



JOINT MEETING OF THE MILPITAS CITY COUNCIL & MILPITAS HOUSING AUTHORITY

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122
Para sa Tagalog, tumawag sa 408-586-3051
Para español, llame 408-586-3232

AGENDA (REVISED) **TUESDAY, MAY 7, 2019** **COUNCIL CHAMBERS, 455 E. CALAVERAS BLVD., MILPITAS, CA** **5:30 PM (CLOSED SESSION)** **7:00 PM (PUBLIC BUSINESS)**

CALL JOINT MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9(d)(2) – 2 matters

(b) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)

Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823

(c) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING

Pursuant to California Government Code Section 54957.6

City Negotiator: Liz Brown, Human Resources Director

Employee Groups: Professional and Technical Group & Mid-Management and Confidential Group

Under Negotiation: Wages, Hours, Benefits, and Working Conditions

(d) PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code Section 54957

Employee Position: City Manager

CLOSED SESSION ANNOUNCEMENT: Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present

PLEDGE OF ALLEGIANCE

INVOCATION

PRESENTATIONS

- Proclaim *Public Works Week* for May 19 – 25, 2019
- Proclaim May 2019 as *Affordable Housing & Building Safety Month*
- Proclaim May 2019 as *Older Americans Month*

PUBLIC FORUM

Those in the audience are invited to address City Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit spoken remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

ANNOUNCEMENTS

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

APPROVAL OF AGENDA

CONSENT CALENDAR

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a City Councilmember, member of the audience or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

C1. Receive City Council calendar of meetings for the month of May 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

C2. Approve City Council meeting minutes of April 16, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve April 16, 2019 City Council meeting minutes.

C3. Waive the Second Reading and Adopt Ordinance No. 38.833 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 13 and 57 Relating to Accessory Dwelling Units (Staff Contact: Rozalynne Thompson, 408-586-3278)

Recommendations:

- 1) Waive the second reading of Ordinance No. 38.833 Amending Milpitas Municipal Code (Zoning Text) Title XI, Chapter 10 for a zoning text amendment in Section 2 ("Definitions"), Section 4 ("Residential Uses"), Section 13 ("Special Uses"), and Section 57 ("Applications") complying with Government Code Sections 65852.2 and 65852.22, to further encourage the production of accessory dwelling units in the City of Milpitas and determine that the Municipal Code (zoning) amendment is statutorily exempt from California Environmental Quality Act pursuant to CEQA Guidelines Section 15282(h).
- 2) Adopt Ordinance No. 38.833 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 13 and 57 Relating to Accessory Dwelling Units.

C4. Adopt a Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District (LLMD) No. 95-1, McCarthy Ranch, and Provide Notice of a Public Hearing to be held on May 21, 2019 (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 95-1 (LLMD No. 95-1 McCarthy Ranch), and Provide Notice of a Public Hearing to be held on May 21, 2019.

C5. Adopt Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District (LLMD) No. 98-1, Sinclair Horizons, and Providing Notice of Public Hearing (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 98-1 (LLMD No. 98-1 Sinclair Horizons), and Providing Notice of Public Hearing to be held on May 21, 2019.

C6. Award Construction Contract to St. Francis Electric for McCarthy/Sandisk Traffic Signal, Project No. 4292 (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a Resolution Awarding a Construction Contract to and Authorizing the City Manager to Execute the Contract with the Lowest Responsible Bidder Submitting a Responsive Bid, St. Francis Electric, LLC, in the Amount of \$595,100 for the McCarthy/Sandisk Traffic Signal Project, Project No. 4292, and Authorizing the Engineering Director/City Engineer to Negotiate and Execute Contract Change Order(s) in an Aggregate Amount Not to Exceed \$89,500 for the Project.

C7. Adopt a Resolution Requesting the Allocation of Transportation Development Act (TDA), Article 3 Funding for the City's Americans with Disabilities Act (ADA) Curb Ramp Transition Program, and Appropriate the Funding Received in to Project No. 4283 (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a Resolution requesting the Allocation of Transportation Development Act (TDA), Article 3 Funding for the City's Americans with Disabilities Act (ADA) Curb Ramp Transition Program, and appropriate the funding received into Project No. 4283.

C8. Adopt a Resolution Authorizing the City Manager to Execute a Purchase and Sale Agreement and all related closing documents for Property located at 1700 Sango Court (APN 086-36-012) within the Transit Area Specific Plan (TASP) Area to accommodate expansion of Augustus Rathbone Public Park and Approve a Budget Amendment (Staff Contact: Steve McHarris, 408-586-3059)

Recommendation: Adopt a Resolution authorizing the City Manager to execute a Purchase and Sale Agreement and all related closing documents for Property located at 1700 Sango Court (APN 086-36-012) within the Transit Area Specific Plan (TASP) are to accommodate expansion of Augustus Rathbone Park and approve a budget amendment.

C9. Adopt a Resolution Approving a Reimbursement Resolution Authorizing Reimbursement of Certain Water and Wastewater Capital Improvement Expenditures from the Proceeds of Future Indebtedness (Staff Contact: Jane Corpus, 408-586-3125)

Recommendation: Adopt a Resolution Authorizing Reimbursement of Certain Water and Wastewater Capital Improvement Expenditures from the Proceeds of Future Indebtedness.

C10. Approve the 5-Year Professional Services Agreement with Precision K9 for Police Canine Training (Staff Contacts: Lt. John Torrez, 408-586-2408 and Chris Schroeder, 408-586-3161)

Recommendation: Approve the 5-Year Professional Services Agreement with Precision K9 in the amount not to exceed \$195,000.

C11. Permanently change the Milpitas National Night Out day to align with the Nationally recognized date of the first Tuesday in August (Staff Contact: Raj Maharaj, 408-586-2416)

Recommendation: Move to permanently change the Milpitas National Night Out day to align with the Nationally recognized date of the first Tuesday in August.

C12. Approve and Authorize the City Manager to Execute Master Professional Service Agreements with Environmental Consultants for On-Call Environmental Services (Staff Contact: Rozalynne Thompson, 408-586-3278)

Recommendation: Approve and authorize the City Manager to execute Master Professional Service Agreements with the selected consulting firms to provide on-call environmental consulting services.

C13. Consider and Approve a \$500 donation to Milpitas Historical Society (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Consider request received by the City Clerk and approve donation of \$500 to Milpitas Historical Society to defray costs of touring bus for historical tour of Milpitas on June 22, 2019.

C14. Consider and Approve a Fee Waiver for the Nuñez Community Foundation (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Consider request received by the City Clerk on April 23 and approve waiving the fee of \$1,080 to rent the Senior Center Auditorium on June 1, 2019 for the Nuñez Community Foundation, host of a Youth Health and Wellness Fair.

C15. Receive Update on State Legislation of Critical Importance to Cities and authorize the City Manager to submit letters of support to State Legislators (Staff Contact: Ashwini Kantak, 408-586-3053)

Recommendation:

1. Authorize the City Manager to submit letters of support to State Legislators for Assembly Bill 1235 - Youth Homelessness Prevention Centers; Assembly Bill 291 - Local Emergency Preparedness and Hazard Mitigation Fund; Assembly Bill 344 – New Beginnings California Program; Assembly Bill 916 - Suicide prevention; Assembly Bill 688 - Firearms: vehicle storage; Senate Bill 438 - Emergency Medical Services: Dispatch; Senate Bill 531 - Local Agencies: Retailers;
2. Receive informational update on Senate Bill 50 - Planning and Zoning: Housing Development: Incentives.

COMMUNITY DEVELOPMENT

16. Per Request from Councilmember Montano, Receive an Update and Presentation from Santa Clara Valley Transportation Authority Staff on Bay Area Rapid Transit Extension and Montague Expressway Pedestrian Overcrossing Projects (Staff Contact: Steve Chan, 408-586-3324)

Recommendation: Receive update and presentation from Valley Transportation Authority (VTA) staff on Bay Area Rapid Transit (BART) Extension and Montague Expressway Pedestrian Overcrossing Projects.

- 17. HOUSING AUTHORITY: Adopt a Resolution Authorizing \$6.5 million development loan for Sango Court for 355 Sango Court Affordable Housing Development and Approve Budget Appropriation (Staff Contact: Sharon Goei, 408-586-3260)**

Recommendations:

1. Adopt a Resolution of the Milpitas Housing Authority to authorize the development loan to Sango Court L.P. in the amount of \$6.5 million.
2. Approve a budget appropriation of \$6.5 million from the Housing Authority Fund reserve into the FY 2018-19 Nondepartmental Operating Budget.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE

- 18. Approve the Schematic Design/Conceptual Plan and Provide Direction to Staff on Funding Options for the Replacement of Fire Station No. 2, Project No. 3447 (Staff Contact: Steve Erickson, 408-586-3301)**

Recommendation: Approve the Schematic Design/Conceptual Plan and Provide Direction to Staff on Funding Options for the Replacement of Fire Station No. 2, Project No. 3447.

LEADERSHIP AND SUPPORT SERVICES

- 19. Consider Recommendation from Councilmember Nuñez for One Appointment to the Milpitas Planning Commission (Contact: Councilmember Nuñez, 408-586-3023)**

Recommendation: Receive Councilmember Nuñez's recommendation of Ricky Ablaza, and consider confirming his appointment by Mayor Tran to a term on the City of Milpitas Planning Commission that would expire in December 2020.

- 20. Receive an Update on the City Council Rules Subcommittee and Provide Direction on Potential Items for the Subcommittee's Consideration (Staff Contact: Ashwini Kantak, 408-586-3053)**

Recommendation: Receive an update on the Rules Subcommittee and provide direction on potential items for the Subcommittee's consideration.

REPORTS OF MAYOR & COUNCILMEMBERS - from assigned Commissions, Committees and Agencies

- 21. Consider Requests for an Urgency Tenant Protection Ordinance for Rent Control (Vice Mayor Dominguez and Mayor Tran) and an Urgency Tenant Protection Ordinance for Just Cause Eviction (Vice Mayor Dominguez and Councilmember Nuñez) (Staff Contact: Sharon Goei, 408-586-3260)**

Recommendations:

1. Consider Council/Mayor requests related to:
 - a. Urgency Ordinance recommendation related to Tenant Protections – Just Cause Eviction; and
 - b. Urgency Ordinance recommendation related to Tenant Protections – Rent Control.
2. Provide direction to staff.

NEXT AGENDA PREVIEW

- 22. Receive Preview List of Next Regular City Council Meeting Agenda for May 21, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)**

ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
Tuesday, May 21, 2019

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website. City Council agendas and related materials can be viewed online here: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

Item Attachment Documents:

- C1. Receive City Council calendar of meetings for the month of May 2019 (Staff Contact: Mary Lavelle, 408-586-3001)**

April 2019						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Milpitas City Council Calendar

May 2019

June 2019						
S	M	T	W	T	F	S
	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 2:00 PM -Santa Clara VTA - Northeast group (RT) (Santa Clara) 7:00 PM -Community Advisory Commission (BN)	2 5:30 PM -Santa Clara VTA Board of Directors (RT) 5:30 PM -Milpitas Chamber of Commerce Board (CM)	3	4 9:00 AM US Passport Fair @City Hall Lobby
5	6 7:00 PM -Parks, Recreation & Cultural Resources Commission (AP)	7 5:30 PM -Closed Session 7:00 PM -City Council	8 4:30 PM -City Council Finance Subcommittee (RT/CM) 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (BN) (Cupertino)	9 4:00 PM -Santa Clara VTA Policy Advisory Committee (KD) 4:00 PM -Treatment Plant Advisory Committee (CM) (San Jose) 7:00 PM -Cities Assoc of SCC (CM) 7:00 PM -Youth Advisory Commission (AP)	10	11
12	13 4:00 PM -Economic Development & Trade Commission (KD)	14	15 5:30 PM City Council Budget Study Session @B. Lee Senior Center Rooms 140/141	16 6:30 PM -Bay Area Water Supply Conserv Agency (San Mateo) 7:00 PM -Public Safety and Emergency Preparedness Commission (KD)	17	18
19	20 7:00 PM -Science, Technology, & Innovation Commission (BN) 7:00 PM -Library & Education Commission (CM)	21 7:00 PM -Closed Session 7:00 PM -City Council	22 7:00 PM -Planning Commission	23 12:00 PM -Terrace Gardens Board of Directors (BN) 4:00 PM -SV Regional Interop. Authority Board of Directors (KD)	24	25
26	27 CITY HOLIDAY memorial DAY  9:00 AM Memorial Day Ceremony (Veterans Plaza)	28 7:00 PM -Arts Commission (CM)	29	30	31	

Item Attachment Documents:

C2. Approve City Council meeting minutes of April 16, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve April 16, 2019 City Council meeting minutes.

**Draft MEETING MINUTES
CITY OF MILPITAS**

Minutes of:	Regular Meeting of Milpitas City Council
Date:	Tuesday, April 16, 2019
Time:	5:30 PM Closed Session 7:00 PM Open Session
Location:	Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas

CALL TO ORDER	Mayor Tran called the meeting to order at 5:38 PM. City Clerk Mary Lavelle called the roll. PRESENT: Mayor Tran, Councilmembers Montano and Nuñez ABSENT: Vice Mayor Dominguez and Councilmember Phan were absent at roll call. Ms. Dominguez arrived at 5:39 PM, and Mr. Phan arrived in Closed Session.
CLOSED SESSION	City Council convened in Closed Session to discuss two matters listed on the agenda. City Council convened at the dais for the Open Session regular agenda at 7:30 PM.
ANNOUNCEMENT	City Attorney Chris Diaz stated there was nothing to report out of Closed Session.
PLEDGE	The pledge of allegiance was led by Boy Scouts from Troop No. 92.
INVOCATION	Mayor Tran invited Muneerah Merchant, President of the Ismailia Cultural Center to offer a prayer to start the meeting.
PRESENTATION	Vice Mayor Dominguez proclaimed <i>National Public Safety Telecommunications Week</i> for April 14-20, 2019, and the proclamation was accepted by staff of the Milpitas Police Department Dispatching Center. Commendations to police dispatcher employees were also presented, including to Robert Gaudinez, the Milpitas 2018 Dispatcher of the Year.
PUBLIC FORUM	Robert Marini, resident, mentioned information he had requested but did not receive from the Public Works Director, regarding cost allocation for water service. Rob Means, 1421 Yellowstone resident, referred to the US President and played an audio recording. Voltaire Montemayor, resident, addressed the Council. Frank DeSmidt of Milpitas Rotary Club, invited all to attend the April 17 Masquerade fundraising dinner at Ta Restaurant. He showed examples of masks available for sale in Milpitas.
ANNOUNCEMENTS	None
ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS	City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, none were reported.
APPROVAL OF AGENDA	<u>Motion:</u> to approve the meeting agenda, as submitted Motion/Second: Councilmember Montano/Councilmember Nuñez

Motion carried by a vote of:

AYES: 5

NOES: 0

CONSENT CALENDAR

Mayor Tran asked to place items no. 12 (VTA presentation) and no. 17 (new travel policy) onto the consent calendar.

Councilmember Phan asked for item no. 15 (Commission by-laws) to go on consent.

Councilmember Montano requested to move Planning Commission appointments (item no. 18) up, to the top of agenda heard first.

Councilmember Nuñez asked for item no. 5 (purchase of body worn cameras) and item no. 10 (Fire Dept. protective equipment) to come off the consent calendar.

Councilmember Montano asked for item no. 15 to be discussed, and so not added to consent.

Motion: to approve the consent calendar including agenda items 1 – 4, no. 6 – 9, no. 12 and no.17

Motion/Second:

Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of:

AYES: 5

NOES: 0

- * 1. Council Calendars Accepted City Council calendars for April and May 2019.
- * 2. Meeting Minutes Approved City Council meeting minutes of April 2, 2019.
- * 3. Adopt Resolution Adopted Resolution No. 8861 to transfer a total of \$801.30 in unclaimed checks and credits, per the list generated by the City's Finance Department, to the General Fund in accordance with the City of Milpitas Standard Operating Procedure No. 26-1
- * 4. Adopt Resolution Adopted Resolution No. 8862 authorizing the Purchasing Agent to make a cooperative purchase of Oracle Database Enterprise Software from Mythics (OMNIA Partners) for the initial cost for the software and first year's software update license and support of \$100,000.84, and to exercise the four years of contract renewal options for an additional amount of \$79,639.27, for a grand total amount not to exceed \$179,640.
- 5. Adopt Resolution Purchasing Agent Chris Schroeder responded to questions from Councilmember Montano.

Motion: to adopt Resolution No. 8863 approving the sole source purchase of Axon body worn cameras, conducted electrical weapons with associated equipment and a supplementary subscription to Evidence.com for a total three-year cost of \$85,734.83 and approving Amendment No. 1 to the Agreement with Axon Enterprises, Inc. for the sole source purchase, increasing the agreement amount of \$444,982.03 by \$85,734.83 for a new total not to exceed \$530,716.86

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0
- * 6. Adopt Resolution Adopted Resolution No. 8864 approving the sole source purchase of a Neutral Output-Discharge Elimination System (NO-DES) water main flushing truck and accessories from NO-DES, Inc. for an amount not to exceed \$509,580.77, and authored the City Manager to execute the NO-DES Purchase, Sale and Security Agreement required to complete the purchase.
- * 7. 2 Contracts with Dryco. 1) Approved a construction contract with DRYCO Construction, Inc. for the rehabilitation of the tennis courts at Pinewood Park for an amount not to exceed \$157,600, and authorized the Public

Works Director to negotiate and execute contract change orders, in aggregate not to exceed \$23,640.

2) Approved a construction contract with DRYCO Construction, Inc. for the rehabilitation of the tennis courts at Robert E. Browne Park for an amount not to exceed \$162,100, and authorized the Public Works Director to negotiate and execute contract change orders, in aggregate not to exceed \$27,860.

* 8. Amendment No. 15 to Agreement with SCVTA

Approved Amendment No. 15 to the Master Agreement with the Santa Clara Valley Transportation Authority relating to the Silicon Valley Rapid Transit Berryessa BART Extension Project, subject to any minor and clarifying revisions deemed necessary by the City Attorney.

* 9. Agreement - Fireworks

Authorized the City Manager to execute the Agreement with Fireworks & Stage FX America for Annual Fireworks Shows for the amount of \$26,500, and authorize the Purchasing Agent to exercise the options per the terms of the agreement.

10. Emergency Purchase for Fire Dept.

Purchasing agent Chris Schroeder explained the need for this purchase by the Fire Department, due to a greater and heavy use of firefighting equipment during extensive wildfire season last year. Councilmember Nuñez asked if the City would get any special funds for reimbursement. Deputy Fire Chief Rick Frawley responded, a 10% reimbursement from the state.

Motion: to receive Purchasing Agent's report on purchase of Nomex Wildland Personal Protective Equipment for the Milpitas Fire Department, and authorize payment of invoices from LN Curtis & Sons for purchase of Nomex Wildland protective clothing

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC HEARING

11. Ordinance No. 38.833 to regulate Accessory Dwelling Units

Planning Director Ned Thomas said staff was pleased to have this ordinance ready for the Council's action, following past reports to City Council on this subject.

Senior Planner Rozalynne Thomas presented an overview of the proposed ordinance to bring Milpitas regulations into accordance with state law regarding accessory dwelling units, an additional format for housing in the City. After defining Accessory Dwelling Units ("ADUs"), Ms. Thompson listed four specific recommendations to Council: hold the public hearing and move to close it, City Attorney would read the ordinance title, Council could introduce the ordinance and find it exempt from CEQA.

Mayor Tran believed this would be the fastest way to provide housing across California. He asked staff if it would consider an "amnesty" programs for some existing units. Staff responded that would be for the Building Department and could be considered.

Next, Mayor Tran opened the public hearing.

Voltaire Montemayor, resident, believed having these units would help in Milpitas and help households with the mortgage. Difficulty with parking could happen though.

Motion: to close the public hearing, following one speaker

Motion/Second: Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

Councilmember Phan asked about design standards, and Ms. Thompson said the ordinance did address that and had to conform to state law.

Councilmember Nuñez was glad that the ordinance was here and asked about parking. Staff described current parking on streets, as regulated, with no added regulation in the ordinance.

Councilmember Phan commented on pre-fab buildings, as secondary garage dwelling units, and asked about parking. Staff responded that ADU size was not limited based on lot size nor parking. Mr. Phan stated he wanted other cities in the region to “step it up” on ADUs.

Mayor Tran asked staff, under state law, if homeowners of ADUs could grow marijuana in their units. Staff confirmed that it was a dwelling unit, so yes was the response.

Next, City Attorney Chris Diaz read aloud the title of Ordinance No. 38.833, “An Ordinance of the City Council of the City of Milpitas Amending Sections of Chapter 10 of Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units.”

(2) Motion: to waive the first reading beyond the title and introduce Ordinance No. 38.833 amending Milpitas Municipal Code (Zoning Text) Title XI, Chapter 10 for a zoning text amendment in Sections 2, 4, 13 and Section 57 complying with Government Code Sections 65852.2 and 65852.22, to further encourage the production of accessory dwelling units and to make the CEQA finding, determining that the Milpitas Municipal Code zoning amendment is statutorily exempt from California Environmental Quality Act per CEQA Guidelines Section 15282(h)

Motion/Second: Councilmember Phan/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

COMMUNITY DEVELOPMENT

*12. VTA presentation

This item was moved onto the consent calendar. Received update from Valley Transportation Authority (VTA) on Bay Area Rapid Transit (BART) Extension and Montague Expressway Pedestrian Overcrossing Projects.

13. Matrix presentation

Deputy City Manager Steve McHarris presented background on the city departments covered and the purpose for the draft reports (two studies) by Matrix Consulting Group on the City’s development review process and related user fees. Stakeholders were involved in this process.

Consultants Courtney Ramos and Alan Pennington then gave a lengthy and detailed presentation to the City Council. Cost of service analysis given regarding User Fees and Impact Fees.

Ms. Ramos responded to questions from Councilmember Montano, on what did full cost recovery entail, when she identified full costs of some services versus present charges.

Mr. Pennington reviewed organizational assessment of development processes in Milpitas. Matrix provided key staffing recommendations, with a few recommendations for fee increases. He listed performance process recommendations. The consultant suggested a Zoning Hearing Officer for administrative approval of some permits.

Councilmember Phan asked questions about costs for a public hearing if there were a Hearing Officer.

Mr. Pennington noted the need for data integration and more complete use of TrakIt software for all segments of development applications. Staff offered 5-6 questions to seek City Council direction on this report.

Mayor Tran was concerned for older homes that required renovation, and where there was a barrier for lower income folks. He did not want to see permit fees go up for that group of owners.

Councilmember Montano asked if this report would be shelved, or would be utilized. If so, when would that occur? The Deputy City Manager said the fees part of this would come to City Council on April 30. Ms. Montano asked him how Council could support when staff tried to streamline processes.

Councilmember Phan felt fees should be updated, following review increases. He wanted to add minor subdivision and minor tract maps for approval administratively (i.e. not always go to Council). He looked to the Public Information Officer to get good information out there including good use of website.

Councilmember Nuñez agreed with Mr. Phan and favored having an Administrative Hearing so that all disputes would not have to come to Planning Commission or City Council.

Next, Mayor Tran asked for public comments.

Voltaire Montemayor, resident, said cost recovery was big, of course. Guiding term.

Jim Sullivan, property owner in Milpitas and resident of Campbell, commended Matrix consulting group and for the thoughtful questions. He thankful for staff reaching out to stakeholders and staff holding the roundtables for developers. For developers, time was money and he preferred the flat fee approach over a deposit.

Armando Gomez, representative for McCarthy Ranch, had experience with some of the development time frames and slow process. So he looked forward to implementing changes.

Councilmember Phan agreed with Mr. Sullivan on the flat fee.

Councilmember Nuñez inquired, on the software, what there any kind of upgrade in Planning for a new software or new direction. Mr. McHarris responded that the software was there (TrakIt) but not being utilized across all departments. More training and use of the produce was planned.

Vice Mayor Dominguez supported staff to improve and use that software, and she supported flat fees.

Councilmember Montano asked Information Services Director Mike Luu to comment on TrakIt software, and he responded.

No vote was taken, while Council had received a presentation related to the consultant's evaluation of the Development Review Process and Development Review Cost of Services (User Fee) Study, both completed by the Matrix Consulting Group

14. Citygate Associates presentation

Fire Chief Brian Sherrard and Citygate Associates leader Stewart Gary from Citygate had nearly 50 years in public service, and had participated in more than 400 studies. Mr. Gary had been a Livermore City Councilmember. He reviewed the Standards of Coverage and Headquarters Services assessment. Also, Mr. Gary detailed some of the significant points in the study, including response time performance to 90%.

Chief Sherrard commented on maps showing hotspots in Milpitas, including over 300 responses at Elmwood Jail and coverage for 300 miles of road network in Milpitas. Mr. Gary displayed deployment findings in the summary that was positive overall. He described inadequate headquarters. Deployment recommendations (several were staffing specific), headquarters recommendations (staffing, overtime & revenues) were given along with 5 next steps.

Mayor Tran thanked both men for their presentations.

Councilmember Montano asked about a new station design. Chief Sherrard said there would be a re-build of current Fire Station 2, but no request for a new Fire Station. She inquired about the Fire Department's response to youth with asthma, a condition on the rise.

Mayor Tran thanked all for this report, and noted receipt of the information, with no vote taken.

15. Commission By-Laws

Recreation Services Director Renee Lorentzen was available to answer Councilmember questions.

Councilmember Montano commented about a request from the Arts Commission to include students on the Milpitas Arts Commission and having a youth member. Staff replied that the revised “addendum” to the Arts Commission included opportunity for appointment of two non-voting student members and to encourage their participation.

Motion: to approve standardized Bylaws for 11 City of Milpitas Commissions (excepting Planning Commission)

Motion/Second:

Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of:

AYES: 5

NOES: 0

16. Formation of a City Council Agenda Subcommittee

This item was heard following item no. 18.

Councilmember Montano asked Assistant City Manager Ashwini Kantak to go over her powerpoint presentation, even though this topic had been previously introduced to City Council. Ms. Kantak summarized the background, including the fact that all Councilmembers may request items go onto a Council agenda. She defined a proposal for an Agenda Subcommittee consisting of Mayor and Vice Mayor.

There is a “Rules Subcommittee” called out in the Open Government Ordinance. So staff pointed out, based on function, there could be an “Agenda Subcommittee” established. As mentioned at Council retreat, Mayor would lead the committee and another member selected to serve.

Ms. Montano asked staff about the idea of having two Councilmembers on Subcommittee, and asked if they would then control what goes on the meeting agendas. Staff replied that would be the body that would approve Council agendas, following input and discussion including from the City Manager.

Mayor Tran wanted to have a policy to allow any Councilmember to place an item on the agenda, at least one per meeting in a common sense way.

City Attorney Diaz offered legal advice on how to set up the Subcommittee. Maintain right of members to place agenda items, not allowing subcommittee to touch any items specifically requested by any Councilmember for discussion. He heard a desire to legally vet particular concepts about going on the agendas, and the scope of topics which was up to the Council.

Councilmember Nuñez commented that every Councilmember needed a venue to say here’s an idea to bring forward, and to have it understood, and allow staff time and effort to prepare. He wanted to know more about the past Rules Subcommittee in the City. City Attorney replied.

Councilmember Phan wanted to make a new Rules Subcommittee, to scrap what happened in past and start new. What a Councilmember proposed would end up on the Council agenda. Subcommittee would not shut it down, but it could make a recommendation on those proposals. For staff proposals, Subcommittee could shut it down, unless it was Council priority. There needed to be some authority. Deliberate on how to approach the policy or service area. Work with staff to come up with options.

Mayor Tran wanted to have a rule if Councilmember brought an item, just one Councilmember needed to support a proposal by the City Manager.

Vice Mayor Dominguez stated she was the person who initiated this request and saw two problems going on. There were a lot of great ideas, with a limited time frame, with late Council meetings. There needed to be a better way of doing government in the City. Goal of committee: ability for each Councilmember to bring forth their idea on the agenda. Because of turnover of staff, it caused lack of understanding on how things got in the pipeline. She wanted a Council Subcommittee of Mayor and one Councilmember to meet and review what was on Council agendas. She stated the Subcommittee shall: prioritize agendas to needs of those served (citizens of Milpitas); ensure ideas of all Council were being vetted, especially towards priorities set by Council; and to name it the Rules Subcommittee. Also rename the old subcommittee the Open Government Subcommittee and honor the correct intent.

Mayor Tran agreed with her recommendations. He said Council may need to make changes by ordinance, at a future meeting. He wanted to allow every Councilmember to be able to put any item they wanted on the agenda. Empower each Councilmember on the dais.

Councilmember Montano wanted the rest of the staff powerpoint. She needed the pros/cons. Ms. Kantak continued, listing Council Meeting Management Options, 1 – 10. Subcommittee would need to meet at least 10 days prior to Council meeting date, in order to publish the agenda on time for each meeting.

Councilmember Phan wanted to make sure when moving forward, to make sure a representative from the city's legal counsel was present.

Councilmember Montano said it would be a lot of significant work, and she did not want to volunteer. Council could always change this effort if it did not work and could change it.

Councilmember Nuñez agreed this would be time consuming. The whole idea of open government was one he was really interested in. He wanted to learn more about the past Open Government Subcommittee and its purpose, beyond just the agenda topic for the Rules Subcommittee. He did not volunteer to be on the subcommittee.

Councilmember Phan nominated Vice Mayor Dominguez to serve with Mayor Tran on the new subcommittee.

Vice Mayor Dominguez stated her goal was to make a motion to rename the existing Rules Subcommittee to an Open Government Ordinance Committee and develop a new Rules Subcommittee made up of the Mayor and one Councilmember, appointed by the Mayor or the Council. She wanted to know what the "Open Government Subcommittee" did, and if it could meet. She referred to its role to hear requests for public records when denied, per the open government ordinance. City Attorney Diaz confirmed that focus. The Vice Mayor wanted only to establish the Rules Subcommittee to review the agenda, meeting management and other tasks. She asked if Council could appoint two members at this meeting.

City Attorney Diaz offered options to accomplish what she described. He confirmed that subcommittee members could be appointed at this meeting.

Vice Mayor Dominguez wanted implementation of the subcommittee to begin and to have the two members to come back to Council before the summer recess, and to have it go into effect in the next Fiscal Year (starting for the first August Council meeting).

Mayor Tran wanted each elected official had the opportunity to place an item on the agenda, with no restriction by the two member Subcommittee to maintain rights of each official to propose a policy.

Councilmember Phan wanted to have a separate discussion on the Open Government Subcommittee at a later date. He asked to bring that back.

Motion: to establish a new City Council Rules Subcommittee, to appoint Mayor Tran and Vice Mayor Dominguez to serve as the two members, to begin meeting right away to determine scope

of the Subcommittee including agenda review, to take consideration of comments at this meeting, and to prepare to implement fully this Subcommittee in August after determining its scope in the preceding months

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0

- *17. Approve Travel Policy This item was moved onto the consent calendar. City Council approved the revised Travel and Expense Reimbursement Policy, Standard Operating Procedure No. 06-01, for City of Milpitas employees and City officials.

REPORT

18. Commission Appointments

This item was heard immediately following the consent calendar.

Councilmember Nuñez asked why his recommendation for Planning Commission was not put forward, as he had suggested. He provided support for this resident Economic Development Commissioner Ricky Ablaza to move to the Planning Commission. Mr. Nuñez wanted to put this name forward.

Mayor Tran expressed his goal for Commissioners to serve out their full terms, including Mr. Ablaza on the Economic Development & Trade Commission.

Councilmember Montano wanted to nominate a different applicant to Planning Commission.

Councilmember Phan was willing to withdraw his nomination, and go with Mr. Nuñez's recommendation for Mr. Ablaza. He could reach out to Steve Tao to ask if he was interested in Economic Development.

Councilmember Nuñez was holding the Mayor to his previous comments, permitting Councilmembers each to be able to nominate residents to Planning Commission. If not approved at this meeting, he would like to bring Ricky Ablaza at the end of the year when two more seats on Planning Commission would have terms expired.

Motion: to approve all recommendations from the Mayor and Councilmembers for appointments and re-appointments to seven City of Milpitas Commissions (see below)

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 5
NOES: 0

Planning Commission: appointed Evelyn Chua and Steve Tao as voting Commissioners to terms of service that will expire in December of 2021.

Arts Commission

Newly appointed Robert Besler as Commissioner to a term that expires in October 2021.

Economic Development and Trade Commission

Newly appointed Victor San Vicente as voting Commissioner representing residents (into seat served by Minh Nguyen) to a term that expires in April 2021.

Re-appointed Chris Norwood as MUSD Board/Education representative to a term that expires in April 2022. Confirmed Michael Tsai as Alternate from the school board, per Board action
Re-appointed Lynne Rice as voting Commissioner representing business to a term that expires in April 2021.

Re-appointed Jeffrey Chen as voting Commissioner representing business to a term that expires in April 2021.

Newly appointed Matt Taylor as voting Commissioner representing real estate to a term that expires in April 2021.

Newly appointed Dipak Awasthi as Alternate No. 1 to a term that expires in April 2021.

Newly appointed Juliette Gomez as Alternate No. 2 to a term that expires in April 2020.

Parks, Recreation and Cultural Resources Commission

Appointed Voltaire Montemayor as voting Commissioner to term to expire in June 2021.

Newly appointed Ricky Davis as Alternate No. 1 to a term that expires in June of 2020.

Newly appointed Molly Current as Alternate No. 2 to a term that expires in June of 2019.

Public Safety & Emergency Preparedness Commission

Confirmed Milpitas Unified School District Board of Trustees member Hon Lien as voting Commissioner to a currently vacant seat that expires in June of 2020.

Science, Technology and Innovation Commission

Appointed Jaime Hallera as voting Commissioner to a term that expires in January 2020.

Appointed Ratan Choudhury as Alternate No. 1 to a term that expires January 2021.

Newly appointed Guy Haas as Alternate No. 2 to a term that expires in January 2021.

Veterans Commission

Appointed Ricardo Martinez as Commissioner to a term that expires in February 2022.

Newly appointed Bruce Choy as Alternate No. 1 to a term that expires in February 2022.

Note that Matt Taylor was not appointed to Economic Development & Trade Commission to represent the real estate sector (as listed on the meeting agenda) because he'd withdrawn his application from consideration.

NEXT AGENDA

19. Preview next agenda

Received list of agenda items for the May 7, 2019 regular City Council meeting.

ADJOURNMENT

Councilmember Nuñez commented on all the people who came last month to the Council meetings, so he would like to have come back a report on rent control. See if Council was doing something different, speakers made a statement. He wanted to address what they asked about and put it on an agenda. He felt he owed the community something.

Councilmember Montano understood that staff was still working on it, was a work in progress and trying to find alternatives, to keep issue alive.

Vice Mayor Dominguez supported what Mr. Nuñez brought up and stated the conversation was not over. She thanked her colleague and asked the City Manager to put on the agenda as soon as she possibly could.

Mayor Tran adjourned the regular Council meeting at 11:40 PM.

*Meeting minutes respectfully drafted and submitted by
Mary Lavelle, City Clerk*

Item Attachment Documents:

- C3. Waive the Second Reading and Adopt Ordinance No. 38.833 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 13 and 57 Relating to Accessory Dwelling Units (Staff Contact: Rozalynne Thompson, 408-586-3278)

Recommendations:

Waive the second reading of Ordinance No. 38.833 Amending Milpitas Municipal Code (Zoning Text) Title XI, Chapter 10 for a zoning text amendment in Section 2 (“Definitions”), Section 4 (“Residential Uses”), Section 13 (“Special Uses”), and Section 57 (“Applications”) complying with Government Code Sections 65852.2 and 65852.22, to further encourage the production of accessory dwelling units in the City of Milpitas and determine that the Municipal Code (zoning) amendment is statutorily exempt from California Environmental Quality Act pursuant to CEQA Guidelines Section 15282(h).

Adopt Ordinance No. 38.833 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 13 and 57 Relating to Accessory Dwelling Units.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Waive the Second Reading and Adopt Ordinance No. 38.833 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 13 and 57 Relating to Accessory Dwelling Units (Staff Contact: Rozalynne Thompson, 408-586-3278)
Category:	Consent Calendar-Community Development
Meeting Date:	5/7/2019
Staff Contact:	Rozalynne Thompson, Senior Planner, 408-586-3278
Recommendation:	1) Waive the second reading of Ordinance No. 38.833 Amending Milpitas Municipal Code (Zoning Text) Title XI, Chapter 10 for a zoning text amendment in Section 2 ("Definitions"), Section 4 ("Residential Uses"), Section 13 ("Special Uses"), and Section 57 ("Applications") complying with Government Code Sections 65852.2 and 65852.22, to further encourage the production of accessory dwelling units in the City of Milpitas and determine that the Municipal Code (zoning) amendment is statutorily exempt from California Environmental Quality Act pursuant to CEQA Guidelines Section 15282(h). 2) Adopt Ordinance No. 38.833 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 13 and 57 Relating to Accessory Dwelling Units.

Background:

On April 16, 2019, the City Council introduced and conducted the first reading of Ordinance No. 38.833 to amend the City's regulations pertaining to accessory dwelling units found in Title XI, Chapter 10 of the Milpitas Municipal Code to comply with State law and further encourage the production of accessory dwelling units.

Ordinance No. 38.833 is now ready for a second reading and adoption.

Policy Alternatives:

Alternative 1: Do not amend Section XI-10-13.08 ("Second Family Unit") and defer to State law

Pros: Consistent with State law.

Cons: Potential impacts to neighborhoods

Reason not recommended: If the City does not amend its code to conform to current State law, State law makes the City's ADU regulations null and void. The City will have no ability to regulate ADUs beyond the few standards that the State law itself imposes (which are minimal ambiguous). Deferring to State law has been confusing to Milpitas residents and property owners. In addition, staff has experienced difficulties with interpreting State law requirements which has hampered ADU processing and plan checking, and generally has not incentivized ADU production in Milpitas.

Fiscal Impact: None.

California Environmental Quality Act:

Pursuant to State CEQA Guidelines Section 15282(h), adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from CEQA.

Recommendation:

1. Waive the second reading of Ordinance No. 38.833 and determine that the Municipal Code (zoning) amendment is statutorily exempt from California Environmental Quality Act pursuant to CEQA Guidelines Section 15282(h).
2. Adopt Ordinance No. 38.833 amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 13 and 57 relating to accessory dwelling units.

Attachment:

1. Proposed City Council Ordinance No. 38.833

REGULAR

NUMBER: 38.833

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS OF CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of April 16, 2019, upon motion by Councilmember Phan, and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the availability of housing is a substantial concern for individuals of all demographics, ages, and economic backgrounds in communities throughout the State of California; and

WHEREAS, accessory dwelling units and junior accessory dwelling units offer lower-cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character; and

WHEREAS, in September 2016, the Legislature passed new laws including AB 2299, SB 1069, and AB 2406 intended to increase the number of accessory dwelling units and junior accessory dwelling units by simplifying the approval process and reducing costs associated with their creation, developing new standards and regulations, and modifying the City's ability to regulate accessory dwelling units; and

WHEREAS, the State of California has established that a local agency may, by ordinance, provide for the creation of accessory dwelling units and junior accessory dwelling units in single family residential zones and that the ordinance must designate areas within its jurisdiction where accessory dwelling units may be permitted; and

WHEREAS, accessory dwelling units and junior accessory dwelling units are, by law, deemed to be residential uses consistent with existing residential zoning and General Plan designations; and

WHEREAS, the proposed Zoning Ordinance amendments comply with the legislative amendments made in 2016 to Government Code Sections 65852.2 and 65852.22, which establish standards for the development of accessory dwelling units and junior accessory dwelling units, respectively, so as to increase the supply of smaller and affordable housing while ensuring that they remain compatible with the existing neighborhood; and

WHEREAS, the City has prepared a Zoning Amendment ("Amendment") to the City's Municipal Code, including refinements to Section XI-10-2 "Definitions," Subsection XI-10-13.08 "Second Family Unit," and Section XI-10-57 "Applications" of the Municipal Code; and

WHEREAS, on February 13, 2019 the Planning Commission for the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the Amendment.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this Ordinance has been assessed in accordance with the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (14 Cal. Code Regs., § 15000 et seq.) and is statutorily exempt from the CEQA under Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code section 65852.1 or 65852.2. This Ordinance implements section 65852.2. Therefore, this Ordinance is statutorily exempt.

SECTION 3. GENERAL PLAN CONSISTENCY

State law requires the City to deem accessory dwelling units, as permitted by this Ordinance, to be “a residential use that is consistent with the existing general plan and zoning designation.” (Cal. Gov. Code § 65852.2(a)(1)(C).) Furthermore, the City Council has considered the Planning Commission staff report, which provides a robust analysis demonstrating that this Ordinance is consistent with the General Plan. Therefore, the Council deems this Ordinance to be consistent with the General Plan both in substance and as a matter of law.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2

The following entries in Title XI, Chapter 10, Section 2 “Definitions,” Subsection XI-10-2.03 “Definitions,” of the Milpitas Municipal Code are hereby amended to read as follows:

“Accessory Building or Use” means a subordinate building or use, whose purpose is clearly incidental to that of the main building or the use of the land, and which shall not contain living or sleeping quarters or storage for commercial vehicles in excess of three-quarter ($\frac{3}{4}$) ton size. Accessory dwelling units, as defined in subsection XI-13.08 “Accessory Dwelling Units,” are exempted from the prohibition against living and sleeping quarters. An accessory building shall be considered attached to the main building if:

1. It shares a common wall with the main building; or
2. It shares an integral roof structure having the same framing system and roof covering as the main building and is separated from the main structure by no more than ten (10) feet at any given point.

“Single Household Unit” means the functional equivalent of a traditional family, whose members are a non-transient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas which are not compartmentalized, such locked cabinets or doors. A single housekeeping unit shall be limited to one (1) kitchen and shall have permanent internal access to all rooms within the dwelling unit, except as provided for Accessory Dwelling Units.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 4

The following text and footnote of Table XI-10-4.02-1 “Residential Zone Uses” in Title XI, Chapter 10, Section 4 “Residential Zones and Standards,” Subsection XI-10-4.02 “Residential Use Regulations of the Milpitas Municipal Code are hereby amended to read as follows:

4. Residential Uses					
Condominiums and condo conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (Two dwellings)	NP	P	NP	NP	NP
Group dwelling	NP	NP	NP	C	C
Guest house	C	NP	NP	NP	NP
Manufactured home ⁴	P	P	NP	NP	NP
Multi-family dwellings (Three or more units)	NP	NP	P	P	P
Planned unit development ⁵	P	P	P	P	P
Accessory dwelling unit ⁶	P	SFR: P Duplex: P	NP	NP	NP

⁶ In conjunction with an existing or proposed legal single-family dwelling or duplex. Refer to Subsection XI-10-13.08, Accessory Dwelling Units, of this Chapter, for standards.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13

Title XI, Chapter 10, Section 13 “Special Uses,” Subsection XI-10-13.08 “Second Family Unit” is amended as follows:

XI-10-13.08 - Accessory Dwelling Units

A. Purpose and Intent. The purpose of these standards is to comply with Government Code Sections 65852.2 and 65852.22.

B. Definitions:

1. Accessory Dwelling Unit: As defined by Government Code Section 65852.2, an accessory dwelling unit is an attached or a detached dwelling unit which provides complete independent living facilities for one or more persons and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. An accessory dwelling unit also includes an efficiency unit as defined in Section 17958.1 of the Health and Safety Code and a manufactured home as defined in Section 8007 of the Health and Safety Code.

2. Attached Accessory Dwelling Unit: An attached accessory dwelling unit is an accessory dwelling unit that either shares, at minimum, one wall with the primary dwelling.

3. Converted Accessory Dwelling Unit: A converted accessory dwelling unit is an accessory dwelling unit that is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety.

4. Detached Accessory Dwelling Unit: An accessory dwelling unit is detached if it does not share any walls with the primary dwelling unit or existing attached accessory structure.

5. Efficiency Kitchen: As defined by Government Code Section 65852.22(a)(6), an efficiency kitchen includes all of the following: (a) a sink with a maximum waste line diameter of one-and-a-half (1.5) inches, (b) A cooking facility with appliance which do not require electrical service greater than one-hundred-and twenty (120) volts or natural or propane gas, and (c) a food preparation counter and storage cabinets that are reasonable to size of the unit.

6. Junior Accessory Dwelling Unit: As defined by Government Code Section 65852.22, a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling must be constructed within the existing walls of the structure and incorporate an existing bedroom. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

7. Living Area: As defined by Government Code Section 65852.2, the interior habitable area of a dwelling unit including basements and attics not including a garage or any existing accessory building or structure.

8. Public Transit: Any form of public transportation that runs on fixed routes and available to the public. Examples include, but are not limited to, Altamont Commuter Express (ACE), Bay Area Rapid Transit (BART), AC Transit, Valley Transportation Authority (VTA) bus service and light rail, and paratransit.

C. General Provisions

1. Existing Use. A single accessory dwelling unit may be established on any lot in any district where a single-family detached primary dwelling or two-family dwelling has been legally established or is proposed to be established in conjunction with construction of an accessory dwelling-unit.

2. Number. A maximum of either one accessory dwelling unit or junior accessory dwelling unit is permitted on any lot.

3. Owner Occupancy. Either the primary dwelling unit or the accessory dwelling unit or junior accessory dwelling unit must be occupied by the owner as the owner's primary residence and legal domicile.

4. Number of Bedrooms and Kitchen. In non-Hillside zoning districts, an accessory dwelling unit may not have more than one bedroom or more than one kitchen. In the Hillside zoning district, an accessory dwelling unit may not have more than two bedrooms or more than one kitchen.

5. Sale Prohibited. The primary dwelling unit and accessory dwelling unit must be held under the same ownership and may not be sold separately.

6. Rental. The accessory dwelling unit may be rented.

D. Specific Standards

1. Attached Accessory Dwelling Unit.

a. An attached accessory dwelling unit must comply with the same objective building height, setback (except as provided in (viii) below), and lot coverage requirements as the primary dwelling per Section XI-10-4.04 - Residential Zone General Development Standards and Sections XI-10-45.04 – Height Regulations and XI-10-45.05 – Yard Requirements for lots within the Hillside Combining District, except that where an accessory unit is constructed above a detached garage the setback for that accessory dwelling unit must be at least five feet from the side and rear lot lines.

b. In a non-Hillside Combining District, the floor area of an attached accessory dwelling unit may not exceed 50 percent of the existing living area of the primary dwelling or 800 square feet, whichever is smaller. When located on a lot with a two-family dwelling, the floor area of an attached accessory dwelling unit may not exceed 50 percent of the existing living area of the smaller of the two units.

c. The increased floor area of an attached accessory dwelling unit in the Hillside combining district may not exceed 50 percent of the existing living area or 1,200 square feet, whichever is smaller. However, in no case shall the overall building size exceed that allowed in Section XI-10-45-17 – Maximum Size of Residence Accessory Structures and Impervious Surface Coverage.

d. An attached accessory dwelling unit must match the architectural style, roof pitch, exterior materials, and color palette of the existing primary dwelling.

e. The accessory dwelling unit may not encroach into a public utility easement.

f. Where an attached garage that was legally constructed is converted to an accessory dwelling unit, no greater setback shall be required, but the resulting accessory dwelling unit must conform to height, lot coverage, and other requirements of this Section.

2. Converted Accessory Dwelling Unit. A converted attached accessory dwelling unit must:

a. be contained entirely within the existing space of a single-family residence or accessory structure,

b. have independent exterior access from the existing residence, and

c. have rear and side-yard setbacks that are sufficient for fire safety.

3. Detached Accessory Dwelling Unit.

a. A detached accessory dwelling unit in a non-Hillside combining district must be located on the rear half of the lot, and no farther than 100 feet from the primary dwelling, or two-family dwelling. The minimum setback for a detached accessory dwelling unit from the side property line is zero, as long as it is sufficient for fire safety, and 10 feet from the rear property line. When located on a lot with a single-family residential dwelling, the floor area of an accessory dwelling unit may not exceed 50 percent of the existing living area of the primary dwelling or 800 square feet, whichever is smaller. When located on a lot with a two-family dwelling, the floor area of the accessory dwelling unit may not exceed 50 percent of the existing living area of the smaller of the two units. The height of a detached accessory dwelling unit may not exceed two stories or 28 feet. Windows located on the second-story of a detached accessory dwelling unit must be either clerestory or consist of obscured glazing.

b. A detached accessory dwelling unit in the Hillside combining district may not exceed two stories or 27 feet from the finished grade to the highest ridgeline of the building, and its floor area may not exceed 50 percent of the living area of the primary dwelling or 1,200 square feet, whichever is smaller. It must be located on the rear half of the lot, no farther than 100 feet from the primary dwelling. It may not cover more than 50 percent of the required rear yard area. It must match the same side yard setback at which the primary dwelling is built. Its floor area counts towards the maximum allowed impervious surface coverage for the parcel on which it is located. Windows located on the second-story of a detached accessory dwelling unit must be either clerestory or consist of obscured glazing.

c. A detached accessory dwelling unit may be a manufactured home as defined in Section 18007 of the Health and Safety Code, subject to the development standards in this Section.

d. A detached accessory dwelling unit must match the architectural style, roof pitch, exterior materials, and color palette of the existing primary dwelling.

e. Where an accessory dwelling unit is constructed above a garage, the setback for that unit is no more than five feet from the side and rear lot lines, and the unit must conform to the standards of this Section, and other requirements of the zoning ordinance, and other applicable City codes.

f. A detached accessory dwelling unit must be located at least six feet to the rear of the primary dwelling unit.

g. Two-story detached accessory dwelling units not located above a garage in non-Hillside Combining districts shall have a minimum side yard setback of five feet and a minimum rear yard setback of 10 feet.

4. Parking.

a. The owner must provide one additional off-street parking space for the accessory dwelling unit unless one of the following conditions is met:

- i. The accessory dwelling unit is located within one-half mile of public transit.
- ii. The accessory dwelling unit is located within an architecturally and historically significant historic district.
- iii. The accessory unit is part of an existing or proposed primary residence or accessory structure (i.e., it is a converted ADU).
- iv. On-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

- v. When there is a car share vehicle located within one block of the accessory dwelling unit.
- b. If a parking space is required for an accessory dwelling unit, the space must comply with all development standards set forth in Section XI-10-53 – Off-Street Parking Regulations, except that the parking space may be located within any setback area, in a tandem configuration, or on a mechanical lift.
- c. Required parking for the primary dwelling may not be removed for the creation of an accessory dwelling unit (e.g., garage conversions), or allocated to meet the parking requirement for the accessory dwelling unit, unless replacement parking is provided in accord with this Section. Replacement parking spaces for the primary dwelling unit may be located in any configuration on the site, such as covered spaces, uncovered spaces, tandem spaces, or on mechanical parking lifts, subject to the City of Milpitas Engineering Division residential driveway development standards.
- d. If the primary dwelling is nonconforming because it does not meet parking standards, an accessory dwelling unit may be established when parking for the primary dwelling unit is provided to meet the applicable requirements of Section XI-10-53 – Off-Street Parking Regulations. Parking for the primary dwelling unit may be located in any configuration on the site, such as covered spaces, uncovered spaces, tandem spaces, or mechanical parking lifts, subject to the City of Milpitas Engineering Division residential driveway development standards.

E. Junior Accessory Dwelling Units

1. A junior accessory dwelling unit is a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. The junior accessory dwelling unit must incorporate an existing bedroom and must be within the existing footprint of a structure and may only include an efficiency kitchen. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
 - a. Junior accessory dwelling units must comply with the following standards:
 - i. Only one accessory junior accessory dwelling unit may be located on any lot that a primary single unit dwelling has been legally established or is proposed to be established in conjunction with construction of a junior accessory dwelling unit.
 - ii. A junior accessory dwelling unit may only be located on a lot which already contains one legally established or proposed to be established single-family dwelling. A junior accessory dwelling unit must be created within the existing walls of an existing primary dwelling, and must include conversion of an existing bedroom.
 - iii. A separate exterior entry must be provided to serve a junior accessory dwelling unit.
 - iv. The interior connection to the main living area must be maintained, but a second door may be added for sound attenuation.
 - v. The junior accessory dwelling unit must include an efficiency kitchen, requiring and limited to the following components:
 - a) A sink with a maximum waste line diameter of one-and-a-half (1.5) inches,
 - b) A cooking facility with appliance which do not require electrical service greater than one-hundred-and twenty (120) volts or natural or propane gas, and
 - c) A food preparation counter and storage cabinets that are reasonable to size of the unit.
 - vi. The minimum total area of floor space of a junior accessory dwelling unit must be at least the minimum area of an efficiency unit as described in Section 17958.1 of the California Health and Safety Code but may not exceed a maximum of 500 square feet of floor area.
 - vii. No additional parking is required.
 - viii. The owner of a parcel proposed for a junior accessory dwelling unit must occupy as a principal residence either the primary dwelling unit or the junior accessory dwelling unit.

- ix. A junior accessory dwelling unit may not be sold independently of the primary dwelling on the parcel.
 - x. Prior to obtaining a building permit for a junior accessory dwelling unit, a deed restriction, approved by the City Attorney, must be recorded with the County Recorder's office, which must include the pertinent restrictions and limitations of a junior accessory dwelling unit identified in this Section. Said deed restriction must run with the land and bind all future owners, heirs, and assigns. A copy of the recorded deed restriction must be filed with the Department stating that:
 - a) The junior accessory dwelling unit may not be sold separately from the primary dwelling unit;
 - b) The junior accessory dwelling unit is restricted to the maximum size allowed per the development standards;
 - c) The junior accessory dwelling unit is legal only so long as either the primary residence, or the junior accessory dwelling unit, is occupied by the owner of record of the property;
2. These junior accessory dwelling unit restrictions bind every successor in ownership of the property and a lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain a junior accessory dwelling unit on the property.
- F. Other Standards.
- 1. Any accessory dwelling unit must meet the minimum requirements of an efficiency unit, as defined by Section 17958.1 of the State Health and Safety Code, and may not have a floor area that is smaller than 150 square feet.
 - 2. A permanent foundation shall be required for all accessory dwelling units.
 - 3. Every accessory dwelling unit must comply with local building code requirements.
 - 4. An accessory dwelling unit that conforms to the requirements of this section is not considered to exceed the allowable density for the lot upon which it is located and must be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. An accessory dwelling unit may not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- G. Review Requirements. Any application for accessory dwelling unit that satisfies the standards in this Section will be approved ministerially without discretionary review or public hearing. An application that does not satisfy the standards in this Section are subject to a Minor Site Development Permit in accordance with Section XI-10-57 "Applications."

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57

Title XI, Chapter 10, Section 57 "Applications," Subsection XI-10-57.03 "Site Development Permits and Minor Site Development Permits," Table XI-10-57.03-1 "Additions or Alterations Requiring Minor Site Development Permits" of the Milpitas Municipal Code is hereby amended to read as follows:

Project Type	Planning Commission Subcommittee	Staff review
Accessory Buildings	A. Non-Residential and Mixed Use Districts: 1. Accessory buildings up to 2,500 square feet in area, provided that the proposed structure is not adjacent to a residential or Mobile Home Park Overlay (-MHP) district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply:	A. Residential Only 1. Accessory buildings in residential districts (excluding -H Combining District), provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply: a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted

	a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street at least as far as the main building. b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way. c. Architecture shall match that of the existing building in terms of material, colors, style, etc.	and conditional uses in R3 and R4 districts shall comprise building materials, colors and style which complement the existing main structure. 2. Accessory dwelling units that do not meet the standards set forth in Section XI-10-13.08(C), General Provisions and Section XI-10-13.08(D) Specific Standards B. All zones 1. Community emergency caches as defined in Subsection XI-10-2.03, Definitions, of this Chapter are exempt. Refer to Subsection XI-10-54.08(B)(12) for performance standards.
Building Additions	A. Non-residential and Mixed Use Districts: 1. All non-residential and mixed use building additions for legal, conforming buildings not adjacent to residential or Mobile Home Park Overlay District or use. a. Size of building addition shall not exceed 10,000 square feet or ten percent (10%) of the existing building gross floor area, whichever is less. Calculation shall cumulatively count all additions or enlargements completed since June 20, 2003. b. In addition to other development standards, the following shall also apply: i. Architecture shall match that of existing building in terms of material, colors, style, etc. ii. The height of the addition shall not exceed the height of the adjacent portion of the existing building. B. Residential Districts 1. All single-family dwellings in Hillside (-H) PUDs which are specifically conditioned not to require Planning Commission or City Council review for building additions (refer to Section XI-10-56, Non-Conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply: a. Existing front yard paving shall be brought into conformance.	1. Residential building additions in R1 and R2 districts. 2. Residential building additions in multi-family districts up to 200 square feet. 3. All single-family dwellings in Hillside (-H) Overlay PUDs which specifically allow for staff approval. (refer to Section XI-10-56, Non-conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply: a. Existing front yard paving shall be brought into conformance. b. The addition shall comprise building materials, colors and style which complement the existing structure. 4. Accessory dwelling units that do not meet the standards set forth in Section XI-10-13.08(C), General Provisions and Section XI-10-13.08(D) Specific Standards

SECTION 8. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

SECTION 9. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

Item Attachment Documents:

- C4. Adopt a Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 95-1 (LLMD No. 95-1 McCarthy Ranch), and Provide Notice of a Public Hearing to be held on May 21, 2019 for LLMD No. 95-1 McCarthy Ranch.**

Recommendation:

Adopt a Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 95-1 (LLMD No. 95-1 McCarthy Ranch), and Provide Notice of a Public Hearing to be held on May 21, 2019 for LLMD No. 95-1 McCarthy Ranch.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 95-1 (LLMD No. 95-1 McCarthy Ranch), and Provide Notice of a Public Hearing to be held on May 21, 2019 for LLMD No. 95-1 McCarthy Ranch.
Category:	Consent Calendar-Community Development
Meeting Date:	5/7/2019
Staff Contact:	Steve Erickson 408-586-3301
Recommendation:	Adopt a Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 95-1 (LLMD No. 95-1 McCarthy Ranch), and Provide Notice of a Public Hearing to be held on May 21, 2019 for LLMD No. 95-1 McCarthy Ranch.

Background:

Landscaping and Lighting Maintenance Assessment District No. 95-1 (LLMD No. 95-1 McCarthy Ranch) provides the maintenance and improvement of public landscaping, irrigation systems, pedestrian lighting, gateway columns and entry signs along portions of North McCarthy Boulevard and the Ranch Drive gateway between State Route 237 and Dixon Landing Road in the areas as shown on the attached location map.

Analysis:

Before the City Council may levy the annual assessment for LLMD 95-1, the Landscaping and Lighting Act of 1972 requires the Council to adopt a resolution approving the annual Engineer's Report (Report) evaluating the LLMD district's maintenance and improvement costs for fiscal year 2019-20.

On March 5, 2019, the City Council directed the City Engineer to prepare this report, which is included in the Council packet. The proposed total assessment for fiscal year 2019-20 is \$360,135.96, with an assessment rate not exceeding the maximum assessment rate. Council must also adopt a resolution that declares its intent to levy and collect an assessment and directs publishing of notice of a public hearing to be held on May 21, 2019.

Policy Alternatives:

Alternative 1:

Not approve the annual Report nor adopt a resolution of intent to levy and collect assessments for LLMD 95-1 McCarthy Ranch.

Pros: None

Cons: The Landscaping and Lighting Act of 1972 requires the legislative body to adopt a resolution of intent upon approval of the Report, not approving the Report nor adopting a resolution of intent would jeopardize the City's ability to collect assessments for the maintenance and upkeep of LLMD 95-1 McCarthy Ranch.

Reason not recommended: To allow for the continued maintenance of LLMD 95-1 McCarthy Ranch, staff recommends approving the annual Report and declaring intent to levy and collect assessments for fiscal year 2019/20.

Fiscal Impact:

The levy and collection of assessments provides a funding resource for the City to improve and maintain public landscaping, irrigation systems, pedestrian lighting, gateway columns and entry signs within LLMD 95-1 McCarthy Ranch.

California Environmental Quality Act:

Levy and collection of assessment is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

Recommendation:

Adopt a Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 95-1 (LLMD No. 95-1 McCarthy Ranch), and Provide Notice of a Public Hearing to be held on May 21, 2019 for LLMD No. 95-1 McCarthy Ranch.

Attachments:

- a. Resolution Approving Annual Engineers Report
- b. Resolution Declaring Intention to Levy and Collect Assessments
- c. Engineer's Report LLMD No. 95-1 McCarthy Ranch
- d. Location Map

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, APPROVING THE
ANNUAL REPORT FOR LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT
DISTRICT NO. 95-1 FOR FISCAL YEAR 2019/20**

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the “Act”) to establish the Landscaping and Lighting Maintenance Assessment District (the “Assessment District”); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of an Annual Report; and

WHEREAS, the City Council has, by previous resolution, ordered NBS to prepare and file such Annual Report; and

WHEREAS, NBS has prepared and filed such Annual Report with the City Clerk.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. **Approval of Report:** The City Council hereby approves the Annual Report concerning the levy of assessments as submitted by NBS for the fiscal year commencing July 1, 2019, and ending June 30, 2020.

PASSED AND ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, DECLARING ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR THE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1 FOR FISCAL YEAR 2019/20

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the “Act”) to establish the Landscaping and Lighting Maintenance Assessment District (the “Assessment District”); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of an Annual Report.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. **Intention:** The City Council hereby declares its intention to levy and collect assessments within the Assessment District to pay the costs of the Improvements for the fiscal year commencing July 1, 2019, and ending June 30, 2020. The City Council finds that the public’s best interest requires such action.
2. **Improvements:** The improvements within the District include, but are not limited to: the operating, maintaining and servicing of all public landscaping improvements, consisting of landscaping and grass. Operating, maintaining and servicing include, but are not limited to: personnel, materials, electrical energy and water. Services provided include all necessary service, operations, administration and maintenance required to keep the improvements in a healthy, vigorous, and satisfactory condition.
3. **Assessment District Boundaries:** The distinctive designation for the Assessment District is Landscaping and Lighting Maintenance Assessment District No. 95-1. The boundaries of the Assessment District are as shown by the assessment diagram filed in the offices of the City Clerk, which map is made a part hereof by reference.
4. **Annual Report:** Reference is made to the Annual Report prepared by NBS, on file with the City Clerk, for a full and detailed description of the improvements, the boundaries of the Assessment District and the zones therein, and the proposed assessments upon assessable lots and parcels of land within the Assessment District.
5. **Notice of Public Hearing:** The City Council hereby declares its intention to conduct a Public Hearing concerning the levy of assessments in accordance with Section 22629 of the Act. All objections to the assessment, if any, will be considered by the City Council. The Public Hearing will be held on **Tuesday, May 21, 2019 at 7:00 pm** or as soon thereafter as is feasible in the meeting place of the City Council located at 455 E. Calaveras Boulevard, Milpitas, CA 95035. The City Council further orders the City Clerk to publish notice of this resolution in accordance with Section 22626 of the Act.
6. **Increase of Assessment:** The maximum assessment is not proposed to increase from the previous year above that previously approved by the property owners (as “increased assessment” is defined in Section 54954.6 of the Government Code).

PASSED AND ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

CITY OF MILPITAS

Landscaping and Lighting Maintenance Assessment District No. 95-1

Fiscal Year 2019/20 Annual Report

April 2019

OFFICE LOCATIONS:

Temecula – Corporate Headquarters
32605 Temecula Parkway, Suite 100
Temecula, CA 92592

San Francisco – Regional Office
870 Market Street, Suite 1223
San Francisco, CA 94102

California Satellite Offices
Atascadero, Davis,
Huntington Beach,
Joshua Tree, Riverside,
Sacramento, San Jose

www.nbsgov.com

Prepared by:



CITY OF MILPITAS
LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1
455 East Calaveras Boulevard
Milpitas, California 95035
Phone (408) 586-3000

CITY COUNCIL

Rich Tran, Mayor
Karina R. Dominguez, Vice-Mayor
Carmen Montano, Council Member
Bob Nunez, Council Member
Anthony Phan, Council Member

CITY STAFF

Steve Erickson, PE, Director of Engineering/City Engineer
Jane Corpus, Interim Director of Financial Services
Tony Ndah, Director of Public Works

NBS

Tim Seufert, Client Services Director
Tiffany Ellis, Senior Consultant
Manuel Kauss, Financial Analyst

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1. ENGINEER'S LETTER

WHEREAS, in 1995 the City Council of the City of Milpitas (the "City"), State of California, under the Landscaping and Lighting Act of 1972 (the "Act"), created the City of Milpitas Landscaping and Lighting Maintenance Assessment District No. 95-1 (the "District") in order to provide for the continued maintenance, operation, and administration of various improvements within the boundaries of the District; and

WHEREAS, the City Council has directed NBS to prepare and file a report for Fiscal Year 2019/20 in accordance with Chapter 1, Article 4 of the Act presenting plans and specifications describing the general nature, location and extent of the improvements to be maintained; an estimate of the costs to maintain, operate, and service the improvements for the District for the referenced fiscal year; a diagram for the District showing the area and properties to be assessed; and an assessment of the estimated costs to maintain and service the improvements, stating the net amount to be assessed upon all assessable lots or parcels within the District in proportion to the special benefit received.

NOW THEREFORE, the following assessments have been calculated in accordance with the assessment methodology adopted and approved by the City Council at the time of District formation, and are made to cover the portion of the estimated costs of maintenance, operation, and servicing of the improvements, to be paid by the assessable real property within the District in proportion to the special benefit received:

District	Parcels	2019/20 Maximum Assessment Rate per Lot Sq. Ft. ⁽¹⁾	2019/20 Actual Assessment Rate per Lot Sq. Ft.	2019/20 Net Amount to be Assessed ⁽²⁾⁽³⁾
LLMAD 95-1	44	\$0.0462	\$0.03054	\$360,135.96

(1) The April 1, 2019 CPI was not available at the time of writing of this Report. The Fiscal Year 2019/20 CPI increase was estimated using the February 2019/20 CPI.

(2) Amounts placed on the tax roll include the 1% Santa Clara County Collection Fee.

I identified all parcels which will have a special benefit conferred upon them from the improvements described in District's Plans and Specifications section of this Engineer's Report (the "Benefited Parcels"). For particulars as to the identification of said parcels, reference is made to the Assessment Diagram, a copy is on file in the office of the City Clerk.

I have assessed the costs and expenses of the improvements upon the Benefited Parcels. In making such assessment:

- The proportionate special benefit derived by each Benefited Parcel from the improvements was determined in relationship to the entirety of the maintenance costs of the improvements;
- No assessment has been imposed on any Benefited Parcel which exceeds the reasonable cost of the proportional special benefit conferred on such parcel from the improvements; and
- Any general benefits from the improvements have been separated from the special benefits and only special benefits have been assessed.

I, the undersigned, respectfully submit the enclosed Engineer's Report and, to the best of my knowledge, information and belief, the Engineer's Report, Assessments, and the Assessment Diagrams herein have been prepared and computed in accordance with the order of the City Council of the City of Milpitas, the Act, and Article XIIID.

Steven Erickson, PE
Engineering Director/City Engineer

2. PLANS AND SPECIFICATIONS

The District provides for the continued administration, maintenance, operation, and servicing of various improvements located within the public right-of-way and dedicated easements within the boundaries of the District.

2.1 Location of Improvements

The District is located on the west side of the City of Milpitas, bounded on the east by State Route 880, on the west by Coyote Creek, on the south by State Route 237, and on the north by Dixon Landing Road. The improvements maintained include public landscaping and irrigation improvements, including jogging paths, pedestrian lighting, gateway improvements, and entry signage, which are primarily situated within the public right-of-way and dedicated public easements within the District.

2.2 Landscaping Improvements

Landscaping, pedestrian lighting, gateway, and signage improvements were installed along the roadways and sidewalks within the District to enhance the overall visual appearance for adjacent parcels.

The improvements within the District consist of the maintenance and installation of any or all public landscaping and irrigation improvements adjacent to curbs of the following described streets, including jogging paths, planter walls, grass berms, pedestrian lighting and appurtenant irrigation systems, ornamental planting including lawns, shrubs, and trees; installation and maintenance of gateway columns and entry signs. Such maintenance includes all necessary repairs, replacements, water, electric current, spraying, care, supervision, debris removal and all other items of work necessary and incidental for property maintenance and operation thereof. The landscaping, irrigation, pedestrian lighting, gateway, and signage improvements are collectively referred to as “landscaping improvements”. All such work will be performed in the following areas:

2.2.1 N. McCarthy Boulevard

1. A strip of land including an earth berm approximately 50 feet in width from face of each curb line, from the southerly connection with Ranch Drive northerly 2,400 feet, more or less, to the northerly connection with Ranch Drive. A strip of land including a grass berm approximately 35 feet in width, west of the face of westerly curb, along the West Side of N. McCarthy Boulevard, from the southerly connection with Ranch Drive, northerly 2,400 feet, more or less. The initial phase includes a strip of land 6 feet wide on the west side of McCarthy Boulevard.
2. Commencing at a location approximately 2,400 feet north of State Route 237 thence proceeding north to the northern boundary of Lands of N. McCarthy, 7,800 feet more or less, a strip of land approximately 27 to 34 feet in width on each side along the east and west sides of McCarthy Boulevard between the northerly connection with Ranch Drive and Dixon Landing Road.
3. A median island from the southerly intersection with Ranch Drive northerly to the intersection with Dixon Landing Road.

4. Gateway Improvements, at the southerly intersection of N. McCarthy Boulevard and Ranch Drive and southerly of Bridge No. 1 along N. McCarthy Boulevard, including curved stone planter walls, gateway columns with entry sign appurtenant mounding ornamental plantings including flat work, trees and ground cover, irrigation systems; all as shown on landscape plans.
5. Lighting costs in the District are limited to the supplemental pedestrian lights installed between each of the 2 street lights on the section of curved walkway located on the East Side of N. McCarthy Boulevard. The conventional lighting along McCarthy Boulevard is not included.

2.2.2 Milpitas Entry Sign

1. City of Milpitas Entry Identification Sign along N. McCarthy Blvd., including walls, columns, lighting and other appurtenances.

2.2.3 Ranch Drive

1. Commencing at a Northerly location where the right-of-way of Ranch Drive is contiguous with the right-of-way of Interstate 880, thence southerly, a strip of land approximately 10 feet in width measured from the east face of curb of Ranch Drive, from the northerly connection with Interstate 880 and Ranch Drive, southerly 630 feet, more or less, thence 405 feet south to the southerly end of Gateway location, varying in width from 10 feet to 132 feet, more or less.
2. Gateway Improvements, at the southerly connection of Ranch Drive and Interstate 880, including curved stone planter walls, gateway columns with entry sign appurtenant mounding ornamental plantings including flat work, trees and ground cover, irrigation systems; all as shown on landscape plans (Part A), except the Shopping Center's Monument Sign.

2.3 Overhead

In addition to the hard costs of maintaining the improvements mentioned above, the City will incur costs for staff time and expenses related to the management and maintenance of the improvements within the District. Staff time includes oversight and coordination of both City and contractor provided services, annual tax roll preparation, and addressing property owner questions and concerns. These activities are directly related to the maintenance of the improvements, and without them the improvements could not be efficiently completed or properly maintained on an ongoing basis.

3. ESTIMATE OF COSTS

The estimated costs of maintenance and servicing of the improvements as described in the Plans and Specifications are summarized below.

3.1 District Budget

The Fiscal Year 2019/20 estimated cost budget for the maintenance and servicing of the improvements is as follows:

Description	Budget 2019/20
Maintenance Staff and Contract Services ⁽¹⁾	\$245,740
Capital Equipment	0
Supplies	2,000
Utilities (Water, Electricity)	41,180
Reserve Fund	0
<u>Capital Improvement Program</u>	<u>85,000</u>
Maintenance Costs	\$373,920
NBS	\$4,350
City Staff District Admin	700
<u>County Auditor-Controller Fee⁽²⁾</u>	<u>3,601</u>
District Specific Costs	\$8,651
Total District Costs	\$382,571
General Benefit Contribution ⁽³⁾	(22,435)
<u>Operating Reserve Contribution</u>	<u>0</u>
Net Amount to be Assessed	\$360,136
Total District Square Footage⁽⁴⁾	11,792,520
Rate per Square Foot⁽⁵⁾⁽⁶⁾	\$0.03054
Maximum Rate Per Square Foot – 2019/20⁽⁷⁾	\$0.04620

(1) For 2019/20 Landscape Maintenance Contract Services includes Terracare and Irvine Company.

(2) County Auditor-Controller Fee is currently 1% of the total levy submittal.

(3) General Benefit Contribution is not applied to District Specific Costs as these are special benefits to the District.

(4) Total District Square Footage includes the 50% reduction for Parcel 5-7 (Sewer Main Pump Station) and Parcel 5-3C (Storm Pump Station).

(5) The Rate per Square Foot equals the Net Amount to be Assessed / Total District Square Footage.

(6) The assessed rate cannot exceed the maximum rate.

(7) The April 1, 2019 CPI was not available at the time of writing of this Report. The Fiscal Year 2019/20 CPI increase was estimated by using the February 2019/20 CPI.

3.1.1 Operating Reserve



It is the intent of the City to maintain an operating reserve which shall not exceed the estimated costs of maintenance and servicing of the improvements prior to December 10 of the fiscal year, or when the City expects to receive its apportionment of special assessments from the County, whichever is later. The operating reserve balance information for the District is as follows:

Estimated Fiscal Year Ending 6/30/2019 Operating Reserve Cash Balance	\$185,496
Operating Reserve Collection – Fiscal Year 2019/20	0
Estimated Fiscal Year Ending 6/30/2020 Operating Reserve Cash Balance	\$185,496

4. SPECIAL AND GENERAL BENEFIT

The improvements defined in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits are described below.

4.1 Introduction

Pursuant to Article XIID, all parcels that receive a special benefit conferred upon them because of the installation, implementation and maintenance of the improvements, services and activities shall be identified, and the proportionate special benefit derived by each identified parcel shall be determined in relationship to the entire costs of the installation, implementation and maintenance of the improvements, services and activities.

Article XIID, Section 4(a) of the California Constitution limits the amount of any assessment to the proportional special benefit conferred on the property. Proposition 218 requires that the City separate the general benefit from special benefit, so that only special benefit may be assessed to properties within the District. Furthermore, Article XIID also provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment.

4.2 Special Benefits Identified

The improvements described in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits conferred to property within the District can be grouped into three primary benefit categories: aesthetic benefit, safety benefit, and economic benefit. The three district benefit categories are further expanded upon below.

- J **Improved Aesthetics:** The aesthetic benefit relates to the increase in the overall aesthetics because of the ongoing maintenance, servicing, and operation of the improvements within the District. The landscaping improvements enhance the overall image and desirability of the properties within the District. Street landscaping improvements improve the livability, commercial activity, appearance, and desirability for properties within the District. Regular maintenance ensures that the improvements do not reach a state of deterioration or disrepair to be materially detrimental to properties adjacent to or in close proximity to the improvements. The overall appeal of the District is enhanced when improvements are in place and kept in a healthy and satisfactory condition. Conversely, appeal decreases when improvements are not well-maintained, unsafe, or destroyed by the elements or vandalism. Streetscapes have a significant effect on how people view and interact with their community.¹ With streetscapes that are safe and inviting, people are more likely to walk, which can help reduce automobile traffic, improve public health, stimulate local economic activity, and attract residents and visitors to the community.²
- J **Increased Safety:** Well-maintained areas mitigate crime, especially vandalism, and enhance pedestrian safety. A recent study found that after landscape improvements were installed, there

¹ Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities*. Retrieved from <http://www.vtpi.org/tdm/tdm97.htm>.

² *Ibid.*

was a 46% decrease in crash rates across urban arterial and highway sites and a second study reviewed found a 5% to 20% reduction in mid-block crashes after trees and planters in urban arterial roads were put in place. In addition, there is less graffiti, vandalism, and littering in outdoor spaces with natural landscapes than in comparable plant-less spaces.³ The Victoria Transport Policy Institute has found that streetscapes reduce traffic speeds and when combined with improved pedestrian crossing conditions can significantly reduce collisions.⁴

) **Economic Activity:** Well-maintained street landscape improvements not only make adjacent properties appear more stable and prosperous but can spur investment in the property. The National Complete Streets Coalition notes that street design that is inclusive of all modes of transportation, where appropriate, not only improves conditions for existing businesses, but also is a proven method for revitalizing an area and attracting new development.⁵ Landscaped sidewalks create an inviting place for customers to shop and do business.⁶ Well-maintained and safe District areas will encourage an increase in the overall pedestrian activity. The area will become more pedestrian friendly, thus improving the retail environment by encouraging individuals to shop, dine, and stay within the District boundaries. The District will provide a cleaner more inviting environment to businesses and consumers which will attract, retain and expand the retail and business climate throughout. The effort will reduce vacancy rates and increase lease rates and utilization of property within the District.

4.3 General Benefits Identified

Section 4 of Article XIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next “separate the general benefits from the special benefits conferred,” and only the special benefits can be included in the amount of the assessments imposed.

General benefit is an overall and similar benefit to the public at large resulting from the maintenance of the District’s improvements provided by the assessments levied. The improvements to be maintained by the District are located within the District boundaries only. There will be no District maintenance activities provided for improvements located outside of the District boundaries.

The ongoing maintenance of the District improvements will provide aesthetic, safety, and economic activity benefits to the property within the District. However, it is recognized that the ongoing maintenance activities will also provide a level of benefit to some property within proximity to the District, as well as individuals passing through. Therefore, the general benefit created because of the District maintenance activities has been considered.

³ Wolf, Kathleen L. (2010). *Safe Streets – A Literature Review*. In: *Green Cities: Good Health* (www.greenhealth.washington.edu). College of the Environment, University of Washington.

⁴ Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities*. Retrieved from <http://www.vtpi.org/tdm/tdm97.htm>.

⁵ Pugliese, Philip. (2008). *Complete Streets provide all the elements of multi-modal transportation*. Retrieved from <http://www.americantrails.org/resources/trans/completestreets08.html>

⁶ U.S Department of Transportation. Federal Highway Administration. (2001). *Designing Sidewalks and Trails for Access, Part II of II: Best Practices Design Guide*. Retrieved from http://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/sidewalk2

4.4 Quantification of Benefit

As a result of the maintenance and operation of the improvements, there will be a level of general benefit to people that do not work or intend to conduct business within the District. In order for property within the District to be assessed only for that portion of special benefits received from the district's maintenance activities, general benefits provided by the ongoing maintenance of the improvements needs to be quantified. The amount of general benefit that is provided from the District's maintenance activities cannot be funded via property owners' assessments.

Based upon the City's General Plan, the streets within the City are classified into one of the following categories: freeway, expressway, arterial, collector, or local streets. The landscaping improvements are primarily located along N McCarthy Boulevard and Ranch Drive, and situated within the public right-of-way. The portion of the maintained landscaping that is located along N McCarthy Boulevard (classified as an arterial street) provides some general benefit to pass-through traffic. Arterial streets are intended to provide a higher degree of mobility and generally serve longer vehicle trips. The landscape improvements within the District boundaries not only serve the parcels in the immediate vicinity, but persons who live outside of the District and are passing by. The City's Traffic Volumes Map⁷ does not identify the percentage of traffic, which is pass-through traffic. The City's Traffic Volumes Map does provide an estimated number of daily trips for N McCarthy Boulevard at the entrance of the District.

Street Name	Average Number of Vehicles per Day ⁽¹⁾
N McCarthy Boulevard – between SR 237 and Ranch Drive	35,050

(1) Average Number of Vehicles per Day is from the City of Milpitas Traffic Volumes Map⁸

Before the determination and allocation of the percentage of special and general benefit for the District can be made, the estimated pass-through traffic must be computed. The pass-through trips are vehicles driving along the maintained streets for a portion of their trips, but not working, shopping, or conducting business in the District or benefiting from the landscaping improvements in place. In lieu of having a study that identifies the pass-through traffic, the estimated number of special benefit trips for each parcel based upon its land use has been used. Each parcel within the District was assigned an average daily number of special benefit trips according to the ITE Trip Generation report using the parcel's land use, building size, or number of units. Further, to make sure the number of trips generated by the parcels has not been overstated, the percentage of total trips that are made internally within the development so that both the original and end destination are within the District has been considered. The total special benefit trips have been reduced by approximately 29% (13,810 trips) to account for internal trips between the various businesses within the District. The total number of special benefit trips is therefore 33,708.

⁷ City of Milpitas. (2007). *Traffic Volume Map*. Retrieved from <http://www.ci.milpitas.ca.gov>

⁸ Ibid.

Property Type	Combined Trip Generations
Hotel (ITE Land Use 310)	2,328
Office (ITE Land Uses 710, 714, 750)	15,809
Restaurant (ITE Land Uses 931, 932, 934)	6,965
Retail (ITE Land Uses 815, 820, 863, 869)	22,416
Total Trips	47,518
Internal Trip Reduction ⁽¹⁾	(13,810)
Total Special Benefit Trips	33,708

(1) The internal trip rate percentage was calculated by using the NCHRP 684 Internal Rate Capture Estimation Tool.⁹

The total of all special benefit trips was removed from the average number of vehicles per day traveling within the District to estimate the number of pass-through trips daily.

Street Name	Average Number of Vehicles per Day	Less: Estimated Special Benefit Trips	Estimated Number of Pass Through Trips	Estimated % General Benefit
McCarthy Boulevard	35,050	33,708	1,342	3.83%

Based on the above calculations, the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be 3.83%, rounded up to 4.00%.

Pass-thru Vehicle General Benefit	4.00%
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The commonly accepted distance people will walk for public transportation, goods, and services is one-quarter mile.¹⁰ However, based on the location of the District, and given that it is bounded by State Route 880 and 237, and Coyote Creek, there is not an efficient or practical means of walking into the District. Although unlikely, a person may decide to use the paths within the District, and as such the general benefit portion of the improved aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be 1.00%.

Pass-thru Walking General Benefit	1.00%
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An estimated 1% of all US trips were made by bicycle.¹¹ Although the District is bounded by State Route 880 and 237, and Coyote Creek, there is a bike lane on N McCarthy Boulevard and a bike path along Coyote Creek.¹² According to the National Household Travel Surveys, 49% of bike trips are for recreation, exercise, and sports.¹³ As result of the District maintenance activities, there will be a level of general benefit to bicycle traffic that is not associated with property in the District. As such the general benefit portion of the improved

⁹ Bochner, Brian S., Hooper, Kevin, Sperry, Benjamin and Dunphy, Robert. National Cooperative Highway Research Program, Transportation Research Board of National Academies (2011). *NCHRP Report 684 Enhancing Trip Capture Estimation for Mixed-use Developments*. Retrieved from onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_684.pdf

¹⁰ Walkscore. (2014). Walk Score Methodology. Retrieved from <http://www.walkscore.com/methodology.shtml>

¹¹ U.S Department of Transportation. Federal Highway Administration. (2011). *Summary of Travel Trends: 2009 National Household Travel Survey*. (Report No. FHWA-PL-11-022). Retrieved from <http://nhts.ornl.gov>

¹² City of Milpitas. (2002). *General Plan*. Retrieved from <http://www.ci.milpitas.ca.gov>

¹³ Pucher, J., Buehler R., Meron, F., and Bauman, A. American Journals of Public Health, Supplement 1, Vol 101, No S1 (2011). *Walking and Cycling in the United States, 2001-2009: Evidence from the National Household Travel Surveys*. Retrieved from <http://www.ncbi.nlm.nih.gov/pubmed/21551387>

aesthetics, increased safety, and economic activity benefits resulting from the landscaping improvements is estimated to be .50%, rounded up to 1.00%.

Pass-thru Biking General Benefit	1.00%
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4.4.1 Collective District-Wide General Benefit

Since the District is comprised of improved aesthetics, safety, and economic activity benefits resulting from the collective landscaping improvements, the activity of both pedestrians and vehicles must be addressed in a collective form rather than independently. The sum of the calculated general benefits is the total general benefit related to vehicle, walking, and biking pass-thru traffic. This general benefit result is provided in the table below:

Pass-thru Vehicle General Benefit	4.00%
Pass-thru Walking General Benefit	1.00%
Pass-thru Biking General Benefit	1.00%
Total General Benefit	6.00%

The general benefit, which is the percentage of the total budget that must be funded through sources other than assessments, is 6.00%. The special benefit then, which is the percentage of the budget that may be funded by assessments, is 94.00%.

4.5 Special Benefit Trips

The detailed breakdown of the estimated special benefit trips for each parcel in the District is shown in the following table:

Assmt ID	Assessor's Parcel No.	Land Use Description	Acreage	Gross Leasable Area	Average Trip Rate ⁽¹⁾	Estimated # of Daily Special Benefit Trips ⁽²⁾
1-1A-1	022-54-016	710 - General office	1.06	4,046	11.03	44.63
1-1A-2	022-54-017 ⁽³⁾	310 – Hotel	3.29	161	8.17	1,315.37
1-1A-3	022-54-018 ⁽³⁾	310 – Hotel	2.31	124	8.17	1,013.08
1-1A-4	022-54-019	934 - Fast Food	0.19	-	496.12	-
1-1B	022-54-008	934 - Fast Food	0.78	2,912	496.12	1,444.70
1-2	022-54-002 ⁽⁴⁾	820 - Shopping Center	0.58	5,400	42.70	230.58
1-3	022-54-003	932 - High Vol. Restaurant	1.02	5,465	127.15	694.87
1-4A	022-54-009 ⁽⁴⁾	869 - Home Superstore	8.47	100,000	20.00	2,000.00
1-4B	022-54-012 ⁽⁴⁾	820 - Shopping Center	3.02	20,000	42.70	854.00
1-4C	022-54-013	820 - Shopping Center	0.23	10,000	42.70	427.00
1-4D	022-54-015	931 - Quality Restaurant	1.78	7,846	89.95	705.75
1-4E	022-54-014 ⁽⁴⁾	932 - High Vol. Restaurant	0.64	3,000	127.15	381.45
1-4F	022-54-011 ⁽⁴⁾	820 - Shopping Center	1.31	8,000	42.70	341.60
1-4G	022-54-010	931 - Quality Restaurant	1.03	7,476	89.95	672.47
2-1	022-53-001	931 - Quality Restaurant	0.75	6,500	89.95	584.68
2-2	022-53-002 ⁽⁴⁾	820 - Shopping Center	1.23	10,000	42.70	427.00
2-3	022-53-003 ⁽⁴⁾	820 - Shopping Center	0.76	8,000	42.70	341.60
2-4	022-53-004	934 - Fast Food	0.60	2,000	496.12	992.24
2-5	022-53-005	934 - Fast Food	0.74	3,000	496.12	1,488.36
2-6	022-53-006	863 – Elect. Superstore	1.19	51,250	45.04	2,308.30
2-7	022-53-007	820 - Shopping Center	21.92	214,094	42.70	9,141.81
3	022-29-016	815 - Discount Superstore	14.56	125,000	50.75	6,343.75
4-1A-1	022-56-005	714 - Corp Headquarters	2.03	115,753	7.98	923.71
4-1A-2	022-56-006	714 - Corp Headquarters	2.06	174,483	7.98	1,392.37
4-1A-3	022-56-007	714 - Corp Headquarters	2.07	177,483	7.98	1,416.31
4-1A-4	022-56-008	Undeveloped	34.52	-	-	-
4-1A-5	022-56-009	Parking Lot	24.32	-	-	-
4-1B	022-29-037	Open Space	6.00	-	-	-
5-1A-1	022-29-034	750 - Office Park	36.66	572,660	11.42	6,539.78
5-2A-1	022-29-035	750 - Office Park	31.14	480,772	11.42	5,490.42
5-3A-1	022-29-040	Undeveloped	15.55	-	-	-
5-3A-2	022-29-041	Undeveloped	1.00	-	-	-
5-3A-3	022-29-042	Undeveloped	6.94	-	-	-
5-3A-4	022-29-043	Undeveloped	7.36	-	-	-
5-3A-5	022-29-044	Undeveloped	7.73	-	-	-
5-3B-1A	022-30-054	Undeveloped	5.63	-	-	-
5-3B-2	022-30-038	Undeveloped	10.00	-	-	-
5-3B-3	022-30-039	Undeveloped	5.22	-	-	-
5-3C	022-30-035 ⁽⁵⁾	Pump Station	0.19	-	-	1.00
5-5A-1	022-30-055	Undeveloped	5.60	-	-	-
5-5A-2	022-30-056	Undeveloped	0.59	-	-	-
5-5A-3	022-30-057	Undeveloped	3.15	-	-	-
5-6	022-30-041	Open Space	1.43	-	-	-
5-7	022-30-049 ⁽⁵⁾	Sewer Pump Station	9.12	-	-	1.00
Total Estimated Daily Special Benefit Trips						47,517.83
Internal Trip Reduction ⁽⁶⁾						(13,810.00)
Total Special Benefit Trips						33,707.83

- (1) *Average Trip Rate per Day is from the Institute of Traffic Engineer's, Trip Generation Report.¹⁴*
- (2) *Average Number of Special Benefit Trips per Day is the Average Trip Rate times each 1,000 square feet of gross leasable area.*
- (3) *Average Number of Special Benefit Trips per Day is the Average Trip Rate times number of hotel rooms for this parcel.*
- (4) *Building Square Feet for this parcel is unavailable at this time. Estimate of square feet was used based on similar building in center.*
- (5) *Pump Station trips are an estimate.*
- (6) *The internal trip rate percentage was calculated by using the NCHRP 684 Internal Rate Capture Estimation Tool.*

¹⁴ *Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers.* (2012). Washington, DC: Institute of Transportation Engineers.

5. METHOD OF ASSESSMENT

5.1 Introduction

The special benefits that accrue to the properties in the District are limited to those properties that abut an improved public street or which have been obligated by issuance of bonds for necessary public improvements (the “Benefited Parcels”). Other properties in the District receive only a general benefit from the work of the improvements, and there is also some general benefit that accrues to the community as a whole. As outlined in Section 4, the total amount of general benefit from the improvements is determined to be 6.00%.

The Benefited Parcels receive a special benefit proportionate to their net acreage and thus they are assessed on the basis of total net acreage for all costs associated with the maintenance and installation of the District’s improvements, with the following exceptions:

- J Of the 9.12 acres of parcel 022-30-049 (sewer pump station), 5.51 acres is the pump station and is not assessable. The remaining 3.61 acres does not benefit from landscaping as much as other Benefited Parcels because it is dedicated to municipal sanitary sewer and storm facilities use and will not otherwise be developed. Therefore, it is assigned a special benefit equal to 50% of other Benefited Parcels.
- J Parcel 022-30-035 (storm pump station) does not benefit from landscaping as much as other Benefited Parcels because it is dedicated to municipal sanitary sewer and storm facilities use and will not otherwise be developed. Therefore, it is assigned a special benefit equal to 50% of other Benefited Parcels.
- J Parcel 022-29-037 and parcel 022-30-041 are dedicated to open space and therefore do not receive special benefit from the maintenance and improvements.

5.2 Method of Assessment Spread

The amount of assessment levied on each Benefited Parcel in the District, for Fiscal Year 2019/20, is \$0.03054 per square foot. The assessment rate was determined by taking the Fiscal Year 2019/20 Net Amount to be assessed divided by the total net square footage of the District.

The maximum assessment rate for Fiscal Year 2019/20 is approximately \$0.0462, which is a preliminary number. Each year the maximum assessment rate per square foot is increased by the percentage change from April 1st of the prior year to April 1st of the current year in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and U.S. City Average, San Francisco-Oakland-Hayward. For Fiscal Year 2019/20, the April 1, 2019 CPI was not available at the time of writing of this Report. For Fiscal Year 2019/20, the CPI increase was estimated by using the February 2019/20 CPI.

5.3 Maximum Assessment Rates

The following table provides the maximum assessment rate for Fiscal Year 2001/02 through the current fiscal year:

Historical Maximum Rates					
Fiscal Year	CPI	% Increase ⁽¹⁾	Range		
2001/02	189.1	N/A	\$0.0120	\$0.0300	
2002/03	193.0	2.06%	0.0122	0.0306	
2003/04	197.3	2.23%	0.0125	0.0313	
2004/05	198.3	0.51%	0.0126	0.0315	
2005/06	202.5	2.12%	0.0129	0.0321	
2006/07	208.9	3.16%	0.0133	0.0331	
2007/08	215.842	3.32%	0.0137	0.0342	
2008/09	222.074	2.89%	0.0141	0.0352	
2009/10	223.854	0.80%	0.0142	0.0355	
2010/11	227.697	1.72%	0.0144	0.0361	
2011/12	234.121	2.82%	0.0149	0.0371	
2012/13	238.985	2.08%	0.0152	0.0379	
2013/14	244.675	2.38%	0.0155	0.0388	
2014/15	251.495	2.79%	0.0160	0.0399	
2015/16	257.622	2.44%	0.0163	0.0409	
2016/17	264.565	2.70%	0.0168	0.0420	
2017/18	274.589	3.79%	0.0174	0.0436	
2018/19	283.422	3.22%	0.0180	0.0450	
2019/20 ⁽²⁾	291.227	2.75%	0.0185	0.0462	

(1) Percentage increase from April 1 of the prior year to April 1 of the current year in the US Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and US City Average, San Francisco-Oakland-Hayward.

(2) The April 1, 2019 CPI was not available at the time of writing of this Report. The Fiscal Year 2019/20 CPI increase was estimated using the February 2019/20 CPI.

5.4 Appeals

Any property owner who feels that the amount of their assessment is in error as a result of incorrect information being used to apply the foregoing method of spread may file an appeal with the Finance Director of the City. Any such appeal is limited to correction of an assessment during the current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Finance Director shall promptly review the information provided by the property owner and if he/she finds that the assessment should be modified, he/she shall have the authority to make the appropriate changes in the assessment roll. If any such changes are provided after the assessment roll has been filed with the County for collection, the Finance Director is authorized to refund to the property owner the amount of any approved reduction.

6. ASSESSMENT DIAGRAM

The following page provides a copy of the assessment diagram of the District.

An assessment was levied by the City Council of the City of Milpitas, County of Santa Clara, State of California on the lots, pieces and parcels of land shown on this assessment diagram. Said assessment was levied on the 3rd day of June 2014; said assessment diagram and the assessment roll were recorded in the Office of the Superintendent of Streets of said City on the 3rd day of June 2014. Reference is made to the assessment roll recorded in the Office of the Superintendent of Streets for the exact amount of such assessment levied against each parcel of land shown on this assessment diagram.

Filed in the Office of the City Clerk of the City of Milpitas, County of Santa Clara, State of California this 20th day of May, 2014.

Mary Lavelle
City Clerk of the City of Milpitas

Recorded in the Office of the Superintendent of Streets of the City of Milpitas, County of Santa Clara, State of California, this 3rd day of June 2014.

Mary Lavelle
Superintendent of Streets
City of Milpitas

Figure 1

ASSESSMENT NO.	ASSESSOR'S PARCEL NO.	ASSESSMENT NO.	ASSESSOR'S PARCEL NO.	ASSESSMENT NO.	ASSESSOR'S PARCEL NO.	ASSESSMENT NO.	ASSESSOR'S PARCEL NO.
1-1A-1	APN 22-54-016	1-40	APN 22-54-015	2-7	APN 22-53-007	5-3A	APN 22-29-036
1-1A-2	APN 22-54-017	1-4E	APN 22-54-014	3	APN 22-29-016	5-3B-1	APN 22-30-037
1-1A-3	APN 22-54-018	1-4F	APN 22-54-011	4-1A-1	APN 22-56-005	5-3B-2	APN 22-30-038
1-1A-4	APN 22-54-019	1-4G	APN 22-54-010	4-1A-2	APN 22-56-006	5-3B-3	APN 22-30-039
1-1B	APN 22-54-008	2-1	APN 22-53-001	4-1A-3	APN 22-56-007	5-3C	APN 22-30-035
1-2	APN 22-54-002	2-2	APN 22-53-002	4-1A-4	APN 22-56-008	5-5A	APN 22-30-048
1-3	APN 22-54-003	2-3	APN 22-53-003	4-1A-5	APN 22-56-009	5-6	APN 22-30-041
1-4A	APN 22-54-009	2-4	APN 22-53-004	4-1B	APN 22-29-037	5-7	APN 22-30-049
1-4B	APN 22-54-012	2-5	APN 22-53-005	5-1A-1	APN 22-29-034		
1-4C	APN 22-54-013	2-6	APN 22-53-006	5-1A-1	APN 22-29-035		



LEGEND
 (6) ASSESSMENT NO.
 — BOUNDARY DISTRICT
 - - - ASSESSMENT LIMIT

PART F - ASSESSMENT DIAGRAM
 LANDSCAPING & LIGHTING & MAINTENANCE
 ASSESSMENT DISTRICT NO. 95-1

OF
 CITY OF MILPITAS
 COUNTY OF SANTA CLARA - STATE OF CALIFORNIA

Note:
 Reference is hereby made to the maps and deeds of record in the Office of the Assessor of the County of Santa Clara for a detailed description of the lines and dimensions of any parcels shown hereon. These maps shall govern for all details concerning the lines and dimensions of such parcels. Each parcel is identified in said maps by its distinctive Assessor's Parcel Number.

7. ASSESSMENT ROLL

The assessment roll is a listing of the proposed assessment for Fiscal Year 2019/20 apporportioned to each lot or parcel, as shown on the last equalized roll of the Assessor of the County of Santa Clara. The following page shows the assessment roll for Fiscal Year 2019/20.

City of Milpitas
Landscaping and Lighting Maintenance Assessment District
Fiscal Year 2019/20 Assessment Roll

APN	Owner	Net Sq. Ft.	19/20 Levy	Rounding	
				Adj.	19/20 Total
022-29-016	WAL-MART REAL ESTATE	634,233.60	\$19,369.10	\$0.00	\$19,369.10
022-29-034	MCCARTHY CENTER HOLDINGS LLC	1,589,504.40	48,542.47	(0.01)	48,542.46
022-29-035	MCCARTHY CENTER HOLDINGS LLC	1,363,863.60	41,651.54	0.00	41,651.54
022-29-037	CITY OF SAN JOSE	0	0.00	0.00	0.00
022-29-040	CREEKSIDE MILPITAS LLC	677,532.24	20,691.41	(0.01)	20,691.40
022-29-041	CREEKSIDE MILPITAS LLC	43,690.68	1,334.29	(0.01)	1,334.28
022-29-042	CREEKSIDE MILPITAS LLC	302,349.96	9,233.58	0.00	9,233.58
022-29-043	CREEKSIDE MILPITAS 2 LLC	320,732.28	9,794.96	0.00	9,794.96
022-29-044	CREEKSIDE MILPITAS 2 LLC	336,544.56	10,277.86	0.00	10,277.86
022-30-035	MILPITAS CITY OF	4,138.20	126.38	0.00	126.38
022-30-038	NEW TREND TECH INC	435,600.00	13,302.95	(0.01)	13,302.94
022-30-039	MCCARTHY RANCH LP	217,800.00	6,651.48	0.00	6,651.48
022-30-041	CITY OF MILPITAS	0	0.00	0.00	0.00
022-30-049	MILPITAS SANITARY DIST	78,625.80	2,401.18	0.00	2,401.18
022-30-054	CREEKSIDE MILPITAS 2 LLC	245,329.92	7,492.22	0.00	7,492.22
022-30-055	SPRIG CENTER LLC	243,936.00	7,449.65	(0.01)	7,449.64
022-30-056	SPRIG CENTER LLC	25,874.64	790.20	0.00	790.20
022-30-057	SPRIG CENTER LLC	137,039.76	4,185.11	(0.01)	4,185.10
022-53-001	HAM JAYNE Y	32,670.00	997.72	0.00	997.72
022-53-002	TMS MCCARTHY LP	53,578.80	1,636.26	0.00	1,636.26
022-53-003	TMS MCCARTHY LP	33,105.60	1,011.02	0.00	1,011.02
022-53-004	HSC ASSOCIATES LP	26,136.00	798.18	0.00	798.18
022-53-005	HSC ASSOCIATES LP	32,234.40	984.42	0.00	984.42
022-53-006	TMS MCCARTHY LP	51,836.40	1,583.05	(0.01)	1,583.04
022-53-007	TMS MCCARTHY LP	954,835.20	29,160.07	(0.01)	29,160.06
022-54-002	FIRST CREEKSIDE ASSOC	25,264.80	771.57	(0.01)	771.56
022-54-003	LOO YUK LUN TRUSTEE & ET AL & LOO MEI FONG TRUSTEE	44,431.20	1,356.90	0.00	1,356.90
022-54-008	IN N OUT BURGERS	33,976.80	1,037.63	(0.01)	1,037.62
022-54-009	MCCARTHY SHOPPING CTR LP	368,953.20	11,267.60	0.00	11,267.60
022-54-010	H & Y NORTHERN CALIFORNIA LLC	44,866.80	1,370.20	0.00	1,370.20
022-54-011	FIRST CREEKSIDE ASSOC	57,063.60	1,742.69	(0.01)	1,742.68
022-54-012	F&M SORCI LAND COMPANY INC	131,551.20	4,017.49	(0.01)	4,017.48
022-54-013	F&M SORCI LAND COMPANY INC	10,018.80	305.97	(0.01)	305.96
022-54-014	J N C INTERNATIONAL ENTPRS LLC	27,878.40	851.39	(0.01)	851.38
022-54-015	PACIFIC MERITAGE LLC	77,536.80	2,367.93	(0.01)	2,367.92
022-54-016	HOURET FAM LP	46,173.60	1,410.11	(0.01)	1,410.10
022-54-017	BRE SELECT HOTELS PROPERTIES LLC	143,312.40	4,376.67	(0.01)	4,376.66
022-54-018	LL MILPITAS, L P	100,623.60	3,072.98	0.00	3,072.98
022-54-019	IN N OUT BURGERS	8,276.40	252.76	0.00	252.76
022-56-005	HUDSON CAMPUS CENTER LLC	88,426.80	2,700.50	0.00	2,700.50
022-56-006	HUDSON CAMPUS CENTER LLC	89,733.60	2,740.41	(0.01)	2,740.40
022-56-007	HUDSON CAMPUS CENTER LLC	90,169.20	2,753.71	(0.01)	2,753.70
022-56-008	HUDSON CAMPUS CENTER LLC	1,503,691.20	45,921.79	(0.01)	45,921.78
022-56-009	HUDSON CAMPUS CENTER LLC	1,059,379.20	32,352.78	0.00	32,352.78
Total: 44 Parcels		11,792,519.64	\$360,136.16	(0.20)	\$360,135.96

CITY OF MILPITAS
LANDSCAPING MAINTENANCE DISTRICT (LMD) 95-1
(N.T.S.)



2019-2020 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE

Item Attachment Documents:

- C5. Adopt Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 98-1 (LLMD No. 98-1 Sinclair Horizons), and Providing Notice of Public Hearing to be held on May 21, 2019.**

Recommendation:

Adopt Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 98-1 (LLMD No. 98-1 Sinclair Horizons), and Providing Notice of Public Hearing to be held on May 21, 2019.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 98-1 (LLMD No. 98-1 Sinclair Horizons), and Providing Notice of Public Hearing to be held on May 21, 2019.
Category:	Consent Calendar-Community Development
Meeting Date:	5/7/2019
Staff Contact:	Steve Erickson 408-586-3301
Recommendation:	Adopt Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 98-1 (LLMD No. 98-1 Sinclair Horizons), and Providing Notice of Public Hearing to be held on May 21, 2019.

Background:

Landscaping and Lighting Maintenance Assessment District No. 98-1 (LLMD 98-1 Sinclair Horizons) provides the maintenance and improvement of public landscaping, irrigation systems, and pedestrian walking path adjacent to Sinclair Frontage Road, and Los Coches Creek abutting the Sinclair Horizon residential subdivision in the areas as shown on the attached location map.

Analysis:

Before the City Council may levy the annual assessment for LLMD 98-1 Sinclair Horizons, the Landscaping and Lighting Act of 1972 requires Council to adopt a resolution approving the annual Engineer's Report (Report) evaluating the LLMD district's maintenance and improvement costs for fiscal year 2019-20.

On March 5, 2019, the City Council directed the City Engineer to prepare this report, which is included in the Council packet. The proposed total assessment for fiscal year 2019-20 is \$44,063.74, with an assessment rate not exceeding the maximum assessment rate. Council must also adopt a resolution that declares its intent to levy and collect an assessment and directs publishing of notice of a public hearing to be held on May 21, 2019.

Policy Alternatives:

Alternative 1:

Not approve the annual Report nor adopt a resolution of intent to levy and collect assessments for LLMD 98-1 Sinclair Horizons.

Pros: None

Cons: The Landscaping and Lighting Act of 1972 requires the legislative body to adopt a resolution of intent upon approval of the Report, not approving the Report nor adopting a resolution of intent would jeopardize the City's ability to collect assessments for the maintenance and upkeep of LLMD 98-1 Sinclair Horizons.

Reason not recommended: To allow for the continued maintenance of LLMD 98-1 Sinclair Horizons, staff recommends approving the annual Report and declaring intent to levy and collect assessments for fiscal year 2019/20.

Fiscal Impact:

The levy and collection of assessments provides a funding resource for the City to improve and maintain public landscaping, irrigation systems, and pedestrian walking path within LLMD 98-1 Sinclair Horizons.

California Environmental Quality Act:

Levy and collection of assessment is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

Recommendation:

Adopt Resolution Approving the Annual Engineer's Report, and Adopt a Resolution Declaring Its Intention to Levy and Collect Assessments for Fiscal Year 2019-20 for Landscaping and Lighting Maintenance Assessment District No. 98-1 (LLMD No. 98-1 Sinclair Horizons), and Providing Notice of Public Hearing to be held on May 21, 2019.

Attachments:

- a) Resolution Approving Annual Engineers Report
- b) Resolution Declaring Intention to Levy and Collect Assessments
- c) Engineer's Report LLMD No. 98-1 Sinclair Horizons
- d) Location Map

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, APPROVING THE
ANNUAL REPORT FOR LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT
DISTRICT NO. 98-1 FOR FISCAL YEAR 2019/20**

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the “Act”) to establish the Landscaping and Lighting Maintenance Assessment District (the “Assessment District”); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of an Annual Report; and

WHEREAS, the City Council has, by previous resolution, ordered NBS to prepare and file such Annual Report; and

WHEREAS, NBS has prepared and filed such Annual Report with the City Clerk.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

- 1. Approval of Report:** The City Council hereby approves the Annual Report concerning the levy of assessments as submitted by NBS for the fiscal year commencing July 1, 2019, and ending June 30, 2020.

PASSED AND ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS,
DECLARING ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR THE
LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1
FOR FISCAL YEAR 2019/20**

WHEREAS, the City Council previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the “Act”) to establish the Landscaping and Lighting Maintenance Assessment District (the “Assessment District”); and

WHEREAS, the City Council has retained NBS for the purpose of assisting with the annual levy of the Assessment District, and the preparation and filing of an Annual Report.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. **Intention:** The City Council hereby declares its intention to levy and collect assessments within the Assessment District to pay the costs of the Improvements for the fiscal year commencing July 1, 2019, and ending June 30, 2020. The City Council finds that the public’s best interest requires such action.
2. **Improvements:** The improvements within the District include, but are not limited to: the operating, maintaining and servicing of all public landscaping improvements, consisting of landscaping and grass. Operating, maintaining and servicing include, but are not limited to: personnel, materials, electrical energy and water. Services provided include all necessary service, operations, administration and maintenance required to keep the improvements in a healthy, vigorous, and satisfactory condition.
3. **Assessment District Boundaries:** The distinctive designation for the Assessment District is Landscaping and Lighting Maintenance Assessment District No. 98-1. The boundaries of the Assessment District are as shown by the assessment diagram filed in the offices of the City Clerk, which map is made a part hereof by reference.
4. **Annual Report:** Reference is made to the Annual Report prepared by NBS, on file with the City Clerk, for a full and detailed description of the improvements, the boundaries of the Assessment District and the zones therein, and the proposed assessments upon assessable lots and parcels of land within the Assessment District.
5. **Notice of Public Hearing:** The City Council hereby declares its intention to conduct a Public Hearing concerning the levy of assessments in accordance with Section 22629 of the Act. All objections to the assessment, if any, will be considered by the City Council. The Public Hearing will be held on **Tuesday, May 21, 2019 at 7:00 pm** or as soon thereafter as is feasible in the meeting place of the City Council located at 455 E. Calaveras Boulevard, Milpitas, CA 95035. The City Council further orders the City Clerk to publish notice of this resolution in accordance with Section 22626 of the Act.
6. **Increase of Assessment:** The maximum assessment is not proposed to increase from the previous year above that previously approved by the property owners (as “increased assessment” is defined in Section 54954.6 of the Government Code).

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

CITY OF MILPITAS

Fiscal Year 2019/20 Annual Report For:

Landscaping and Lighting Maintenance Assessment District No. 98-1

April 2019

Prepared by:



Corporate Headquarters
32605 Temecula Parkway, Suite 200
Temecula, CA 92592
Toll free: 800.676.7316

CITY OF MILPITAS
LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1
455 East Calaveras Boulevard
Milpitas, California 95035
Phone (408) 586-3000

CITY COUNCIL

Rich Tran, Mayor
Karina R. Dominguez, Vice-Mayor
Carmen Montano, Council Member
Bob Nunez, Council Member
Anthony Phan, Council Member

CITY STAFF

Steve Erickson, PE, Director of Engineering/City Engineer
Jane Corpus, Interim Director of Financial Services
Tony Ndah, Director of Public Works

NBS

Tim Seufert, Client Services Director
Tiffany Ellis, Senior Consultant
Manuel Kauss, Financial Analyst

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1. ENGINEER'S LETTER

WHEREAS, in 1998 the City Council of the City of Milpitas (the "City"), State of California, under the Landscaping and Lighting Act of 1972 (the "Act"), created the City of Milpitas Landscaping and Lighting Maintenance Assessment District No. 98-1 (the "District") to provide for the continued maintenance, operation, and administration of various improvements within the boundaries of the District; and

WHEREAS, the City Council has directed NBS to prepare and file a report for Fiscal Year 2019/20 in accordance with Chapter 1, Article 4 of the Act presenting plans and specifications describing the general nature, location and extent of the improvements to be maintained; an estimate of the costs to maintain, operate, and service the improvements for the District for the referenced fiscal year; a diagram for the District showing the area and properties to be assessed; and an assessment of the estimated costs to maintain and service the improvements, stating the net amount to be assessed upon all assessable lots or parcels within the District in proportion to the special benefit received.

NOW THEREFORE, the following assessments have been calculated in accordance with the assessment methodology adopted and approved by the City Council at the time of District formation, and are made to cover the portion of the estimated costs of maintenance, operation, and servicing of the improvements, to be paid by the assessable real property within the District in proportion to the special benefit received:

District	Parcels	2019/20 Maximum Assessment Rate per Lot ⁽¹⁾	2019/20 Actual Assessment Rate per Lot	2019/20 Net Amount to be Assessed ⁽²⁾⁽³⁾
LLMAD 98-1	98	\$477.18	\$449.63	\$44,063.74

(1) The April 1, 2019 CPI was not available at the time of writing of this Report. The Fiscal Year 2019/20 CPI increase was estimated using the February 2019/20 CPI.

(2) Amounts placed on the tax roll include the 1% Santa Clara County Collection Fee.

(3) This amount is only an estimate and does not reflect the final billed amount with rounding adjustments.

I identified all parcels which will have a special benefit conferred upon them from the improvements described in District's Plans and Specifications section of this Engineer's Report (the "Benefited Parcels"). For particulars as to the identification of said parcels, reference is made to the Assessment Diagram, a copy is on file in the office of the City Clerk.

I have assessed the costs and expenses of the improvements upon the Benefited Parcels. In making such assessment:

- The proportionate special benefit derived by each Benefited Parcel from the improvements was determined in relationship to the entirety of the maintenance costs of the improvements;
- No assessment has been imposed on any Benefited Parcel which exceeds the reasonable cost of the proportional special benefit conferred on such parcel from the improvements; and
- Any general benefits from the improvements have been separated from the special benefits and only special benefits have been assessed.

I, the undersigned, respectfully submit the enclosed Engineer's Report and, to the best of my knowledge, information and belief, the Engineer's Report, Assessments, and the Assessment Diagrams herein have been prepared and computed in accordance with the order of the City Council of the City of Milpitas, the Act, and Article XIID.

Steven Erickson, PE
Engineering Director/City Engineer

2. PLANS AND SPECIFICATIONS

The District provides for the continued administration, maintenance, operation, and servicing of various improvements located within the public right-of-way and dedicated easements within the boundaries of the District.

2.1 Location of Improvements

The District is located in the City of Milpitas, bounded on the east by Sinclair Frontage Road, on the west by Berryessa Creek, and on the north by Los Coches Street. The improvements maintained include public landscaping and irrigation improvements, including jogging paths, planter walls, grass berms, and ornamental planting, which are primarily situated within the public rights-of-way and dedicated public by easements within the District.

2.2 Landscaping Improvements

The landscaping and irrigation improvements were installed within the District in order to enhance the overall visual appearance for adjacent parcels. The improvements consist of the maintenance and operation of any or all public landscaping and irrigation improvements adjacent to curbs, including asphalt concrete jogging paths, planter walls, grass berms, and appurtenant irrigation systems; ornamental planting including lawns, shrubs, and trees, including necessary repairs, replacements, water, electric current, spraying, care, supervision, debris removal and all other items of work necessary and incidental for proper maintenance and operation thereof. The landscaping and irrigation improvements are collectively referred to as “landscaping improvements”. All such work will be performed in the following areas:

2.2.1 BERRYESSA CREEK

Due to the widening of the creek, improvements in Berryessa Creek were removed. Any improvements that existed in this reach (asphalt concrete jogging path, exercise equipment, planting, and irrigation) will no longer be maintained or improved.

2.2.2 LOS COCHES CREEK

1. A strip of land 812 feet long, 14 feet in width along the south bank of Los Coches Creek adjacent to Tract 9018. The improvements include an asphalt concrete jogging path, exercise equipment, planting, and irrigation.
2. A strip of land 5.5 feet wide within the Los Coches Street right-of-way between the back of sidewalk and the right-of-way along the south side of Los Coches Street between Berryessa Creek and Sinclair Frontage Rd. The improvements include planting and irrigation.

2.3 Overhead

In addition to the hard costs of maintaining the improvements mentioned above, the City will incur costs for staff time and expenses related to the management and maintenance of the improvements within the District. Staff time includes oversight and coordination of both City and contractor provided services, annual tax roll preparation, and addressing property owner questions and concerns. These activities are directly related to the maintenance of the improvements, and without them the improvements could not be efficiently completed or properly maintained on an ongoing basis.

3. ESTIMATE OF COSTS

The estimated costs of maintenance and servicing of the improvements as described in the Plans and Specifications are summarized below.

3.1 District Budget

The Fiscal Year 2019/20 estimated cost budget for the maintenance and servicing of the improvements is as follows:

Description	Budget 2019/20
Maintenance Staff and Contract Services ⁽¹⁾	\$16,383
Capital Equipment	0
Supplies	1,000
Utilities (Water, Electricity)	17,495
Reserve Fund	0
<u>Capital Improvement Program</u>	<u>23,000</u>
Maintenance Costs	\$57,878
NBS	\$3,450
City Staff District Admin	700
<u>County Auditor-Controller Fee⁽²⁾</u>	<u>441</u>
District Specific Costs	\$4,591
Total District Costs	\$62,469
General Benefit Contribution ⁽³⁾	(18,405)
<u>Operating Reserve Contribution</u>	<u>0</u>
Net Amount to be Assessed	\$44,064
Total District Lots	98
Rate per Lot⁽⁴⁾⁽⁵⁾	\$449.63
Maximum Rate Per Lot – 2019/20⁽⁶⁾	\$477.18

(1) For 2019/20 Landscape Maintenance Contract Services includes Terracare and Irvine Company.

(2) County Auditor-Controller Fee is provided by the LLMAD.

(3) General Benefit Contribution is not applied to District Specific Costs as these are special benefits to the District.

(4) The Rate per lot equals the Net Amount to be Assessed / Total District Lots.

(5) The assessed rate cannot exceed the maximum rate.

(6) The April 1, 2019 CPI was not available at the time of writing of this Report. The Fiscal Year 2019/20 CPI increase was estimated by using the February 2019/20 CPI.

3.1.1 OPERATING RESERVE

It is the intent of the City to maintain an operating reserve which shall not exceed the estimated costs of maintenance and servicing of the improvements prior to December 10 of the fiscal year, or when the City expects to receive its apportionment of special assessments from the County, whichever is later. The operating reserve balance information for the District is as follows:

Estimated Fiscal Year Ending 6/30/2019 Operating Reserve Cash Balance	\$37,652
Operating Reserve Collection – Fiscal Year 2019/20	0
Estimated Fiscal Year Ending 6/30/2020 Operating Reserve Cash Balance	\$37,652

4. SPECIAL AND GENERAL BENEFIT

The improvements defined in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits are described below.

4.1 Introduction

Pursuant to Article XIID, all parcels that receive a special benefit conferred upon them as a result of the installation, implementation and maintenance of the improvements, services and activities shall be identified, and the proportionate special benefit derived by each identified parcel shall be determined in relationship to the entire costs of the installation, implementation and maintenance of the improvements, services and activities.

Article XIID, Section 4(a) of the California Constitution limits the amount of any assessment to the proportional special benefit conferred on the property. Proposition 218 requires that the City separate the general benefit from special benefit, so that only special benefit may be assessed to properties within the District. Furthermore, Article XIID also provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment.

4.2 Special Benefits Identified

The improvements described in Section 2 are expected to confer certain special benefits to parcels within the District. The special benefits conferred to property within the District can be grouped into two primary benefit categories: aesthetic benefit and safety benefit. The two district benefit categories are further expanded upon below.

) **Improved Aesthetics:** The aesthetic benefit relates to the increase in the overall aesthetics as a result of the ongoing maintenance, servicing and operation of the improvements within the District. Street landscaping improvements improve the livability, commercial activity, appearance and desirability for properties within the District. Regular maintenance ensures that the improvements do not reach a state of deterioration or disrepair so as to be materially detrimental to properties adjacent to or in close proximity to the improvements. The overall appeal of the District is enhanced when improvements are in place and kept in a healthy and satisfactory condition. Conversely, appeal decreases when improvements are not well-maintained, unsafe, or destroyed by the elements or vandalism. Streetscapes have a significant effect on how people view and interact with their community¹. With streetscapes that are safe and inviting, people are more likely to walk, which can help reduce automobile traffic, improve public health, stimulate local economic activity and attract residents and visitors to the community².

) **Increased Safety:** Well maintained areas mitigate crime, especially vandalism, and enhance pedestrian safety. A recent study found that after landscape improvements were installed, there was a 46% decrease in crash rates across urban arterial and highway sites and a second study

¹ Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities*. Retrieved from <http://www.vtpi.org/tadm/tadm97.htm>.

² *Ibid*.

reviewed found a 5% to 20% reduction in mid-block crashes after trees and planters in urban arterial roads were put in place. In addition, there is less graffiti, vandalism, and littering in outdoor spaces with natural landscapes than in comparable plant-less spaces³. The Victoria Transport Policy Institute has found that streetscapes reduce traffic speeds and when combined with improved pedestrian crossing conditions can significantly reduce collisions⁴.

4.3 General Benefits Identified

Section 4 of Article XIID of the California Constitution provides that once a local agency which proposes to impose assessments on property has identified those parcels that will have special benefits conferred upon them and upon which an assessment will be imposed, the local agency must next “separate the general benefits from the special benefits conferred,” and only the special benefits can be included in the amount of the assessments imposed.

General benefit is an overall and similar benefit to the public at large resulting from the maintenance of the District’s improvements provided by the assessments levied. The improvements to be maintained by the District are located within the District boundaries only. There will be no District maintenance activities provided for improvements located outside of the District boundaries.

The ongoing maintenance of the District improvements will provide aesthetic and safety benefits to the property within the District. However, it is recognized that the ongoing District maintenance activities will also provide a level of benefit to some property within proximity to the District, as well as individuals passing through. Therefore, the general benefit created as a result of the District maintenance activities has been considered.

4.4 Quantification of Benefit

As a result of the maintenance and operation of the improvements, there will be a level of general benefit to people that do not live in or intend to conduct business within the District. In order for property within the District to be assessed only for that portion of special benefits received from the district’s maintenance activities, general benefits provided by the ongoing maintenance of the improvements needs to be quantified. The amount of general benefit that is provided from the District’s maintenance activities cannot be funded via property owners’ assessments.

The landscaping improvements are primarily located along Los Coches Street and Sinclair Frontage Road and within the subdivision along Los Coches Creek and Berryessa Creek. A portion of the maintained landscaping provides some general benefit to pass-thru traffic. Per the City, there is 52,912 square feet of landscaping being maintained.

Los Coches Creek and Berryessa Creek

As result of the District maintenance activities, there will be a level of general benefit to pedestrians and vehicular traffic that are not associated with property in the District. As expressed by the Court in *Beutz v. County of Riverside* (2010), “... courts of this state have long recognized that virtually all public improvement projects provide general benefits.” A route beginning or ending with a parcel within the District does not

³ Wolf, Kathleen L. (2010). *Safe Streets – A Literature Review*. In: *Green Cities: Good Health* (www.greenhealth.washington.edu). College of the Environment, University of Washington.

⁴ Victoria Transport Policy Institute. (2011). *Community Livability. Helping to Create Attractive, Safe, Cohesive Communities*. Retrieved from <http://www.vtpi.org/tdm/tdm97.htm>.

include the “general public” for purposes of determining general benefit. The landscaping improvements along the south side of Los Coches Creek and Berryessa Creek are local in nature, however even though they are intended primarily for localized access, there is some portion of pedestrian traffic that may not be accessing the adjacent properties. The landscaping improvements are located adjacent to the backyard of homes, and access is only available by walking or bicycling. There is no vehicular access to these improvements.

The Summary of Travel Trends, 2009 National Household Travel Survey (NHTS) prepared by the U.S. Department of Transportation Federal Highway Administration analyzed the number of person trips by various modes of transportations such as private vehicle, transit, walking or some other means of transportation. According to the Pacific Division data extracted from the 2009 NHTS database, of the annual 181,703 (in millions) total person trips, 21,252 (in millions) or 11.70% of those person trips were made by using walking as their mode of transportation, and 2,066 (in millions) or 1.14% of those person trips were made by bicycling⁵.

According to the U.S. Census Bureau (2010), the average household size in the City is 3.34 persons⁶. Based on this average household size, and considering there are 98 residential units within the District, there are approximately 327 people residing within the District boundaries. There are an estimated 163 residential units in close proximity, but outside of the District boundaries. Based on the City’s average household size, there are approximately 544 persons residing outside of the District boundaries, but have access to the landscaping improvements.

Community	Estimated Number of Residential Units	Estimated Number of Persons ⁽¹⁾
District	98	327
Sundrop subdivision	83	277
Sinclair Renaissance	80	267
Total Residential Population	261	871

(1) U.S. Census Bureau (2010) average household size in the City is 3.34 persons.⁷

In order to determine the estimated total number of persons who are within close proximity to the landscaping improvements, and would utilize walking or bicycling as their mode of transportation, we applied the 12.84% (11.70% walking, 1.14% bicycling) of person trips reported from the NHTS Pacific Division study, to the total nearby residential population (871). There are approximately 112 people within close proximity of the District that utilize walking or bicycling as their mode of transportation.

In order to determine the portion of the 112 persons that reside within the District, we applied the 2009 NHTS walking trip percentage (12.84%) to the District population (327). Approximately 42 people within the District boundaries use walking or bicycling as their primary mode of transportation. Therefore, the total surrounding neighborhood area population, located outside of the District boundaries, but in close

⁵ U.S. Department of Transportation. Federal Highway Administration. (2011). Summary of Travel Trends: 2009 National Household Travel Survey. (Report No. FHWA-PL-11-022). Retrieved from <http://nhts.ornl.gov>

⁶ U.S. Census Bureau. (2010). Profile of General Population and Housing Characteristics: 2010, 2010 Demographic Profile Data. Milpitas, C.A. Retrieved March 23, 2015, <http://quickfacts.census.gov/qfd/states/06/0647766.html>

⁷ Ibid.

proximity the landscaping improvements, that uses walking or bicycling as their primary mode of transportation is estimated to be 70 people.

Community	Estimated Number of Persons
District	42
Sundrop subdivision	36
Sinclair Renaissance subdivision	34
Walking or Bicycling Population	112

In order to obtain a better picture of the overall level of general benefit provided by the landscaping improvements, the pedestrian traffic that utilizes walking or bicycling as the mode of transportation that will seek out and use the District improvements, but live outside of the District, must be considered. The 2009 NHTS further details the purposes of the reported walking (21,252 in millions) and bicycling (2,066 in millions) trips; based on the property types people entering the District would most likely do so for social or recreational activities.

The following details the number of walking and bicycling trips, based on the 2009 NHTS study, for each of the activities that are the most likely reasons people outside of the District would use the landscaping improvements:

Trip Purpose	Number of Walking/Bicycling Trips (in millions)
Social/Recreational	6,442
Total	6,442

Of the total number of walking and bicycling trips reported, 6,442 (in millions) or 27.63% are for purposes that persons outside of the District may use the landscaping improvements. Applying this percentage (27.63%) to the number of people walking or bicycling as their mode of transportation and that reside outside of the District (70), there are approximately 19 people (general benefit) that may use the landscaping improvements, but do not reside within the District. Taking the 19 people that may walk or bicycle, but reside outside of the District, divided by total residential population with access to the landscaping improvements (871), the estimated percentage of persons, engaging in what is considered general benefit because they do not reside within the District, represents 2.21%.

Los Coches Street and Sinclair Frontage Road

The City does not have a study showing traffic volume along Los Coches Street and Sinclair Frontage Road along the District boundaries. The portion of the maintained landscaping that is located along Los Coches Street and Sinclair Frontage Road provides some general benefit to pass-through traffic. Before the determination and allocation of the percentage of special and general benefit for the District can be made, the estimated pass-through traffic must be computed. The pass-through trips are vehicles driving along the maintained streets within the District for a portion of their trips, but not living or conducting business in the District and benefiting from the landscaping improvements in place.

The Sundrop and Sinclair Renaissance residential communities are located directly across the street and next to the District, and vehicles entering and/or exiting these communities in all likelihood are passing by a portion of the landscaping improvements for a portion of their trip. In lieu of having a study that identifies the pass-through traffic, the estimated number of trips generated for each community has been calculated based on the number of units and average number of trips per dwelling unit.

Community	Number of Residential Units ⁽¹⁾	Estimated Number of Daily Vehicle Trips ⁽²⁾	% of Total Daily Vehicle Trips ⁽³⁾
District	98	933.0	44.34%
Sundrop subdivision	83	790.2	37.56%
Sinclair Renaissance subdivision	80	380.8	18.10%
Total	261	2,104.0	100.00%

(1) Number of Residential Units is from the City's Approved Projects map.⁸

(2) Per the ITE Trip Generation Report a single family residence generates an average of 9.52 trips per dwelling unit.⁹

(3) Number of daily trips has been reduced by 50% to account for vehicles entering and exiting the community from the opposite direction on Sinclair Frontage Road, and not driving along the portion of Los Coches Street and Sinclair Frontage Road with landscaping improvements maintained by the District.

As detailed above, based on the average number of daily vehicle trips generated for the communities in close proximity to the District, 1,171 (55.66%) are generated by residential units located outside of the District (general benefit).

All Locations and Landscaping Improvements – Residential Pass-thru Benefit

The general benefit percentages determined in the previous sections for Los Coches Creek and Berryessa Creek (2.21%) and Los Coches Street and Sinclair Frontage Road (55.66%) were then applied to each corresponding location with landscaping improvements. The landscaping square footage being maintained by the District was provided by the City's Public Works Department. The general benefit percentage for each street type was multiplied by the total square footage being maintained for such street. The general benefit square footage was summed for all street segments and divided into the total square footage of all landscaping maintenance. The result is the combined general benefit percentage. The following table details this calculation.

Street Name	Total Square Footage	General Benefit Percentage	General Benefit Square Footage
Los Coches Creek	4,572	2.21%	101
Berryessa Creek	21,025	2.21%	465
Los Coches Street	24,747	55.66%	13,773
Sinclair Frontage	2,568	55.66%	1,429
Totals:	52,912		15,768
Landscaping General Benefit			29.80%

Based on the above calculations, the general benefit portion of the improved aesthetics and increased safety resulting from the landscaping improvements is estimated to be 29.80%.

⁸ City of Milpitas. (2013). Approved Development Projects. Retrieved from http://www.ci.milpitas.ca.gov/government/planning/proj_approved.asp

⁹ Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers.

(2012). Washington, DC: Institute of Transportation Engineers.

Public at Large General Benefit

Given the location and nature of the improvements, it is very unlikely the public at large would seek out or use the landscaping improvements within the District. In addition, there are more direct routes to access the industrial complexes/businesses located to the south of the District than the 2 lane Los Coches Street and Sinclair Frontage Road. Nevertheless, it is perceivable that members of the public at large may pass-thru a portion of the landscaping improvements, even if it's lost or leisure traffic. As such, general benefit of 2.00% has been assigned for the landscaping improvements to the public at large

4.4.1 COLLECTIVE DISTRICT-WIDE GENERAL BENEFIT

Since the District is comprised of improved aesthetics and increased safety benefits resulting from the collective landscaping improvements, the activity of both pedestrians and vehicles, and the public at large must be addressed in a collective form rather than independently. The sum of the calculated general benefits is the total general benefit related to all pass-thru traffic. This general benefit result is provided in the table below:

Residential Pass-thru General Benefit	29.80%
Public at Large General Benefit	2.00%
Total General Benefit	31.80%

The general benefit, which is the percentage of the total budget that must be funded through sources other than assessments, is 31.80%. The special benefit then, which is the percentage of the budget that may be funded by assessments, is 68.20%.

4.5 Special Benefit Trips

The detailed breakdown of the estimated special benefit trips for each parcel in the District is shown in the following table:

Assmt ID	Assessor's Parcel No.	Land Use Description	Acreage	Gross Leasable Area	Average Trip Rate ⁽¹⁾	Estimated # of Daily Special Benefit Trips ⁽²⁾
1-1A-1	022-54-016	710 - General office	1.06	4,046	11.03	44.63
1-1A-2	022-54-017 ⁽³⁾	310 – Hotel	3.29	161	8.17	1,315.37
1-1A-3	022-54-018 ⁽³⁾	310 – Hotel	2.31	124	8.17	1,013.08
1-1A-4	022-54-019	934 - Fast Food	0.19	-	496.12	-
1-1B	022-54-008	934 - Fast Food	0.78	2,912	496.12	1,444.70
1-2	022-54-002 ⁽⁴⁾	820 - Shopping Center	0.58	5,400	42.70	230.58
1-3	022-54-003	932 - High Vol. Restaurant	1.02	5,465	127.15	694.87
1-4A	022-54-009 ⁽⁴⁾	869 - Home Superstore	8.47	100,000	20.00	2,000.00
1-4B	022-54-012 ⁽⁴⁾	820 - Shopping Center	3.02	20,000	42.70	854.00
1-4C	022-54-013	820 - Shopping Center	0.23	10,000	42.70	427.00
1-4D	022-54-015	931 - Quality Restaurant	1.78	7,846	89.95	705.75
1-4E	022-54-014 ⁽⁴⁾	932 - High Vol. Restaurant	0.64	3,000	127.15	381.45
1-4F	022-54-011 ⁽⁴⁾	820 - Shopping Center	1.31	8,000	42.70	341.60
1-4G	022-54-010	931 - Quality Restaurant	1.03	7,476	89.95	672.47
2-1	022-53-001	931 - Quality Restaurant	0.75	6,500	89.95	584.68
2-2	022-53-002 ⁽⁴⁾	820 - Shopping Center	1.23	10,000	42.70	427.00
2-3	022-53-003 ⁽⁴⁾	820 - Shopping Center	0.76	8,000	42.70	341.60
2-4	022-53-004	934 - Fast Food	0.60	2,000	496.12	992.24
2-5	022-53-005	934 - Fast Food	0.74	3,000	496.12	1,488.36
2-6	022-53-006	863 – Elect. Superstore	1.19	51,250	45.04	2,308.30
2-7	022-53-007	820 - Shopping Center	21.92	214,094	42.70	9,141.81
3	022-29-016	815 - Discount Superstore	14.56	125,000	50.75	6,343.75
4-1A-1	022-56-005	714 - Corp Headquarters	2.03	115,753	7.98	923.71
4-1A-2	022-56-006	714 - Corp Headquarters	2.06	174,483	7.98	1,392.37
4-1A-3	022-56-007	714 - Corp Headquarters	2.07	177,483	7.98	1,416.31
4-1A-4	022-56-008	Undeveloped	34.52	-	-	-
4-1A-5	022-56-009	Parking Lot	24.32	-	-	-
4-1B	022-29-037	Open Space	6.00	-	-	-
5-1A-1	022-29-034	750 - Office Park	36.66	572,660	11.42	6,539.78
5-2A-1	022-29-035	750 - Office Park	31.14	480,772	11.42	5,490.42
5-3A-1	022-29-040	Undeveloped	15.55	-	-	-
5-3A-2	022-29-041	Undeveloped	1.00	-	-	-
5-3A-3	022-29-042	Undeveloped	6.94	-	-	-
5-3A-4	022-29-043	Undeveloped	7.36	-	-	-
5-3A-5	022-29-044	Undeveloped	7.73	-	-	-
5-3B-1A	022-30-054	Undeveloped	5.63	-	-	-
5-3B-2	022-30-038	Undeveloped	10.00	-	-	-
5-3B-3	022-30-039	Undeveloped	5.22	-	-	-
5-3C	022-30-035 ⁽⁵⁾	Pump Station	0.19	-	-	1.00
5-5A-1	022-30-055	Undeveloped	5.60	-	-	-
5-5A-2	022-30-056	Undeveloped	0.59	-	-	-
5-5A-3	022-30-057	Undeveloped	3.15	-	-	-
5-6	022-30-041	Open Space	1.43	-	-	-
5-7	022-30-049 ⁽⁵⁾	Sewer Pump Station	9.12	-	-	1.00
Total Estimated Daily Special Benefit Trips						47,517.83
Internal Trip Reduction ⁽⁶⁾						(13,810.00)
Total Special Benefit Trips						33,707.83

- (1) *Average Trip Rate per Day is from the Institute of Traffic Engineer's, Trip Generation Report.¹⁰*
- (2) *Average Number of Special Benefit Trips per Day is the Average Trip Rate times each 1,000 square feet of gross leasable area.*
- (3) *Average Number of Special Benefit Trips per Day is the Average Trip Rate times number of hotel rooms for this parcel.*
- (4) *Building Square Feet for this parcel is unavailable at this time. Estimate of square feet was used based on similar building in center.*
- (5) *Pump Station trips are an estimate.*
- (6) *The internal trip rate percentage was calculated by using the NCHRP 684 Internal Rate Capture Estimation Tool.*

¹⁰ *Trip Generation, 9th Edition: An Informational Report of the Institute of Transportation Engineers.* (2012). Washington, DC: Institute of Transportation Engineers.

5. METHOD OF ASSESSMENT

5.1 Method of Assessment Spread

All parcels in the District on which residential dwellings will be constructed specially benefit from the improvements to an equivalent extent. These parcels are therefore assessed on a per lot basis for the maintenance and operation of the District, including incidentals and appurtenances, and will include all the costs of maintenance and/or operating the improvements. As outlined in Section 4, the total amount of general benefit from the improvements is determined to be 31.80%.

The maximum assessment rate for Fiscal Year 2019/20 is \$477.18, which is a preliminary number. The actual assessment rate levied on each taxable parcel for Fiscal Year 2019/20 is \$449.63.

Each year the maximum assessment rate shall be increased by the percentage change from April 1st of the prior year to April 1st of the current year by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and U.S. City Average, San Francisco-Oakland-Hayward. For Fiscal Year 2019/20 the April 1, 2019 CPI was not available at the time of writing of this Report. The Fiscal Year 2019/20 CPI increase was estimated by using the February 2019/20 CPI.

5.2 Maximum Assessment Rates

The following table provides the maximum assessment rate for Fiscal Year 2000/01 through the current fiscal year:

<i>Historical Maximum Rates</i>			
Fiscal Year	CPI	% Increase⁽¹⁾	Maximum Rate
2000/01	178.7	NA	\$292.803
2001/02	189.1	5.82%	309.844
2002/03	193.0	2.06%	316.234
2003/04	197.3	2.23%	323.280
2004/05	198.3	0.51%	324.918
2005/06	202.5	2.12%	331.800
2006/07	208.9	3.16%	342.286
2007/08	215.842	3.32%	353.661
2008/09	222.074	2.89%	363.872
2009/10	223.854	0.80%	366.789
2010/11	227.697	1.72%	373.086
2011/12	234.121	2.82%	383.611
2012/13	238.985	2.08%	391.581
2013/14	244.675	2.38%	400.904
2014/15	251.495	2.79%	412.079
2015/16	257.622	2.44%	422.118
2016/17	264.565	2.70%	433.494
2017/18	274.589	3.79%	449.919
2018/19	283.422	3.22%	464.392
2019/20 ⁽²⁾	291.227	2.75%	477.181

(1) Percentage increase from April 1 of the prior year to April 1 of the current year in the US Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes, Pacific Cities and US City Average, San Francisco-Oakland-Hayward.

(2) The April 1, 2019 CPI was not available at the time of writing of this Report. The Fiscal Year 2019/20 CPI increase was estimated using the February 2019/20 CPI.

5.3 Appeals

Any property owner who feels that the amount of their assessment is in error as a result of incorrect information being used to apply the foregoing method of spread, may file an appeal with the Finance Director of the City. Any such appeal is limited to correction of an assessment during the current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Finance Director shall promptly review the information provided by the property owner and if he/she finds that the assessment should be modified, he/she shall have the authority to make the appropriate changes in the assessment roll. If any such changes are provided after the assessment roll has been filed with the County for collection, the Finance Director is authorized to refund to the property owner the amount of any approved reduction.

6. ASSESSMENT DIAGRAM

The following page provides a copy of the assessment diagram of the District.

7. ASSESSMENT ROLL

The assessment roll is a listing of the proposed assessment for Fiscal Year 2019/20 apporportioned to each lot or parcel, as shown on the last equalized roll of the Assessor of the County of Santa Clara. The following page shows the assessment roll for Fiscal Year 2019/20.

City of Milpitas
Landscaping and Lighting Maintenance Assessment District
Fiscal Year 2019/20 Assessment Roll

APN	Assessment ID	Owner	Amount
086-48-001	1	HUYNH CONNIE C AND NGUYEN HUNG	\$449.63
086-48-002	2	BHAT BALASUBRAMANYA AND RAMANANDA RAMYA N	449.63
086-48-003	3	SANTIAGO SIMON AND RACHEL	449.63
086-48-004	4	GDK ENTERPRISE LLC	449.63
086-48-005	5	NOGUERA ALEX D AND GUTIERREZ-NOGUERA MARLI	449.63
086-48-006	6	KEMPIS BENJAMIN S AND EVANGELINE Q TRUSTEE	449.63
086-48-007	7	SHILEDAR ADITYA AND BADHE PRIYA P	449.63
086-48-008	8	XU JIANZHONG AND WANG XIAOMIN ET AL & XU XIAO	449.63
086-48-009	9	LAM TUAN AND NGUYEN YEN N	449.63
086-48-010	10	VU JOSEPH ANH AND TRAN YENLINH T	449.63
086-48-011	11	GUTIERREZ ALEJANDRO J AND SOLITA A TRUSTEE	449.63
086-48-012	12	ECAL ERLINDA E AND GEORGE E	449.63
086-48-013	13	DELA CRUZ DALE E AND JEANETTE M	449.63
086-48-014	14	TRINH DANH XUAN AND TRAN NGOC-CHAU THI	449.63
086-48-015	15	NGUYEN TUNG K AND LAC V	449.63
086-48-016	16	LADLE GORDON B AND MARICAR C	449.63
086-48-017	17	JACKSON PAUL K AND BRITTON-JACKSON VIVIAN	449.63
086-48-018	18	CAO MICHAEL T AND TAM VUONG	449.63
086-48-019	19	MIGUELINO OSCAR T JR AND JUDY Y	449.63
086-48-020	20	BUI THUAN AND NGUYEN HA TRUSTEE	449.63
086-48-021	21	TRAN KENNETH L AND LENA L TRUSTEE	449.63
086-48-022	22	AGBUYA ALBERT P AND AMORFINA G TRUSTEE	449.63
086-48-023	23	PATEL BHUSHAN AND AARTI M	449.63
086-48-024	24	KOH CHENG-CHEE ET AL & KOH KEWSEK	449.63
086-48-025	25	GADIGE BHASKAR V AND HIMABINDU	449.63
086-48-026	26	AGARWAL SHIV TRUSTEE & TAYAL MANISHA TRUSTEE	449.63
086-48-027	27	NARVAEZ HOWARD M TRUSTEE & ET AL & CHU FONDA W TRUSTEE	449.63
086-48-028	28	LEUNG PAUL K AND NANCY M	449.63
086-48-029	29	TRAN MICHAEL AND TIFFANY	449.63
086-48-030	30	WU XILONG AND YU ZHEBIN TRUSTEE	449.63
086-48-031	31	WONG IRENE TRUSTEE	449.63
086-48-032	32	BAKHURU SUDHIR & MULLASSERY DIVYA	449.63
086-48-033	33	RAGHUNATHA SWAROOP AND PADUBIDRI LALITHA TR	449.63
086-48-034	34	GUDURI VINOD AND LAKMA SHAILAJA	449.63
086-48-035	35	YAU TIMOTHEUS AND PEGGY	449.63
086-48-036	36	VOLADRI RAMA K AND GURJAL MANI R	449.63
086-48-037	37	CHU WEI MUN	449.63
086-48-038	38	AGRAWAL RAKESH AND KANSAL ESHA	449.63
086-48-039	39	DUNN ERIC J AND BUI TRANG THI THUY	449.63
086-48-040	40	MUNE DEREK AND LEE TERRI L	449.63
086-48-041	41	AGGARWAL RAHUL AND SHELLY	449.63
086-48-042	42	RAO QIZHOU AND SHAN MENGWEN	449.63
086-48-043	43	LOW NEE-LOONG AND OH BEE-BEE	449.63
086-48-044	44	VOGETY RAMANAGOPAL V AND VEDANTAM KANYALAKS	449.63
086-48-045	45	MAI KENNY CHI AND PAULINE	449.63
086-48-046	46	DO KHAN AND NGUYEN THU K TRUSTEE	449.63
086-48-047	47	TSAI JULIE Y ET AL & TSAI CHRISTINE P	449.63
086-48-048	48	GDK ENTERPRISES LLC	449.63
086-48-049	49	PEI NICHOLAS	449.63
086-48-050	50	WANG YUN AND TONG MIN	449.63

City of Milpitas
Landscaping and Lighting Maintenance Assessment District
Fiscal Year 2019/20 Assessment Roll

APN	Assessment ID	Owner	Amount
086-48-051	51	LY PETER T	449.63
086-48-052	52	WONG JAMES	449.63
086-48-053	53	FANG XIONG AND WANG QING	449.63
086-48-054	54	LAN DI AND CAO RONG	449.63
086-48-055	55	LAM RONNY TRUSTEE & LAM JULIE TRAN TRUSTEE	449.63
086-48-056	56	ZHOU GUO QUAN AND LIU XIN	449.63
086-48-057	57	LI HONG AND TU MINGHU	449.63
086-48-058	58	DUGYALA ANURADHA	449.63
086-48-059	59	AU JONSON C AND OR SOPHIA YUK YU	449.63
086-48-060	60	TRUONG MAI C ET AL	449.63
086-48-061	61	BASANI SHAILESH KUMAR AND SUPRIYA TRUSTEE	449.63
086-48-062	62	LEE ANDREW AND LIU LISA	449.63
086-48-063	63	AZALI ALBERTUS H AND TUNGGAL WENDA TRUSTEE	449.63
086-48-064	64	NIGAM AJAY AND ANJULA TRUSTEE	449.63
086-48-065	65	KOMATSU HIROYUKI AND MIKA	449.63
086-48-066	66	NAIR SEEMA	449.63
086-48-067	67	BIALA CHARITO M TRUSTEE & ET AL & BIALA FE T TRUSTEE	449.63
086-48-068	68	NITAFAN DEMETRIO B AND CECILIA C	449.63
086-48-069	69	NGUYEN TANYA VINH ET AL & NGUYEN STEVEN D	449.63
086-48-070	70	HUYNH QUANG AND VO JASMINE TRUSTEE	449.63
086-48-071	71	PATEL GITA V TRUSTEE	449.63
086-48-072	72	FENG HAIJUN AND ZHONG WEIHONG	449.63
086-48-073	73	XUE WEI AND SUN LI	449.63
086-48-074	74	GANGAIAH MAHENDRA	449.63
086-48-075	75	PRABHU VIVEK R AND SUNITA TEJWANI TRUSTEE	449.63
086-48-076	76	HSIAO JEFF C AND NGUYEN ANGELA TRUSTEE & ET	449.63
086-48-077	77	CHIN MICHAEL AND MARY TRUSTEE	449.63
086-48-078	78	TRUONG PHILLIP TRUSTEE	449.63
086-48-079	79	XIONG XIANG D AND YEE VICKY TRUSTEE & ET AL	449.63
086-48-080	80	REDDY SAMINA AGUTHU ET AL	449.63
086-48-081	81	ARUNACHALAM SARAVANAN AND KRISHNAMOORTHY SA	449.63
086-48-082	82	MA NAN	449.63
086-48-083	83	BUKIN KONSTANTIN V AND HSIEH PING	449.63
086-48-084	84	DESAI RAJENDRA J AND PRATIMA R	449.63
086-48-085	85	ZHAO QIANG JIMMY AND YUO JENNY BIN	449.63
086-48-086	86	TAN ALICIA SHUFANG	449.63
086-48-087	87	PIERCE BRAD A AND KOH CHENG-CHEE TRUSTEE	449.63
086-48-088	88	AHUJA SUMEET AND RUCHI	449.63
086-48-089	89	DEVADAS MANJUNATH AND KARVETI HEMALATHA	449.63
086-48-090	90	LIEU TONY AND TIFFANY	449.63
086-48-091	91	KRISHNAN ANANTA AND KUMAR MAYA	449.63
086-48-092	92	LIM PERRY F AND DIXIE M TRUSTEE	449.63
086-48-093	93	LU COURTNIIE TU TRINH	449.63
086-48-094	94	QUANG TONY D	449.63
086-48-095	95	SINGLA SANJEEV K AND ANITA	449.63
086-48-096	96	PAL SHIRISH C AND DAS SUJATA S	449.63
086-48-097	97	ANNADATA ANIL K AND VEEPURI SRAVANTHI	449.63
086-48-098	98	ONG PHILIP J JR TRUSTEE & ONG UYEN T TRUSTEE	449.63
Total: 98 Parcels			\$44,063.74

CITY OF MILPITAS
 LANDSCAPING MAINTENANCE DISTRICT (LMD) 98-1
 (N.T.S.)



2019-2020 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE

Item Attachment Documents:

C6. Award Construction Contract for McCarthy/Sandisk Traffic Signal, Project No. 4292

Recommendation:

Adopt a Resolution Awarding a Construction Contract to and Authorizing the City Manager to Execute the Contract with the Lowest Responsible Bidder Submitting a Responsive Bid, St. Francis Electric, LLC, in the Amount of \$595,100 for the McCarthy/Sandisk Traffic Signal Project, Project No. 4292, and Authorizing the Engineering Director/City Engineer to Negotiate and Execute Contract Change Order(s) in an Aggregate Amount Not to Exceed \$89,500 for the Project.



**CITY OF MILPITAS
AGENDA REPORT
(AR)**

Item Title:	Award Construction Contract for McCarthy/Sandisk Traffic Signal, Project No. 4292
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	5/7/2019
Staff Contact:	Steve Erickson, (408) 586-3301
Recommendation:	Adopt a Resolution Awarding a Construction Contract to and Authorizing the City Manager to Execute the Contract with the Lowest Responsible Bidder Submitting a Responsive Bid, St. Francis Electric, LLC, in the Amount of \$595,100 for the McCarthy/Sandisk Traffic Signal Project, Project No. 4292, and Authorizing the Engineering Director/City Engineer to Negotiate and Execute Contract Change Order(s) in an Aggregate Amount Not to Exceed \$89,500 for the Project.

Background:

Project No. 4292, McCarthy Blvd./Sandisk Drive Traffic Signal ("Project") is in the approved 2018-2024 Capital Improvement Program, and provides for the installation of a new four-way traffic signal and PG&E electrical service including removal of existing equipment, and installation of ADA compliant curb ramps, and sidewalk at the intersection of Sandisk Drive and McCarthy Blvd.

The Engineers construction estimate for the Project is \$648,000.

Analysis:

The Project was advertised in the Milpitas Post on March 29, 2019 and April 5, 2019. Bid opening was on April 19, 2019, and 3 sealed bid proposals were received. The bid pricing ranged from \$595,100 to \$631,053. The lowest responsible bidder submitting a responsive bid is St. Francis Electric LLC, in the amount of \$595,100. No bid protests were filed with the City for this Project. The following is the list of bidders and their respective bid amounts. The bid result tabulation is included as **Attachment 2**.

Bidder	Location	Total Base Bid
St. Francis Electric, LLC.	San Leandro, CA	\$595,100.00
W Bradley Electric, Inc.	Novato, CA	\$596,914.00
Columbia Electric, Inc.	San Leandro, CA	\$631,052.92

The bid prices submitted by bidders varied from between 3% to 8% under the Engineer's Estimate.

Staff recommends the City Council award a construction contract to St. Francis Electric, LLC, the lowest responsible bidder submitting a responsive bid, in the amount of \$595,100. There are sufficient funds available within the Project No. 4292 budget to award this contract.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy, see **Attachment 3**. This policy allows for timely completion of the Project, while addressing the need to respond swiftly to construction conditions and approve necessary change orders in order to limit potential claims or risks to the City. The construction conting

established for this Project is \$89,500; approximately 15% of the total contract value. The change order authority is not anticipated to exceed this amount, and the Project would not require additional appropriation.

Fiscal Impact:

As of March 1, 2019, the uncommitted balance to the Project is \$738,956.

Summary of Estimated Construction:

Lowest Responsible Bidder's Bid	\$595,100
15% Construction Contingency	\$89,500
Total	\$684,600

There are sufficient funds available within the Project No. 4292 budget to award a contract for the bid and 15% construction contingency noted above.

California Environmental Quality Act: The Project is exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines.

Recommendation:

Adopt a Resolution Awarding a Construction Contract to and Authorizing the City Manager to Execute the Contract with the Lowest Responsible Bidder Submitting a Responsive Bid, St. Francis Electric, LLC, in the Amount of \$595,100 for the Project and Authorizing the Engineering Director/City Engineer to Negotiate and Execute Contract Change Order(s) in an Aggregate Amount not to exceed \$89,500 for the Project.

Attachments:

- Attachment 1: Location Map
- Attachment 2: Bid summary
- Attachment 3: Change Order Policy
- Attachment 4: Resolution

GENERAL NOTES:

1. ALL MATERIAL AND WORKMANSHIP SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE APPROVED CONTRACT DRAWINGS AND SPECIFICATIONS. UNLESS OTHERWISE NOTED, THE CONTRACTOR SHALL MAINTAIN THE EXISTING CONDITIONS OF THE SITE AND SURROUNDING AREAS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS). THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS). THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS).
2. CONTRACTOR MUST NOTIFY THE CITY PROJECT INSPECTOR 48 HOURS IN ADVANCE BEFORE STARTING ANY WORK.
3. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES. THE CONTRACTOR SHALL NOTIFY UTILITY COMPANIES 48 HOURS IN ADVANCE OF CONSTRUCTION TO FIELD LOCATE UTILITIES, CONTACT UNDERGROUND SERVICE ALERT (USA) AT THE CONTRACTOR'S EXPENSE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS). THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS).
4. ALL QUANTITIES AND PAY ITEMS ARE AND WILL BE BASED ON ACTUAL FIELD MEASUREMENTS. ALL LOCATIONS OF MANHOLES, VALVE BOXES, MONUMENTS, AND TRAFFIC LOOPS ON CONTRACT DRAWINGS ARE APPROXIMATE AND SHALL BE FIELD LOCATED PRIOR TO RESTORATION.
5. CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS AND ELEVATIONS PRIOR TO STARTING CONSTRUCTION. ANY CONFLICT WITH THE CONTRACT DRAWINGS OR SPECIFICATIONS SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE CITY PROJECT ENGINEER.
6. CONTRACTOR SHALL MEET WITH PROJECT INSPECTOR AND SIGN OFF ON QUANTITIES WITHIN 48 HOURS OF COMPLETING EACH SEGMENT.
7. CONTRACTOR IS RESPONSIBLE FOR VERIFYING QUANTITIES AND SHALL OBTAIN AN APPROVED CHANGE ORDER PRIOR TO EXCEEDING ESTIMATED QUANTITIES.
8. ALL RESPONSIBLE CONTRACTOR REPRESENTATIVES (CONTRACTOR'S SUPERINTENDENT AND SUBCONTRACTOR'S SUPERINTENDENT) WILL BE REQUIRED TO ATTEND A PRE-CONSTRUCTION MEETING WHICH WILL BE SCHEDULED BY THE CITY PRIOR TO THE COMMENCEMENT OF ANY WORK.
9. CONTRACTOR SHALL SUBMIT A CONSTRUCTION SCHEDULE TO THE PROJECT ENGINEER WITHIN 21 DAYS AFTER THE ISSUANCE OF THE NOTICE OF AWARD AND SHALL BE APPROVED PRIOR TO ISSUANCE OF NOTICE TO PROCEED.
10. DETOUR OF THROUGH TRAFFIC TO NEARBY STREETS WILL NOT BE PERMITTED. CONTRACTOR MUST MAINTAIN AT LEAST ONE THROUGH TRAFFIC LANE PER TRAVEL DIRECTION, AT ALL TIMES OR WARE SPECIAL PROVISION TO ALLOW THROUGH TRAFFIC.
11. ALL EXISTING UTILITIES, IMPROVEMENTS, LANDSCAPING AND PROPERTY THAT BECOME DAMAGED DURING CONSTRUCTION SHALL BE COMPLETELY RESTORED TO THE SATISFACTION OF THE CITY ENGINEER, AT CONTRACTOR'S SOLE EXPENSE.
12. SAFETY MEASURES: AT ALL TIMES THE CONTRACTOR SHALL BE SOLELY AND COMPLETELY RESPONSIBLE FOR THE SAFETY OF THE PROJECT AND THE PUBLIC. THE CONTRACTOR SHALL MAINTAIN THE EXISTING CONDITIONS OF THE SITE AND SURROUNDING AREAS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS). THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS).
13. CONTRACTOR SHALL COMPLY WITH ALL OCCUPATIONAL SAFETY AND HEALTH STANDARDS AND REGULATIONS.
14. HAUL ROUTES SHALL BE ONLY ON THOSE STREETS AS PRE-APPROVED BY THE CITY ENGINEER. THE CONTRACTOR SHALL NOT ALLOW MATERIAL TO FLOW OR SPILL OVER AND ADJACENT, PUB.C OR PRIVATE PROPERTY, HIGHWAYS, RAILROADS, SAND, GRAVEL, STONE, DEBRIS, PAPER, OR ANY SUBSTANCE OVER ANY PUBLIC STREET, ALLEY OR PUBLIC PLACE.
15. ALL SURVEY MONUMENTS SHALL BE PROTECTED AND PERPETUATED IN PLACE. ANY DISTURBED OR COVERED MONUMENTS SHALL BE RESET BY A CALIFORNIA LICENSED SURVEYOR AT THE DIRECTION OF THE CITY ENGINEER, AT THE CONTRACTOR'S SOLE EXPENSE.
16. NO CONSTRUCTION IS PERMITTED ON THE FOLLOWING HOLIDAYS: NEW YEAR'S DAY, MARTIN LUTHER KING DAY, LINCOLN'S BIRTHDAY, PRESIDENT'S DAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, VETERAN'S DAY, THANKSGIVING DAY, DAY AFTER THANKSGIVING, DAY BEFORE CHRISTMAS, AND CHRISTMAS DAY.
17. CONTRACTOR SHALL COMPLY WITH THE CITY'S NON-POINT SOURCE POLLUTION PREVENTION ORDINANCE AND THE STORM WATER POLLUTION PREVENTION PLAN (SWPPP) AND USE/INSTALLATION OF BEST MANAGEMENT PRACTICES (BMP) FOR THIS PROJECT.
18. CONTRACTOR SHALL MAINTAIN THE PROJECT SITES IN A NEAT AND PROFESSIONAL CONDITION AT ALL TIMES. CONTRACTOR SHALL PROVIDE ON-GOING STREET SWEEEPING OPERATIONS, SIDEWALK & DRIVEWAY CLEAN UP OF DEBRIS & LOOSE MATERIALS. DURING AND AFTER ROADWAY SWEEEPING, CONTRACTOR SHALL NOT STORE ANY MATERIALS OR EQUIPMENT ON THE SIDEWALK OR DRIVEWAY. CONTRACTOR SHALL MAINTAIN CLEAR ACCESS TO ALL SIDEWALKS AND DRIVEWAYS AT ALL TIMES OF WORKING DAY.
19. THE CONTRACTOR SHALL PROVIDE TEMPORARY PEDESTRIAN WALKWAYS/PATHS THAT ARE ADA COMPLIANT TO TRAVEL AROUND WORK AND FOR PEDESTRIAN RAMP/SIDEWALK SECTION REMOVED.

CITY OF MILPITAS

MCCARTHY BLVD./SANDISK DR.

TRAFFIC SIGNAL PROJECT NO. 4292



LOCATION MAP
N.T.S.

SHEET INDEX	NO.	DESCRIPTION
1	1	TITLE SHEET
2	2	TRAFFIC SIGNAL INSTALLATION PLAN
3	3	TRAFFIC SIGNAL INSTALLATION SCHEDULE
4	4	INTERCONNECT INSTALLATION PLAN
5	5	CONSTRUCTION DETAILS-CURB RAMP
6	6	CONSTRUCTION DETAILS-CURB RAMP
7	7	CONSTRUCTION BEST MANAGEMENT PRACTICES (BMP)
8	8	CONSTRUCTION BEST MANAGEMENT PRACTICES (BMP)

DESIGNER CSG CONSULTANTS Employee - Owned		RECORD DRAWINGS Designed: _____ Date: _____ Checked By: _____ Date: _____ Project Engineer: _____ Date: _____ By City Council on: _____ Rev. No. _____		REVISIONS Rev. No. Description 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____ 7. _____ 8. _____		CITY OF MILPITAS ENGINEERING DIVISION MCCARTHY BLVD./SANDISK DR. TRAFFIC SIGNAL PROJECT NO. 4292 TITLE SHEET APPROVED FOR RECORD Steve P. Brown P.E. City Engineer DATE: 3/26/19		PROJECT NO. 4292 Rev. No. _____ SCALE NO SCALE SHEET 1 OF 8	
--	--	--	--	--	--	---	--	--	--

GENERAL NOTES:

20. ANY OPERATION THAT CREATES DUST SHALL BE STOPPED IMMEDIATELY IF DUST AFFECTS ADJACENT AREAS. THE CONTRACTOR SHALL MAINTAIN THE EXISTING CONDITIONS OF THE SITE AND SURROUNDING AREAS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS). THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS).
21. CONTRACTOR SHALL COMPLY WITH THE PROVISIONS OF SECTION 72.13 - GENERAL CONDITIONS, ARTICLE 28, HOURS OF WORK, OF THE PROJECT SPECIFICATIONS. FURTHER, BY THE CITY OF MILPITAS ORDINANCE, THE CONTRACTOR SHALL NOT ENGAGE OR PERMIT OTHERS TO ENGAGE IN ANY CONSTRUCTION RELATED OPERATIONS DURING THE HOURS OF 7:00 AM TO 7:00 PM ON WEDNESDAYS AND FRIDAYS.
22. CONTRACTOR SHALL PROVIDE ADEQUATE TRAFFIC CONTROLS INCLUDING FLAG PERSONS PER SPECIFICATIONS AND SHALL MAINTAIN THE EXISTING CONDITIONS OF THE SITE AND SURROUNDING AREAS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS). THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS).
23. AT ALL TIMES, THE CONTRACTOR SHALL HAVE A SUFFICIENT NUMBER OF CONES, TEMPORARY SIGNS, BARRICADES, AND OTHER TRAFFIC CONTROL AND SAFETY DEVICES ON HAND IN ORDER TO SAFELY PROSECUTE THE WORK AND TO DIRECT TRAFFIC INCLUDING BICYCLIST AND PEDESTRIANS AS DETERMINED BY THE CITY ENGINEER.
24. SIDEWALKS AND DRIVEWAYS SHALL NOT BE BLOCKED WITHOUT PRIOR APPROVAL FROM THE ENGINEER.
25. CONTRACTOR'S LICENSE REQUIREMENTS ARE NOTED IN THE CONTRACT SPECIFICATIONS AND NOTICE INVITING BIDS.
26. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER, THE CITY OF MILPITAS AND ITS AUTHORIZED REPRESENTATIVES AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR FROM THE SOLE NEGLIGENCE OF THE OWNER OR THE ENGINEER.
27. TEMPORARY ROADWAY MARKINGS SHALL BE INSTALLED IMMEDIATELY AFTER STRIPING REMOVAL OPERATIONS. PERMANENT ROADWAY MARKINGS ARE INSTALLED.
28. CONTRACTOR SHALL NOTIFY MILPITAS SCHOOL DISTRICT, WASTE SERVICES, ALL TRANSPORTATION COMPANIES, AND ALL OTHER AGENCIES THAT MAY BE AFFECTED BY THE PROJECT. THE CONTRACTOR SHALL MAINTAIN THE EXISTING CONDITIONS OF THE SITE AND SURROUNDING AREAS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS). THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MILPITAS AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY (CALTRANS).
29. UNLESS NOTED OTHERWISE, THERE WILL BE NO TOTAL STREET CLOSURES. CONTRACTOR MUST MAINTAIN AT LEAST ONE THROUGH TRAFFIC LANE PER TRAVEL DIRECTION, AT ALL TIMES OR WARE SPECIAL PROVISION TO ALLOW THROUGH TRAFFIC.
30. ALL UTILITY BOXES & LIDS REMOVED AND REPLACED IN CONJUNCTION WITH MISCELLANEOUS CONCRETE SHALL BE INSTALLED AT FINISHED GRADE.
31. THE CITY OF MILPITAS ORDINANCE NO. 240.2 PROHIBITS POTABLE WATER USE FOR CONSTRUCTION ACTIVITIES SUCH AS FILLING, CONCRETE CURING, AND BULKHEAD TREATMENT. REFER TO THE LATEST SOUTHWEST BAY WATER RECYCLING RECYCLED WATER ACCESS POINTS PROGRAM IMPLEMENTATION PLAN FOR PERMITTING REQUIREMENTS GUIDELINES, AND RESPONSIBLE PERSON TRAINING AND EQUIPMENT CERTIFICATION.
32. ALL WATER VALVES ARE TO BE KEPT ACCESSIBLE AT ALL TIMES. 4" WATER VALVE BOXES TO GRADE WITHIN 72 HOURS AFTER AC OVERLAY.

ABBREVIATIONS

AB	AGGREGATE BASE	NTS	NOT TO SCALE
BW	BACK OF WALK	(N)	NEW
CCSC	CONCRETE CURB	PEU	PHOTO ELECTRIC UNIT
CA	CONCRETE	PMT	PAVEMENT
CONC	CONCRETE	PCC	PORTLAND CEMENT CONCRETE
DWS	DRIVEWAY	RWP	RECYCLED WATER
D/W DAY	DETECTABLE WARNING SURFACE	SCJ	SCORE JOINT
(E)	EXISTING	SD	STORM DRAIN
FC	FACE OF CURB	SSMH	SANITARY MANHOLE
FL	FLOWLINE	SIC	SIGNAL INTERCONNECT CABLE
G7	GAS VALVE	SW	SIDEWALK
HMA	HOT MIX ASPHALT	TBD	TO BE DETERMINED
MON	MONUMENT	TC	TOP OF CURB
		TP	TYPICAL
		WV	WATER VALVE



CITY OF MILPITAS
ENGINEERING DIVISION
BID SUMMARY

Project Name: McCarthy/Sandisk Traffic Signal
Project No. : 4292
Bid Date: April 19, 2019 at 2pm

ITEM	DESCRIPTION	Qty.	UNIT	Engineering Estimate		St. Francis Electric		W Bradley Electric		Columbia Electric	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
1	Mobilization	1	LS	\$ 28,000.00	\$ 28,000.00	\$ 25,000.00	\$ 25,000.00	\$ 5,700.00	\$ 5,700.00	\$ 30,850.00	\$ 30,850.00
2	Traffic Control	1	LS	\$ 56,000.00	\$ 56,000.00	\$ 25,000.00	\$ 25,000.00	\$ 18,314.00	\$ 18,314.00	\$ 15,000.00	\$ 15,000.00
3	Water Pollution Control Program	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 1,000.00	\$ 1,000.00	\$ 3,400.00	\$ 3,400.00	\$ 5,000.00	\$ 5,000.00
4	New Traffic Signal at McCarthy/Sandisk	1	LS	\$ 399,000.00	\$ 399,000.00	\$ 389,000.00	\$ 389,000.00	\$ 421,000.00	\$ 421,000.00	\$ 422,655.00	\$ 422,655.00
5	Signal Interconnect Cable	1,200	LF	\$ 10.00	\$ 12,000.00	\$ 9.50	\$ 11,400.00	\$ 22.00	\$ 26,400.00	\$ 9.80	\$ 11,760.00
6	Spare Parts	1	LS	\$ 85,000.00	\$ 85,000.00	\$ 75,000.00	\$ 75,000.00	\$ 63,900.00	\$ 63,900.00	\$ 78,850.00	\$ 78,850.00
7	Curb Ramp, Case A	1	EA	\$ 8,000.00	\$ 8,000.00	\$ 4,100.00	\$ 4,100.00	\$ 4,100.00	\$ 4,100.00	\$ 8,503.04	\$ 8,503.04
8	Curb Ramp, Case C	1	EA	\$ 8,000.00	\$ 8,000.00	\$ 4,700.00	\$ 4,700.00	\$ 4,500.00	\$ 4,500.00	\$ 8,946.56	\$ 8,946.56
9	Curb Ramp, Case F	2	EA	\$ 8,000.00	\$ 16,000.00	\$ 3,700.00	\$ 7,400.00	\$ 4,000.00	\$ 8,000.00	\$ 8,280.16	\$ 16,560.32
10	Remove & Replace Sidewalk	1,400	SF	\$ 16.00	\$ 22,400.00	\$ 25.00	\$ 35,000.00	\$ 19.00	\$ 26,600.00	\$ 15.68	\$ 21,952.00
11	Remove & Replace Curb and Gutter	100	LF	\$ 105.00	\$ 10,500.00	\$ 175.00	\$ 17,500.00	\$ 150.00	\$ 15,000.00	\$ 109.76	\$ 10,976.00
Total Base Bid					\$647,900.00		\$595,100.00		\$596,914.00		\$631,052.92

Lowest Bidder

ATTACHMENT 3

Construction Change Order Policy for McCarthy/Sandisk Traffic Signal, Project No. 4292

2007 City Council Approved Construction Change Order Policy

<u>Construction Award Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
Under \$50,000	\$5,000	\$7,500
Over \$50,000	10% of Award or \$25,000 whichever is smaller	15% of Award or \$100,000 whichever is smaller

McCarthy/Sandisk Traffic Signal Project, Project No. 4283 & 4287

<u>Contract Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
\$595,100	\$25,000	\$89,500

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AWARDING A CONSTRUCTION CONTRACT TO AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT WITH THE LOWEST RESPONSIBLE BIDDER SUBMITTING A RESPONSIVE BID, ST. FRANCIS ELECTRIC, LLC., IN THE AMOUNT OF \$595,100 FOR THE MCCARTHY/SANDISK TRAFFIC SIGNAL PROJECT, PROJECT NO. 4292; AND AUTHORIZING THE ENGINEERING DIRECTOR/CITY ENGINEER TO NEGOTIATE AND EXECUTE CONTRACT CHANGE ORDER(S) IN AN AGGREGATE AMOUNT NOT TO EXCEED \$89,500 FOR THE PROJECT

WHEREAS, on February 19, 2019, the City Council approved the plans and specifications and authorized the advertisement for construction bid proposals for the McCarthy/Sandisk Traffic Signal, Project No. 4292 (“Project”), which provides for the installation of a new four-way traffic signal and PG&E electrical service including removal of existing equipment, and installation of ADA compliant curb ramps, and sidewalk at the intersection of Sandisk Drive and McCarthy Blvd.; and

WHEREAS, the Engineer’s Estimate for the Project is \$648,000; and

WHEREAS, the Project was advertised and three (3) sealed bid proposals were received on April 19, 2019. The bid pricing ranged from \$595,100 to \$631,053. The lowest responsible bidder submitting a responsive bid is St. Francis Electric, LLC, in the amount of \$595,100; and

WHEREAS, no bid protest was filed with the City within ten (10) days of the bid opening as set forth in the Project specifications; and

WHEREAS, sufficient funds to award the Project are available in the Project budget; and

WHEREAS, staff recommends the City Council award a construction contract to St. Francis Electric, LLC, the lowest responsible bidder submitting a responsive bid for the Project, and authorize the City Manager to execute a contract in the amount of \$595,100 in accordance with State law; and

WHEREAS, staff recommends the City Council authorize the Director of Engineering/City Engineer to negotiate and execute change order(s) in an amount not to exceed \$89,500, approximately fifteen percent (15%) of the total contract value, due to the Project’s tight completion schedule and staff’s capability to respond swiftly to unanticipated construction conditions to limit potential claims or risk to the City.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby awards the construction contract to and authorizes the City Manager to execute the contract and related documents with the lowest responsible bidder submitting a responsive bid, St. Francis Electric, LLC., in the amount of \$595,100 for the Project.

3. The Director of Engineering/City Engineer is hereby authorized to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$89,500 for the Project.

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Item Attachment Documents:

- C7. Adopt a Resolution Requesting the Allocation of Transportation Development Act (TDA), Article 3 Funding for the City's Americans with Disabilities Act (ADA) Curb Ramp Transition Program, and Appropriate the Funding Received in to Project No. 4283**

Recommendation:

Adopt a Resolution requesting the Allocation of Transportation Development Act (TDA), Article 3 Funding for the City's Americans with Disabilities Act (ADA) Curb Ramp Transition Program, and appropriate the funding received into Project No. 4283.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Requesting the Allocation of Transportation Development Act (TDA), Article 3 Funding for the City's Americans with Disabilities Act (ADA) Curb Ramp Transition Program, and Appropriate the Funding Received in to Project No. 4283
Category:	Consent Calendar-Community Development
Meeting Date:	5/7/2019
Staff Contact:	Steve Erickson, 408-586-3301
Recommendation:	Adopt a Resolution requesting the Allocation of Transportation Development Act (TDA), Article 3 Funding for the City's Americans with Disabilities Act (ADA) Curb Ramp Transition Program, and appropriate the funding received into Project No. 4283.

BACKGROUND:

The California Transportation Development Act, (TDA) was approved in 1971, and, allows Counties to establish a quarter-cent sales tax to provide funding for a variety of transportation projects, including:

- Transit operations;
- Bus and rail projects;
- Special transit services for disabled riders;
- Pedestrian and bicycle facilities;
- Transportation planning; and
- Transportation Development Act Article 3, or TDA-3, provides annual funding for bicycle and pedestrian projects.

The Metropolitan Transportation Commission (MTC) is responsible for management and policies of the TDA program for the San Francisco Bay Area. The City of Milpitas applies for annual grant funding from TDA-3 for pedestrian and bicycle improvement projects. The City's allocated annual funding amount is based on a population formula, and the City is eligible for \$84,296 in fiscal year 2019-20. The funding is anticipated to be received in the fall of 2019, and will be available for projects in 2020.

ANALYSIS:

The adoption of a resolution requesting allocation of the TDA-3 funds, and submission of a grant proposal to MTC before June 1, 2019 is required to obtain the funding. Staff recommends using the TDA-3 funds for Project No. 4283 ADA Curb Ramp Transition Program for the replacement of damaged and non-compliant ADA sidewalk curb ramps to meet State and Federal access requirements. Funding received this year will be used to construct improvements in 2020. Project locations for the ADA sidewalk ramp replacements to be complete in 2020 will be along Great Mall Parkway between I-880 and Montague Expressway, with exact locations to be determined during the design phase.

FISCAL IMPACT:

Staff recommends the appropriation of TDA 3 grant funding received in fall of 2019, estimated to be \$84,296, to be appropriated into the construction (Phase 7) of Project No. 4283, ADA Curb Ramp Transition Program.

California Environmental Quality Act (CEQA):

The project is categorically exempt under CEQA Article 19 Section 15301 for maintenance of existing public streets.

RECOMMENDATION:

Adopt a Resolution requesting the Allocation of Transportation Development Act (TDA), Article 3 Funding for the City's Americans with Disabilities Act (ADA) Curb Ramp Transition Program, and appropriate the funding received into Project No. 4283.

ATTACHMENTS:

- a) Resolution
- b) Budget Change Form

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS REQUESTING OF THE METROPOLITAN TRANSPORTATION COMMISSION THE ALLOCATION OF FISCAL YEAR 2019/2020 TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 PEDESTRIAN/BICYCLE PROJECT FUNDING

WHEREAS, Article 3 of the Transportation Development Act (TDA), Public Utilities Code (PUC) Section 99200 et seq., authorizes the submission of claims to a regional transportation planning agency for the funding of projects exclusively for the benefit and/or use of pedestrians and bicyclists; and

WHEREAS, the Metropolitan Transportation Commission (MTC), as the regional transportation planning agency for the San Francisco Bay region, has adopted MTC Resolution No.4108, entitled “Transportation Development Act, Article 3, Pedestrian and Bicycle Projects,” which delineates procedures and criteria for submission of requests for the allocation of “TDA Article 3” funding; and

WHEREAS, MTC Resolution No. 4108 requires that requests for the allocation of TDA Article 3 funding be submitted as part of a single, countywide coordinated claim from each county in the San Francisco Bay region; and

WHEREAS, the City of Milpitas desires to submit a request to MTC for the allocation of TDA Article 3 funds to support the projects described in Attachment B to this Resolution, which are for the exclusive benefit and/or use of pedestrians and/or bicyclists.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City of Milpitas declares it is eligible to request an allocation of TDA Article 3 funds pursuant to Section 99234 of the Public Utilities Code.
2. There is no pending or threatened litigation that might adversely affect the project or projects described in **Attachment B** to this Resolution, or that might impair the ability of the City of Milpitas to carry out the project.
3. The City of Milpitas attests to the accuracy of and approves the statements in **Attachment A** to this Resolution.
4. A certified copy of this Resolution and its attachments, and any accompanying supporting materials shall be forwarded to the congestion management agency, countywide transportation planning agency, or county association of governments, as the case may be, of Santa Clara County for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Attachment A

Re: Request to the Metropolitan Transportation Commission for the Allocation of Fiscal Year 2019/2020 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding

Findings

Page 1 of 1

1. That the **City of Milpitas** is not legally impeded from submitting a request to the Metropolitan Transportation Commission for the allocation of Transportation Development Act (TDA) Article 3 funds, nor is the **City of Milpitas** legally impeded from undertaking the project(s) described in “Attachment B” of this resolution.
2. That the **City of Milpitas** has committed adequate staffing resources to complete the project(s) described in Attachment B.
3. A review of the project(s) described in Attachment B has resulted in the consideration of all pertinent matters, including those related to environmental and right-of-way permits and clearances, attendant to the successful completion of the project(s).
4. Issues attendant to securing environmental and right-of-way permits and clearances for the projects described in Attachment B have been reviewed and will be concluded in a manner and on a schedule that will not jeopardize the deadline for the use of the TDA funds being requested.
5. That the project(s) described in Attachment B comply with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 et seq.).
6. That as portrayed in the budgetary description(s) of the project(s) in Attachment B, the sources of funding other than TDA are assured and adequate for completion of the project(s).
7. That the project(s) described in Attachment B are for capital construction and/or design engineering; and/or for the maintenance of a Class I bikeway which is closed to motorized traffic; and/or for the purposes of restriping Class II bicycle lanes; and/or for the development or support of a bicycle safety education program; and/or for the development of a comprehensive bicycle and/or pedestrian facilities plan, and an allocation of TDA Article 3 funding for such a plan has not been received by the **City of Milpitas** within the prior five fiscal years.
8. That the project(s) described in Attachment B is included in a locally approved bicycle, pedestrian, transit, multimodal, complete streets, or other relevant plan.
9. That any project described in Attachment B that is a bikeway meets the mandatory minimum safety design criteria published in Chapter 1000 of the California Highway Design Manual.
10. That the project(s) described in Attachment B will be completed before the funds expire.
11. That the **City of Milpitas** agrees to maintain, or provide for the maintenance of, the project(s) and facilities described in Attachment B, for the benefit of and use by the public.

Attachment B

Page 1 of 1

TDA Article 3 Project Application Form

Fiscal Year of this Claim: 2019/20 Applicant: City of Milpitas

Contact person: Steve Chan

Mailing Address: 455 E. Calaveras Blvd, Milpitas, CA 95035

E-Mail Address: schan@ci.milpitas.ca.gov Telephone: (408) 586-3324

Secondary Contact (in event primary not available): Fanny Yu

E-Mail Address: fyu@ci.milpitas.ca.gov Telephone: (408) 586-3318

Short Title Description of Project: ADA Curb Ramp Transition Program 2020

Amount of claim: \$84,296

Functional Description of Project: Construction of ADA ramps and sidewalk closure as part of City's ADA Curb Ramp Transition Program FY19/20. Locations to be determined later.**Financial Plan:**

List the project elements for which TDA funding is being requested (e.g., planning l, engineering, construction, contingency). Use the table below to show the project budget for the phase being funded or total project. Include prior and proposed future funding of the project.

Project Elements: Installation of ADA ramps and sidewalk closure of various city streets.

Funding Source	All Prior FYs	Application FY	Next FY	Following FYs	Totals
TDA Article 3		\$84,296			\$84,296
List all other sources:					
1. Gas Tax		300,000			\$300,000
2.					
3.					
4.					
Totals		\$384,296			\$384,296

Project Eligibility:	YES?/NO?
A. Has the project been approved by the claimant's governing body? (If "NO," provide the approximate date approval is anticipated). August 2018	Yes
B. Has this project previously received TDA Article 3 funding? If "YES," provide an explanation on a separate page.	No
C. For "bikeways," does the project meet Caltrans minimum safety design criteria pursuant to Chapter 1000 of the California Highway Design Manual? (Available on the internet via: http://www.dot.ca.gov).	N/A
D. Has the project been reviewed by a Bicycle Advisory Committee (BAC)? (If "NO," provide an explanation). Enter date the project was reviewed by the BAC: <u>BPAC was dissolved by City Council in 2018</u>	No
E. Has the public availability of the environmental compliance documentation for the project (pursuant to CEQA) been evidenced by the dated stamping of the document by the county clerk or county recorder? (required only for projects that include construction).	Yes
F. Will the project be completed before the allocation expires? Enter the anticipated completion date of project (month and year) <u>December 31, 2020</u>	Yes
G. Have provisions been made by the claimant to maintain the project or facility, or has the claimant arranged for such maintenance by another agency? (If an agency other than the Claimant is to maintain the facility provide its name: _____)	Yes

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	311-2931	\$ 84,296	311-3999	\$ 84,296
☒ Budget Appropriation	331-951-4283-07-3899	\$ 84,296	331-951-4283-7-4800	\$ 84,296
☐ Budget Transfer				

Adopt a Resolution Requesting the Allocation of Transportation Development Act (TDA), Article 3 Funding for the City's American Disability Act (ADA) Curb Ramp Transition Program, and Appropriate the Funding Received in to Project No. 4283. (Staff Contact: Steve Chan (408)586-3324, Steve Erickson (408)586-3301)

BACKGROUND:

The California Transportation Development Act, (TDA) was approved in 1971, and, allows Counties to establish a quarter-cent sales tax to provide funding for a variety of transportation projects, including:

- Transit operations;
- Bus and rail projects;
- Special transit services for disabled riders;
- Pedestrian and bicycle facilities;
- Transportation planning; and
- Transportation Development Act Article 3, or TDA-3, provides annual funding for bicycle and pedestrian projects.

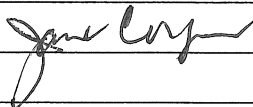
The Metropolitan Transportation Commission (MTC) is responsible for management and policies of the TDA program for the San Francisco Bay Area. The City of Milpitas applies for annual grant funding from TDA-3 for pedestrian and bicycle improvement projects. The City's allocated annual funding amount is based on a population formula, and the City is eligible for \$84,296 in fiscal year 2018-19. The funding is anticipated to be received in Fall of 2019, and will be available for projects in 2020.

RECOMMENDATION:

Adopt a Resolution Requesting the Allocation of Transportation Development Act (TDA), Article 3 Funding for the City's American Disability Act (ADA) Curb Ramp Transition Program, and Appropriate the Funding Received in to Project No. 4283.

☒ Check if City Council Approval required.

Meeting Date: May 07, 2019

Requested by:	Steve Chan, Transportation and Traffic Manager	Date: 05/07/2019
Reviewed by:	Interim Finance Director: Jane Corpus 	Date: 05/07/2019
Date approved by City Council, if required: _____ Confirmed by: _____		

Item Attachment Documents:

- C8. Adopt a Resolution Authorizing the City Manager to Execute a Purchase and Sale Agreement and all related closing documents for Property located at 1700 Sango Court (APN 086-36-012) within the Transit Area Specific Plan (TASP) to accommodate expansion of Augustus Rathbone Public Park and Approve a Budget Amendment

Steve McHarris, 408-586-3059

Recommendation:

Adopt a Resolution authorizing the City Manager to Execute a Purchase and Sale Agreement and all related closing documents for Property located at 1700 Sango Court (APN 086-36-012) within the Transit Area Specific Plan (TASP) to accommodate expansion of Augustus Rathbone Park and Approve a Budget Amendment



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Authorizing the City Manager to Execute a Purchase and Sale Agreement and all related closing documents for Property located at 1700 Sango Court (APN 086-36-012) within the Transit Area Specific Plan (TASP) to accommodate expansion of Augustus Rathbone Public Park and Approve a Budget Amendment
Category:	Consent Calendar-Community Development
Meeting Date:	5/7/2019
Staff Contact:	Steve McHarris, 408-586-3059
Recommendation:	Adopt a Resolution authorizing the City Manager to Execute a Purchase and Sale Agreement and all related closing documents for Property located at 1700 Sango Court (APN 086-36-012) within the Transit Area Specific Plan (TASP) to accommodate expansion of Augustus Rathbone Park and Approve a Budget Amendment

Background:

The subject property is a 1.31 acre (56,926 SF) site with a 9,600 square foot industrial building located at 1700 Sango Court. The site is bounded by the recently approved future 308 Sango Court affordable housing project site to the north, existing legal non-conforming industrial use to the east, existing Augustus Rathbone Public Park to the south, and existing legal non-conforming industrial use to the west. The site resides within the Transit Area Specific Plan (TASP) with a land use designation of Parks/Plazas/Community Facilities. The TASP Zoning is R5-TOD.

The City Council adopted the TASP in June 2008 to support future BART service as well as existing VTA transit options in the community. Since that time, the TASP has facilitated the transformation of an older industrial area into a vibrant, high-intensity mixed-use, transit-oriented district. The TASP area of Milpitas is unique in the Bay Area in that it features large land acreages, access to two freeways and a regional expressway, two light rail stations, the new Milpitas BART station, and the Great Mall as a regional retail destination.

The TASP envisions a walkable, transit-oriented neighborhood with a mix of land uses to minimize vehicle trips and encourage walking, biking, and transit ridership. The Plan is designed to accommodate substantial new development, minimize traffic impacts on local roadways, and reduce urban sprawl. It establishes not only the land use vision but also includes specific policies, standards, and capital improvement projects needed to achieve the vision. It also provides detailed standards for street design and building form.

Public improvements and services needed to serve the TASP area's future residents and workers are set forth in the Plan. These basic infrastructure requirements include streets, parks, pedestrian/bike bridges, community facilities, sewer and water facilities, storm drainage, etc. The Plan is accompanied by a separate Transit Area Development Impact Fee (TADIF) financing strategy to ensure that the Plan is fiscally responsible for the City and property owners. TADIF fees are paid by development occurring exclusively within the TASP and are applied to construction of streets, parks, and infrastructure. A copy of the TASP and TADIF is available at <http://www.ci.milpitas.ca.gov/planning-documents/transit-area-specific-plan/>.

Analysis:

The Council adopted several Public Parks and Streets Policies to guide development of these facilities within the TASP. The TASP public park, spaces, trails is illustrated in TASP Figure 3-6 Public Parks, Spaces, Trails which also illustrates the street layout. The public parks layout establishes park land distributed amongst properties is transit, and other subareas, that are essentially part of the pedestrian-oriented districts with direct pedestrian routes. Small block sizes and ample connections give pedestrians direct and easy access routes to transit, retail, jobs, and other residents. As best as possible, public park and streets are sited to serve all users within the TASP.

Park Acreage Requirement

To accommodate the various types of park facilities outlined above, the Specific Plan envisions three types of open space within its boundaries: Public Parks, Common Open Space, and Private Open Space. Parks are required at a ratio of 3.5 acres per 1,000 people, with at least 2.0 of those acres publicly accessible. This public parkland requirement must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu (TADIF) fee.

Park Acreage and Locations

The amount of parkland in the TASP is treated as an overall total, with the amount of acreage based on buildout projections of the future population. As a result, not all residential projects provide public parkland on site, but all contributes toward land purchase and park construction through the TADIF fee. Some sub-districts have more parkland per person than others. This results, for example, from the creation of a larger park in the McCandless/Centre Point sub-district.

The amount of Public Park space required and currently planned in each sub-area based on population projections is identified in the TASP. Wide landscape buffer projects, including areas around trails, streets or public right of ways, are reflected in the acreage count at 20 percent of their project area. The overall policy is to develop between 32 and 47 acres of public park space in the Transit Area, with a general goal of around 36 acres. This target is based on the parks standard of at least 2.0 acres of the required 3.5 acres of parkland per 1,000 residents be publicly accessible. The Transit Area's current planned population of 17,914 residents determined the 36-acre goal.

Augustus Rathbone Public Park

The TASP land use map shows a 5.0-acre park site in the Montague/Trade Zone sub-district that would include sports fields and other active recreation amenities. The identified location of this park in TASP required a phased approach for its development as both developers and private business owners currently own the underlying property. A developer designed and constructed the first 0.73 acres as part of their development. This park includes a playground, public art, picnic area, and pathways. As for the proposed site acquisition parkland identified for this sub-district, the property owner is requesting the City either acquire the site or allow a high-density residential project per the underlying TASP zoning.

The following four TASP park and street policies apply to the proposed PSA:

- 1) Policy 3.40: Locate and size parks as generally shown on Figure 3-6, Parks, Public Spaces, and Trails. Minor adjustments to the location of parks may be necessary to facilitate a better site plan, respond to specific site constraints, or to accommodate phasing of a project.

Staff Comment: Implementation of the proposed PSA will locate and size Augustus Rathbone Park as generally shown on TASP Parks Figure 3-6.

- 2) Policy 3.41: Park land dedication and in-lieu fees required of new development. Park land shall be dedicated as part of the approval of any new development, if a park site is designated on the property as shown in Figure 3-6. Land dedication is required for Parks/Plazas/Community Facilities and L
Parks and Trails in the locations and amounts generally shown on Figure 3-6.

Staff Comment: Implementation of the proposed PSA addresses land dedication in that planned Sango Court easterly extension is located along the subject property northerly boundary. The ½ street dedication will include frontage improvements (paving, curb, gutter, sidewalk, street lights, bridge landing, and landscaping).

In addition, the timing for purchase of this property is in alignment with the residential development currently taking place in this area of the TASP.

- (3) Policy 3.17: New streets shall be located as generally shown on the Street System Map, Figure 3-2. New local streets may shift location to take into account more detailed survey information, to better align them evenly along property boundaries, or to facilitate a better, more efficient development project. Standards for maximum block size and block frontage established in Chapter 5 must still be met.

Staff Comment: In compliance with the TASP and the TADIF program, S. Milpitas Boulevard is currently being constructed southward between Great Mall Parkway and E. Penetencia Creek where a vehicle and pedestrian bridge is required. The City is near completion of construction plans for the E. Penetencia Creek crossing and intends to complete the roadway connection to Sango Court and Tarob Court, as identified in both the TASP and the TADIF.

Implementation of the proposed PSA will provide the precise locations needed for both the expansion of Augustus Rathbone Park and the ½ street frontage section of Sango Court extension to the east. The Sango Court extension would connect to the planned extension of S. Milpitas Boulevard and to Tarob Court. These ultimate connections will provide this residential TASP neighborhood with direct pedestrian and vehicle access to the Milpitas BART station and locations beyond.

- (4) Policy 3.18: New development must dedicate land for new public streets and pay for their construction. When a parcel is redeveloped under this Specific Plan, all necessary right-of-way must be dedicated for new public streets and the streets constructed following the street designs and streetscape standards laid out in Chapter 5 and any unique details established in the subdistrict policies, Chapter 4.

Staff Comment: Implementation of the proposed PSA addresses land dedication in that this particular planned road segment is located along the subject property northerly boundary. The ½ street dedication will include frontage improvements (paving, curb, gutter, sidewalk, street lights, bridge landing, and landscaping).

In addition, the timing for purchase of this property is in alignment with the upcoming Milpitas BART station opening, the City's approved Capital Improvement Project for E. Penetencia Creek crossing project, as well as the residential development currently taking place in this area of the TASP.

The City and the property owner established a fair market value for the subject site based on a negotiation, which began with the property sales price of \$5,400,000. The City and owner agreed to a City appraisal, which identified a value of \$5,305,000 as the appropriate fair market value, which is the sales price, recommended by staff.

If approved by the City Council, Staff will initiate the PSA. The PSA terms are summarized as follows:

- Purchase Price: \$5,305,000
- Deposits:
 - \$100,000 Initial Deposit (\$100.00 non-refundable); and
 - \$200,000 Second Deposit 3 days after the Feasibility Period;
 - Deposits are non-refundable after Feasibility Period Expires
- Feasibility Period: 30 days from the Effective Date to perform due diligence;
- Close of Escrow: 150 days after Feasibility Period or upon 30 days' notice by Seller to accommodate Seller relocation; and
- Seller may remove all personal property, fixtures, and improvements from the property.

Based upon the PSA terms, staff anticipates close of escrow to occur in August 2019.

Fiscal Impact:

The TADIF program currently retains a balance of over \$40,000,000, which is available for the purposes of property acquisition and roadway construction. In addition, upcoming “pipeline” projects will be adding to the TADIF fund, including \$5,300,000 for “The Edge” residential project and \$3,200,000 for the 720 Montague residential project.

California Environmental Quality Act:

In accordance with the requirements of the California Environmental Quality Act (CEQA), the City prepared and certified a programmatic Environmental Impact Report (EIR) in conjunction with adoption of the TASP. The Plan is “self-mitigating” in that specific plan policies minimize or reduce significant environmental impacts to the extent feasible. The EIR is based on extensive quantitative analysis and modeling to assess service requirements for public infrastructure, including parks and open space. The action being taken is consistent with the adopted TASP EIR and that subsequent development will implement the vision, goals, and policies of the TASP. A copy of the TASP EIR is available at http://www.ci.milpitas.ca.gov/_pdfs/plan_eir_tasp_final.pdf.

Recommendations:

- 1) Adopt a Resolution Authorizing the City Manager to Execute a Purchase and Sale Agreement and all related closing documents for Property located at 1700 Sango Court (APN 086-36-012) within the Transit Area Specific Plan (TASP) to accommodate expansion of Augustus Rathbone Park.
- 2) Approve a budget amendment to appropriate \$5,305,000,000 plus an estimated amount of \$100,000 of escrow closing costs.

Attachments:

- A) Resolution
- B) Purchase and Sale Agreement
- C) Appraisal Report dated January 2019
- D) Environmental Phase I Site Assessment
- E) TASP Figure 3-6 Public Parks, Spaces, Trails (Informational)
- F) Budget Change Form

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AND SALE AGREEMENT AND ALL RELATED CLOSING DOCUMENTS FOR THE PURCHASE OF REAL PROPERTY LOCATED AT 1700 SANGO COURT (APN 086-36-012) WITHIN THE TRANSIT AREA SPECIFIC PLAN TO ACCOMMODATE EXPANSION OF AUGUSTUS RATHBONE PUBLIC PARK

WHEREAS, Section I-2-12.01 of the Milpitas Municipal Code exempts the purchase or lease of real property from the procedures set forth in the Purchasing Ordinance (Chapter 2 of Title I) and authorizes the City Council to otherwise proceed in accordance with law; and

WHEREAS, pursuant to Government Code Section 37350 the City of Milpitas (the “City”) has full authority to purchase real property for the common benefit; and

WHEREAS, it is desirable and necessary for the City of Milpitas (the “City”) to acquire certain real property and interests in real property for the expansion of Augustus Rathbone Public Park; and

WHEREAS, it is desirable and necessary for the City to acquire certain real property and interests in real property for the one-half street frontage section of Sango Court extension to the east; and

WHEREAS, the subject property is a 1.31-acre site with a 9,600 square foot industrial building located at 1700 Sango Court. The site is bounded by the recently approved future 308 Sango Court affordable housing project site to the north, the existing legal non-conforming industrial use to the east, the existing Augustus Rathbone Public Park to the south, and the existing legal non-conforming industrial use to the west. The site resides within the Transit Area Specific Plan (TASP) with a land use designation of Parks/Plazas/Community Facilities and TASP Zoning of R5-TOD; and

WHEREAS, legal descriptions of the property interests to be acquired are attached collectively hereto as **Exhibits A and B**, including maps depicting the areas to be acquired and diagrams showing the general location and extent of the property to be acquired; and

WHEREAS, the TASP land use map shows a 5.0-acre park site in the Montague/Trade Zone sub-district that would include sports fields and other active recreation amenities. The identified location of this park in the TASP required a phased approach for its development as both developers and private business owners currently own the underlying property. A developer designed and constructed the first 0.73 acres as part of their development, which includes a playground, public art, picnic area, and pathways. The property owners of the remaining 4.4 acres of parkland identified for this area are requesting the City consider purchasing the property as an option for the City; and

WHEREAS, the City Council adopted the Transit Area Specific Plan (TASP) in June 2008 to support future Bay Area Rapid Transit (BART) service as well as existing Valley Transportation Authority transit options in the community and, since that time, the TASP has facilitated the transformation of an older industrial area into a vibrant, high-intensity mixed-use, transit-oriented district, with planned public parks and open space; and

WHEREAS, public improvements and services are needed to serve the TASP area’s existing and future residents and workers, including streets, parks, pedestrian/bike bridges, community facilities, sewer and water facilities, and storm drainage; and

WHEREAS, the TASP is accompanied by a separate Transit Area Development Impact Fee

(TADIF) financing strategy to ensure that the TASP is fiscally responsible with TADIF fees paid by development occurring exclusively within the TASP area, and applied to construction of streets, parks, and infrastructure, and such funds are available for the purchase of this property; and

WHEREAS, the City prepared and certified a programmatic Environmental Impact Report (EIR) in conjunction with adoption of the TASP and in accordance with the requirements of the California Environmental Quality Act (CEQA). The purchase of the subject property is consistent with the adopted TASP EIR and subsequent development will implement the vision, goals, and policies of the TASP, as more particularly set forth in the Agenda Report; and

WHEREAS, the City and the property owner established a fair market value for the subject site based on a negotiation, which began with the property sales price of \$5,400,000. The City and owner agreed to a City appraisal, which identified a value of \$5,305,000 as the appropriate fair market value, which is the purchase and sales price, recommended by staff; and

WHEREAS, implementation of the proposed Purchase and Sales Agreement will conform with the TASP as:

- It will locate and size Augustus Rathbone Park as generally shown on TASP Parks Figure 3-6;
- It will address land dedication in that planned Sango Court easterly extension is located along the subject property northerly boundary and the ½ street dedication will include frontage improvements (paving, curb, gutter, sidewalk, street lights, and landscaping); and
- S. Milpitas Boulevard is currently being constructed southward between Great Mall Parkway and E. Penetencia Creek where a vehicle and pedestrian bridge is required. The City is near completion of construction plans for the E. Penetencia Creek crossing and intends to complete the roadway connection to Sango Court and Tarob Court, as identified in both the TASP and the TADIF; and

WHEREAS, implementation of the proposed PSA will benefit the public as:

- It will provide the precise locations needed for both the expansion of Augustus Rathbone Park and the ½ street frontage section of Sango Court extension to the east. The Sango Court extension would connect to the planned extension of S. Milpitas Boulevard and to Tarob Court. These ultimate connections will provide this residential TASP neighborhood with direct pedestrian and vehicle access to the Milpitas BART station and locations beyond; and
- This particular planned road segment is located along the subject property northerly boundary and the ½ street dedication will include frontage improvements (paving, curb, gutter, sidewalk, street lights, and landscaping); and

WHEREAS, the timing for purchase of this property is in alignment with the upcoming Milpitas BART station opening, the City's approved Capital Improvement Project for the E. Penetencia Creek crossing, as well as the residential development currently taking place in this area of the TASP.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other

materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City Council hereby authorizes the City Manager to execute a Purchase and Sale Agreement and all related closing documents for the purchase of real property located at 1700 Sango Court (APN 086-36-012) in Milpitas, California, as more particularly described on the legal descriptions attached hereto as **Exhibit A**, for the amount of \$5,305,000.00, subject to approval as to form by the City Attorney.

PASSED AND ADOPTED this _____, day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

To: Mark Zamudio

Colliers International

RE: 1700 Sango Ct. Milpitas

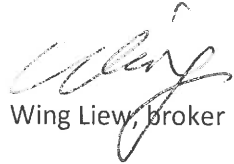
Please find attached:

3 originals of execution PSA signed by Seller.

I have ordered an updated preliminary report which will be available next week.

Please let me know if there is anything else you need from me.

Thank you very much.

A handwritten signature in black ink, appearing to read 'Wing Liew', is written over the typed name.

Wing Liew, Broker

WING Investments

Phone: 408-629-7000

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This Purchase and Sale Agreement and Joint Escrow Instructions (this "**Agreement**") is made as of _____, 2019 (the "**Effective Date**"), between HENRY W. CHUNG and OLIVIA Y. CHUNG, husband and wife as community property with right of survivorship ("**Seller**"), and the CITY OF MILPITAS, a municipal corporation ("**Buyer**").

ARTICLE 1. AGREEMENT OF SALE.

Subject to and on the terms and conditions of this Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller all of the following (collectively, the "**Property**"):

1.1 Land. The real property consisting of approximately 1.31 net acres and improved with an industrial building (the "**Building**") that is approximately 9,600 square feet, commonly known as 1700 Sango Court, Milpitas, CA (Assessor's Parcel No. 086-36-012), which is more particularly described in Exhibit A, together with (a) all privileges, rights, easements and appurtenances belonging to the real property, including without limitation all minerals, oil, gas and other hydrocarbon substances on and under the real property, (b) all development rights, air rights, water, water rights and water stock relating to the real property, and (c) all right, title and interest of Seller in and to any streets, alleys, passages, other easements and other rights-of-way or appurtenances included in, adjacent to or used in connection with such real property, before or after the vacation thereof (collectively, the "**Land**");

1.2 Improvements. Any and all structures, including the Building, fences, parking areas, and other improvements located upon the Land (collectively, the "**Improvements**").

The Land and the Improvements are sometimes collectively referred to in this Agreement as the "**Property**";

1.3 Other Assets. To the extent owned by Seller, all tangible and intangible assets of any nature relating to the Property or the Personal Property, including without limitation (a) all warranties upon the Improvements or Personal Property, to the full extent such warranties are assignable, (b) copies of all plans, specifications, engineering drawings and prints relating to the construction of the Improvements, and (c) all claims and causes of action arising out of or in connection with the Property.

1.4 Exclusions from Purchase. Notwithstanding the foregoing, Buyer shall not purchase, and Seller shall retain all rights and obligations associated with the following:

1.4.1 Personal Property. Buyer is not purchasing any personal property. Seller may remove any and all personal property and fixtures from the Property including those attached to the Building, including, without limitation, any and all machinery, equipment, apparatus and appliances used in connection with the operation or occupancy of the Land (such as heating and air conditioning systems and facilities used to provide utility services,

refrigeration, ventilation, garbage disposal or other amenities on the Land) and other improvements located upon the Land (collectively, the "**Personal Property**"). Notwithstanding the foregoing, title to all Personal Property shall pass to Buyer for any Personal Property which remains on the Property after the Closing and seller shall have no further right of ownership or removal.

1.4.2 Service Contracts. Buyer is not assuming any Service Contracts (listed on Exhibit D), all Service Contracts and all tenancies for the Property shall be terminated on or before the Closing Date.

ARTICLE 2. PURCHASE PRICE.

2.1 Amount. The purchase price (the "**Purchase Price**") for the Property shall be Five Million Three Hundred Thousand and Five and No/100 Dollars (\$5,305,000.00).

2.2 Initial Deposit. Within 3 business days following the Effective Date, Seller and Buyer shall open an escrow in connection herewith ("**Escrow**") as set forth in Section 9.2 herein, and Buyer shall deposit into Escrow the amount of One Hundred Thousand Dollars (\$100,000.00) ("**Initial Deposit**") in cash or other immediately available funds. The Initial Deposit shall be held by Escrow Holder (defined in Section 9.2) in an interest bearing account for the benefit of Buyer and in accordance with this Agreement. Notwithstanding anything herein to the contrary One Hundred Dollars (\$100.00) of the Initial Deposit (the "**Independent Consideration**") shall be non-refundable to Buyer, and shall represent consideration for this Agreement and shall be paid to Seller. The Independent Consideration shall be paid to Seller within 4 business days of the Effective Date and shall serve as consideration for the granting of the time periods herein contained for Buyer to exercise Buyer's right to satisfy and approve all of Buyer's conditions herein contained.

2.3 Additional Deposit. Within three (3) days following the expiration of the Feasibility Period, and if this Agreement is not earlier terminated, Buyer shall deposit into Escrow the additional amount of Two Hundred Thousand Dollars (\$200,000.00) (the "**Second Deposit**"). Together, the First and Second Deposit shall be referred to as the "**Deposits**". The Deposits, less the Independent Consideration are referred to herein from time to time as the "**Earnest Money**" which shall be held By Escrow Holder in accordance with this Agreement.

2.4 Payment of Purchase Price. If the Closing (as defined herein) as contemplated hereunder should occur, then the Earnest Money will be paid by the Escrow Holder to Seller at the Closing, and the Earnest Money will be credited against the Purchase Price payable by Buyer to Seller at the Closing. If this Agreement is not terminated prior to the expiration of the Feasibility Period, the Earnest Money shall be nonrefundable to Buyer, except that if this Agreement is terminated prior to the Closing due to Seller's default or the failure of any Conditions Precedent (as defined herein) or as expressly set forth herein, then the Earnest Money shall be returned to Buyer. The Earnest Money shall be applied to the Purchase Price at the Closing. On or before the Closing, if this Agreement has not been earlier terminated, Buyer shall deposit into Escrow cash or other immediately available funds in the amount of the balance of the Purchase Price, less any credits due Buyer hereunder (the "**Closing Amount**"). The Closing Amount shall be applied towards the Purchase Price at the Closing.

ARTICLE 3. DUE DILIGENCE.

3.1 Feasibility Period; Inspection and Access.

3.1.1 Feasibility Period. Buyer shall have 30 days after the Effective Date or the receipt of all the Due Diligence Materials, whichever is later, to approve title matters and to determine in Buyer's discretion the feasibility of purchasing the Property (the "**Feasibility Period**"). On or before the expiration of the Feasibility Period, Buyer, in its sole and absolute discretion and for any reason whatsoever, or no reason, shall have the right to terminate the Agreement. In the event Buyer timely and effectively terminates the Agreement, (a) Buyer shall receive a full refund of the Initial Deposit, plus interest actually earned thereon, and (b) except for obligations that the Agreement expressly states survive termination, neither party shall have any further rights against the other. On or prior to 5:00 PM Pacific Time on the last day of the Feasibility Period, Buyer shall give Seller written notice of election to terminate this Agreement or approval of the Feasibility.

3.1.2 Access to Information and the Property. Upon the Effective Date, Buyer may conduct its investigation of the Property during the Feasibility Period. This investigation ("**Due Diligence Investigation**") may include, at Buyer's option: a physical inspection of the Land and all Improvements thereon, including soil, geological and other tests, engineering evaluations of the mechanical, electrical, HVAC and other systems in the Improvements, and easements; review of all governmental matters affecting the Property, including zoning, environmental and permit matters; review and verification of all financial and other information previously provided by Seller relating to the operation of the Property; review of the condition of title to the Property, including the Building, boundaries, fencing, water rights and wetlands, access, Improvements' structural integrity and inspections, and review of such other matters pertaining to an investment in the Property as Buyer deems advisable.

3.2 Delivery of Preliminary Documents. Within 5 business days after the Effective Date, Seller shall deliver to Buyer, at Seller's expense, all of the documents described in the remaining subsections of this Section 3.2 (collectively, the "**Preliminary Documents**") in Seller's possession or control.

3.2.1 Title Report and Survey. A preliminary title report or commitment for title insurance (the "**Preliminary Title Report**"), dated no earlier than 10 days before the Effective Date, covering the Property and issued by a title insurance company or companies acceptable to Buyer (the "**Title Company**"), together with a legible copy of each document, map and survey referred to in the Preliminary Title Report. Buyer, at Buyer's sole cost, may obtain an as-built survey of the Property (the "**Survey**") prepared by a certified land surveyor in accordance with the most recent American Land Title Association standards, certified by such surveyor to Buyer and the Title Company in a form acceptable to the Title Company for the purpose of deleting any survey exception from the Title Policy described in Section 4.1.3.

3.2.2 Natural Hazards Disclosure Report. Seller shall deliver a Natural Hazards Disclosure Report with the Preliminary Documents.

3.3 Additional Documents and Information. From the Effective Date through the Closing Date, Seller shall make available to Buyer at the Property in accordance with Section 3.1, such other documents and information concerning the Property as Buyer may reasonably request.

3.4 Approval/Disapproval of Due Diligence Investigations. Buyer shall approve or disapprove the results of Buyer's Due Diligence Investigation, in the exercise of Buyer's sole discretion, by written notice delivered to Seller no later than the expiration of the Feasibility Period. Buyer's disapproval shall terminate this Agreement unless, at the time Buyer gives notice of its disapproval, Buyer also notifies Seller of Buyer's desire to enter into negotiations with Seller for the purpose of reaching an accommodation concerning the disapproval. If Buyer so notifies Seller and the parties have not reached a written agreement satisfactory to both of them regarding the disapproval within 10 days after the date of the disapproval notice, Buyer, at its option, may either (a) elect to terminate this Agreement by so notifying Seller and recover the Deposit, or (b) elect to proceed with the transactions contemplated by this Agreement notwithstanding its earlier disapproval. If Buyer fails to deliver to Seller notice of its approval or disapproval of the results of its Due Diligence Investigation, Buyer shall be deemed to have disapproved such results. If Buyer elects to terminate the Agreement, Buyer shall return to Seller all of the Preliminary Documents and Additional Documents previously delivered by Seller to Buyer within 5 business days of such termination.

3.5 Title Review.

3.5.1 Monetary Liens. At its expense, Seller shall remove all liens on the Property at or prior to the Closing (collectively, "**Monetary Liens**"): (i) all delinquent taxes, bonds and assessments and interest and penalties thereon (it being agreed that Seller shall not be required to remove any non-delinquent taxes and assessments imposed by any governmental agency that are paid with the property taxes for the Property); and (ii) all other monetary liens, including without limitation all those shown on the Preliminary Title Report (including judgment and mechanics' liens, whether or not liquidated, and mortgages and deeds of trust, with Seller being fully responsible for any fees or penalties incurred in connection therewith).

3.5.2 Approval/Disapproval of Title Review. Buyer shall approve or disapprove of the Preliminary Title Report, the Survey and any exceptions to title shown thereon (other than the Monetary Liens) in the exercise of Buyer's sole discretion, by the expiration of the Feasibility Period. If Buyer disapproves, Buyer may either (a) terminate this Agreement by giving Seller written notice of termination or (b) give Seller a written notice ("**Disapproval Notice**") identifying the disapproved title matters ("**Disapproved Title Matters**"). With respect to any Disapproved Title Matters, other than the Monetary Liens, Seller shall notify Buyer in writing within 5 days after Seller's receipt of the Disapproval Notice whether Seller will cause the Disapproved Title Matters to be removed or cured at or prior to Closing. If Seller elects not to remove or cure all Disapproved Title Matters, Buyer may, at its option: (i) subject to satisfaction of the other conditions to Closing, close the purchase of the Property and take title subject to the Disapproved Title Matters which Seller elects not to remove or cure; or (ii) terminate this Agreement in accordance with Section 9.6.1.

3.5.3 Buyer's Options. If any Disapproved Title Matters (including the Monetary Liens) have not been removed at least 5 days prior to Closing or provision for their removal at the Closing has not been made to Buyer's satisfaction, Buyer may, at its option: (i) close the purchase of the Property and take title subject to the Disapproved Title Matters which have not been removed; (ii) close the purchase of the Property and cure or remove the Disapproved Title Matters which have not been removed. Buyer may credit the costs of such cure or removal against the Purchase Price by reducing the amount of cash payable by Buyer at the Closing, but only to the extent such costs are expended to remove (A) Monetary Liens referred to in Section 3.5.1 or (B) Disapproved Title Matters which Seller agreed to remove; or (iii) terminate this Agreement in accordance with Section 9.6.1.

3.5.4 Failure to Disapprove. If Buyer fails to notify Seller of its approval or disapproval of the Preliminary Title Report, the Survey or the exceptions shown thereon by the end of the Feasibility Period, then Buyer shall be deemed to have disapproved the same.

ARTICLE 4. CONDITIONS PRECEDENT.

4.1 Buyer's Conditions. Buyer's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 4.1 on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or in part by Buyer by written notice to Seller.

4.1.1 Due Diligence. Buyer having approved of the results of its Due Diligence Investigation pursuant to Section 3.4;

4.1.2 Title Review. Buyer having approved of the results of its review of title pursuant to Section 3.5.

4.1.3 Title Policy. Seller having caused the Title Company to deliver to Buyer (a) an ALTA Owner's standard policy of title insurance, provided that Buyer may require an ALTA extended coverage if Buyer pays the incremental premium for extended ALTA coverage ("**Title Policy**") (or at Buyer's election a binder therefor) for the Property, or (b) the Title Company's irrevocable commitment to issue such policy of title insurance, (including such coinsurance, reinsurance and endorsements as Buyer shall require), with liability equal to the Purchase Price showing fee title to the Property vested in Buyer and subject only to: (i) the matters and exceptions which were approved by Buyer pursuant to Section 3.5; and (ii) the standard printed exceptions in the form of title policy called for (collectively, "**Conditions of Title**").

4.1.4 Performance of Covenants. Seller performing and complying in all material respects with all of the terms of this Agreement to be performed and complied with by Seller prior to or at the Closing.

4.1.5 Representations and Warranties. The representations and warranties of Seller set forth in Article 5 being true and accurate on the Closing Date, as if made on such date.

4.1.6 Non-Foreign Certification. Seller having executed and delivered to Buyer on or prior to the Closing Date a certification (the "**Non-Foreign Certification**"), substantially in the form of Exhibit C.

4.1.7 California Certification. Seller having furnished the residency certification required pursuant to Sections 18805 and 26131 of the California Revenue and Taxation Code or having authorized Escrow Holder in writing to withhold from the Purchase Price the amounts required to be withheld by such Sections.

4.1.8 Equipment Removal. Seller shall have terminated all tenancies on the Property and removed, or caused to be removed, all vehicles from the parking area on the Property. The Building shall be broom clean with no contents prior to the Closing Date.

4.2 Seller's Conditions. Seller's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 4.2 on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or part by Seller by written notice to Buyer.

4.2.1 Covenants. Buyer performing and complying in all material respects with all of the terms of this Agreement to be performed and complied with by Buyer prior to or at the Closing.

4.2.2 Representations and Warranties. The representations of Buyer set forth in Article 6 being true and accurate on the Closing Date, as if made on such date.

ARTICLE 5. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller hereby makes the following representations and warranties to Buyer with the understanding that each such representation and warranty is material and is being relied upon by Buyer:

5.1 Organization. Seller is duly organized, validly existing and in good standing under the laws of the State of California. This Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are and at the time of Closing will be duly authorized, executed and delivered by Seller, are and at the time of Closing will be legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms. Seller has obtained all necessary authorizations, approvals and consents to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

5.2 No Action. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending against Seller, nor are any such proceedings contemplated by Seller.

ARTICLE 6. BUYER'S REPRESENTATIONS AND WARRANTIES.

Buyer makes the following representation and warranties to Seller with the understanding that each such representation and warranty is material and is being relied upon by Seller:

6.1 Buyer's Authority. The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Buyer in order to consummate the transactions contemplated herein.

6.2 No Conflict. Neither the execution nor delivery of this Agreement by Buyer, nor performance of any of its obligations hereunder, nor consummation of the transactions contemplated hereby, shall conflict with, result in a breach of, or constitute a default under, the terms and conditions of the organizational documents pursuant to which Buyer was organized, or any agreement to which Buyer is a party or is bound, or any order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over Buyer.

6.3 AS-IS. Buyer is purchasing the Property in its existing condition, "AS-IS, WHERE-IS, WITH ALL FAULTS," and will, by the expiration of the Feasibility Period, have made or have had the opportunity to make all inspections and investigations of the Property and its vicinity which Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property.

ARTICLE 7. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

7.1 Survival of Warranties. Buyer and Seller agree that each representation and warranty in Articles 5 and 6, respectively, shall survive the Closing Date and shall not merge with the delivery to Buyer of the Grant Deed.

7.2 Notice of Changed Circumstances. If either party becomes aware of any fact or circumstances which would render false or misleading a representation or warranty made by such party, then it shall immediately give notice of such fact or circumstance to the other party, but such notice shall not relieve any party of any liabilities or obligations with respect to any representation or warranty.

ARTICLE 8. SELLER'S PRE-CLOSING COVENANTS.

Seller shall comply with the covenants contained in this Article 8 from the Effective Date through the Closing Date unless Buyer consents otherwise in writing. Buyer may grant or withhold any such consent requested by Seller in Buyer's sole discretion.

8.1 Contracts and Documents. Seller shall not, without Buyer's approval, not to be unreasonably withheld or delayed, (a) amend or waive any right under any Service Contract, Preliminary Document or Additional Document, or (b) enter into any material agreement of any type affecting the Property that would survive the Closing Date.

8.2 Insurance. Seller shall maintain or cause to be maintained in full force and effect its present insurance policies for the Property.

8.3 Compliance with Obligations. Seller shall fully and timely comply with all obligations to be performed by it under the Service Contracts, the other Preliminary Documents, the Conditions of Title and all permits, licenses, approvals and laws, regulations and orders applicable to the Property.

8.4 No Transfers. Seller shall not sell, encumber or otherwise transfer any interest in all or any portion of the Property, or agree to do so.

8.5 Termination of Contracts. Seller at its sole cost and expense shall terminate all of Service Contracts and all tenancies for the Property at or before the Closing Date.

8.6 Maintenance. At its sole cost and expense, Seller shall operate and maintain the Property such that on the Closing Date the Property shall be in at least as good a condition and repair as on the Effective Date, reasonable wear and tear excepted. Without limiting the generality of the foregoing, Seller shall, at a minimum, spend such amounts for repair and maintenance as are consistent with its prior practice. Seller shall promptly advise Buyer of any significant repair or improvement required to keep the Property in such condition. Seller shall remove, or cause to be removed, all equipment, machinery, vehicles or other Personal Property from the Property and shall remove all Personal Property and/or fixtures from the Building and shall deliver the Building broom clean at Closing.

8.7 Best Efforts. Seller shall use its best efforts to cause the conditions set forth in Section 4.1 to be satisfied by the Closing Date, and Seller shall not take or permit any action that would result in any of the representations and warranties set forth in Article 5 becoming false or incorrect.

ARTICLE 9. CLOSING.

9.1 Time. Provided all conditions set forth in Article 4 have been either satisfied or waived, the parties shall close this transaction (the "**Closing**"), on the date which is 150 days after the expiration of the Feasibility Period (the "**Closing Date**"). Following the expiration of the Feasibility Period, Seller may elect to close this transaction early by delivering to Buyer thirty (30) days' written notice setting forth a re-scheduled Closing Date.

9.2 Escrow. This Article 9, together with such additional instructions as Chicago Title Company, 675 North 1st Street, Suite 300, San Jose, CA 95112, Attn: Mitch O'Brien, Phone: (408) 292-4212, Email: mitch.obrien@titlegroup.fntg.com ("**Escrow Holder**"), shall reasonably request and the parties shall agree to, shall constitute the escrow instructions to Escrow Holder. If there is any inconsistency between this Agreement and the Escrow Holder's additional escrow instructions, this Agreement shall control unless the intent to amend this Agreement is clearly stated in said additional instructions. Buyer and Seller shall cause Escrow Holder to execute and deliver a counterpart of this Agreement to each of them. If the Title Company does not serve as the Escrow Holder, the Title Company shall provide a letter to Buyer, in form and content acceptable to Buyer, pursuant to which the Title Company accepts responsibility and liability for the acts and omissions of Escrow Holder in discharging Escrow Holder's obligations hereunder, including, without limitation, any acts or omissions of Escrow Holder relating to the Title Company's commitment to issue the Title Policy, the receipt, recordation or delivery of any documents placed into escrow, and the receipt and disbursement of any funds placed into escrow.

9.3 Seller's Deposit of Documents and Funds Into Escrow. Seller shall deposit into escrow on or before Closing the following documents:

9.3.1 A duly executed and acknowledged grant deed, in the form acceptable to Buyer, conveying the Property to Buyer ("**Grant Deed**") in the form attached as Exhibit B;

9.3.2 A duly executed Bill of Sale in the form attached as Exhibit E. ("**Bill of Sale**"), as applicable;

9.3.3 A duly executed assignment, in the form of Exhibit F, assigning to Buyer all of Seller's interest in all intangible assets of the Property (the "**General Assignment**");

9.3.4 A certificate executed by Seller stating that all representations and warranties made by Seller pursuant to this Agreement are true and correct as of the Closing Date ("**Seller's Certificate**");

9.3.5 Seller's Non-Foreign Certification;

9.3.6 All costs of Closing, including, but not limited to, the premium for the ALTA Title Policy, recording fees, transfer taxes and fees, one-half of the escrow fees, sales tax and any other costs of Closing customarily paid by sellers of real property, plus or minus prorations as provided in Section 9.8; provided that, subject to Section 9.6, Buyer and Seller shall bear their own attorneys' fees and costs in connection with the negotiation and preparation of this Agreement and the transactions completed by this Agreement;

9.3.7 All records and files relating to the management or operation of the Property, including, without limitation, property tax bills, insurance, and property taxes; and

9.3.8 Such additional documents, including written escrow instructions consistent with this Agreement, as may be necessary or desirable for conveyance of the Property in accordance with this Agreement.

9.4 Deliveries Outside of Escrow. Notwithstanding Section 9.3, Seller and Buyer may elect to deliver the documents described in Section 9.3 outside of escrow (other than documents which are to be recorded) by giving Escrow Holder a joint written notice of such election, specifying the documents which will be so delivered outside of escrow. Upon receipt of such notice, Escrow Holder shall have no further obligation concerning such specified documents.

9.5 Buyer's Deposit of Documents and Funds. Buyer shall deposit into escrow:

9.5.1 The Purchase Price in accordance with the provisions of Article 2, plus or minus prorations as provided in Section 9.8, by electronic transfer of federal funds to Escrow Holder, on or before the Closing Date; and

9.5.2 Such additional documents, including written escrow instructions consistent with this Agreement, as may be necessary or desirable for conveyance of the Property in accordance with this Agreement.

9.6 Default, Termination and Remedies.

9.6.1 Buyer's Termination. This Agreement shall automatically terminate without further notice or action by Buyer upon the occurrence of any of the following events, provided that Buyer is not then in material breach of this Agreement: (a) any condition to Closing contained in Section 4.1 has not been satisfied or waived by Buyer by the Closing Date; or (b) Buyer having exercised its right to terminate this Agreement pursuant to Section 3.4 (disapproval of Due Diligence Investigation), Section 3.5 (disapproval of title) or Article 10 (damage or condemnation). In such event, the parties shall have no further obligation to each other except for those obligations that specifically survive the termination of this Agreement. If this Agreement terminates as a result of Seller's material breach of this Agreement, Buyer shall have all remedies it may have hereunder or at law as a result of such occurrence, including the remedy of specific performance.

9.6.2 Seller's Termination. Provided that Seller is not then in material breach of this Agreement, this Agreement shall automatically terminate without further notice or action by Seller if any condition to Closing contained in Section 4.2 has not been satisfied or waived by Seller by the Closing Date.

9.6.3 Release from Escrow. Upon termination of this Agreement pursuant to Section 9.6.1 or 9.6.2, Escrow Holder shall promptly return to Buyer and Seller, respectively, all documents and monies deposited by them into escrow without prejudice to their rights and remedies hereunder.

9.6.4 Remedies.

(a) Buyer's Remedies. If Seller breaches this Agreement, Buyer shall be entitled to pursue all remedies permitted herein and by law, including the remedy of specific performance and a refund of all deposits, even if deemed nonrefundable. No termination of the escrow by Buyer following a breach by Seller shall be deemed to waive such breach or any remedy otherwise available to Buyer.

(b) Seller's Remedies/Liquidated Damages. IF BEFORE THE CLOSE OF ESCROW BUYER FAILS TO COMPLY WITH OR PERFORM BUYER'S OBLIGATIONS UNDER THIS AGREEMENT AND (EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH 9.6) DOES NOT CURE SUCH FAILURE WITHIN TEN BUSINESS DAYS AFTER SELLER GIVES BUYER WRITTEN NOTICE OF SUCH FAILURE, THEN SELLER MAY THEREAFTER: (I) TERMINATE THIS AGREEMENT; (II) RECEIVE AND RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES IF SUCH DEFAULT OCCURS AFTER BUYER'S FEASIBILITY PERIOD; AND (III) EXERCISE THE OTHER RIGHTS AND REMEDIES RESERVED BY SELLER AS PROVIDED IN THIS PARAGRAPH. IN THE EVENT SELLER TERMINATES THIS AGREEMENT BY REASON OF BUYER'S DEFAULT, BUYER AND SELLER SHALL BE RELIEVED OF ANY FURTHER OBLIGATION TO EACH OTHER WITH RESPECT TO THIS AGREEMENT AND THE PROPERTY. IT IS EXPRESSLY UNDERSTOOD AND AGREED BY BUYER AND SELLER: THAT SELLER WILL INCUR SUBSTANTIAL DAMAGES AS A RESULT OF ANY FAILURE BY BUYER TO COMPLY WITH OR PERFORM BUYER'S OBLIGATIONS

UNDER THIS AGREEMENT IN THE FORM OF, AMONG OTHER THINGS, ADDITIONAL INTEREST COSTS, MARKETING COSTS, OPPORTUNITY COSTS AND OTHER RELATED EXPENDITURES; THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO CALCULATE AND ASCERTAIN AS OF THE EFFECTIVE DATE OF THIS AGREEMENT THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED IN SUCH EVENT BY SELLER; AND THAT THE DEPOSIT IS A REASONABLE ESTIMATE OF THE EXTENT TO WHICH SELLER MAY BE DAMAGED BY BUYER'S DEFAULT IN LIGHT OF THE DIFFICULTY THE PARTIES WOULD HAVE IN DETERMINING SELLER'S ACTUAL DAMAGES AS A RESULT OF SUCH DEFAULT BY BUYER.

H.C. O.C.
SELLER'S INITIALS

BUYER'S INITIALS

(c) Waiver of Specific Performance. SELLER HEREBY WAIVES THE RIGHT TO MAINTAIN AN ACTION FOR SPECIFIC PERFORMANCE OF BUYER'S OBLIGATION TO PURCHASE THE PROPERTY AND SELLER AGREES THAT SELLER CAN BE ADEQUATELY COMPENSATED IN MONEY DAMAGES IF BUYER FAILS TO PURCHASE THE PROPERTY IN BREACH OF THIS AGREEMENT. SELLER ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL PART OF THE CONSIDERATION BEING GIVEN TO BUYER FOR ENTERING INTO THIS AGREEMENT AND THAT BUYER WOULD BE UNWILLING TO ENTER INTO THIS AGREEMENT IN THE ABSENCE OF THE PROVISIONS OF THIS PARAGRAPH.

H.C. O.C.
SELLER'S INITIALS

BUYER'S INITIALS

9.7 Closing. When Escrow Holder has received all documents and funds identified in Sections 9.3 and 9.5, has received notification from Buyer and Seller that all conditions to Closing to be satisfied outside of escrow have been satisfied or waived and Title Company is irrevocably committed to issue the Title Policy, then, and only then, Escrow Holder shall:

9.7.1 Record the Grant Deed;

9.7.2 Cause the Title Company to issue the Title Policy to Buyer;

9.7.3 To the extent not otherwise delivered to Buyer outside of escrow, deliver to Buyer: (a) a conformed copy (showing all recording information thereon) of the Grant Deed; (b) the Non-foreign Certification;

9.7.4 Deliver the Purchase Price (as adjusted pursuant to Section 9.8) to Seller.

Escrow Holder shall prepare and sign closing statements showing all receipts and disbursements and deliver copies to Buyer and Seller and, if applicable, shall file with the Internal Revenue Service (with copies to Buyer and Seller) the reporting statement required under Section 6045(e) of the Internal Revenue Code.

9.8 Prorations. Subject to the other provisions of this Section 9.8, all receipts and disbursements of the Property will be prorated as of 11:59 p.m. on the day immediately

preceding the Closing Date. Not less than five business days prior to the Closing, Seller shall submit to Buyer for its approval a tentative proration schedule showing the categories and amounts of all prorations proposed. The parties shall agree on a final proration schedule prior to the Closing and shall deliver the same to Escrow Holder. If following the Closing either party discovers an error in the proration statement, it shall notify the other party and the parties shall promptly make any adjustment required.

9.8.1 Capital Expenditures and Accounts Payable. All capital and other improvements (including labor and material) which have been performed or contracted for, by or on behalf of Seller prior to the Closing Date, and all sums due for accounts payable which have been incurred with respect to the Property prior to the Closing Date shall be paid by Seller and shall be subject to the indemnification provisions of Section 7.3. Buyer shall furnish to Seller for payment any bills for such period received after the Closing Date, and Buyer shall have no further obligation with respect thereto.

9.8.2 Property Taxes. All real and personal property ad valorem taxes and special assessments, if any, whether payable in installments or not, including without limitation, all supplemental taxes attributable to the period prior to the Closing Date for the calendar year in which the Closing occurs, shall be prorated to the Closing Date, based on the latest available tax rate and assessed valuation. If the amount of any installment of real property taxes is not known as of the Closing Date, then a proration shall be made by the parties based on a reasonable estimate of the real property taxes applicable to the Property and the parties shall adjust the proration when the actual amount becomes known upon the written request of either party made to the other.

9.8.3 Utility Charges. All utility charges shall be prorated as of the Closing Date and Seller shall obtain a final billing therefor. All utility security deposits, if any, shall be retained by Seller.

9.9 Possession. Seller shall deliver exclusive right of possession of the Property to Buyer on the Closing Date, subject only to the Conditions of Title.

ARTICLE 10. DAMAGE, DESTRUCTION AND CONDEMNATION.

This Agreement shall be governed by the Uniform Vendor and Purchaser Risk Act as set forth in Section 1662 of the California Civil Code as supplemented and modified by this Article 10. Seller shall promptly notify Buyer in writing of any material damage to the Property and of any taking or threatened taking of all or any portion of the Property. Within a reasonable period of time after receipt of such notice, Buyer shall determine whether a material part of the Property has been damaged or whether such taking or threatened taking has affected or will affect a material part of the Property. As used herein, (a) the destruction of a "**material part**" of the Property shall be deemed to mean an insured or uninsured casualty to the Property having an estimated cost of repair which in the reasonable judgment of Buyer equals or exceeds \$200,000; and (b) a taking by eminent domain of a portion of the Property shall be deemed to affect a "**material part**" of the Property if in the reasonable judgment of Buyer the estimated value of the portion of the Property taken exceeds \$200,000. Upon making its determination, Buyer shall notify Seller in writing of the results of such determination. Buyer may elect, by

written notice delivered to Seller within 30 days after giving Seller notice of such determination, to terminate this Agreement in accordance with Section 9.6.1 if a material part of the Property has been damaged or if such taking has affected or will affect a material part of the Property. If Buyer does not so terminate, (i) in the case of damage to a material part of the Property, Seller shall assign to Buyer at the Closing its right to recover under any insurance policies covering such damage and shall pay Buyer at the Closing the amount of the deductible, if any, and (ii) in the case of a threatened or actual taking of a material part of the Property, Seller shall assign to Buyer at the Closing Seller's entire right, title and interest in the proceeds thereof. If between the Effective Date and the Closing Date the Property suffers damage which is not material, Seller shall repair such damage at its expense prior to the Closing, and the Closing Date shall be extended for a reasonable period of time not to exceed 30 days to allow for completion of such repairs. The Closing Date shall be extended as necessary to permit Buyer to exercise its rights under this Article 10.

ARTICLE 11. GENERAL.

11.1 Seller's Acknowledgement. By executing this Agreement, Seller acknowledges that it has had sufficient time to review this Agreement and that it has read and understands its contents. Seller represents and acknowledges by its signature that this Agreement has been reviewed and approved by its legal counsel and certified public accountant. Seller further acknowledges that Seller's execution and delivery to Buyer of this Agreement shall constitute an offer to sell the applicable Property pursuant to the terms stated herein, which offer shall be irrevocable by Seller, provided that Buyer accepts such offer by executing and returning to Seller a counterpart of this Agreement. Seller understands and agrees that Buyer is a governmental entity which must schedule and hold one or more meetings of its governing body in order to authorize Buyer's acceptance of this offer and that Buyer is relying of the irrevocability of this offer in processing it for consideration by the City Council of the City of Milpitas.

11.2 Notices. All notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (a) when personally delivered to the recipient at the recipient's address set forth below; (b) five business days after deposit in a sealed envelope in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below; or (c) one business day after deposit with a recognized overnight courier or delivery service, addressed to the recipient as set forth below, whichever is earlier. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday.

The addresses for notice are:

SELLER: Henry W. Chung and Olivia Y. Chung
1700 Sango Ct. Milpitas CA 95035
Phone: 408-957-9600
Email: Formosa.chung@yahoo.com

With a copy to:

Attn: _____

Phone: _____
Email: _____

BUYER:

CITY OF MILPITAS.
Attn: City Manager
455 E. Calaveras Boulevard
Milpitas, California 95035
Phone: (408) 586-3050
Email: jedmonds-mares@ci.milpitas.ca.gov

With a copy to:

BEST BEST & KRIEGER, LLP.
Attn: Christopher J. Diaz
2001 N. Main Street, Suite 390
Walnut Creek, CA 94596
Phone: (925) 977-3309
Email: Christopher.Diaz@bbklaw.com

Either party may change its address by written notice to the other given in the manner set forth above.

11.3 Entire Agreement. This Agreement and the Schedules and Exhibits hereto contain the entire agreement and understanding between Buyer and Seller concerning the subject matter of this Agreement and supersede all prior agreements, including any previous letter of intent or terms, understandings, conditions, representations and warranties, whether written or oral, made by Buyer or Seller concerning the Property or the other matters which are the subject of this Agreement.

11.4 Amendments and Waivers. No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the party against whom the addition or modification is sought to be enforced. The party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving party.

11.5 Invalidity of Provision. If any provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

11.6 References. Unless otherwise indicated, (a) all Article, Section, Schedule and Exhibit references are to the articles, sections, schedules and exhibits of this Agreement, and (b) all references to days are to calendar days. All the Schedules and Exhibits attached hereto are incorporated herein by this reference. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or California state holiday, such time for performance shall be extended to the next business day. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires.

11.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

11.8 Confidentiality and Publicity. Buyer is a public entity and is subject to the Public Records Act. All information provided to Buyer may be subject to request for review by members of the public. This Agreement shall be reviewed for approval by the City Council in an open public meeting.

11.9 Time. Time is of the essence in the performance of the parties' respective obligations under this Agreement.

11.10 Attorneys' Fees. In the event of any legal or equitable proceeding to enforce any of the terms or conditions of this Agreement, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs of defense paid or incurred in good faith.

11.11 Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. However, Seller shall not have the right to assign all or any portion of its interest in this Agreement without Buyer's prior written consent. Buyer shall have the right to assign all or any portion of its interest in this Agreement, or substitute for itself a nominee, upon notice to Seller not later than three days prior to the Closing Date.

11.12 Further Assurances. Seller, at any time before or after Closing, shall, at its own expense, execute, acknowledge and deliver any further deeds, assignments, conveyances and other assurances, documents and instruments of transfer reasonably requested by Buyer and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by Buyer for the purpose of transferring and confirming to Buyer, or reducing to Buyer's possession, any or all of the Property or otherwise carrying out the terms of this Agreement.

11.13 Cooperation With Exchange. Each party agrees to cooperate with the other if such party intends to accomplish a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986 ("**1031 Exchange**"). Buyer and/or Seller may assign this Agreement to an exchange intermediary for the purpose of facilitating such an exchange by the

assigning party. Buyer's duty to cooperate shall be limited to the transfer of money to Seller or Seller's designee in exchange for the Property, and in no event shall Buyer act as purchaser or acquirer of any exchange property. Seller's duty to cooperate shall be limited to the transfer of the Property to Buyer or Buyer's designee and in no event will Seller exchange the Purchase Property for any exchange property designated by Buyer. The requesting party shall indemnify and defend and hold the other party harmless from any claims, loss, damages or liability arising out of participation in an exchange. Notwithstanding the foregoing or anything herein to the contrary, completion of a 1031 Exchange shall not be a condition for Closing, and failure by Seller close for reason of a failed 1031 Exchange shall be a breach of this Agreement.

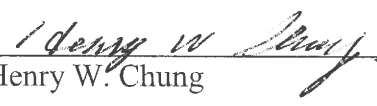
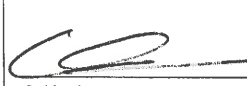
11.14 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over against any party to this Agreement.

11.15 Remedies Cumulative. The remedies set forth in this Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a party.

11.16 Commissions, Indemnity, Disclosure. Seller has employed the firm of Wing Investments (Wing Liew) as its broker ("**Seller's Broker**") and Buyer has employed the firm of Colliers International (Mark Zamudio) as its broker ("**Buyer's Broker**") in connection with the purchase and sale of the Property. Each party represents to the other party that, except for Seller's Broker and Buyer's Broker, neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein. Seller shall be responsible for any broker commission associated with this purchase. Each party hereby indemnifies and agrees to protect, defend and hold harmless the other party from and against all liability, cost, damage or expense (including without limitation attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 11.15 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.

11.17 Counterparts/Facsimile/.PDF Signatures. This Agreement may be executed in counterparts and when so executed by the parties, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument that shall be binding upon the parties, notwithstanding that the parties may not be signatories to the same counterpart or counterparts. The parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart. In order to expedite the transaction contemplated herein, facsimile or .pdf signatures may be used in place of original signatures on this Agreement. Seller and Buyer intend to be bound by the signatures on the facsimile or .pdf document, are aware that the other party will rely on the facsimile or .pdf signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:  Henry W. Chung  Olivia Y. Chung Date: <u>4/18/2019</u>	BUYER: CITY OF MILPITAS, a municipal corporation By: _____ Name: _____ Its: _____ Date: _____
	APPROVED AS TO FORM: BEST BEST & KRIEGER LLP By: _____ Christopher Diaz, City Attorney

Acceptance by Escrow Holder

Escrow Holder acknowledges receipt of the foregoing Agreement and accepts the instructions contained therein.

Dated: _____, 2019 _____

By: _____
Name: _____
Title: _____

EXHIBIT A
LAND DESCRIPTION

the following described real property in the City of Milpitas, County of Santa Clara, State of California:

Parcel 6, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on April 22, 1974, in Book 338 of Maps, Page 42.

EXHIBIT B

FORM OF GRANT DEED

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO**

BEST BEST & KRIEGER, LLP.
Attn: Christopher J. Diaz
2001 N. Main Street, Suite 390
Walnut Creek, CA 94596

EXEMPT FROM RECORDING FEES PURSUANT
TO GOVERNMENT CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 086-36-012

Grant Deed

The undersigned Grantor(s) declare(s): CITY OF MILPITAS is exempt from property taxes.
(Rev & Tax Code 11922)

Documentary transfer tax is \$ -0-.

- ☐ Computed on full value of property conveyed, or
☐ Computed on full value less value of liens and encumbrances remaining at time of sale.
☐ Unincorporated area ☒ City of MILPITAS, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

HENRY W. CHUNG and OLIVIA Y. CHUNG, husband and wife as community property with
right of survivorship

hereby GRANT(S) to

CITY OF MILPITAS, a municipal corporation

the following described real property in the City of Milpitas, County of Santa Clara, State of
California:

**Parcel 6, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa
Clara, State of California on April 22, 1974, in Book 338 of Maps, Page 42.**

Dated: _____, 2019

HENRY W. CHUNG and OLIVIA Y. CHUNG, husband and wife
as community property with right of survivorship

Henry W. Chung

Olivia Y. Chung

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____, Notary Public
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

CERTIFICATE OF ACCEPTANCE

Pursuant to Section 27281 of the
California Government Code

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 2019, from HENRY W. CHUNG and OLIVIA Y. CHUNG, husband and wife as community property with right of survivorship, as Grantor thereunder, to CITY OF MILPITAS, a municipal corporation, as Grantee thereunder, is hereby accepted by the undersigned officer on behalf of the CITY OF MILPITAS, pursuant to the authority conferred by Resolution No. _____, adopted by _____ on _____, 2019, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2019 _____

By _____
_____(Name)
_____(Title)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____, Notary Public
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT C

TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the CITY OF MILPITAS (the "Transferee"), that withholding of tax under Section 1445 of the Code will not be required upon the transfer of a U.S. real property interest to the Transferee by HENRY W. CHUNG and OLIVIA Y. CHUNG, husband and wife as community property with right of survivorship (the "Transferor"), the undersigned hereby certifies the following on behalf of the Transferor:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. The Transferor's U.S. employer identification number is _____; and
3. The Transferor's office address is _____.

The Transferor understands that this Certificate may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury I declare that I have examined this Certification and, to the best of my knowledge and belief, it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

DATED: _____, 2019.

HENRY W. CHUNG and OLIVIA Y. CHUNG,
husband and wife as community property with right
of survivorship

Henry W. Chung

Olivia Y. Chung

EXHIBIT D

LIST OF SERVICE CONTRACTS

(Each to be cancelled by Seller prior to Closing)

EXHIBIT E

BILL OF SALE

This Bill of Sale (the "Bill of Sale") is made as of _____, 2019, by HENRY W. CHUNG and OLIVIA Y. CHUNG, husband and wife as community property with right of survivorship ("Transferor").

FOR VALUABLE CONSIDERATION, as set forth in that certain Purchase and Sale Agreement dated March __, 2019 (the "Agreement"), Transferor hereby sells, transfers, assigns and delivers to the CITY OF MILPITAS ("Transferee"), any and all personal property (the "Personal Property") located within or used in connection with that certain improved real property commonly known as 1700 Sango Court, Milpitas, CA (Assessor's Parcel No. 086-36-012)(the "Real Property"), as more particularly described in Schedule 1 attached hereto. The Personal Property shall include, without limitation, the items described in the Personal Property Inventory attached hereto as Schedule 2.

1. Transferor hereby assigns all warranties, guarantees and indemnities, whether those warranties are express or implied, and all similar rights which Transferor may have against any other manufacturer or supplier of the Personal property or any portion thereof or against any seller, engineer, contractor or builder, in respect of the Personal Property.

2. Transferor warrants that each item of the Personal Property is in good condition, order and repair and suitable for its intended purpose on the date of this Bill of Sale.

3. Transferor at any time at or after the date of this Bill of Sale shall execute, acknowledge and deliver any further deeds, assignments, conveyances and other assurances, documents and instruments of transfer reasonably requested by Transferee, and shall take any other action consistent with the terms of this Bill of Sale that may reasonably be requested by Transferee for the purpose of granting and confirming to Transferee, or reducing to Transferee's possession, any or all of the Personal Property. If requested by Transferee, Transferor further agrees to prosecute or otherwise enforce in its own name for the benefit of Transferee any claims, rights or benefits included in the Personal Property that require prosecution or enforcement in Transferor's name. Transferor also hereby appoints Transferee as its agent to act in Transferor's name and on Transferor's behalf to take any action necessary to effect the transfer of any of the Personal Property to Transferee, or prosecute or otherwise enforce any claims, rights or benefits included in the Personal Property in Transferor's name, including bringing suit in Transferor's name.

4. This Bill of Sale shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

DATED: _____, 2019.

TRANSFEROR:

HENRY W. CHUNG and OLIVIA Y. CHUNG,
husband and wife as community property with right
of survivorship

Henry W. Chung

Olivia Y. Chung

EXHIBIT E
GENERAL ASSIGNMENT

This Assignment (the "Assignment") is made as of _____, 2019, by HENRY W. CHUNG and OLIVIA Y. CHUNG, husband and wife as community property with right of survivorship ("Assignor").

FOR VALUABLE CONSIDERATION, as set forth in that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated March __, 2019 (the "Agreement"), Assignor hereby assigns and transfers to CITY OF MILPITAS, a municipal corporation ("Assignee"), with respect to the real property described in Schedule 1, following:

A. All equipment leases, service and/or maintenance agreements and contracts relating to the Real Property (collectively, the "Contracts"), as more particularly described in Schedule 2 attached hereto;

B. All permits, licenses, consents, registrations and other similar approvals applicable to the Real Property (collectively, the "Approvals"), which Approvals are more particularly described in Schedule 3 attached hereto;

C. All as-built plans and specifications for: (1) the Real Property; (2) any and all improvements used in connection with the operation or occupancy of the Real Property or located upon the Real Property (the "Improvements"); and (3) any and all personal property owned by Assignor located within or used in connection with the operation of the Real Property and Improvements (the "Personal Property") (collectively, the "Plans"); and

D. All warranties of which Assignor is the beneficiary (the "Warranties") with respect to the Improvements or Personal Property.

This Assignment shall not supersede the Agreement and, in the event of conflict between this Assignment and the Agreement, the Agreement shall control.

This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first above written.

ASSIGNOR:

HENRY W. CHUNG and OLIVIA Y. CHUNG,
husband and wife as community property with right
of survivorship

Henry W. Chung

Olivia Y. Chung



ASSOCIATED
RIGHT OF WAY
SERVICES, INC.



No. 18082

Appraisal Report

for

City of Milpitas TASP Park and Roadway Infrastructure Project

Chung Property
1700 Sango Court
Milpitas, CA
APN: 086-36-012

Prepared by:

Brian C. Drake, R/W-AC
Appraiser

January 2019

Associated Right of Way Services, Inc.
2300 Contra Costa Blvd., Suite 525
Pleasant Hill, CA 94523
925.691.8500

January 18, 2019

Steve Chan, T.E., E.E.
Transportation and Traffic Manager
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035

Re: TASP Park and Roadway Infrastructure Project
Owner: Chung
Property Address: 1700 Sango Court, Milpitas, CA
APN: 086-36-012

Dear Mr. Chan:

In accordance with our contract with the City of Milpitas, an appraisal has been made of the fair market value of the above referenced property as requested for the TASP Park and Roadway Infrastructure Project. The proposed property interest to be acquired is the full fee simple acquisition of the subject property.

This Appraisal Report is prepared in conformance with the Uniform Standards of Professional Appraisal Practice, Standard Rule 2-2(a). This report contains a description of the subject property, the property rights to be acquired, a valuation conclusion for the property to be acquired and an estimate of just compensation. I have completed an inspection of the subject, gathered pertinent information, sales and other data relevant to the valuation and analyzed the data to reach my conclusions.

The property owner was sent a Notice of Decision to Appraise letter on December 21, 2018. Property owner Henry Chung accompanied me during an inspection of the property on January 8, 2019. Wing Liu, agent for the owner and Mason McKellips, providing Phase 1 ESA services for the Client, were also present at the time of the site visit. The date of value is the date of the inspection.

The opinion of the fair market value of the property interests considered for acquisition for the project is as shown in the following Valuation Summary, which is made a part of this transmittal letter and appraisal report. The accompanying report is submitted for your review and approval for acquisition purposes and is subject to the Assumptions and Limiting Conditions included herein.

Sincerely,



Brian C. Drake, R/W-AC
State Certified General Appraiser
CA License No. AG031568

Summary of Salient Facts and Estimate of Just Compensation

Fee Simple Interest and Estimate of Just Compensation	
	\$5,305,000 (Five Million Three Hundred and Five Thousand Dollars)

Date of Valuation:	January 8, 2019 (date of site visit)
Assessor's Parcel Number:	086-36-012
Property Location/Address:	1700 Sango Court, Milpitas, CA
Owner:	Henry W. & Olivia Y. Chung
Owner's Contact Information:	Henry Chung: 408-957-9600
Owner's Address:	1700 Sango Court, Milpitas, CA
Owned Since:	For more than five years
Occupied By:	Owner; two tenants occupy a portion of the yard space on a month-to-month basis
Principal Improvements:	Industrial building measuring 9,600 gross square feet
Total Site Area:	56,926 square feet or approximately 1.31 acres
Zoning:	R4-TOD – Multi-Family Residential, Very High Density / Transit-Oriented Development Overlay
General Plan:	Multi-Family Residential, Very High Density (VHD); 41 up to 60-90 units/gross acre in TOD
Highest and Best Use As If Vacant:	Development of a multifamily residential project at the highest density allowed under the zoning and that is accepted by the market. <i>This conclusion disregards the designation for the subject of Parks/Plazas/Community Facilities by the Transit Area Specific Plan, under the hypothetical condition that the project and steps leading up to the project do not exist.</i>

City of Milpitas

TASP Park and Roadway Infrastructure Project

APN: 086-36-012 – Chung

As Improved:

Continue the current industrial use, as an interim use, while obtaining entitlements for a multifamily development consistent with the highest and best use as if vacant.

Flood Hazard Information:

Flood Zone A, Map No. 06085C0067J, dated February 10, 2014 and Map No. 0685C0069H, dated May 18, 2009

Earthquake Information:

Not located in an Earthquake Fault Zone

The intent of this appraisal assignment is to conduct an investigation approximating the thoroughness that a typical buyer would conduct when considering similar property on the open market in the subject's neighborhood and competing markets, and in conformance with the necessary policies and techniques used by appraisers in developing an estimate of fair market value.

An inspection of the subject was conducted to determine size, condition and utility of the property. The subject's existing industrial use became a legal non-conforming use subsequent to the adoption of the Transit Area Specific Plan (TASP) in June 2008 and rezoning of the property to Multi-Family Residential, Very High Density with a Transit-Oriented Development Overlay, consistent with the City's General Plan. The value of the land zoned for multifamily residential development with an allowed density of up to 60-90 dwelling units per acre has been found to exceed the value of the improved property for industrial use, and therefore the highest and best use of the subject property is determined to be to redevelop the site for multifamily residential purposes. *The fact that the Transit Area Specific Plan has designated the subject property Parks/Plazas/Community Facilities, has been disregarded for this analysis under the hypothetical condition that the project and steps leading up to the project do not exist.* The value of the land has been estimated by applying the sales comparison approach. Searches of public records, real estate listings and sales services were employed to obtain data. Relevant property sales were researched and confirmed to the extent possible. The conclusion of value for the sales comparison approach is determined following appropriate adjustments to properties that have sold and are similar to the subject, considering the unit prices paid in the market for this type of property. The concluded unit value is applied to value the subject property. The income and cost approaches are not considered applicable to this assignment since these approaches do not typically apply to the valuation of land.

Subject Location Map

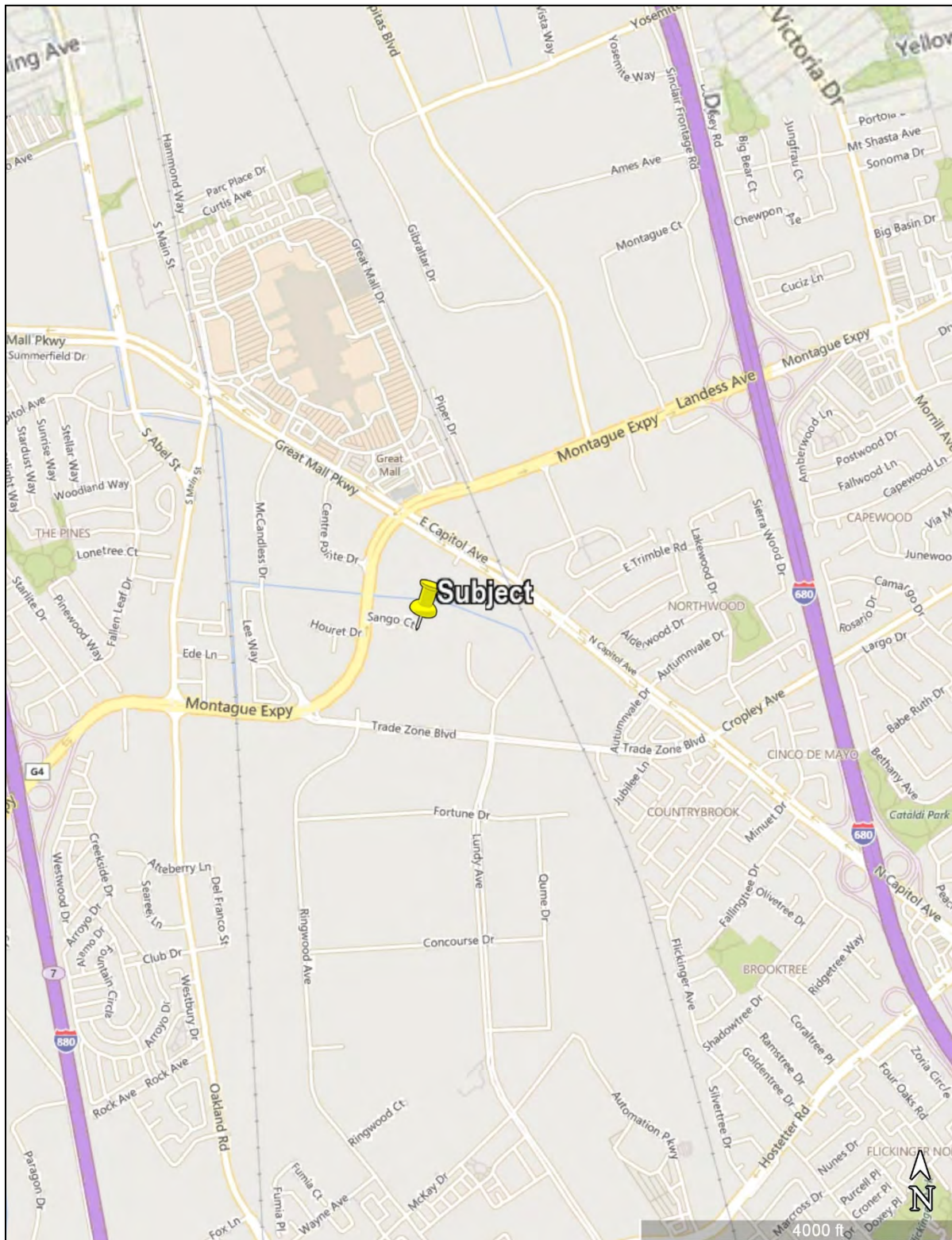


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Introduction

Purpose of the Appraisal

The purpose of this appraisal is to furnish an opinion of the fair market value of the full fee simple acquisition of the subject for the TASP Park and Roadway Infrastructure Project.

Scope of Assignment

The Appraiser inspected the subject to determine the size, condition, and utility of the land and impacted improvements. Descriptive data about the subject was gathered from online data resources, such as public record summary, assessor's parcel map, aerial map, and flood map, in addition to data provided by the Client or owner. Planning department personnel with the City of Milpitas were contacted and the City's website utilized to obtain data about land use ordinances as they apply to the subject. Macro and micro-economic information was gathered from the Internet and various news publications. Market participants were interviewed. Analysis of market conditions was completed, both general and specific to the market. Searches of public records, real estate listings and sales services were employed to obtain comparable data. Relevant property sales were researched and confirmed to the extent possible. The data and conclusions are set out in the Valuation section of this report.

The Appraisal Report conforms to Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice. The information contained in this report is specific to the needs of the Client and for the intended use stated in this report. The Appraiser is not responsible for unauthorized use of this report. The intent of this report is to provide sufficient data and analysis so as to have no misleading information and a conclusion of value of high reliability.

Intended Use of the Appraisal

The intended use of the appraisal and report is to provide the City of Milpitas with a basis for determining just compensation to be offered and payable to the property owner for the proposed full acquisition of the subject property. The appraisal report is subject to administrative review by the Client.

Client and Intended User of the Appraisal

The Client and the intended user of this appraisal report is the City of Milpitas.

Date of Valuation

The property in this report has been valued as of January 8, 2019. The date of value is the date of the site inspection.

Property Interest Appraised

This appraisal addresses the fee simple estate in the subject property. The fee simple estate is defined as follows:

“Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.”

(The Dictionary of Real Estate Appraisal, Sixth Edition, published by the Appraisal Institute)

Market Value Defined

(California Code of Civil Procedure, Section 1263.320)

- “(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.
- (b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.”

Reasonable Exposure Time

Uniform Standards of Professional Appraisal Practice (USPAP 2018/2019 edition: Definitions) defines exposure time as follows:

“EXPOSURE TIME: estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal.

Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market.”

Exposure time is presumed to be a reasonably adequate and sufficient period of time with adequate effort necessary to result in a sale fulfilling the definition of value. It is presumed to be a period immediately preceding the effective date of value. However, based on the definition of market value under the Code of Civil Procedure cited above, developing an opinion of exposure time is not required. An opinion of exposure time has not been developed for this appraisal.

Certification of Appraiser

Property Owner	Assessor's Parcel Number
Chung	086-36-012

I hereby certify that to the best of my knowledge and belief:

I have personally inspected the property that is the subject of this report.

The statements of fact contained in the appraisal report are true and correct, and the information upon which the opinions expressed therein are based is correct; subject to the Limiting Conditions therein set forth.

I understand that such appraisal may be used in connection with the proposed acquisition of the entire subject property to be acquired by the City of Milpitas; that such appraisal has been made in conformity with the appropriate State laws, Title VI of the 1964 Civil Rights Act, and regulations, policies and procedures applicable to the appraisal of right of way for such purposes; and that to the best of my knowledge, no portion of the value assigned to such property consists of items which are non-compensable under the established law of the State of California.

Neither my employment nor my compensation for completing this assignment is in any way contingent upon the values reported herein. My compensation is not contingent upon the developing or reporting of predetermined values or direction in value that favors the cause of the Client, the amounts of the value opinions, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.

I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring agency and I will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

The owner or representative for the owner has been given an opportunity to accompany me during the inspection of the subject property.

I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.

I have performed no services as an Appraiser or in any other capacity, regarding the property that is the subject of this report, within a three-year period immediately preceding the acceptance of this assignment.

I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

The reported analyses, opinions, and conclusions are limited only by the reported Assumptions and Limiting Conditions, and are my own personal, impartial, unbiased professional analyses, opinions, and conclusions.

Any decrease or increase in the fair market value of the subject real property prior to the date of valuation caused by the project or improvements for which the subject property is acquired, or by the likelihood that the property would be acquired for such project or improvements, other than due to physical deterioration within the reasonable control of the owner, has been disregarded in appraising the subject property.

The reported analyses, opinions, and conclusions were developed, and this report, to the best of my knowledge and belief, has been prepared in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which includes the Uniform Standards of Professional Appraisal Practice (USPAP).

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. As of the date of this report, I have completed the Standards and Ethics Education Requirement for Practicing Affiliates of the Appraisal Institute.

The opinion of fair market value for the proposed acquisition of the entire subject property as of the date of valuation is set forth in the Summary of Salient Facts and Estimate of Just Compensation and is based upon my independent appraisal and the exercise of professional judgment.

John Russell, Appraisal Research Analyst with AR/WS, aided in the writing of portions of this report, market research, data collection and confirmation of comparable data. No one else provided significant real property assistance to the person signing this certification.

I hereby certify that my opinion of the market value of the property appraised as described in this report is included herein and that my opinions and conclusions were made subject to the Assumptions and Limiting Conditions in this report and without collusion, coercion or direction from anyone as to value.

January 18, 2019
Date



Brian C. Drake, R/W-AC
State Certified General Appraiser
CA License No. AG031568

Inspection Date(s):
January 8, 2019

Assumptions and Limiting Conditions

The following Assumptions and Limiting Conditions have been relied upon and used in making this appraisal and estimating the respective values required by the purpose of the appraisal and its intended use.

- No responsibility is assumed for legal or title considerations. Title to the property is assumed to be good and marketable, unless otherwise stated in this report.
- The property is appraised free and clear of any or all liens and encumbrances, unless otherwise stated in this report.
- Responsible ownership and competent property management are assumed, unless otherwise stated in this report.
- The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
- Sketches, plat maps, or photographs contained in this report are included to assist the reader in visualizing properties and no survey has been made of the property by the Appraiser.
- No responsibility is assumed for discovery of hidden or non-apparent conditions of the property, subsoil, or the structures that render it more or less valuable. Encroachment of real property improvements is assumed to not exist. No responsibility is assumed for arranging for engineering studies or a survey, which may be required to discover these conditions.
- It is assumed that the subject is in full compliance with all applicable Federal, State, and local environmental regulations and laws, unless otherwise stated in this report.
- It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless nonconformity has been stated, defined, and considered in this report.
- It is assumed that all required licenses, certificates of occupancy, or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been, or can be, obtained or renewed for any use on which the value conclusions contained in this report are based.
- The Appraiser is not a soil expert. The existing soil and substructure have been assumed adequate for existing or proposed uses unless contrary information is provided and contained in this report. It is advisable to have a soil analysis and report completed by a qualified soil engineer, or other qualified expert, so that any interested party will become knowledgeable as to the important soil information including seismic data, soil contaminants, type of fill, if any, or other relevant matters.

- Unless otherwise stated in this report, it is assumed that there are no hazardous or toxic substances in the soil comprising the subject land.
- Unless otherwise stated in this report, the subject property is appraised without a specific compliance survey having been conducted to determine if the property is or is not in conformance with the requirements of the Americans with Disabilities Act. The presence of architectural and communications barriers that are structural in nature and would restrict access by disabled individuals may adversely affect the property's values, marketability, or utility.
- The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.
- Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written prior consent of the Appraiser, and in any event, only with proper written qualification and only in its entirety.
- The delivery and/or possession of this report does not require the Appraiser to attend or give testimony at any meeting, public hearing, pretrial conference, deposition or court trial unless there is a written agreement between the Appraiser and the party possessing or relying on this report or requesting such services.
- Neither all nor any part of the contents of this report (*especially any conclusions as to value, the identity of the Appraiser, or the firm with which the Appraiser is connected*) shall be disseminated to the public through advertising, public relations, news sales, or other media.

Project Assumptions and Limiting Conditions

- A condition of title guarantee prepared for the subject property by a title company was reviewed and is displayed in the Addenda of this report. The Appraiser relied on information contained in the report including the ownership, legal description of the subject property, and title exceptions.
- The Jurisdictional Exception Rule of the Uniform Standards of Professional Appraisal Practice (USPAP) is invoked where the USPAP requirements conflict with federal or state laws relating to appraisals for the acquisition of real property by public agencies. The exceptions include the disregard of the proposed public project, which is included as a hypothetical condition within this report. Disregarding the proposed public project as required by California Code of Civil Procedure Section 1263.330 is contrary to Standards Rule 1-2(e) because the effects of the public project and proposed acquisitions on the subject's property value are being ignored. In addition, Evidence Code Section 822 excludes using comparable data involving acquisitions by public agencies having the

power of eminent domain, listings and offers, assessed values and appraising any property or property interest other than that being valued. This may conflict with Standards Rule 1-4, which requires the appraiser to collect, verify and analyze all information necessary for credible assignment results and further specifies that the appraiser analyze such comparable sales data as are available to indicate a value conclusion.

Hypothetical Conditions

Uniform Standards of Professional Appraisal Practice (USPAP 2018/2019 edition: Definitions) defines hypothetical condition as follows:

“HYPOTHETICAL CONDITION: a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.

Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.”

The following hypothetical condition is used for this appraisal and may affect the assignment results:

The analysis of the subject of this appraisal is made under the hypothetical condition that the project and steps leading up to the project do not exist.

Extraordinary Assumptions

Uniform Standards of Professional Appraisal Practice (USPAP 2018/2019 edition: Definitions) defines extraordinary assumptions as follows:

“EXTRAORDINARY ASSUMPTION: an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser’s opinions or conclusions.

Comment: Uncertain information might include physical, legal, or economic characteristics of the subject property; or conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.”

The following extraordinary assumptions are used for this appraisal and may affect the assignment results:

None

General Information

Region, City and Neighborhood Data



The subject property is located in the City of Milpitas, within the County of Santa Clara. Santa Clara County is included as one of the nine counties that comprise the San Francisco Bay Area, located at the southern end of the San Francisco Bay between the Diablo Range to the east and the Santa Cruz Mountains to the west, encompassing 1,312 square miles.

Santa Clara County is the center of an area known as "Silicon Valley," so named because this is the birthplace of the computer chip and the resulting high-tech employment sector. Santa Clara County is a global economic center for high technology and has the third highest GDP per capita in the world (after Zurich, Switzerland and Oslo, Norway), according to the Brookings Institution. The County's

concentration of wealth, primarily due to the tech industry, has made it one of the most affluent places in the United States.

According to the California Department of Finance, as of January 2018, the County had an estimated population of 1,956,598. There are 15 incorporated cities and towns in Santa Clara County. The county seat and largest city is San Jose, the 10th most populous in the nation and the 3rd most populous in the state, with a current population estimate of 1,051,316. Milpitas is home to approximately 74,865 people.

Milpitas is often referred to as a crossroads for the region, with much of the land within the city limits situated between two major freeways (I-880 and I-680). To the west of I-880 is a largely industrial and commercial area. Most of the land within the city limits to the south between the two freeways is improved with industrial uses while residential neighborhoods are prominent in the northern half. Properties to the east of I-680 are primarily residential or undeveloped hillside. Although much of the land within the city limits to the south between I-880 and I-680 is and was improved with industrial, a significant portion of this area has been designated by Milpitas's General Plan and has already transitioned to high density residential development, influenced by the light rail that had been placed in service in 2004 and the Bay Area Rapid Transit (BART) extension.

A 16-mile extension of the BART system, currently being built, proposes to connect the Warm Springs BART Station located in the southern part of the City of Fremont, where it previously had terminated, passing through Milpitas to downtown San Jose. A major multimodal station is under construction near the intersection of Montague Expressway and Capitol Avenue in an area of the City's Transit Area Specific Plan, where the subject is located (see the following exhibit).



The first phase of the BART Silicon Valley Extension is the 10-mile, two station, Berryessa Extension. This extension begins at Fremont's Warm Springs Station, proceeds through Milpitas and terminates in San Jose's Berryessa Area. The extension brings commuters into Silicon Valley with convenient connections to VTA (Valley Transportation Authority) bus, light rail, and bicycle and pedestrian trails that serve employment centers. New developments, including housing, commercial and retail space, are being built near these station areas. The Milpitas and Berryessa/North San Jose stations are intended to be served by two lines providing direct and connecting service to the entire BART system. The Milpitas Station will include a direct connection to VTA's Montague Light Rail Station, and the Berryessa/North San Jose Station will feature direct bus service to and from downtown San Jose, timed to meet BART trains, as well as connect to local bicycle and pedestrian trails.

Just to the north of the subject, across East Capitol Avenue, is where the Milpitas BART station is located. It is currently under construction and is scheduled to open sometime between March and September of 2019. The station is situated near the intersection of Capitol Avenue, Great Mall Parkway, and Montague Expressway. A pedestrian bridge will connect to the elevated Montague light rail station, which will replace the Great Mall Main Transit Center; the Great Mall is a large indoor outlet shopping mall built in 1994, containing 1.4 million square feet of gross leasable area, 200 stores, and is the second largest mall in Northern California.

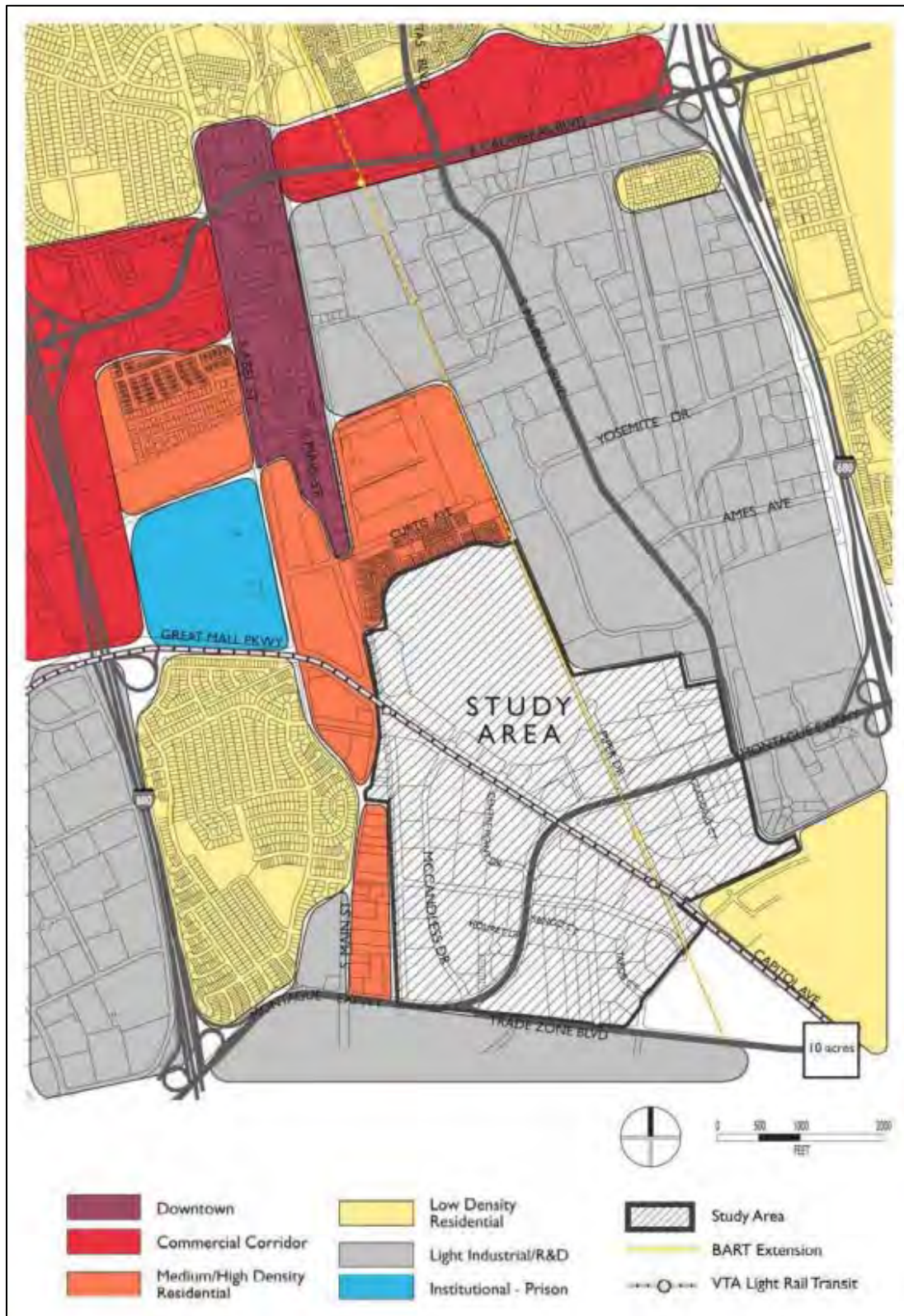
City of Milpitas**TASP Park and Roadway Infrastructure Project**

APN: 086-36-012 – Chung

The subject is included in an area defined by the Milpitas Transit Area Specific Plan (TASP), adopted June 2008, which covers approximately 437 acres centered on a roughly one-half mile radius around the Milpitas BART Station, bounded by the Great Mall and a railroad spur to the north; Trade Zone Boulevard, Lundy Place, and Trimble Road to the south; the Union Pacific Railroad line and Main Street to the west; and South Milpitas Boulevard and Berryessa Creek to the east (see exhibit displayed on the following page). The TASP envisions the transition of older industrial uses to high-intensity mixed-use development, with housing, office, retail, restaurants, personal services, hotels, parks, and community facilities, much of which has already occurred or is occurring within the plan area.

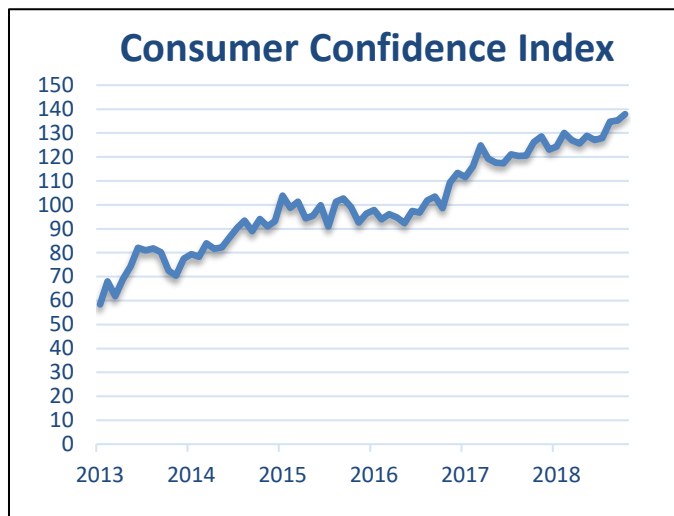
The subject is included in the Trade Zone/Montague Sub-District of the TASP. The subdistrict is located east of Montague Expressway and south of Capitol Avenue, extending to the city limits on Trade Zone Boulevard and Lundy Place. The TASP envisions a moderate-to-high density residential area within this subdistrict, with ample green space in the form of a large park (proposed on a portion of the subject property) and trails along Penitencia Creek. The Capitol Avenue and Montague Expressway portions of the subdistrict are intended to be lined by mid-rise and high-rise mixed-use buildings. The City Council has approved a site development permit and financial support for a project with approximately 100 affordable units located at 355 Sango Court, located directly north of the subject. This is addition to several large high-intensity residential mixed-use projects located within the TASP surrounding the Milpitas BART station that were recently completed or are currently under construction.

Transit Area Specific Plan Exhibit



Real Estate Market Conditions

According to the Federal Reserve, economic activity in the Twelfth District continued to expand at a moderate pace during the reporting period of September through early October. Conditions in the labor market tightened noticeably, and wage pressures picked up. Price inflation increased moderately. Sales of retail goods picked up slightly, while activity in consumer and business services was solid. Activity in the manufacturing sector expanded moderately, and conditions in agriculture improved somewhat. Contacts reported that residential and commercial real estate market activity expanded at a strong pace. Lending activity picked up moderately.

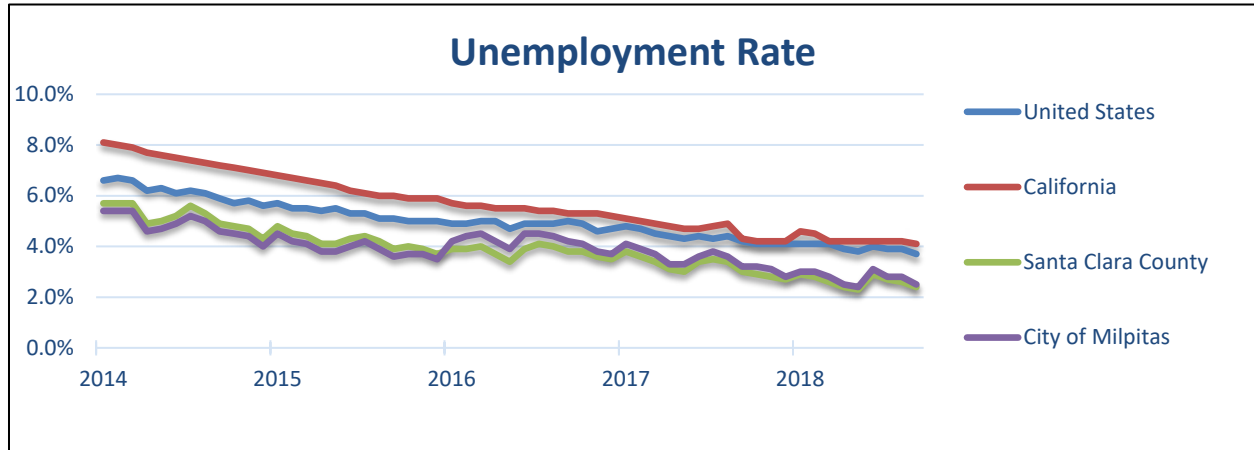


The Conference Board Consumer Confidence Index (CCI) is a barometer of the health of the U.S. economy from the perspective of the consumer. The index is based on consumer's perceptions of current business and employment conditions, as well as their expectations for six months regarding business conditions, employment conditions, and income. On a national level, Americans' assessment of current conditions has been favorable in the past few years following an extended period of instability and a pro-longed recession. After falling to a low of 25.3 in February 2009, the Conference Board

Consumer Confidence Index has increased steadily and now stands at 138.4 as of September 2018, its highest level in 18 years. Comparatively, the index stood at 120.6 in September 2017. Most analysts consider an index of 90 as indicating a stable economy.

According to the United States Department of Labor, Bureau of Labor Statistics, the United States had an unemployment rate of 3.7% in September 2018, which is down from 4.2% a year prior. The unemployment rate is defined as the percentage of unemployed workers in the total labor force and is recognized as a key indicator of labor market performance. When workers are unemployed, their families lose wages, and contribution to the economy in terms of the goods or services that could have been produced are lost. Unemployed workers also lose purchasing power, which can lead to unemployment for other workers, creating a ripple effect that impacts the entire economy. The California Employment Development Department reports that the State had an unemployment rate of 4.1% in September 2018, a decrease of 0.2% year-over-year. Santa Clara County had an unemployment rate of 2.4%, as reported for the month of September 2018, and the City of Milpitas, 2.5%, which both figures are down from 3.0% and 3.2%, respectively, this time in 2017.

The following graph shows unemployment rates since 2014 for the nation, state, region, and City of Milpitas.

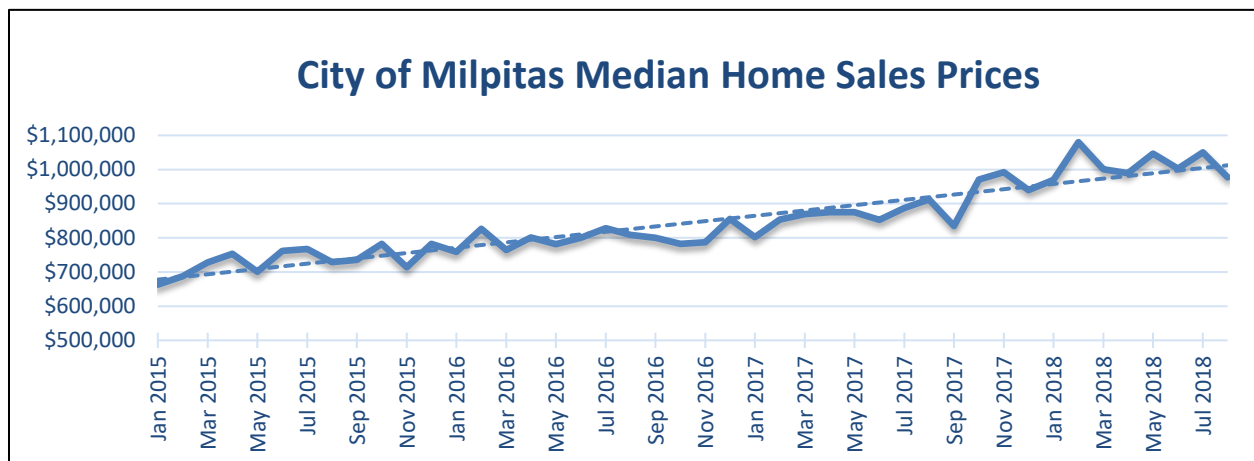


There were an estimated 1,041,900 jobs in Santa Clara County as of September 2018, an increase of 26,400 jobs from a year prior, and the City of Milpitas had an estimated 41,500 jobs, an increase of 1,100 jobs over that same time period.

Residential Market

Generally, housing is seen as one of the sectors to rise or fall as economic conditions improve or degrade. Housing starts and building permits can be indicators of activity in the housing market. New residential housing construction also generally contributes to other types of production in the economy.

The following chart shows the growth of median home sale prices in the City of Milpitas since 2015 based on data from CoreLogic. Although there are some fluctuations in the median home price from month to month, the trend line shows the market consistently moving in a positive direction over the last several years.



The median home sales price in Santa Clara County in August 2018 was \$1,120,000, up 19.8% from \$935,000 in August 2017, according to CoreLogic. The median home sales price in Milpitas over the same time period was \$977,000, up 7.1% from \$912,500.

Area	# Sold	Median Price August 2018	Median Price August 2017	% Change Year to Year
Santa Clara County	1,692	\$1,120,000	\$935,000	19.8%
Campbell	49	\$1,205,000	\$1,200,000	0.4%
Cupertino	38	\$1,807,500	\$1,981,500	-8.8%
Gilroy	70	\$740,000	\$685,000	8.0%
Los Altos	36	\$3,414,000	\$2,892,500	18.0%
Los Gatos	51	\$1,600,000	\$1,652,500	-3.2%
Milpitas	111	\$977,000	\$912,500	7.1%
Morgan Hill	89	\$980,000	\$803,000	22.0%
Mountain View	72	\$1,780,000	\$1,425,000	24.9%
Palo Alto	51	\$3,188,000	\$2,672,750	19.3%
San Jose	842	\$985,000	\$821,000	20.0%
Santa Clara	98	\$1,285,000	\$1,157,500	11.0%
Saratoga	36	\$2,627,500	\$2,460,100	6.8%
Stanford	3	\$2,935,000	n/a	n/a
Sunnyvale	130	\$1,446,500	\$1,325,000	9.2%

Source: CoreLogic

Fueled by the tech industry, the Bay Area economy continues to experience upwards growth, according to the Kidder Mathews *Bay Area Multifamily Report*, Q3 - 2018. Demand for housing remains strong, placing pressure on developers to deliver units, especially in urban areas. Average rental rates currently stand at a high \$2,729 across all nine counties in the Bay Area, compared to \$2,620 from the prior year. San Francisco commands the highest average asking rent at \$3,583, as ongoing strong demand outpaces the City's supply. Of notable interest are the climbing rents in San Mateo County. Rents have increased 6.10% year-over-year in this region and are currently at an average rate of \$3,070. Further, Alameda County rents rose to an average of \$2,464, experiencing a 3.2% rental growth year-over-year. Oakland is a popular location for many people, as it provides them a cheaper living situation than neighboring areas and allows easy access to San Francisco. By the end of the third quarter, average rates stood at \$2,670 in Oakland. Looking into the fourth quarter and the first half of 2019, Kidder Mathews has forecasted rents to increase in the Bay Area by an average of 2.8%.

The following table displays county statistics for multifamily residential activity in the 3rd quarter of 2018, as reported by Kidder Mathews.

County Statistics									
County	Total Units	Units Planned	Units Under Construction	Quarterly Deliveries	Average Asking Rents	Vacancy	Rent Growth (YOY)	Unemployment	Avg Cap Rate
San Francisco	43,638	4,800	4,472	467	\$3,583	4.4%	3.60%	2.4%	N/A
San Mateo	30,577	1,406	1,962	0	\$3,070	4.1%	6.10%	2.3%	N/A
Santa Clara	109,486	5,741	9,892	0	\$2,874	3.6%	4.70%	2.7%	4.4%
Alameda	65,866	8,172	6,938	0	\$2,464	3.9%	3.20%	3.2%	4.3%
Contra Costa	29,666	2,209	552	0	\$2,137	3.9%	2.10%	3.3%	4.6%
Marin	6,957	0	0	0	\$2,783	2.6%	4.00%	2.5%	N/A
Napa	3,140	0	282	0	\$2,094	2.3%	4.80%	2.9%	N/A
Sonoma	12,845	828	446	0	\$2,051	3.7%	5.90%	2.9%	N/A
Solano	12,666	0	82	0	\$1,733	3.6%	4.00%	4.1%	5.1%
Total	314,841	23,156	24,826	467	\$2,729	3.6%	4.30%	2.9%	4.6%

Source: Kidder Mathews, Q3 2018 Bay Area Multifamily Report

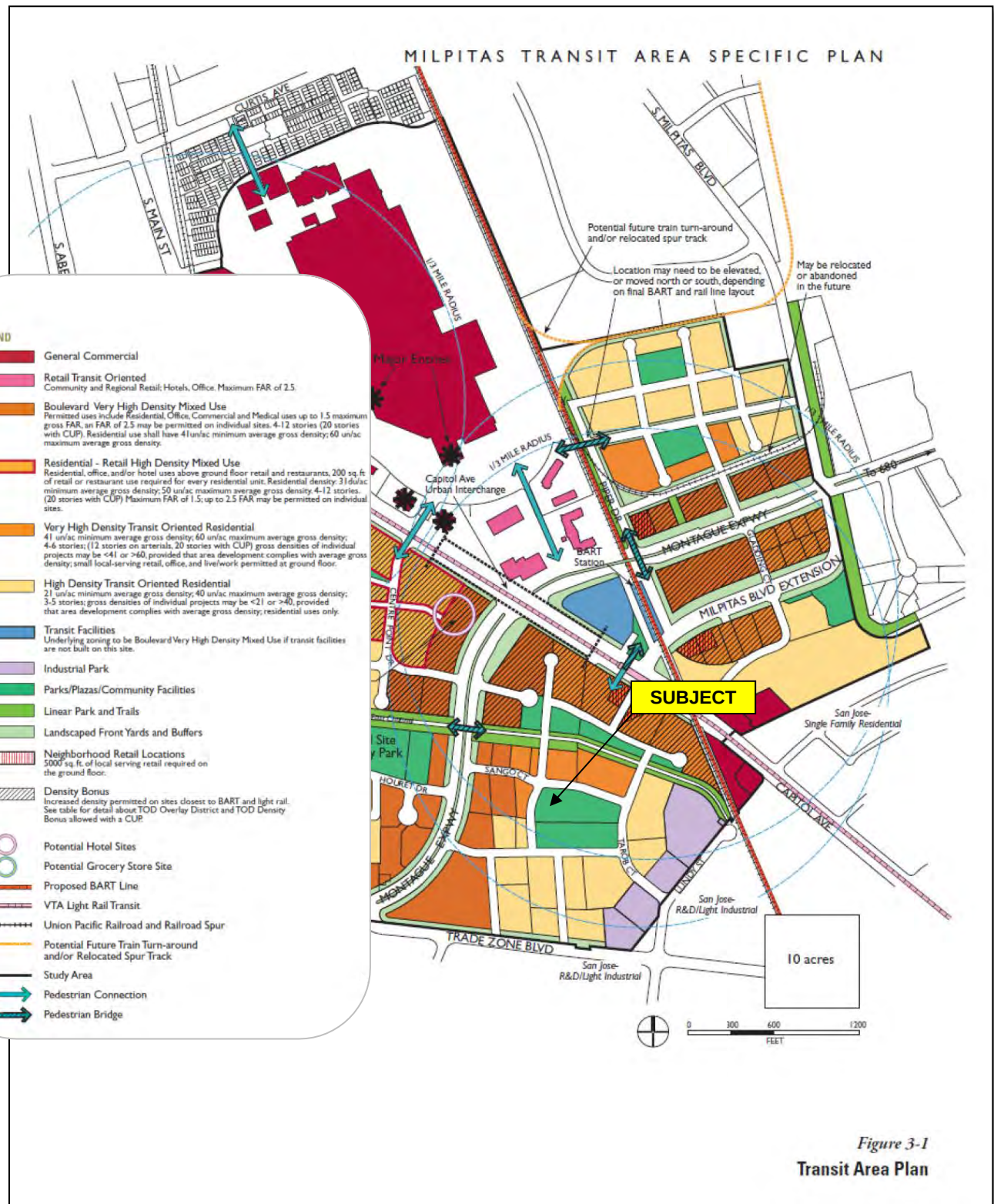
The City of Milpitas has seen a surge in building permits for new housing over the past several years. According to the US Census Bureau, as of September 2018 (the most recent data available), there were 373 new permits for the year-to-date. New permits for September of 2017 totaled 295 over the same time period, expressing a 26% increase in permits between September 2017 and September 2018. Permits for September 2016 totaled 116 for the year-to-date, showing a 154% increase from 2016 to 2017. These recent escalations express the demand for residential development in the area and exhibit the increasing interest of developers wanting to invest in housing projects.

Project Description

The Milpitas Transit Area Specific Plan (TASP) was adopted June 2008 with the goal of transforming an older light industrial district in south Milpitas near the Great Mall in an effort to meet the high demand for housing, retail, offices, and take advantage of public investment in BART and the VTA Light Rail system. The TASP creates a structure for a walkable, transit-oriented area with a mix of land uses to encourage walking, biking, and transit trips and minimize vehicle congestion. Based on City Council direction, the Draft Preferred Plan proposes redevelopment of the 437-acre plan area with 7,109 dwelling units, 993,843 square feet of office space, 340 hotel rooms and 287,075 square feet of retail space.

The TASP is within an area covered by the Midtown Milpitas Specific Plan, which has established open space requirements for the majority of the TASP. New residential development is to provide a minimum of 3.5 acres of open space per thousand residents, with 2.0 acres per thousand residents to be public park land. To meet these requirements, the TASP includes one or two public parks within the subdistricts that comprise the plan. Furthermore, the increase in housing, jobs, and shopping destinations in the plan area will generate more automobile traffic. In order to avoid or mitigate the expected traffic congestion, the TASP calls for a number of improvements to intersections and roadways in and around the plan area. As a result, the City of Milpitas proposes to acquire the subject property for a public park and extension of Sango Court in an effort to meet the goals of the TASP.

Project Exhibit



Subject Parcel Information

Subject Property Data Summary

Assessor's Parcel Number:	086-36-012
Property Location/Address:	1700 Sango Court, Milpitas, CA
Owner:	Henry W. & Olivia Y. Chung
Owner's Contact Information:	Henry Chung: 408-957-9600
Owner's Address:	1700 Sango Court, Milpitas, CA
Owned Since:	For more than five years
Occupied By:	Owner; two tenants occupy a portion of the yard space on a month-to-month basis
Principal Improvements:	Industrial building measuring 9,600 gross square feet
Total Site Area:	56,926 square feet or approximately 1.31 acres
Zoning:	R4-TOD – Multi-Family Residential, Very High Density / Transit-Oriented Development Overlay
General Plan:	Multi-Family Residential, Very High Density (VHD); 41 up to 60-90 units/gross acre in TOD
Highest and Best Use	
As If Vacant:	Development of a multifamily residential project at the highest density allowed under the zoning and that is accepted by the market. <i>This conclusion disregards the designation for the subject of Parks/Plazas/Community Facilities by the Transit Area Specific Plan, under the hypothetical condition that the project and steps leading up to the project do not exist.</i>
As Improved:	Continue the current industrial use, as an interim use, while obtaining entitlements for a multifamily development consistent with the highest and best use as if vacant.
Flood Hazard Information:	Flood Zone A, Map No. 06085C0067J, dated February 10, 2014 and Map No. 0685C0069H, dated May 18, 2009
Earthquake Information:	Not located in an Earthquake Fault Zone

[illegible]

Subject Aerial Photograph



Subject Property Photographs



View of the northern (front) elevation of the building located on the subject property



View of the northern and eastern elevations of the building located on the subject property

Subject Property Photographs



View of the southern and eastern elevations of the building located on the subject property

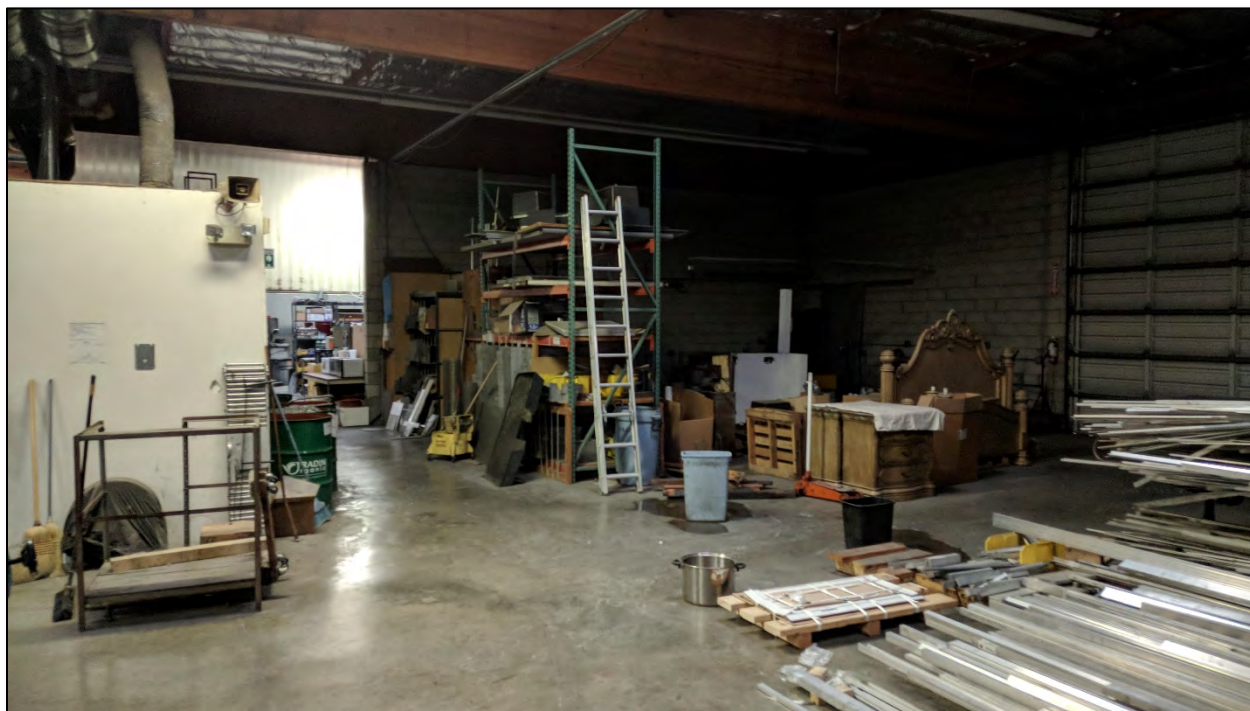


View of an area of the interior of the building located on the property used for office space

Subject Property Photographs



View of an area of the interior of the building located on the property used for production space



View of an area of the interior of the building located on the property used for storage

Subject Property Photographs



View of the subject's yard area, as seen from the northwest corner of the parcel, facing east



View of Sango Court, as seen from the subject's driveway access, facing west

Property Description

Site Description

The subject property is located at the eastern end of Sango Court, in the City of Milpitas, in Santa Clara County. The street address for the subject is 1700 Sango Court. Sango Court is a short, undivided two-lane road that lends access to slightly more than half a dozen properties located in what was predominately an industrial area in the southern part of the City, and as discussed previously, is in transition to high-intensity mixed-use development. The subject site continues to share most of its boundaries with industrial properties but the City Council has approved a site development permit and financial support for a project with approximately 100 affordable units at 355 Sango Court, located directly north of the subject, and the parcel to the south was improved with open park facilities completed in the first half of 2017 that support an adjacent multifamily development.

The subject property comprises 56,926 square feet or approximately 1.31 acres of land, according to the legal description accompanying a current title report. This area is consistent with the assessor's parcel map, which was presented prior to this report section. The site is slightly irregular in shape but generally rectangular. It is flat, level and elevated just above street grade. The property has 50 feet of frontage along Sango Court, which is improved with curb and gutter but there is no sidewalk. All public utilities needed to serve the subject's existing improvements, and the concluded highest and best use for multifamily development, are to the site.

Improvement Description

The subject property is improved with a single-story, concrete block industrial building measuring 9,600 (80 feet by 120 feet) square feet, based on the appraiser's measurements. According to public records, the building was constructed in 1979. The structure is currently demised for one user. Approximately 15% of the gross area is air-conditioned (HVAC) office space and the balance is warehouse or open production. The finish in the office area consists of walls constructed of wood studs covered with gypsum board that has been textured and painted; ceilings have a similar construction to the walls in some areas, while others have a T-bar type drop ceiling; there is fluorescent lighting though the built-out space; and floor coverings are limited to decorative tile located in the lobby area, sheet linoleum in the lavatories and a kitchen, and carpet in the shop space in an area of cubicles, but otherwise sealed concrete. There are two unisex bathrooms, one with multiple fixtures. The shop space is open to an insulated roof deck with a clear height of about 17 feet. Skylights that allow natural light into the warehouse and production areas accompany hanging fluorescent fixtures to illuminate the space. A flat, built-up roof is supported by glulam beams, on steel columns. There are two 14 foot by 19-foot rollup doors in the shop space, accessed by two truck wells. There is an average amount of fenestration located along the front elevation of the building, with some windows that coverup two rollup doors no longer in service, but otherwise the exterior walls have exposed concrete block that has been painted or covered with wood siding. A wooden mansard extends out beyond the exterior walls on a portion of the building, as a decorative accent. Power to the building is 220 amps, 110/208, 3 phase. No fire sprinklers were observed.

The condition of the building is commensurate with its actual age, 40 years, and judged to be in fair condition, based on the Appraiser's observations at the time of inspection. Several deferred maintenance items were noted, from those that require immediate attention, such as a leaky roof, to worn-out, weathered surfaces.

The portion of the lot not covered with the footprint of the building has been paved with asphalt. Striped parking is limited to stalls located at the front of the building and along the east elevation, but otherwise undesignated. Certain areas of the yard space and site perimeter have been landscaped, and although limited, is similar to competing industrial properties. The site has been secured with various types of fencing and gates.

Personal Property Description

An inventory of personal property located on the subject property was not taken by the Appraiser. The owner occupies the property and items of personal property associated with the owner's business, KA Tool & Technology, Inc. were observed. Two different tenants occupy a portion of the yard space for either storing wood pallets or box trucks.

Title and Property History

A condition of title guarantee prepared for the subject property by North American Title Insurance Company and dated October 1, 2018 was provided to the Appraiser for use in this assignment and is displayed in the Addenda. According to the title report reviewed, the subject's fee ownership is vested in Henry W. Chung and Olivia Y. Chung Partnership, a California General Partnership.

According to a summary of the public record for the subject, the property has been under the same ownership for more than five years. The subject property appears to have been offered for sale for over ten years, evident from past marketing flyers. The property is currently being marketed at a list price of \$5,421,080 or \$95.23 per square feet, based on 56,926 square feet of unentitled land zoned for multifamily development. See a current marketing flyer obtained from listing agent Wing Liew's website that is displayed in the Addenda. Mr. Liew provided two prior letters of intent to purchase the subject, one from Amcal Multi Housing Inc. for \$6,850,000 or approximately \$120.33 per square foot, which expired on May 24, 2017; and another from Lucky Investment & Redevelopment Consultant, LLC for \$6,562,360, or about \$150.65 per square foot. The second letter of intent was dated June 1, 2016 and never executed. Both of these offers to purchase the subject property were contingent on the prospective buyers obtaining entitlements for their respective projects that they were unable to obtain approvals for. Mr. Liew indicated that the offers were not pursued because the owner did not want to hold the property in escrow during the entitlement process, in addition to other contingencies. The owner is currently in contract negotiations with the City of Milpitas who desires to purchase the property. A price has not been set.

The subject site was created in the later part of 1978 as part of a recorded subdivision, improved with an industrial building in 1979, and used for industrial purposes since that time. The owner has occupied the property since 1996, dba KA Tool & Technology, Inc., and who according to the company website, specializes in engineering support tools for the PCB manufacturing industry.

Products include wave fixtures, SMT fixtures, AOI / 5DX / FP fixtures, press fit fixtures, as well as custom tooling and dies.

Two tenants occupy the property on a month-to-month basis for yard storage. Rental agreements have not been provided to the Appraiser for review.

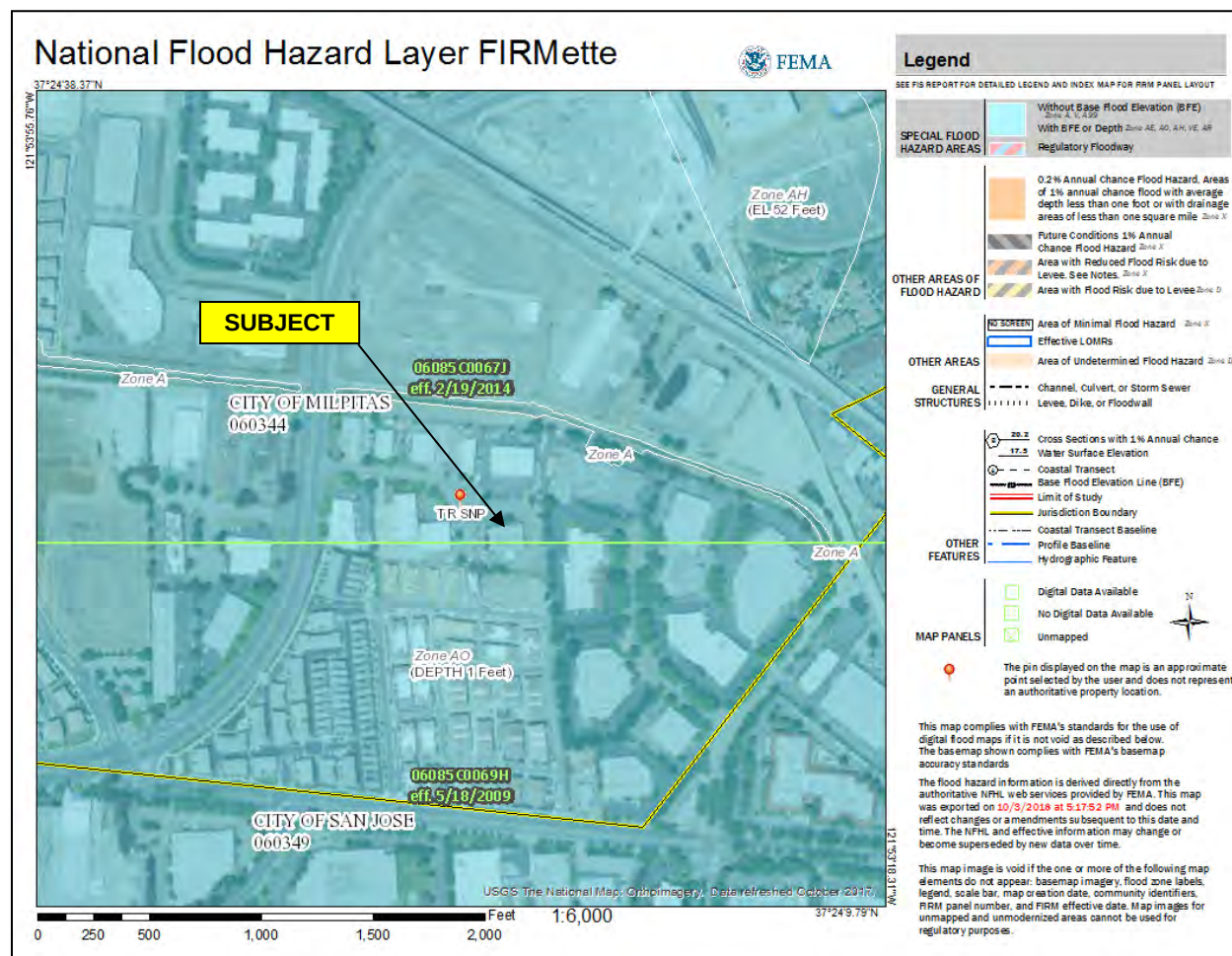
Existing Easements

A title report reviewed for the subject property describes the following recorded easements:

- An easement for public service facilities, including poles, wires, conduits, storm sewer, sanitary sewers, water mains, public utilities and appurtenances and incidental purposes, recorded April 9, 1974 in Book 0840, Page 267 of Official Records in favor of: City of Milpitas, a Municipal Corporation that affects the northern 20 feet of the property; and
- An easement for public utilities and incidental purposes, recorded May 28, 1975 in Book B431, page 640 of Official Records in favor of: City of Milpitas, a Municipal Corporation that affects the westerly 10 feet of the property located along the Sango Court frontage.

Flood Hazard Information

The subject property is in a mapped area designated to be in Flood Zone A by the Federal Emergency Management Agency (FEMA). Flood Zone "A" is defined as areas with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30-year mortgage. The FEMA Flood Zone Map Panel(s) is 06085C0067J and 0685C0069H, with an effective date of February 10, 2014 and May 18, 2009, respectively. A copy of the Flood Insurance Rate Map is included on the following page.



Earthquake Information

All properties in California are subject to some degree of seismic risk. The Alquist-Priolo special Studies Zone Act of 1972 was enacted by the State of California to regulate development near active earthquake faults. The Act required the State Geologist to delineate “special studies zones” along known active faults in California. Cities and counties affected by the identified zones must limit certain development projects within the zones unless geologic investigation demonstrates that the sites are not threatened by surface displacement from future faulting.

According to the California Department of Conservation, California Geological Survey, the subject property is not located in an Earthquake Fault Zone as designated under the Alquist-Priolo Earthquake Fault Zoning Act. Related development limitations, therefore, do not apply.

Environmental Assessment

A Phase I Environmental Site Assessment (ESA) was performed by A&M Environmental Services (A&M) for the subject property. Within the scope of the investigation, A&M did not discover any evidence of a recognized environmental condition in connection with the subject or adjacent properties. In A&M's opinion, no further investigation is warranted. A summary of the findings is included in the Addenda.

Zoning and General Plan of the Subject Property

Parcel (APN)	Zoning	General Plan	Current Use
086-36-012	R4-TOD – Multi-Family Residential, Very High Density / Transit-Oriented Development Overlay	Multi-Family Residential, Very High Density (VHD); 41 up to 60-90 units/gross acre in TOD	Industrial

Utilization of the subject real property is regulated by the municipal code of the City of Milpitas. The laws that govern the use of the land are the zoning ordinance, General Plan, and Transit Area Specific Plan (TASP).

The zoning category for the subject is R4-TOD – Multi-Family Residential, Very High Density with a Transit-Oriented Development Overlay. The purpose and intent of the R4 zone is to “stabilize and protect the residential characteristics of the District and to promote a suitable residential environment. The “R4” district is intended to provide for higher-density residential “villages” structured around transit stations, streets, creek side open spaces, trails and parks.” Permitted and conditionally permitted uses are identified in excerpts to the zoning code, which are displayed in the Addenda.

The purpose of the Transit Oriented Development Overlay District (“-TOD”) is to “provide for land uses, land use densities and intensities and development standards that act to enhance and support transit and to locate such uses near rail transit stations. These provisions allow for a mix of goods and services within a convenient walk of the transit stations, encourage the creation of stable, attractive residential, commercial and industrial environments within the District and provide for a desirable transition to the surrounding conventional areas.”

If any of the regulations specified in the -TOD Overlay district differ from any corresponding regulations of any district where the -TOD Overlay district is combined, then the provisions of the -TOD Overlay district shall govern.

The following table depicts some of the significant development standards that must be adhered within the R4-TOD zoning district.

Building and Site Standards	R4-TOD District
Lot Area (min):	None
Lot Width (min):	None
Density (min-max):	41-60 units per gross acre*
Building Height (max):	6 stories and 75 feet*
<u>Minimum Yard Setbacks</u>	
Front (min-max):	12-20 feet*
Side:	10 feet
Rear:	10 feet

*Deviation in development standards for the underlying base zoning district due to the provisions of the -TOD Overlay district

In the R4-TOD district, ground floor retail, restaurant, and commercial service uses are permitted up to a maximum floor area ratio of 50%.

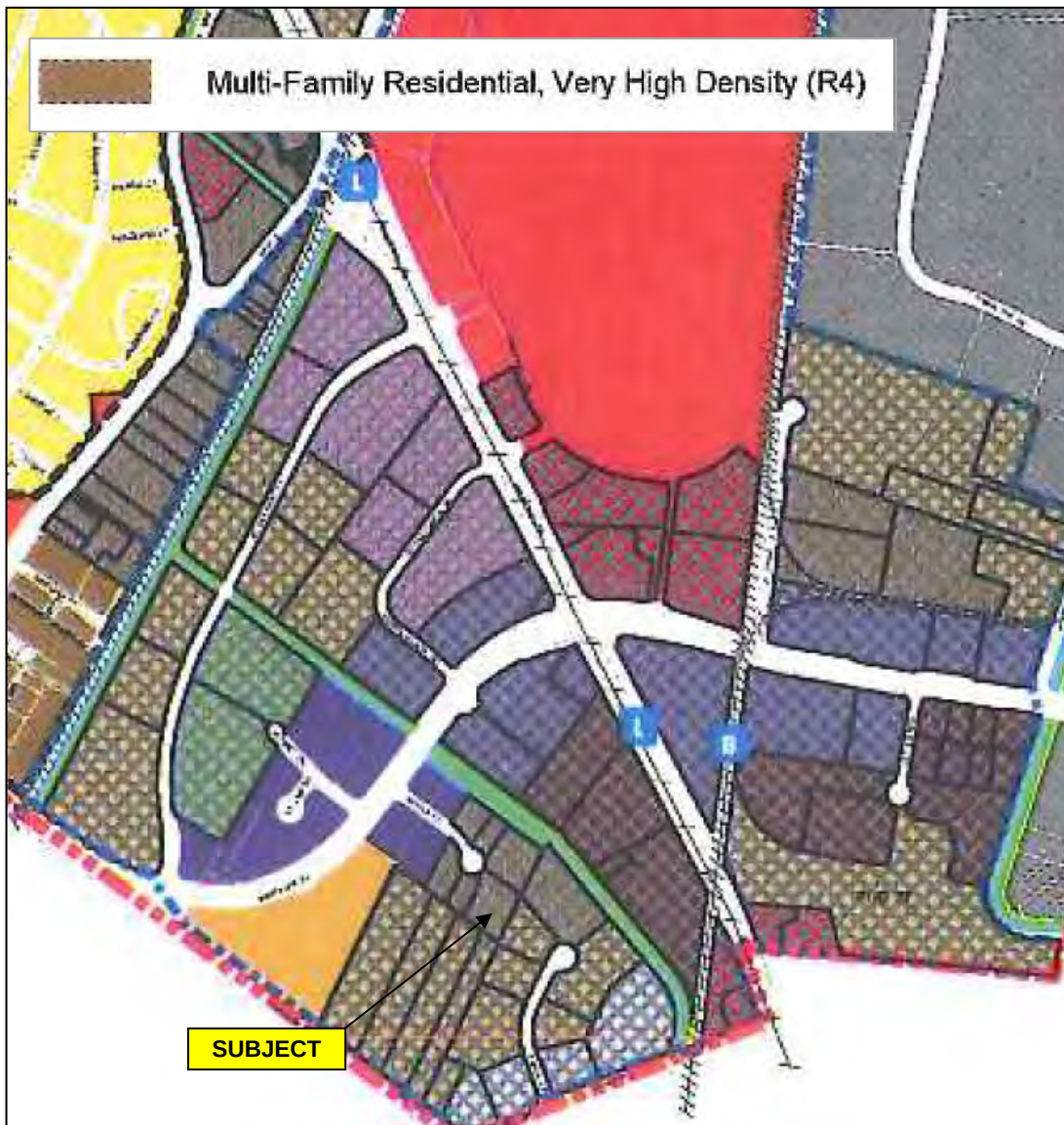
The General Plan land use designation for the subject is Multi-Family Residential, Very High Density (VHD). The General Plan was adopted in December 1994 and last amended in April 2015. This classification is “intended to create residential districts near BART and light rail stations, and requires housing to be built at an average density of at least 41 units per gross acre, up to a maximum of 60 and 90 units per gross acre. Small local-serving commercial uses are permitted at the ground floor level, including retail, restaurants, and personal services uses.”

Compliance: With the subsequent adoption of the TASP in June 2008, and rezoning of the property, the subject’s industrial use became a legal non-conforming use. If the industrial use becomes discontinued for a continuous period of more than one year, in accordance with Section XI-10-56.03 of the Milpitas Municipal Code, the prior non-conforming use may only be replaced with a conforming use. Given the market climate when the TASP was adopted, a subsection of Section XI-10-56.03 was added that allowed the re-establishment of nonconforming uses that were discontinued for more than one year when located within the TASP. However, that subsection was repealed in June 2016.

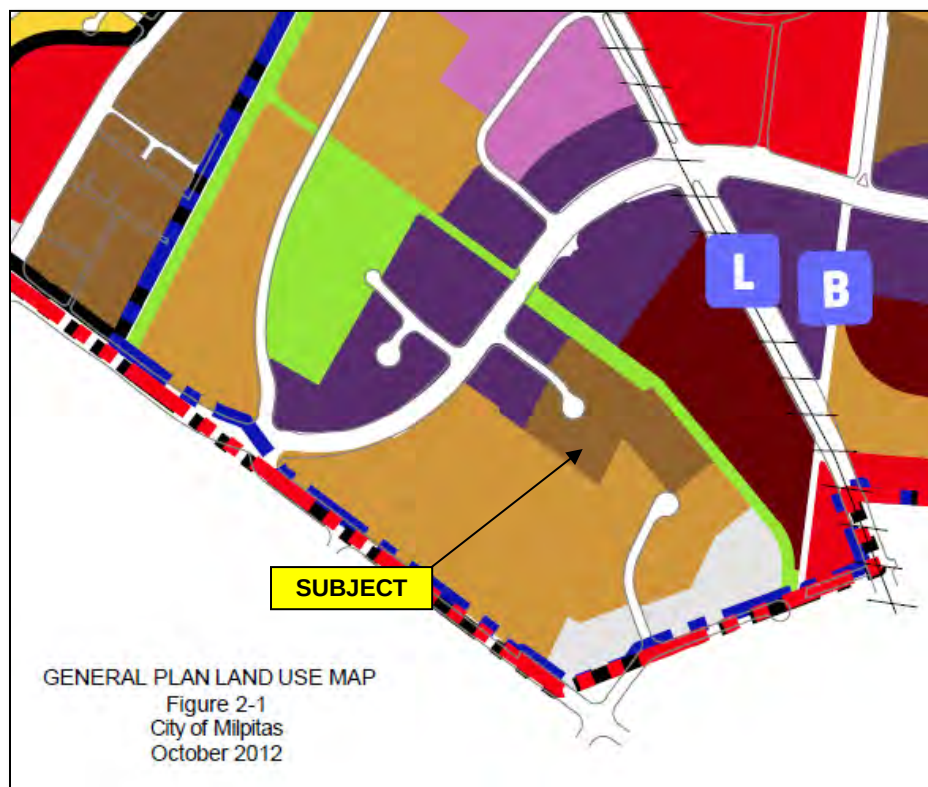
Sections of the zoning and General Plan maps, delineating the land use designations in the vicinity of the subject, are displayed following this report section.

The Transit Area Specific Plan has designated the subject property Parks/Plazas/Community Facilities; however, is disregarded for this analysis under the hypothetical condition that the project and steps leading up to the project do not exist.

Zoning Map



General Plan Map



Legend

	Hillside Very Low Density (HVL) up to 1 unit/10 gross acres		Retail Subcenter (RSC)
	Hillside Low Density (HLD) up to 1 unit/gross acre		General Commercial (GNC)
	Hillside Medium Density (HMD) up to 3 units /gross acre		Highway Services (HWS)
	Single Family Low Density (SFL) 3-5 units/gross acre		Town Center (TWC)
	Single Family Medium Density (SMD) 6-15 units/gross acre		Manufacturing and Warehousing (MW)
	Multi-Family Residential Medium Density (MFM) 7-11 units/gross acre		Industrial Park (INP)
	Multi-Family Residential High Density (MFH) 12-20 units/gross acre; up to 40 units/gross acre with special findings and PUD approval		Public Facilities (PF)
	Multi-Family Residential, Very High Density (VHD) 31-40 units/gross acre; up to 60 units/gross acre in TOD		Parks and Open Space (POS)
	Urban Residential (URR) 41-75 units/ gross acre; up to 25% additional density with CUP approval		Waterways (Shown for reference only)
	Mobile Home Park Overlay (MHP)		Midtown Specific Plan Area Boundary
	Mixed Use (MXD)		Transit Area Specific Plan Area Boundary
	Residential Retail High Density Mixed Use (RRMU)		Sphere Influence
	Boulevard Very High Density Mixed Use (BVMU)		City Boundary
	Professional and Administrative Office (PAO)		Urban Service Area Boundary
			Urban Growth Boundary
			Light Rail
			Future BART Station
			VTA Light Rail Station
			Fire Station
			Police Station

Highest and Best Use Analysis

The following definition of the term “Highest and Best Use” provides a reasonable basis for analyzing the subject property:

The reasonable, probable and legal use of vacant land or improved properties which is physically possible, appropriately supported, financially feasible, and results in the highest value.

Inherent in this definition are the following four criteria:

- | | |
|------------------------------|--|
| Legally Permissible: | What uses are permitted, given existing deed and lease restrictions, zoning, building codes, historic controls, and environmental regulations? |
| Physically Possible: | What uses of the site are possible, given the physical characteristics as revealed in the site analysis? |
| Financially Feasible: | Which possible and permissible uses will produce positive net income from the development of the site after paying operating expenses and other financial obligations? |
| Maximally Productive: | Which financially feasible use will provide the highest value or rate of return on investment? |

The primary purpose of the highest and best use analysis is to identify the most productive, competitive use to which the property can be put. This analysis is done in two parts. The first part considers the possible uses of the site as if vacant. The second part evaluates the improvements to determine if they represent the highest and best use or if they should be modified.

Another purpose of the highest and best use analysis is to assist in defining the scope of the appraisal. In investigating the highest and best use, items that affect value such as accrued depreciation and functional and external obsolescence are identified. Also, by defining the highest and best use the selection of the comparable sales is narrowed, as they typically have the same or similar highest and best use.

Based on the four tests of legally permissible, physically possible, financially feasible, and maximally productive, the Appraiser analyzed the highest and best use of the subject as if vacant and as improved.

As If Vacant

The zoning category for the subject is R4-TOD – Multi-Family Residential, Very High Density with a Transit-Oriented Development Overlay, which is intended to create residential districts near BART and light rail stations, and requires housing to be built at an average density of at least 41 units per gross acre, up to a maximum of 60 and 90 units per gross acre. Small local-serving commercial uses are also permitted at the ground floor level, including retail, restaurants, and personal services uses. *The Transit Area Specific Plan has designated the subject property*

Parks/Plazas/Community Facilities; however, is disregarded for this analysis under the hypothetical condition that the project and steps leading up to the project do not exist. The subject property is 1.31 acres, and in addition to its size, the other physical characteristics of the site would accommodate a high-intensity residential development. The demand for housing exists in the local market, as evident by the ongoing construction in the subject and competing neighborhoods, as previously discussed. Therefore, residential development is judged to be financially feasible. The Appraiser has concluded that the maximally productive use, and highest and best use of the subject (as if vacant), is for development of a multifamily residential project at the highest density allowed under the zoning and that is accepted by the market.

As Improved

The subject property is currently improved with a 1970s-vintage industrial building and associated site improvements. The condition of the building is commensurate with its actual age, 40 years, and judged to be in fair condition. The owner continues to occupy the property, but deferred maintenance items were noted, from those that require immediate attention, such as a leaky roof, to worn-out, weathered surfaces. With the subsequent adoption of the TASP in June 2008, and rezoning of the property to R4-TOD, the subject's industrial use became a legal non-conforming use. If the industrial use becomes discontinued for a continuous period of more than one year, in accordance with Section XI-10-56.03 of the Milpitas Municipal Code, the prior non-conforming use may only be replaced with a conforming use. The Appraiser has determined that the value of the land, zoned for multifamily development, exceeds the value of the improved property. Therefore, it has been concluded that the highest and best use of the subject (as improved) is to continue the current non-conforming industrial use, as an interim use, while obtaining entitlements for development of the site consistent with the highest and best use as if vacant.

Valuation

Valuation Methodology

There are three generally recognized approaches considered in the valuation of real property. These are the cost approach, sales comparison approach, and income approach. The type and age of the property and the quantity and quality of the available data affect the applicability of each approach in a specific appraisal situation.

The **Cost Approach** estimates, through support sources, the cost of constructing the subject improvements. Accrued depreciation from all causes is estimated and deducted from the estimates of cost new of the improvements. The market value of the land is added to this depreciated cost estimate to indicate the value of the subject property by the cost approach. The **Land Value Estimate** in the valuation process is usually a separate step, which is generally accomplished through the application of the sales comparison approach. The land value conclusion is then incorporated into the cost approach.

The **Sales Comparison Approach** involves a search for recent sales of properties similar to the subject. The prices paid for these properties provide the basis for estimating the value of the subject by comparison. Adjustments are made for the differences in the properties as they compare to the subject. A correlation of the data provides a value estimate for the subject. This is the most used, and considered the most reliable, approach to estimating the value of land.

The **Income Approach** looks at the relationship between a property's income producing ability and the value buyers and sellers assign to the income. An estimate is made of the market rent to indicate an annual gross income. Estimated fixed and variable operating expenses are deducted from the annual gross income to provide an annual net operating income. An indicated value of the subject is derived through direct capitalization of the indicated net income by a market derived overall rate or through the use of the discounted cash flow technique.

Reconciliation involves consideration of the relevance and influence of each approach in relation to the actions of typical users and investors of properties and particularly the subject property. The three indications of value are discussed and reconciled into a final conclusion of market value.

The City of Milpitas has requested an appraisal of the current market value of the proposed full acquisition of the subject property. It has been concluded that the highest and best use of the subject is to demolish the existing improvements and develop the site with a multifamily residential project. The subject underlying land has been estimated by applying the sales comparison approach. The prices paid for land with similar development potential as the subject provide a basis for estimating the value of the subject by comparison. The cost of demolition has been deducted from the value indicated by the sales comparison approach to arrive at fair market value of the subject property. The income and cost approaches to value were not utilized because sellers, buyers, and our peers in this market rarely rely on these approaches when offering, purchasing, or valuing property that consists of land only *The Transit Area Specific Plan has designated the subject property Parks/Plazas/Community Facilities; however, is disregarded for this analysis under the hypothetical condition that the project and steps leading up to the project do not exist.*

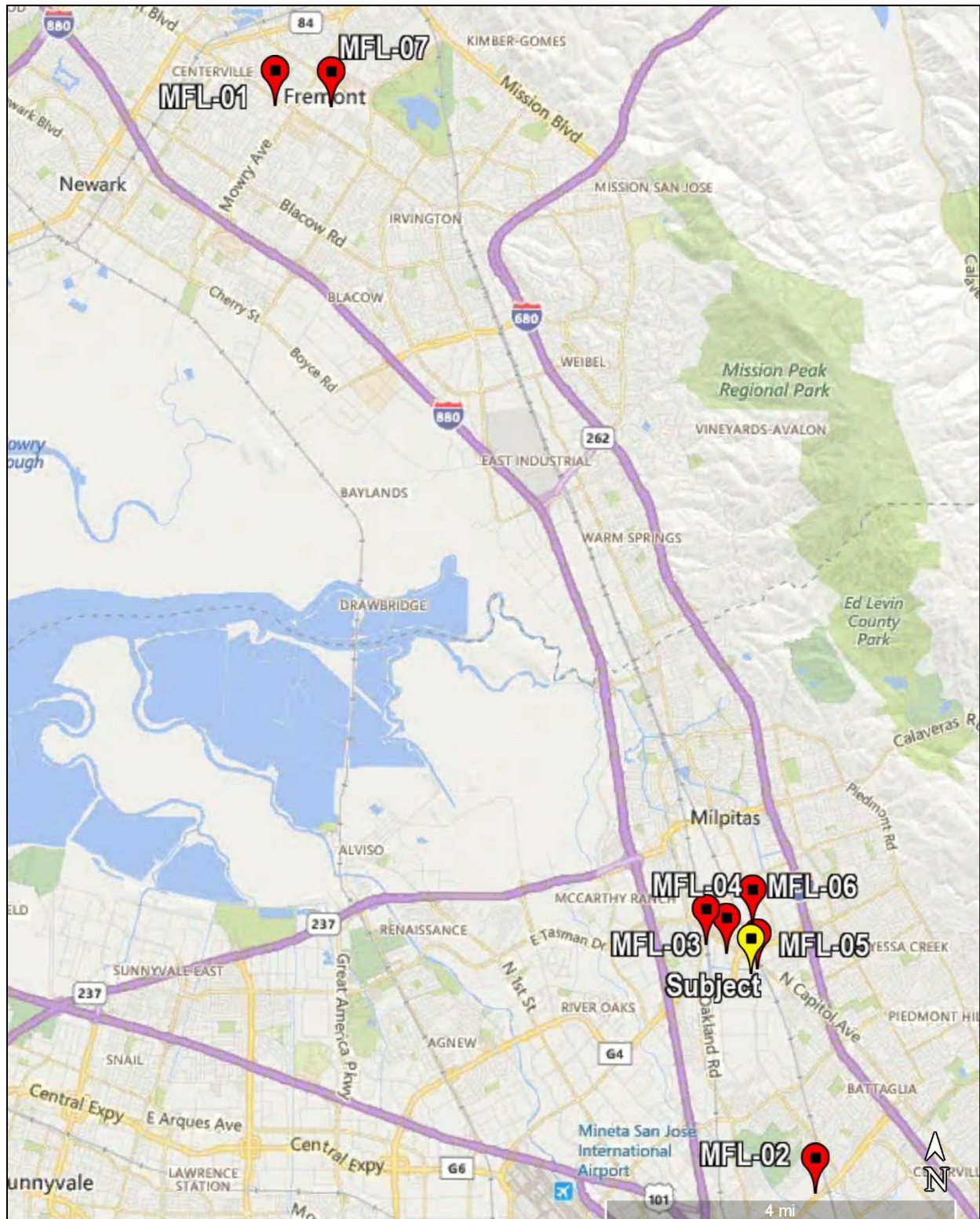
Sales Comparison Approach

A search was conducted for comparable land sales that transacted over the past several years in Milpitas and neighboring cities, with emphasis on those properties located in close proximity to the Milpitas BART station and other mass transit nodes. The comparable sales were researched, inspected, and verified to the extent possible. The following table displays a summary of the selected sales reflecting the actions of buyers and sellers in the marketplace and judged to be most representative of current market conditions for the subject property. A location map and comparable data sheets, including photographs for each comparable sale, are presented on the following pages, and assessor's parcel maps are included in the Addenda.

Sales Data Summary

No.	Address City, State APN	COE	Parcel Size (Acres)	Zoning	Density	Sales Price \$/Sq. Ft. (Land)
		Sales Contract Date	Parcel Size (Sq. Ft.)	General Plan	Entitlements	
MFL-01	38631 Fremont Boulevard Fremont, CA 501-0900-020	02/06/18 June 2016	1.10 48,003	R-3-50 Urban Residential	30-70 du/ac net Contingent on buyer obtaining entitlements for 59 affordable housing units, 63 du/ac in a 4-story complex	\$3,500,000 \$72.91
MFL-02	1501 Berryessa Road San Jose, CA 241-04-040 (portion of)	04/20/17 May 2016	6.50 283,140	A (PD) Urban Village	55-250 du/ac; FAR up to 10.0 Fully entitled for 551 apartment units & 37,000 Sq. Ft. of retail	\$35,000,000 \$123.61
MFL-03	Centre Pointe Drive Milpitas, CA 086-33-102 (portion of)	09/15/17 2015	4.51 196,499	MXD-2 & MXD-3 -TOD TASP: Residential High Density Mixed Use (RRMU) & Boulevard Very High Density Mixed Use (BVMU); Transit Oriented Development (-TOD)	See Comments Fully entitled for 393 multifamily units, 87 du/ac (Phase I)	\$16,295,000 \$82.93
MFL-04	1316 South Main Street Milpitas, CA 086-23-006	12/01/17 Not Discovered	0.39 16,798	R-4-TOD Very High Density Transit Oriented Residential	41-60 units/acre with TOD Overlay Fully entitled for 18 market-rate units, 46 du/ac	\$2,100,000 \$125.01
MFL-05	730 & 750 E. Capitol Ave Milpitas, CA 086-37-015, -026, -027	01/27/2016 & 05/17/2016 See Comments	9.38 408,593	R5/TOD Urban Residential	41-75 du/ac; up to 25% density increase with CUP Contingent on buyer obtaining entitlements for 582 market-rate units, 62	\$29,700,000 \$72.69
MFL-06	SEC of Piper Dr & Garden St Milpitas, CA 086-32-042, portion of -043	01/31/17 See Comments	5.72 249,163	R4/TOD Multi-Family Residential Very- High Density	21-40 du/ac acre, Transit-Oriented Development 60 du/ac max Contingent on buyer obtaining entitlements for 12-story tower with 210 apartments & 2,937 sq. ft. of commercial space, and 98 townhome units (54 du/ac)	\$19,600,000 \$78.66
MFL-07	3515 Walnut Avenue Fremont, CA 501-1130-009	12/04/17 Not Discovered	2.74 119,354	D-E & D-MD Commercial - City Center	FAR of 1.25 - 2.5 for Mixed Use projects with ground floor commercial and residential uses above None (See Comments)	\$11,000,000 \$92.16
Subject	1700 Sango Court Milpitas, CA 086-36-012	DOV 01/08/19	1.13 56,926	R4-TOD Multi-Family Residential, Very High Density (VHD)	41 up to 60-90 units/gross acre in TOD None	

Comparable Land Sale Location Map



Comparable Land Sale Data Sheet – MFL-01

Property Type	Multi-family - Land	
Type of Transaction	Sale	
COE	02/06/18	
Sales Contract Date	June 2016	
Sales Price	\$3,500,000	
\$/Sq. Ft. (Land)	\$72.91	
Address	38631 Fremont Boulevard	
City, State	Fremont, CA	
Zip	94536	
APN	501-0900-020	
Buyer	Allied Housing, Inc.	
Seller	Guido Bertoli	
Document #	18-028687	
DTT	\$3,850.00	
Terms	Cash to Seller	
Parcel Size (Acres)	1.10	
Parcel Size (Sq. Ft.)	48,003	
Utilities / Irrigation	All to Site	
Zoning	R-3-50	
General Plan	Urban Residential	
Density	30-70 du/ac net	
Entitlements	Contingent on buyer obtaining entitlements for 59 affordable housing units, 63 du/ac in a 4-story complex	
Verified By	Jon White - Director of Real Estate Services, Abode Services/Allied Housing	
Contact Info.	408-941-1851	
Comments	A 60-unit housing complex for homeless veterans and low- and very-low income residents will replace a used car dealership located on the property in Fremont's Centerville district, to be called the City Center Apartments. The Fremont Planning Commission voted 5-0 on October 12, 2017 to approve the project. The project will be administered by Abode Services, a nonprofit Fremont-based supportive housing provider, in conjunction with Allied Housing. It will consist of four separate 4-story buildings and total almost 45,000 square feet, featuring 30 studio apartments, 29 one-bedroom units and a two-bedroom unit for a resident manager. Officials estimate 25 of the units will be reserved for homeless veterans. The project stems from a partnership between the Sisters of the Holy Family in Fremont, San Jose-based developer Robson Homes and Abode. When the Sisters sold a portion of their Mission Boulevard property to Robson in 2014, they wanted the developer to build affordable housing instead of just paying into an affordable housing fund to be used for future projects. Robson then found and purchased the Fremont Boulevard parcel and eventually transferred it to Abode to use for the apartment complex. The development will be located between a tire and auto repair shop to the north and another used car dealership and local market to the south. It'll front Fremont Boulevard to the east. The building's parking spaces, a sports court and dog area will be at the rear, abutting a wall separating it from Bell Common to the west. This sale was an off market transaction. On November 7, 2017, the Fremont City Council authorized \$4.1 million in funding to purchase land and cover pre-construction costs.	

Comparable Land Sale Data Sheet – MFL-02

Property Type	Mixed-Use - Land
Type of Transaction	Sale
COE	04/20/17
Sales Contract Date	May 2016
Sales Price	\$35,000,000
\$/Sq. Ft. (Land)	\$123.61
Address	1501 Berryessa Road
City, State	San Jose, CA
Zip	95133
APN	241-04-040 (portion of)
Buyer	San Jose Apartment Owner SPE, LLC
Seller	S.J. Sierra Group LLC
Document #	17-23629903
DTT	\$38,511.00
Terms	Conventional Loan
Parcel Size (Acres)	6.50
Parcel Size (Sq. Ft.)	283,140
Utilities / Irrigation	All to Site
Zoning	A (PD)
General Plan	Urban Village
Density	55-250 du/ac; FAR up to 10.0
Entitlements	Fully entitled for 551 apartment units & 37,000 Sq. Ft. of retail
Verified By	Chris Anderson - Listing Broker
Contact Info.	408-521-7134



Comments The total consideration was around \$40 million but there were \$5 million in reimbursements (\$2.8m for sewer project, \$1.9m to KB Homes, and \$200k for creek work) for a sale price of \$35 million for the entitled land, which is what is indicated on the recorded deed. The property was fully entitled at the time of sale and broker states it was a "huge" part of the sale price, but could not specify as to how much. The buyer has started construction of a multi-residential development called The Platform, consisting of 551 apartments and 37,000 square feet of retail to be constructed in phases. Phase-1 is planned for completion in the spring of 2019. The transit-oriented development, located in the 120-acre Market Park at the site of the San Jose Flea Market, will be the nearest apartment community to the new Berryessa BART transit station. Upscale amenities will include two resort-style pools, two fitness centers with indoor-outdoor convertible space, multiple high-end outdoor kitchen areas, a dog salon, two bike stations for maintenance and storage and two clubhouses with indoor entertainment and gaming facilities.

Comparable Land Sale Data Sheet – MFL-03

Property Type	Mixed-Use - Land	
Type of Transaction	Sale	
COE	09/15/17	
Sales Contract Date	2015	
Sales Price	\$16,295,000	
\$/Sq. Ft. (Land)	\$82.93	
Address	Centre Pointe Drive	
City, State	Milpitas, CA	
Zip	95035	
APN	086-33-102 (portion of)	
Buyer	SHAC Centre Pointe Apartments LLC	
Seller	Centre Pointe Associates, L.P.	
Document #	17-23754096	
DTT	\$17,924.50	
Terms	Cash to Seller	
Parcel Size (Acres)	4.51	
Parcel Size (Sq. Ft.)	196,499	
Utilities / Irrigation	All to Site	
Zoning	MXD-2 & MXD-3 -TOD	
General Plan	TASP: Residential High Density Mixed Use (RRMU) & Boulevard Very High Density Mixed Use (BVMU); Transit Oriented Development (-TOD)	
Density	See Comments	
Entitlements	Fully entitled for 393 multifamily units, 87 du/ac (Phase I)	
Verified By	Michael Anichini - Director, Land Acquisitions	
Contact Info.	415-860-0073	
Comments	This property is within the Montague Corridor Sub-District of the Milpitas Transit Area Specific Plan (TASP). The site is located approximately 600 feet from the Milpitas BART station and south of the Great Mall. For this sub-district, the TASP envisioned high-density residential neighborhoods near transit and shopping. In May 2016, the Milpitas City Council adopted Resolution #8537 to approve a project consisting of 694 condominium units and 36,500 square feet of ground floor commercial space on a 9.84-acre parcel located at 1500-1646 Centre Pointe Drive. The entitlement included a vesting tentative map to allow for condominium spaces and common area. At the time of the May 2016 entitlement, the applicant (seller) informed the City that they would apply for a minor subdivision to separate the 9.84 acres into two parcels; Parcel A (5.282 acres) and Parcel B (4.511 acres). The Resolution (#17-012) was approved April 12, 2017. This sale is comprised of the smaller of the two parcels, fully entitled for the development of 393 multi residential units that are currently under construction as Phase I. It was not determined if any of the units in Phase I were BMR. The 9.84-acre site was improved with six one-story buildings totaling 134,000 square feet with paved parking areas and associated landscape, four of which the seller demolished in the early part of 2017, including those located on this property. The project also includes the construction of a 0.05-acre, 90 degree Centre Pointe Drive alignment as part of Phase I and the buyer will grant an easement to the seller to access Phase 2. BVMU: Permitted uses include Residential, Office, Commercial and Medical uses up to 1.5 maximum gross FAR, an FAR of 2.5 may be permitted on individual sites. 4-12 stories (20 stories with CUP). Residential use shall have 41un/ac minimum average gross density; 60 un/ac maximum average gross density. RRMU: Residential, office, and/or hotel uses above ground floor retail and restaurants, 200 sq. ft of retail or restaurant use required for every residential unit. Residential density: 31du/ac minimum average gross density; 50 un/ac maximum average gross density. 4-12 stories. (20 stories with CUP) Maximum FAR of 1.5; up to 2.5 FAR may be permitted on individual sites.	

Comparable Land Sale Data Sheet – MFL-04

Property Type Multi-family - Land
Type of Transaction Sale
COE 12/01/17
Sales Contract Date Not Discovered
Sales Price \$2,100,000
\$/Sq. Ft. (Land) \$125.01

Address 1316 South Main Street
City, State Milpitas, CA
Zip 95035
APN 086-23-006

Buyer SJ Main St LLC
Seller HHH Property Group LLC
Document # 17-23817189
DTT \$2,310.00
Terms Cash to Seller

Parcel Size (Acres) 0.39
Parcel Size (Sq. Ft.) 16,798
Utilities / Irrigation All to Site

Zoning R-4-TOD
General Plan Very High Density Transit Oriented Residential
Density 41-60 units/acre with TOD Overlay
Entitlements Fully entitled for 18 market-rate units, 46 du/ac

Verified By Recorded and city documents
Contact Info. n/a

Comments This property is within the Milpitas Transit Area Specific Plan (TASP). The site is located approximately 0.50 of a mile from the Milpitas BART station and just south of the Great Mall. On December 6, 2016, the City Council adopted Resolution No. 8612, approving entitlements to allow the development of a four-story, 52 foot tall, 33,310 square foot, 18 unit residential condominium project on the property. According to a Milpitas Planning Commission Staff Report, dated Dec. 12, 2018, the property changed hands to a new owner from George Zhang to SJ Main St., LLC. The new owner hired a consultant (Salvatore Caruso Design Corporation) to develop the civil drawings in order to submit for the required building permits. Due to the ownership and consultant changes, time has lapsed without construction progress made on the development. The approved project entitlements were set to expire in November 2018, but the consultants submitted an application to extend the entitlements 24 months, or until December 5, 2020. Mr. Zhang had submitted the initial development application on November 3, 2014, and the project is therefore not subject to the affordable housing requirement of the TASP. The cost of demolition of two vacant commercial structures that had previously contained the Milpitas Animal Hospital of a little more than 2,000 square feet would be incurred by the buyer.



Comparable Land Sale Data Sheet – MFL-05

Property Type	Multi-family - Land	
Type of Transaction	Sale	
COE	01/27/2016 & 05/17/2016	
Sales Contract Date	See Comments	
Sales Price	\$29,700,000	
\$/Sq. Ft. (Land)	\$72.69	
Address	730 & 750 E. Capitol Ave	
City, State	Milpitas, CA	
Zip	95035	
APN	086-37-015, -026, -027	
Buyer	Anton Development Company, LLC	
Seller	R.W.L. Investments, Inc. & YRC, Inc.	
Document #	23207221 / 23307508	
DTT	\$16,170.00 & \$16,500.00	
Terms	Conventional loan; 35% down payment	
Parcel Size (Acres)	9.38	
Parcel Size (Sq. Ft.)	408,593	
Utilities / Irrigation	See Comments	
Zoning	R5/TOD	
General Plan	Urban Residential	
Density	41-75 du/ac; up to 25% density increase with CUP	
Entitlements	Contingent on buyer obtaining entitlements for 582 market-rate units, 62 du/ac & 5,000 sq. ft. of retail space	
Verified By	Recorded documents, news release, published articles, city documents	
Contact Info.	n/a	
Comments	The property is comprised of three contiguous parcels totaling 9.38 acres that sold as an assemblage. The property is across from the VTA light rail Montague station and new Milpitas BART station. The Great Mall is located within walking distance. The buyer proposes two five-story mixed-use apartment buildings with a total of 582 market rate units, at approximately 62 dwelling units per acre, and 5,000 square feet of retail space. Both buildings will have integrated parking structures. The building design will account for the fact that the property is located in a flood plain. Industrial buildings will need be demolished to accommodate the proposed project. A variety of off/on-site infrastructure improvements will be required, including an extension of Milpitas Boulevard; streetscape and landscape improvements along Capitol Avenue, a new public street connection from the adjacent Lennar project; a 2.1-acre public park with pedestrian and bicycle paths along Penitencia Creek (bordering the property); and stormwater treatment, utility, grading and other associated site improvements. Both properties were being separately marketed at the time the sale was negotiated, which appears to be sometime in the early part of 2015.	

Comparable Land Sale Data Sheet – MFL-06

Property Type	Multi-family - Land	
Type of Transaction	Sale	
COE	01/31/17	
Sales Price	\$19,600,000	
Sales Contract Date	See Comments	
\$/Sq. Ft. (Land)	\$78.66	
Address	SEC of Piper Dr & Garden St	
City, State	Milpitas, CA	
Zip	95035	
APN	086-32-042, portion of -043	
Buyer	KB Home South Bay, Inc.	
Seller	Green Valley Corporation (at el)	
Document #	23572099	
DTT	\$21,560.00	
Terms	All Cash	
Parcel Size (Acres)	5.72	
Parcel Size (Sq. Ft.)	249,163	
Utilities / Irrigation	All to Site	
Zoning	R4/TOD	
General Plan	Multi-Family Residential Very-High Density	
Density	21-40 du/ac acre, Transit-Oriented Development 60 du/ac max	
Entitlements	Contingent on buyer obtaining entitlements for 12-story tower with 210 apartments & 2,937 sq. ft. of commercial space, and 98 townhome units (54 du/ac)	
Verified By	Recorded documents, news release, published articles, city documents	
Contact Info.	n/a	
Comments	January 12, 2015, an application was submitted by the buyer to construct a 12-story tower containing 210 apartments, 2,937 square feet of commercial space, and 98 townhomes in 13 separate three-story buildings. The size of the property was obtained from a city document. At the time of sale, the property was developed with two 1980s-vintage concrete tilt-up industrial buildings totaling about 111,978 square feet, which would be demolished to accommodate the proposed project, a cost to be incurred by the buyer. Off-sites will include street improvements on Piper Drive and Garden Street, including landscaping.	

Comparable Land Sale Data Sheet – MFL-07

Property Type	Multi-family - Land	
Type of Transaction	Sale	
COE	12/04/17	
Sales Contract Date	Not Discovered	
Sales Price	\$11,000,000	
\$/Sq. Ft. (Land)	\$92.16	
Address	3515 Walnut Avenue	
City, State	Fremont, CA	
Zip	94538	
APN	501-1130-009	
Buyer	WSB Bungalows, LLC	
Seller	Central Realty (U.S.A.) Inc.	
Document #	17-266012	
DTT	\$12,100.00	
Terms	Conventional Loan; 50% down payment	
Parcel Size (Acres)	2.74	
Parcel Size (Sq. Ft.)	119,354	
Utilities / Irrigation	All to Site	
Zoning	D-E & D-MD	
General Plan	Commercial - City Center	
Density	FAR of 1.25 - 2.5 for Mixed Use projects with ground floor commercial and residential uses above	
Entitlements	None (See Comments)	
Verified By	Mark Pilarcyk - See Comments	
Contact Info.	408-203-1892	
Comments	The property is located within Fremont's City Center and included in the Downtown Community Plan. The property is just outside a one-half mile radius from the Fremont BART station. This property is in contract and a representative for the contract buyer, Fore Green Dev, LLC (not a part of this sale), confirmed that the property had sold unentitled but was not privy to the details and would not share any information regarding the current pending sale. The City's website indicates that a development proposal for a 275 apartment units in a five-story building and six-level parking structure has been made by Fore Green Dev, LLC. A subscription data reporting service disclosed that this sale was a 1031 exchange for the buyer who had approached the seller with an unsolicited offer. The property fronts on three streets and the entire frontage will need to be improved as part of any development but there does not appear to be any other extraordinary off-site costs associated with this sale.	

Land Sales Data Analysis

Adjustments are made to the comparable sale prices for the differences in the properties as they compare to the subject. The Appraiser has considered a number of adjustments for the analysis of the comparable data in relation to the subject property. The comparable data has been adjusted for inferior and superior characteristics. For Example: where a comparable had an inferior characteristic, a positive (+) adjustment to the comparable was made. Where the comparable had a superior characteristic, a negative (-) adjustment was made to the comparable. Adjustments were made sequentially for property rights conveyed, financing terms, conditions of sale, expenditures incurred by the buyer immediately after the sale, and market conditions at the time of sale. Adjustments for location characteristics, physical characteristics, use and non-realty components of value are subsequently added and applied. None of the sales, to the Appraiser's knowledge, included non-realty components of value.

Property Rights Conveyed: The subject's fee simple interest is being appraised for this analysis. Since all of the comparable sales involved the conveyance of the fee simple interest, no adjustment has been made for this factor.

Financing terms: The comparable sales were either all-cash transactions or a conventional loan was obtained by the buyer to finance the purchase and terms of the sale were cash to the seller, warranting no adjustment.

Conditions of Sale: MFL-05 is comprised of two properties that were being separately marketed that sold as an assemblage and a downward adjustment has been applied for this factor. MFL-07 was a 1031 exchange for the buyer who had approached the seller with an unsolicited offer and a downward adjustment appeared warranted. The Appraiser is not aware of any unusual sale conditions regarding the other comparables.

Expenditures After Purchase: At the time of sale, MFL-05 was developed with two large industrial buildings, which will need to be demolished to accommodate the buyer's proposed project, and will be the responsibility of the buyer, warranting an upward adjustment. The buyer of MFL-01 and MFL-04 will also incur the cost of clearing the site, although negligible relative to the selling price, and only a slight upward adjustment has been applied to these sales. The other comparables sold vacant of any structures.

Change in Market Conditions: Sometimes comparable sales are analyzed under different market conditions than those applicable to the subject on the date of value, that is, if general property values have appreciated or depreciated due to inflation or investor's perceptions of the changes in the market over time. The comparables sales were recorded between January 2016 and February 2018; however, all were negotiated at a time of inferior market conditions than that on the date of value, warranting an upward adjustment, to varying degrees, supported by data presented in a previous report section.

Location / Access: Locational adjustments have been broken into elements that reflect the property's overall desirability to potential buyers based on neighborhood factors such as age and condition of nearby properties, proximity to enhancing or detrimental factors, or an identifiable valuation element relating to address (locational appeal). The subject is included in the Milpitas Transit Area Specific Plan and located near the Milpitas BART station and Great Mall, where older

industrial districts are being replaced by high-intensity mixed-use developments. MFL-03, MFL-04, MFL-05, and MFL-06 have a similar location and no adjustment has been applied for this element of comparison. MFL-02's location in the northern part of San Jose, next to the new Berryessa BART Station, is judged to rate superior, based on market perception, and a down adjustment is warranted. Conversely, MFL-01 and MFL-07's Fremont locations are concluded to be inferior, warranting an upward adjustment, although giving more consideration to MFL-07 being located in the downtown, compared to MFL-01's Fremont Boulevard location.

Size: The comparables range in size from 0.39 acre to 9.38 acres, bracketing the subject at 1.13 acres. With the exception of MFL-01, which was judged to be similar in size to the subject, adjustments have been applied to the remaining comparables for this factor, to varying degrees, when applying the law of diminishing returns, which dictates that smaller parcels of land transact at a higher price on a per unit basis and vice versa.

Site Utility / Constraints: The subject site has level topography and not unusually shaped but has limited street frontage, although this will increase with the extension of Sango Court. The subject is also located entirely within a flood plain, which has more stringent development implications. Excepting MFL-04 and MFL-06, the other comparables either have an above average amount of street frontage or are located outside of a designated flood hazard area, rating superior site utility, warranting a downward adjustment. No adjustment has been applied to MFL-04 and MFL-06 for this factor.

Utilities (Off-Sites): The subject is located in a developed area and has access to all public utilities located at the street, as do all of the comparables. The subject is included in the Milpitas Transit Area Specific Plan and the City's Draft Preferred Plan proposes an extension of Sango Court / Tarob Court as part of the site development. MFL-01 and MFL-04 have limited off-site costs associated with their respective proposed projects, warranting a downward adjustment. No adjustment has been applied to the other comparables for this element of comparison.

Product Mix: Milpitas adopted the Transit Area Specific Plan that included a goal of creating 20% affordable units within new residential construction. Resolution No. 8491, subsequently adopted in 2015, clarifies that "affordable housing requirements shall apply to all completely new residential development applications submitted to the City after June 16, 2015." The seller of MFL-04 submitted an application prior to the Resolution, and is, therefore, not subject to the affordable housing requirement, warranting a downward adjustment. The development proposed for MFL-05 does not include any below market rate (BMR) units either, and a downward adjustment has been applied to this comparable for similar reasons. Conversely, the buyer of MFL-01 poses a project that is comprised entirely of affordable housing units, and an adjustment is judged to be warranted for this element of comparison. It has been determined that the other comparables did not warrant adjustment for this factor.

Entitlements: The sellers' involved in MFL-02, MFL-03, and MFL-04 had processed development approvals and the comparables sold with entitlements for multifamily projects. Thus, these comparable sales warranted a downward adjustment for the time and monies expended by the sellers to reach that point of the development process. For the remaining comparables, the buyers in these transactions sought out obtaining entitlements for their respective projects, or sold as unentitled land, and an adjustment for this factor has therefore not been applied.

Land Use / Zoning: The subject's land use designation allows for residential development within the density range of 41 to 60-90 units per gross acre, as a Transit Oriented Development. In regards to the maximum number of units per acre that are legally allowed, MFL-02 rates superior for this element of comparison, warranting a downward adjustment. No adjustment has been applied to the other comparables for this factor.

The following table summarizes the adjustments made to each comparable. (Embolden font and/or a larger font size denotes more significant adjustment.)

Comparable	MFL-01	MFL-02	MFL-03	MFL-04	MFL-05	MFL-06	MFL-07
Address	38631 Fremont Boulevard Fremont, CA	1501 Berryessa Road San Jose, CA	Centre Pointe Drive Milpitas, CA	1316 South Main Street Milpitas, CA	730 & 750 E. Capitol Ave Milpitas, CA	SEC of Piper Dr & Garden St Milpitas, CA	3515 Walnut Avenue Fremont, CA
Sale Date	Feb-18	Apr-17	Sep-17	Dec-17	Jan-16 & May-16	Jan-17	Dec-17
Sales Price	\$3,500,000	\$35,000,000	\$16,295,000	\$2,100,000	\$29,700,000	\$19,600,000	\$11,000,000
Parcel Size (Acres)	1.10	6.50	4.51	0.39	9.38	5.72	2.74
Sales Price / Sq. Ft.	\$72.91	\$123.61	\$82.93	\$125.01	\$72.69	\$78.66	\$92.16
Property Rights Conveyed	Ø	Ø	Ø	Ø	Ø	Ø	Ø
Financing Terms	Ø	Ø	Ø	Ø	Ø	Ø	Ø
Conditions of Sale	Ø	Ø	Ø	Ø	Negative	Ø	Negative
Expenditures After Purchase	Positive	Ø	Ø	Positive	Positive	Ø	Ø
Market Conditions (Time)	Positive	Positive	Positive	Positive	Positive	Positive	Positive
Location / Access	Positive	Negative	Ø	Ø	Ø	Ø	Positive
Size	Ø	Positive	Positive	Negative	Positive	Positive	Positive
Site Utility / Constraints	Negative	Negative	Negative	Ø	Negative	Ø	Negative
Utilities / Off-Sites	Negative	Ø	Ø	Negative	Ø	Ø	Ø
Product Mix	Positive	Ø	Ø	Negative	Negative	Ø	Ø
Entitlements	Ø	Negative	Negative	Negative	Ø	Ø	Ø
Land Use (Zoning / General Plan)	Ø	Negative	Ø	Ø	Ø	Ø	Ø
Net Adjustment	Positive	Negative	Positive	Negative	Positive	Positive	Positive

Land Value Conclusion

The seven comparable land sales range from an unadjusted unit price of \$72.69 to \$125.01 per square foot. After adjusting for the various factors considered for this type of property, as compared to the subject, the unit value range narrows to between \$92.16 and \$123.61 per square foot, as indicated by MFL-07 and MFL-02, respectively. The data points towards a unit value conclusion for the subject property toward the lower end between these two comparables. In addition to the comparables used in the preceding analysis, the subject property is currently being offered for sale for a list price of \$5,421,080 or \$95.23 per square foot.

Based on the prior analysis and discussion, the estimated value of the subject property is concluded to be **\$95.00** on a per square foot basis, when considering the site as if vacant. Therefore, the estimated fair market value of the subject property, before deducting the cost to demolish the subject's existing improvements, is shown in the table below, when applying the sales comparison approach.

Unit Value (\$/Sq. Ft.)*		Land Area (Sq. Ft.)		Indicated Value
\$95.00	×	56,926	=	\$5,407,970

*As though the site is vacant

Value of the Subject Property and Estimated Just Compensation

It has been concluded the subject improvements do not contribute any value to the subject property when considering the highest and best use for multifamily development and the building and associated improvements need to be demolished. Marshall Valuation Service (MVS), a construction cost service widely in use by appraisers, was utilized to estimate the cost of clearing the site and is shown in the table below.

Improvements	Sq. Ft.		Demo Cost (\$/Unit)**		Indicated Value
Building	9,600	x	\$6.00	=	\$57,600
Site Improvements (Paving, Landscaping, etc.)	47,326*	x	\$1.00	=	\$47,326
Total Estimated Cost of Demolition:					\$104,926

*Total site area less the footprint of the building **Includes hauling and disposal

The estimated market value of the subject property, utilizing the sales comparison approach, was previously estimated to be \$5,407,970, as though the site is vacant and available to be developed to its highest and best use. After deducting for the cost to clear the site, concluded above to be \$104,926, the estimated fair market value of the subject property, and the recommended just compensation, is as follows:

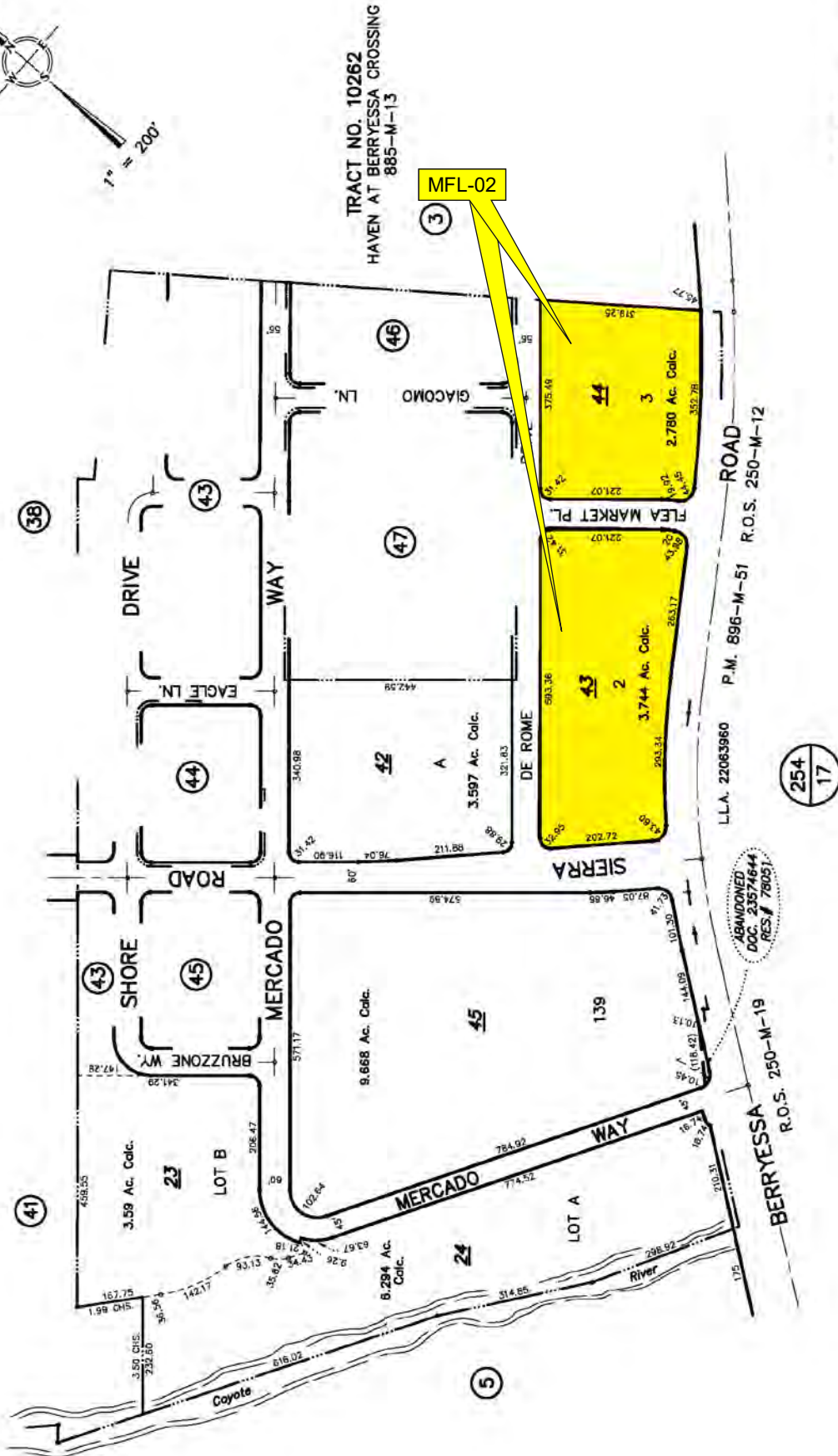
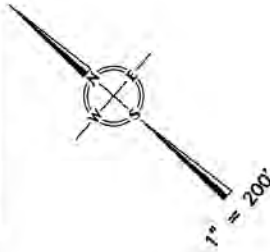
$$\$5,407,970 - \$104,926 = \$5,303,044$$

Fee Simple Interest and Estimated Just Compensation, Rounded: \$5,305,000

(Five Million Three Hundred and Five Thousand Dollars)

ADDENDA

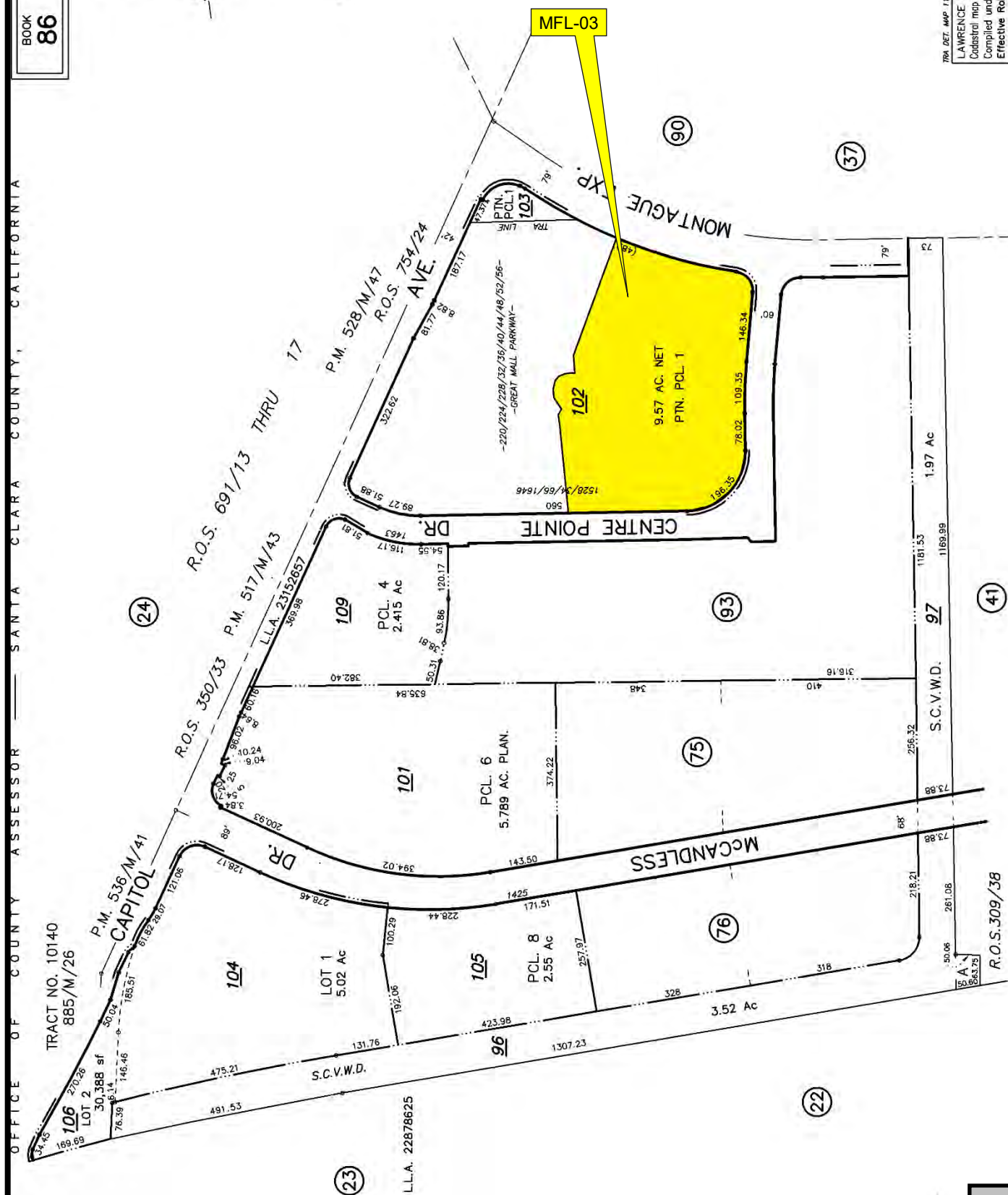
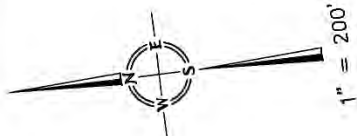
COMPARABLE LAND SALE PARCEL MAPS



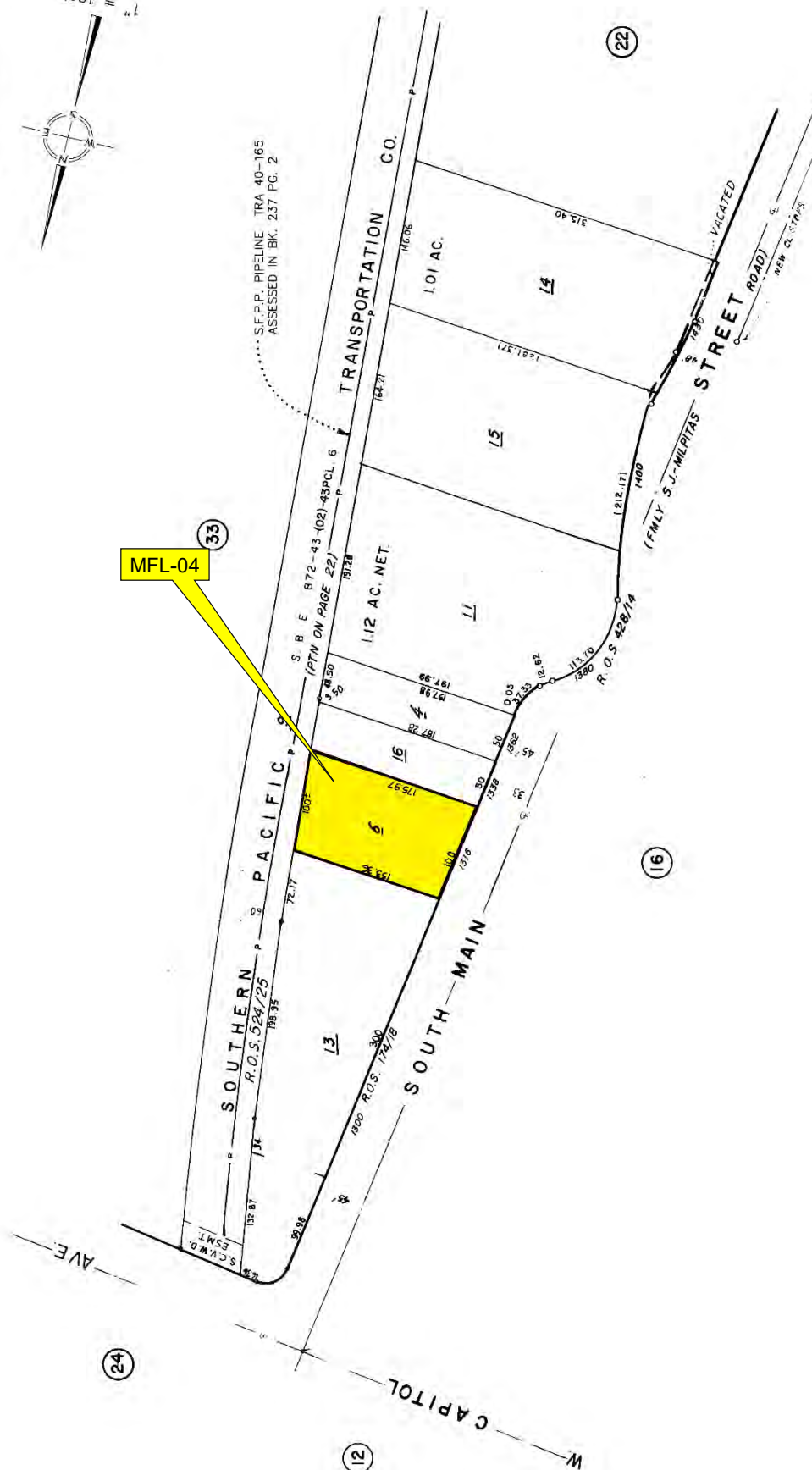
TRACT NO. 10262
HAVEN AT BERRYESSA CROSSING
885-M-13

MFL-02

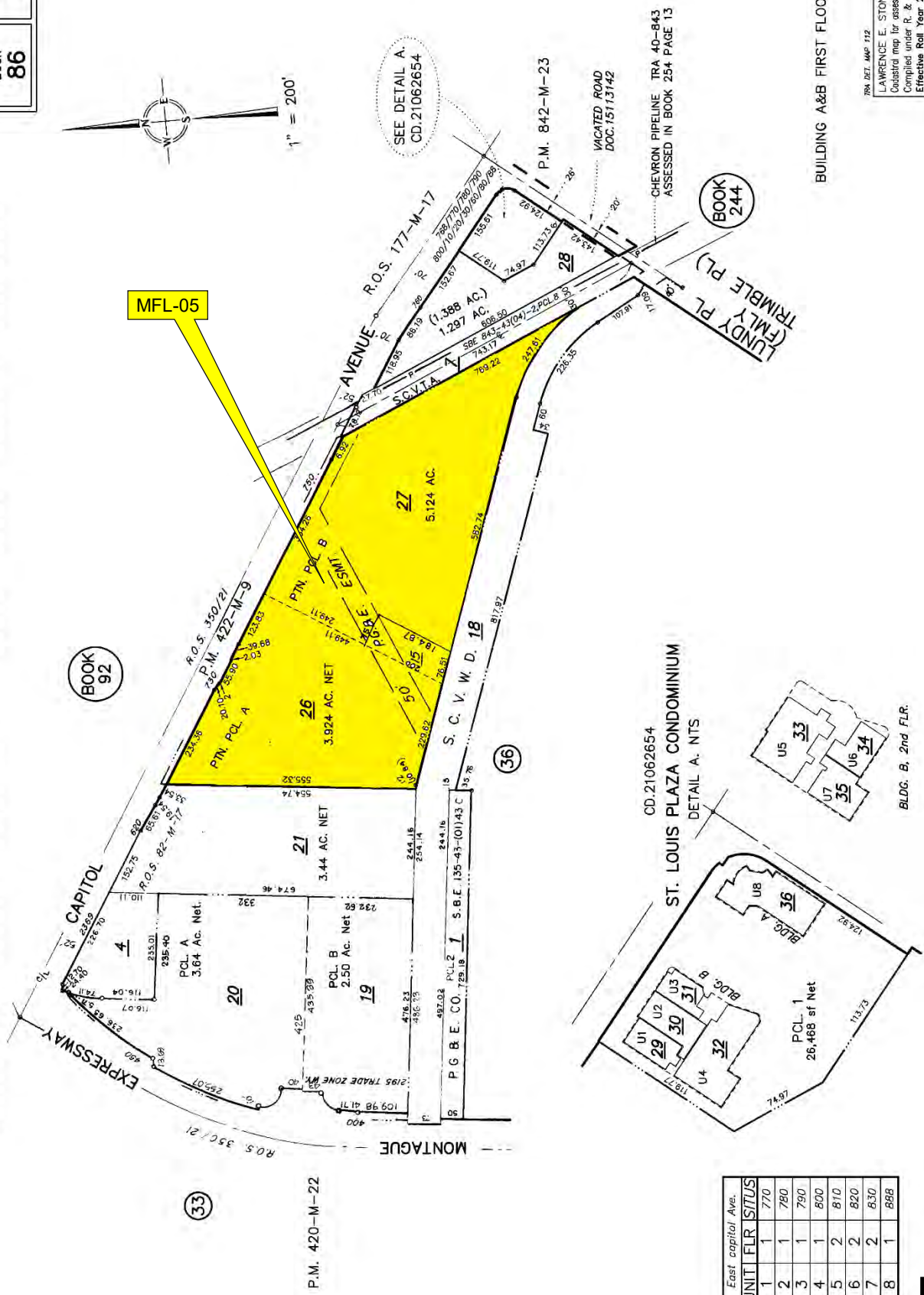
LAWRENCE E. STONE - ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2018-2019



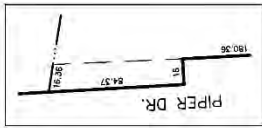
LAWRENCE E. STONE — ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2017–2018



LAWRENCE E. STONE - ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2004-2005



704 DET. MAP 112
LAWRENCE E. STONE — ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2012-2013



DETAIL - N.T.S.

RA DET. MAP 112

NOTICE OF DECISION TO APPRAISE



CITY OF MILPITAS
OFFICE OF THE CITY MANAGER

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE: 408-586-3059, FAX: 408-586-3056, www.ci.milpitas.ca.gov

December 20, 2018

Henry W. Chung and Olivia Y. Chung
1700 Sango Court
Milpitas, CA 95035

Re: Project: Transit Area Specific Plan
Site Address: 1700 Sango Court, Milpitas, CA
APN: 086-36-12

Dear Property Owners:

The City of Milpitas is considering acquiring property for the Transit Area Specific Plan. Your property is within this area. Attached is an Assessor's Parcel Map identifying your property that is being considered for acquisition for the proposed project.

Associated Right of Way Services, Inc., (AR/WS) has been retained by the City of Milpitas to provide appraisal services. Your property will be appraised for possible acquisition by Brian Drake of AR/WS, and he will be visiting and inspecting the property. Please call (800) 558-5151 to arrange a mutually acceptable appointment for the site visit. Mr. Drake will be available to answer any questions you may have with regard to the appraisal process.

A booklet generally explaining the rights and benefits of a property owner is enclosed. The appraisal of real property in connection with planned acquisition for a public project can be a complex effort. If you do plan to retain your own appraiser, you are encouraged to interview professionals who are experienced in this particular specialized area of appraisal. Some sources of information to consult for more information about appraisers and appraisals related to proposed government acquisitions for public projects are:

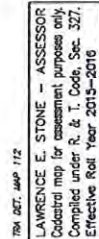
- | | |
|--|--|
| • Bureau of Real Estate Appraisers | www.orea.ca.gov |
| • International Right of Way Association | www.irwaonline.org |
| • Appraisal Institute of California | www.appraisalinstitute.org |

For questions regarding the project design and schedule, please contact Steve Chan, Transportation Manager, at (408) 586-3324. If you have any questions regarding the appraisal process, please contact Brian Drake at (800) 558-5151. This notice does not constitute an offer to purchase your property. After completion of the appraisal, you may be contacted by an acquisition representative.

Sincerely,

Steve McHarris
Deputy City Manager

cc: Brian Drake, RW-AC – Associated Right of Way Services, Inc.



ZONING EXCERPTS

Section 4 - Residential Zones and Standards*

* Prior ordinance history: Ords. 38, 38.19, 38.22, 38.207, 38.339, 38.373.1, 38.384, 38.526, 38.541, 38.561, 38.605, 38.646, 38.687, 38.702, 38.746, 38.758, 38.761, 38.763 and 38.776.

XI-10-4.01 - Purpose and Intent

- A. Single-Family Residential (R1) Zone. The purpose and intent of this zone is to stabilize and protect the residential characteristics of the District and to promote and encourage a suitable environment for family life. The R1 District is intended for the suburban family home and the services appurtenant thereto.
- B. One and Two-Family Residential (R2) Zone. The purpose and intent of this zone is to stabilize and protect the residential characteristics of the District and to promote and encourage a suitable environment for family life. The R2 District is intended for suburban family homes and the community services appurtenant thereto.
- C. Multi-Family High Density Residential (R3) Zone. The purpose and intent of this zone is to stabilize and protect the residential characteristics of the District and to promote, insofar as compatible with the intensity of land use, a suitable environment for family life.
- D. Multi-Family Very High Density Residential (R4) Zone. The purpose and intent of this zone is to stabilize and protect the residential characteristics of the District and to promote a suitable residential environment. The "R4" District is intended to provide for higher-density residential "villages" structured around transit stations, streets, creek side open spaces, trails and parks.
- E. Urban Residential (R5) Zone. The purpose and intent of this zone is to provide for high-density residential development structured around transit stations.

(Ord. 38.777 (6) (part), 6/17/08)

XI-10-4.02 - Residential Use Regulations

A. Permitted and Conditionally Permitted Uses.

- 1. Primary Uses. The uses identified in Table XI-10-4.02-1, Residential Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted entirely within enclosed structures. The primary uses identified in Table XI-10-4.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
P/C	Where the symbol "P/C" appears the use may be permitted if certain criteria is met or otherwise a Conditional Use Permit shall be required, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter.
C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter.
O	Where the symbol "O" appears, the use is subject to an alternative review process described in a subsequent footnote.

2. Accessory Uses. The following are the accessory uses permitted in all residential zoning districts:
- Boarding houses of not more than two (2) persons.
 - Home occupations and professional offices in home, as provided in Section XI-10-13.05, Home Occupation, of this chapter.
 - A State authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such care home furnishes care on a 24-hour a day basis.
 - Other accessory uses, accessory buildings and structures customarily appurtenant to a permitted use, as provided for in Sections XI-10-13.05, Home Occupation and XI-10-54.08, Accessory Buildings and Structures, of this chapter.
 - Small family child care home.
 - Large family child care home, as provided for in Subsections XI-10-53.23-6 through XI-10-53.23-8, Parking Schedule, and Section XI-10-13.06, Large Family Child Care and Child Care Centers, of this chapter.

B. Prohibited Uses. The following uses are prohibited:

- Uses where the symbol "NP" appears within Table XI-10-4.02-1.
- Adult Businesses as defined in Section XI-10-13.04, Adult Businesses, of this chapter.
- Uses that have been excluded from Table XI-10-4.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with subsection C below.

C. Other Uses. Any other uses, may be considered by the Planning Commission that are similar in accordance with the procedure, prescribed in Section XI-10-54.02, Other Uses Permitted by Commission, of this chapter.

Table XI-10-4.02-1
Residential Zone Uses

Use	R1	R2	R3	R4	R5
1. Commercial					
Commercial services ^{1,2}	NP	NP	C	C	C
2. Professional Offices and related uses					
Offices ^{1,2}	NP	NP	C	C	C
3. Public/Quasi-Public and Institutional Uses					
Child care center	C	C	C	C	P
Nursing home ³	NP	C	C	C	C
Park, playground or community center (non-profit)	C	C	C	C	C

Parking lots	C	C	C	C	C
Public service structure	C	C	C	C	C
School (not trade or vocational)	C	C	C	C	C
Social hall, lodge, fraternal organization, club and religious assembly (non-profit)	C	C	C	C	C
4. Residential Uses					
Condominiums and condo conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (Two dwellings)	NP	P	NP	NP	NP
Group dwelling	NP	NP	NP	C	C
Guest house	C	NP	NP	NP	NP
Manufactured home ⁴	P	P	NP	NP	NP
Multi-family dwellings (Three or more units)	NP	NP	P	P	P
Planned unit development ⁵	P	P	P	P	P
Second residential dwelling unit ⁶	P	SFR: P Duplex: NP	NP	NP	NP
Single-family dwelling	P	P	NP	NP	NP
Single-room occupancy residences ⁷	NP	NP	C	C	C
Transitional and supportive housing	P ⁸	P ⁸	P ⁹	P ⁹	P ⁹
5. Restaurants					
Restaurants ^{1,2}	NP	NP	C	P/C	P/C
6. Unclassified Uses					
Agriculture ¹⁰	P	P	P	NP	NP
Boarding house (three or more persons)	NP	C	C	C	C

Golf course ¹¹	C	C	C	NP	NP
Live work units ¹²	NP	NP	C	C	C
Model home complex ¹³	P	P	P	P	P

¹ Refer to Subsection XI-10-4.03(A), Residential Zone Special Uses, of this Chapter, for standards.

² Refer to Subsection XI-10-4.03(B), Residential Zone Special Uses, of this Chapter, for standards.

³ Licensed nursing home serving more than six persons, except when used primarily for contagious sickness, mental or drug alcohol addict cases.

⁴ Refer to Subsection XI-10-13.07, Manufactured Homes, of this Chapter, for standards.

⁵ Refer to Subsection XI-10-54.07, Planned Unit Developments, of this Title, for standards.

⁶ In conjunction with an existing legal single-family dwelling. Refer to Subsection XI-10-13.08, Second Family Unit, of this Chapter, for standards.

⁷ Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter

⁸ Permitted only in single family dwellings

⁹ Permitted only in multi-family dwellings

¹⁰ Except for the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

¹¹ Except for driving tee or range, miniature course and similar uses operated for commercial purposes.

¹² Allowed commercial uses to be specified through the Conditional Use Permit process.

¹³ Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

(Ord. No. 38.822, § 3, 5/5/15; Ord. No. 38.810, § 4, 12/3/13; Ord. No. 38.795, § 17, 4/6/10; Ord. 38.780 (3)—(7), 8/19/08; Ord. 38.777 (6) (part), 6/17/08)

XI-10-4.03 - Residential Zone Special Uses

- A. Incidental Services Within R3 Zones. Incidental services such as restaurants and retail sales to serve residents may be allowed through the approval of a Conditional Use Permit in accordance with the provisions in Section XI-10-57.04, of this chapter, provided there is no exterior display or advertising and such activities are conducted in spaces which are integral parts of a main building.
- B. Commercial Services, Retail and Offices within R4 and R5 Zones. Commercial services, retail and offices may be permitted provided they are:
 - 1. Less than or equal to ten thousand (10,000) square feet in gross floor area;
 - 2. Not open past 10:00 p.m.;

3. Not specifically noted in Table XI-10-4.02-1, Residential Zone Uses, of this Chapter, requiring Conditional Use Permit listed as a prohibited use; and
4. Not listed as a prohibited use in Section XI-10-4.02(B), Prohibited Uses, of this Chapter.

If items 1 through 2, above, are not met, then approval of a Conditional Use Permit is required in accordance with Section XI-10-57.04, of this Chapter.

- C. Affordable Housing. Affordable housing units should be provided in all new housing projects. While twenty percent (20%) is the minimum goal, affordable unit requirements will be determined on a project by project basis, taking into consideration the size and location of the project, the type of housing unit, proximity to transit and the mix of affordable units in the vicinity.

(Ord. No. 38.795, § 18, 4/6/10; Ord. 38.777 (6) (part), 6/17/08)

XI-10-4.04 - Residential Zone General Development Standards

The following minimum requirements shall be observed, except where increased for conditional uses. The minimum requirement shall be one of the following for the district classification as designated on the zoning map.

Table XI-10-4.04-1
Residential Zone Development Standards

Standards	R1	R2	R3	R4	R5
Lot Area, minimum (s.f.) ¹	R1-2.5: 2,500 R1-3: 3,000 R1-4: 4,000 R1-5: 5,000 R1-6: 6,000 R1-8: 8,000 R1-10: 10,000	Single-Family: 6,000 Two-Family: 8,000	8,000 2,000 per dwelling unit	None	None
Lot width, minimum (ft.) ²	R1-2.5: 30 R1-3: 30 R1-4: 40 R1-5: 50 R1-6: 55 R1-8: 70 R1-10: 80	Single-Family: 55 Two-Family: 70	70	None	None
Density, (Min- Max)	1 Dwelling Unit/ Lot (3-15 units per gross acre)	7-11 units per gross acre	12-20 units per gross acre	31-40 units per gross acre	41-60 units per gross acre

Front yard Setback, minimum (ft.) ³	R1-2.5: 20 R1-3: 20 R1-4: 20 R1-5: 20 R1-6: 20 R1-8: 25 R1-10: 25	Single-Family: 20 Two-Family: 20	20	8 min/15 max from back of sidewalk	Min: 12 Min: 20
Side yard setback (Interior), minimum (ft.) ⁴	R1-2.5: One side 5 R1-3: One side 5 R1-4: One side 6 R1-5: Adj. to garage 6, total ten feet. R1-6: Adj. to garage 6, total 13. R1-8: One side 7, total both sides 17 R1-10: One side 8, total both sides 20	Single-Family: Single Story: One side 4, total both sides 12. Two-story: One side 6, total both sides 15. Two-Family: Single Story: One side 7, total both sides 12. Two-Story: One side 8, total both sides 20.	Single Story: One side 5 ft., total both sides 12 ft. Two-2.5 story: One side 10 ft., total both sides 25 ft. Three-3.5 story: One side 12 ft., total both sides 30 ft.	10	15 20 for buildings over 3 stories which abut residential uses
Street side yard Setback, minimum (ft.) ⁵	10	10	10	Same as Front yard setback. See footnote 2.	Min: 12 Max: 20
Rear yard setback, minimum (ft.) (single story/two stories or greater) ⁶	R1-2.5: 15/20 R1-3: 15/20 R1-4: 15/20 R1-5: 20/20 R1-6: 25/25 R1-8: 25/30 R1-10: 30/35	Single-Family: 25/25 Two-Family: 25/30	Single Story: 30 ft. Two/2.5 story: 35 ft. Three/3.5 story: 40 ft.	10	15 20 for buildings over 3 stories which abut residential uses

Other Setbacks					Refer to Section XI-10-4.04, Special Development Standards.
Building Height, maximum (ft.) ⁷	Principal building: 30 Accessory building: 15 Guest house/ Caretaker building: 17	Principal building: 2.5 stories (30 ft.) Accessory building: 1.5 stories (15 ft.)	Principal building: 3.5 stories (35 ft.) Accessory building: 2.5 stories (25 ft.)	Four stories and 60 ft. Including architectural elements.	Six stories and 75 ft.
Parking	Refer to <u>Section 53</u> , Off Street Parking Regulations, of this Chapter.	Refer to <u>Section 53</u> , Off Street Parking Regulations, of this Chapter.	Refer to <u>Section 53</u> , Off Street Parking Regulations, of this Chapter.	Refer to <u>Section 53</u> , Off Street Parking Regulations, of this Chapter.	Refer to <u>Section 53</u> , Off Street Parking Regulations, of this Chapter.
Lot Coverage	Refer to Section XI-10-4.05, Special Development Standards, of this chapter.	NA	Refer to Section XI-10-4.05, Special Development Standards, of this chapter.		

¹ For R3 properties, the minimum requirement of lot area per dwelling unit may be waived where a Planned Unit Development has been approved at a higher density in accordance with the provisions of Section XI-10-54.07(B)(6)(c), Planned Unit Development, of this title. For R3 Properties, provided that all other requirements of this title are met, the required area per dwelling may be reduced to 1,000 square feet for each efficiency apartment, as defined herein, contained in a multiple-family dwelling.

² For R1 properties with slopes less than sixteen (16) percent. For R1-10 properties with slopes equal to or greater than sixteen (16) percent, but less than twenty-six (26) percent, the minimum lot width shall be two hundred (200) feet. For R1-10 properties with slopes equal to or greater than twenty-six (26) percent, the minimum lot width shall be three hundred (300) feet.

³ For R1 properties with slopes less than sixteen (16) percent. For R1-2.5, R1-3, and R1-4 properties, if access is provided to the side of garage via curved driveway, the setback may be 15 feet. For R1-10 properties with slopes equal to or greater than sixteen (16) percent, the minimum setback is forty (40) feet.

For R4 properties, the sidewalk shall be based on either existing sidewalk or an assumed 10-foot wide sidewalk, whichever is wider. Where a public easement prevents a building from being located at its required minimum or maximum setback, the building shall be located as close to the back of said easement as possible.

For R4 and R5 properties, (1) porches, stairs and balconies may be located in the front and street side setback areas provided they are incorporated into an integrated landscape concept where the majority of the setback areas are reserved for landscaping; (2) stairs and porches may project up to six (6) feet into the minimum setback; (3) the front yard setback area shall be landscaped; (4) where a public easement prevents a building from being located at its required minimum or maximum setback lines, the building shall be located as close to the back of said easement as possible.

⁴ For R1 properties with slopes less than sixteen (16) percent. For R1-10 properties with slopes equal to or greater than sixteen (16) percent but less than twenty-six (26) percent the minimum setback shall be twenty (20) feet on side and a total of forty-five (45) feet for both sides. For R1-10 properties with slopes equal to or greater than twenty-six (26) percent, the minimum setback shall be forty (40) feet.

For R4 and R5 properties, balconies, bay windows and awnings may project up to six (6) feet into the interior side setback. Interior side setback areas shall be landscaped but may also be occupied by accessory buildings and drive aisles.

⁵ For R5 properties, the street-side yard setback shall be landscaped.

⁶ For R1 properties with slopes less than sixteen (16) percent. For R1-10 properties with slopes equal to or greater than sixteen (16) percent, the minimum setback is forty (40) feet.

For R4 and R5 properties, balconies, bay windows and awnings may project up to six (6) feet into the rear setback. Interior side setback areas shall be landscaped but may also be occupied by accessory buildings and drive aisles.

For R5 properties, to mitigate the effects of adjacent service commercial or light industrial uses, increased setbacks and other measures, such as a solid six-foot barrier, shall be considered by the Planning Commission during the site and architectural review process.

⁷ For R3 properties, the height restriction can be waived where a Planned Unit Development has been approved at a density in excess of twenty (20) units per gross acre in accordance with the provisions of Section XI-10-54.07(B)(6)(c), of this chapter.

For R5 properties, except on specified sites with frontage on arterials, including Capitol Avenue, Great Mall Parkway, Montague Expressway, Milpitas Boulevard Extension, and Piper Drive, where heights may extend up to twelve (12) stories.

(Ord. 38.777 (6) (part), 6/17/08)

(Ord. No. 38.785, § 3, 4-7-09)

XI-10-4.05 - Residential Zone Special Development Standards

A. All Zones.

1. Areas for Collecting and Loading Recyclable Materials. There shall be provided areas for collecting and recyclable materials in accordance with the requirements of Section XI-10-54.12 of this Chapter.

B. R1 Zones.

1. Front Yard Coverage.

- a. A portion of the required front yard may be paved. The width of the area that may be paved shall not exceed the width of the garage, or fifty percent (50%) of the lot width measured at the front property line, whichever is greater. Patios within the required front are included in this calculation. Walkways, which are not used for vehicular parking, do not count towards coverage limits. Exceptions may be granted by the Planning Commission after public hearing notification, per Section XI-10-64 of this Chapter, for a Site Development Permit application, as described in Section XI-10-57.03 of this Chapter. For Hillside properties, refer to Section XI-10-45 of this Chapter for additional requirements. For regulations pertaining to parking in the front yard, refer to Milpitas Municipal Code Chapter V-500.
- b. For purposes of this section, "patio" shall mean a surfaced area (concrete, brick, stone, asphalt, pavers and the like) for recreational outdoor living use, not for vehicular parking purposes, within the required front yard.
- c. For purposes of this section, "walkway" shall mean a created surface, such as brick, stone, concrete, asphalt, pavers and the like, not exceeding six (6) feet in width, intended to facilitate pedestrian or bicycle passage, and not used for vehicular parking purposes.

C. R3 Zones.

1. Landscape and Open Space Requirements.

- a. A minimum of twenty-five (25) percent of the total lot area (not including paved parking area) shall be landscaped or recreational open space, exclusive of parking and vehicular traffic area and this shall be shown on site plan in detail for Planning Commission approval.
- b. An average of two hundred square feet of usable open space shall be provided for each dwelling unit. "Usable open space" shall mean any open space, the smallest dimension of which is at least 4 ½ feet and which is not used as storage or for movement of motor vehicles: except that yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. At least thirty (30) percent of required open space shall be contiguous to and provide for private usable open space of the individual dwelling unit.

2. On-Site Utilities Requirements.

- a. Where the allowable dwelling units exceed six (6) for a single parcel or the total area to be subdivided exceeds three (3) acres, all on-site utilities are to be placed underground.
- b. Television antennas are to be centralized for structures of four (4) or more units.

3. Trash and Storage Areas and Areas for Collecting and Loading Recyclable Materials.

- a. There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Section XI-10-54.12 of this Chapter.
- b. All outdoor storage and trash areas shall be within a completely enclosed building or behind a solid wall or tight board fence a minimum of six (6) feet in height.

D. R4 Zones.

1. Park and Open Space Requirements for Residential Uses.

- a. All residential projects within the Midtown Specific Plan area shall provide park land at a ratio of three and one-half (3 ½) acres per one thousand (1,000) population. Up to one and one-half (1 ½) of each three and one-half (3 ½) total park acres required (43%) may be satisfied by the provision of private

recreational areas. The remaining park land requirement must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu fee, as set forth in Section XI-1-9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1).

- b. All residential projects outside the Midtown Specific Plan area shall comply with the park land dedication provisions provided in Section XI-1-9.06 (Amount of Park Land to be Dedicated) of the Milpitas Subdivision Ordinance.
 - c. A minimum of twenty-five percent (25%) of the total site shall be usable open space or recreational facilities. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas.
 - d. Balconies and porches located above ground level with a minimum dimension of 4 ½ feet constructed for use by dwelling units shall be exempt from the usable open space dimension standards above and within in Section XI-10-2 of this chapter, and may be considered to satisfy usable open space requirements. Each dwelling unit shall be provided with private open space as follows:
 - i. Balconies and porches (above ground level): minimum sixty (60) square feet; or
 - ii. Patios (at ground level): minimum one hundred square feet.
2. Exceptions to Standards.
- a. Exceptions to all but the use, density and park land requirement regulations of this Section may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section XI-10-57.04.
 - b. In addition to the required findings under Section XI-10-57.04, the Planning Commission must be able to make the following two additional findings for such exceptions:
 - i. The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
 - ii. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

E. R5 Zones.

- 1. Building Location and Placement.
 - a. All buildings shall face the street.
 - b. Primary building entrances shall be oriented to the street.
- 2. Park and Open Space Requirements.
 - a. All residential projects within the Transit Area Specific Plan area shall provide park land at a ratio of three and one-half (3.5) acres per one thousand (1,000) population.
 - i. Two (2) of the required three and one-half (3.5) acres must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu fee, as set forth in Section XI-1-9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1). Land dedication is required if a park is shown on a property on Figure 3-8 of the Transit Area Specific Plan.
 - ii. Up to one and one-half (1.5) of each three and one-half (3.5) total park acres required (43%) may be satisfied by the provision of private recreational areas. Private open space cannot be shared between separate developments.
 - b. Each residential project shall provide adequate on-site usable open space or recreational facilities to the approval of the Planning Commission through the Site Development Permit process.
 - i. Balconies, porches, or roof decks, with a minimum dimension of four and one-half (4.5) feet, may be considered usable open space when properly developed for work, play or outdoor living are.

- ii. Each dwelling unit shall be provided with private open space as follows:
 - 1. Balconies (above ground level): minimum forty (40) square feet; or
 - 2. Patios or porches (at ground level): minimum fifty (50) square feet.
- c. All development projects within the Transit Area Specific Plan area shall dedicate and/or improve public trails if a trail is shown on a property on Figure 3-8 of the Transit Area Specific Plan.
- d. Twenty percent (20%) of a landscape buffer area may count towards the public park and open space requirements when it includes trails or wide sidewalks connected to the pedestrian and bicycle network.
- e. Park Sites. Parks must be bordered by public streets, or public right-of-way such as a trail or railroad right-of-way, on at least three sides.
- 3. Exceptions to Standards.
 - a. Exceptions to all but the allowable uses, density requirements, and public and private park land requirement regulations may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section XI-10-57.04, Conditional Use Permits, of this chapter.
 - b. In addition to the required findings for a Conditional Use Permit, the Planning Commission must be able to make the following two additional findings for such exceptions:
 - i. The exceptions meet the design intent identified within the Transit Area Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
 - ii. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.
 - iii. The project design in its totality does not adversely impact adjoining properties to a greater degree than a project that complies with all development standards. Impacts to be considered include: access to sunlight, views, shadows on parks and open space, privacy, and noise.

(Ord. 38.780 (8), (9), 8/19/08; Ord. 38.777 (6) (part), 6/17/08)

XI-10-4.06 - Reserved.

Editor's note— Ord. No. 38.785, § 4, adopted April 7, 2009, amended the Code by repealing former XI-10-4.06 in its entirety. Former XI-10-4.06 pertained to off-street parking regulations, and derived from Ord. 38.777, adopted June 17, 2008.

XI-10-4.07 - Conformance with Specific Plans

Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

(Ord. No. 38.795, § 19, 4/6/10; Ord. 38.777 (6) (part), 6/17/08)

XI-10-12.06 - Transit Oriented Development (-TOD) Overlay District

- A. Purpose and Intent. The purpose of the Transit Oriented Development Overlay District ("TOD") is to provide for land uses, land use densities and intensities and development standards that act to enhance and support transit and to locate such uses near rail transit stations. These provisions allow for a mix of goods and services within a convenient walk of the transit stations, encourage the creation of stable, attractive residential, commercial and industrial environments within the District and provide for a desirable transition to the surrounding conventional areas.
- B. Applicability. The "-TOD" overlay can be combined with any zoning district on lands that are generally within a 2,000 foot walk from a rail transit station. If any of the regulations specified in the "-TOD" overlay district differ from any corresponding regulations of any district with the "-TOD" Overlay district is combined, then the provisions of the "-TOD" Overlay district shall govern.
- C. Permitted, Accessory and Conditionally Permitted Uses. Permitted and conditional uses within the -TOD Overlay are the same uses as those allowed within the underlying base zones except as noted below. Refer to the use tables for Residential and Mixed Use Zones, within this chapter.
 - 1. Accessory Uses in R3-TOD/R4-TOD/R5-TOD Zones.
 - a. Retail stores, offices, and commercial service establishments as defined in Section XI-10-2.03, Definitions, provided they are:
 - i. On the ground floor level;
 - ii. Located on or within three hundred (300) feet of arterials or collectors including Great Mall Parkway, Montague Expressway, Milpitas Boulevard, Trade Zone Boulevard, and Piper Drive;
 - iii. Less than or equal to ten thousand (10,000) square feet in gross floor areas;
 - iv. Not open past 10:00 p.m.;
 - v. Conducted wholly within a building, except for approved outdoor seating areas;
 - vi. Not Adult Businesses as defined in Section XI-10-13.04, Adult Businesses, of this chapter;
 - vii. Not specifically noted in Section XI-10-6.04, Mixed Use Zone General Development Standards, of this chapter, as requiring Conditional Use Permit approval; and
 - viii. Not specifically noted in Section XI-10-6.04, Mixed Use Zone General Development Standards, of this chapter, as a use not permitted in a mixed-use district.

If items a through d are not met, then approval of a Conditional Use Permit is required in accordance with Section XI-10-57.04, of this chapter.

- b. Restaurants, or restaurants which include internet usage for customers, provided they:
 - i. Are located on or within three hundred (300) feet of arterials or collectors including Great Mall Parkway, Montague Expressway, Milpitas Boulevard, Trade Zone Boulevard, and Piper Drive;
 - ii. Are located on the ground floor;
 - iii. Provide no dancing or live entertainment;
 - iv. Have only ancillary on-premise consumption of beer and wine associated with food sales;
 - v. Conform to the performance standards as listed in Subsection XI-10-6.02-5, Restaurant Uses within Mixed Use Zones, of this chapter.

If items a through d are not met, then approval of a Conditional Use Permit is required in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter.

- c. Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Section XI-10-54.08, Accessory Buildings and Structures, of this chapter.

2. Conditionally Permitted Uses. The following require the approval of a Conditional Use Permit in accordance with 57.04, Conditional Use Permits, of this chapter.
 - a. Retail stores, offices and commercial service establishments, as defined in Section XI-10-2.03, Definitions, of this chapter, which do not meet the criteria in Section XI-10-12.06(C)(1)(a), Accessory Uses in R3-TOD/R4-TOD/R5-TOD Zones, of this section.
 - b. Restaurants, or restaurants which include internet usage for customers, which do not meet the criteria in Section XI-10-12.06(C)(1)(b) Accessory Uses in R3-TOD/R4-TOD/R5-TOD Zones, of this chapter.
 - c. The following uses may be allowed on the ground floor of a mixed use or residential building if a Conditional Use Permit is granted by the Planning Commission:
 - i. Transit stations and parking.
 - ii. Small-scale commercial uses to serve residents and local pedestrian traffic and to transit users, such as dry cleaners, video rentals, day care centers and cafes.
- D. Prohibited Uses.
 1. Vehicle oriented window service facilities, including drive-up or drive-in services.
 2. Adult Businesses, as defined in Section XI-10-13.04, Adult Businesses, of this chapter.
- E. Development Standards. The development standards for the underlying base zoning district shall apply, except any deviations noted below:
 1. MXD-TOD Areas.
 - a. Residential developments shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre. The minimum number of residential units may be reduced for parcels that are less than twenty thousand (20,000) square feet.
 - b. Residential building height shall not exceed four (4) stories and sixty (60) feet, including special architectural elements such as towers and spires.
 - c. The maximum FAR for nonresidential buildings in the "MXD" District is one hundred percent (100% or 1.0).
 2. MXD2-TOD Areas.
 - a. Residential developments shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed fifty (50) dwelling units per gross acre. The minimum number of residential units may be reduced for parcels that are less than twenty thousand (20,000) square feet.
 - b. Childcare Centers.
 - i. Childcare centers are exempt from the FAR limits.
 - ii. Square footage dedicated to childcare centers may be counted towards the commercial space requirement.
 3. MXD3-TOD Areas.
 - a. Residential developments shall be a minimum of forty-one (41) dwelling units per gross acre and shall not exceed seventy-five (75) dwelling units per gross acre. The minimum number of residential units may be reduced for parcels that are less than twenty thousand (20,000) square feet.
 - b. Building Height. Greater height up to twenty-four (24) stories may be allowed with Planning Commission review.
 - c. Childcare Centers.
 - i. Childcare centers are exempt from the FAR limits.
 - ii. Square footage dedicated to childcare centers may be counted towards the commercial space requirement.

requirement.

4. R3-TOD Areas.

- a. Building Height. Residential building height shall not exceed four (4) stories and sixty (60) feet.
- b. Residential Density. Residential density shall be a minimum of twenty-one (21) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre.
- c. Nonresidential Intensity. Ground floor retail, restaurant, and commercial service uses are permitted up to a maximum Floor Area Ratio of thirty percent (0.30 or 30%).
- d. Front and Street Side Setbacks.
 - i. There shall be a minimum setback of eight (8) feet and a maximum building setback of fifteen (15) feet from the property line.
 - iii. Where a public easement prevents a building from being located at its required minimum or maximum setback lines, the building shall be located as close to the back of said easement as possible.

5. R4-TOD Areas.

- a. Building Height. Residential building height shall not exceed six (6) stories and seventy-five (75) feet.
- b. Residential Density. Residential developments shall be a minimum of forty-one (41) dwelling units per gross acre and shall not exceed sixty (60) dwellings units per gross acre.
- c. Nonresidential Intensity. Ground floor retail, restaurant, and commercial service uses are permitted up to a maximum Floor Area Ratio of fifty percent (0.50 or 50%).
- d. Front and Street Side Setbacks.
 - i. There shall be a minimum setback of twelve (12) feet and a maximum building setback of twenty (20) feet from the property line.
 - iii. Where a public easement prevents a building from being located at its required minimum or maximum setback lines, the building shall be located as close to the back of said easement as possible.

6. R5-TOD Areas.

- a. Residential developments shall be a minimum of forty-one (41) dwelling units per gross acre and shall not exceed seventy-five (75) dwelling units per gross acre.
- b. Ground floor retail, restaurant, and commercial service uses are permitted, up to a maximum Floor Area Ratio of fifty percent (50% or 0.50).
- c. Ground Floor Commercial Design Standards. On retail mixed use streets, and in any other areas with ground floor retail, restaurant, and commercial service uses, the following standards apply:
 - i. Ground Floor Commercial Depth. Ground floor commercial tenant spaces shall be at least sixty (60) feet deep. Exceptions may be allowed for small tenant spaces less than two thousand five hundred (2,500) square feet.
 - ii. Floor to Ceiling Height.
 - 1. Retail: minimum eighteen (18) feet.
 - 2. Office: minimum fifteen (15) feet.
 - iii. Windows. At least sixty (60) percent of the ground floor wall area between three (3) and eight (8) feet above the sidewalk shall be glass or other transparent material.
 - iv. Blank Walls. No more than thirty (30) percent of the linear frontage per street may be blank. No more than twenty-five (25) contiguous feet in length may be blank.
 - v. Building Entrances. There shall be at least one entrance per one hundred (100) feet of building.

frontage.

- vi. Exterior Materials. All ground floor exterior materials shall be durable, quality materials, such as tile, stone, brick or glass.
 - vii. Wall Plane Articulation. Windows, doors, columns, and other features shall be recessed or project forward, such that there is a six-inch difference between wall and window surfaces and a total of at least eighteen inches from the window to the outermost plane of a wall or column.
 - viii. Floor Elevation. Ground floor elevation shall be no more than two feet above or below the sidewalk level.
7. C2-TOD Areas.
- a. Floor Area Ratio. The maximum FAR in the "C2-TOD" District is one hundred percent (100%, or 1.0).
8. "MP-TOD" Areas.
- a. Side Yard Setbacks.
 - i. Minimum ten (10) feet.
 - ii. Minimum thirty-five (35) feet when abutting residential uses.
 - b. Rear Yard Setbacks.
 - i. Minimum twenty (20) feet.
 - ii. Minimum one hundred (100) feet when abutting residential uses.
10. I-TOD Areas.
- a. Floor Area Ratio. There will be no maximum FAR in the "I-TOD" district.

F. Off-Street Parking and Bicycle Parking.

- 1. Off-Street Parking. Total off-street parking required in the Parking Schedule (refer to Section XI-10-53.23) and elsewhere in this Chapter may be reduced up to twenty percent (20%) for all "-TOD" overlay districts.
- 2. Development projects in the Transit Area Specific Plan area shall have maximum off-street parking requirements which are equal to the minimum off-street parking requirements of the base zoning district. Refer to the Parking Schedule in Section XI-10-53.23.
- 3. For locations within the Transit Area Specific Plan, preferential parking for carpools shall be one percent of the total amount of parking spaces required and appropriately signed.

Table XI-10-12.06
Number of Parking Spaces Required for MXD-TOD Zones

Use	MXD/MXD2/MXD3	
	Min Required	Max Allowed
Studio	0.8 covered	1.0 covered
1 Bedroom	1.2 covered	1.5 covered
2 + Bedrooms	<u>1.6</u> covered	2.0 covered
Guest Parking	15% of required total	
Bicycle Parking	Long-term Bicycle Parking: 1 per every 4 housing units (25%)	

	Short-term Bicycle Parking: 1 per every 20 parking spaces required (5%)	
Retail	0.8 per 250 sq. ft.	1.0 per 250 sq. ft.
Office	0.8 per <u>303</u> sq. ft.	1.0 per <u>303</u> sq. ft.
Other Uses	Refer to Table 53.23, Parking Schedule, of this title.	
Preferential Parking for Carpools	1% of required total	

G. Bicycle Parking.

1. Long-term bicycle parking shall be one space per every four housing units.
2. Short-term bicycle parking shall be one space per every 20 parking spaces required.

H. Landscape and Open Space Requirements for Residential Uses.

1. When combined with "-TOD" there shall be no minimum on-site open space requirements other than those specified in the base zoning district; however, adequate open space shall be provided to the approval of the Planning Commission through the Site Development Permit process.
2. All residential projects within the Transit Area Specific Plan area shall provide park land at a ratio of three and one-half (3.5) acres per one thousand (1,000) population.
 - a. Two (2) of the required three and one-half (3.5) acres must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu fee, as set forth in Section XI-1-9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1). Land dedication is required if a park is shown on a property on Figure 3-8 of the Transit Area Specific Plan.
 - b. Up to one and one-half (1.5) of each three and one-half (3.5) total park acres required (43%) may be satisfied by the provision of private recreational areas. Private open space cannot be shared between separate developments.

I. Additional Development Requirements.

1. All developments within the "-TOD" Combining District shall, through the Site Development Permit review process, incorporate measures that would encourage the use of transit, foot and bicycles, including, but not limited to:
 - a. Retail shops and services that residents and employees use on a frequent basis, such as restaurants, cafes, exercise facilities, dry cleaners, day care, video rental and automated teller machines.
 - b. Participation in the Valley Transportation Agency's EcoPass or similar programs that support mass transit.
 - c. Provision of bicycle facilities and showers in new office and employment uses larger than 50,000 square feet only.
2. For locations within a Specific Plan, all improvements shall conform to the Midtown Specific Plan, including the Design Guidelines and Standards set forth in Chapter 8, or the Transit Area Specific Plan, including Design Guidelines and Standards set forth in Chapter 5.

J. Exceptions to Standards.

1. Exceptions to all but the density and floor area ratio standards may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section XI-10-57.04, Conditional Use Permits, of this Chapter.
2. In addition to the required findings under Section XI-10-57.04(F), Required Findings, of this chapter, the Planning Commission must be able to make the following three additional findings for such exceptions:
 - a. The exceptions meet the design intent identified within the Zoning District and/or Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
 - b. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.
 - c. The project design in its totality does not adversely impact adjoining properties to a greater degree than a project that complies with all development standards. (Impacts to be considered include: access to sunlight, views, shadows on parks and open space, privacy, and noise.)

K. Conformance with Specific Plans.

1. Midtown Specific Plan.

- a. The Midtown Specific Plan policies, as well as the Design Guidelines and Standards set forth in Chapter 8 of the Plan, shall apply to all properties within the Midtown area if any one or more of the following occurs:
 - i. Whenever a new building is constructed, regardless of size;
 - ii. Whenever the use of an existing building is expanded or changed to a use requiring 50% or more off-street parking spaces, as determined by the City's adopted parking standards; or
 - iii. Whenever an existing building is increased in gross floor area by 10% of the existing gross floor area or is enlarged by 500 or more square feet, whichever is less (all additions or enlargements completed since May 2, 2002 shall be totaled).

If exterior building or site improvements (including signage) are proposed that do not fall under subsections (i) through (iii) above, such improvements shall be designed to conform to the Midtown policies, guidelines and standards applicable to the improvements, without requiring additional Midtown-related improvements to be imposed.

- b. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

The proposed use complies and is consistent with the Specific Plan.

2. Transit Area Specific Plan.

- a. The Transit Area Specific Plan policies, including policies for specific subdistricts in Chapter 4 and the Development Standards and Design Guidelines set forth in Chapter 5 of the Plan, shall apply to all properties within the Transit Area if any one or more of the following occurs:
 - i. Whenever a new building is constructed, regardless of size;
 - ii. Whenever the use of an existing building is expanded or changed to a use requiring 50% or more off-street parking spaces, as determined by the City's adopted parking standards; or
 - iii. Whenever an existing building is increased in gross floor area by 10% of the existing gross floor area or is enlarged by 500 or more square feet, whichever is less (all additions or enlargements completed since the adoption of the Specific Plan June 3, 2008 shall be totaled).

If exterior building or site improvements (including signage) are proposed that do not fall under subsections (i) through (iii) above, such improvements shall be designed to conform to the Transit Area policies, guidelines and standards applicable to the improvements, without requiring additional Transit Area-related improvements to be imposed.

- b. The policies and standards of the Transit Area Specific Plan will supersede the Midtown Specific Plan and the General Plan in the transit area. Should a conflict between the existing plans and codes arise within the Transit Area, the policies and standards of the Transit Area Specific Plan shall govern.
- c. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

The proposed use complies and is consistent with the Specific Plan.

(Ord. 38.781 (1), 12/16/08; Ord. 38.780 (19) (part), 8/19/08)

XI-10-56.03 - Nonconforming Use of Buildings and Structures

- A. The continuation or change of a nonconforming use of a building or structure shall meet the requirements provided below.
1. Continuation of Existing Nonconforming Use. A legally established use that is no longer permitted in a particular zoning district because of a modification of this Chapter shall be allowed to continue indefinitely, absent discontinuation of the use for a year or more and failure to comply with the re-establishment provisions of Section XI-10-56.03(B) below.
 2. Discontinuation of Nonconforming Use. The nonconforming use of a building, structure or portion thereof, which is discontinued for a continuous period of one (1) year or more, may be replaced only with a conforming use, absent an approved nonconforming use reestablishment set forth in Section XI-10-56.03(B) below. Nonconforming uses which have been discontinued for a period of less than one (1) year may be replaced, if (1) with a nonconforming use of the same use classification as a matter of right or (2) a nonconforming use of a different use classification, subject to compliance with the findings and procedures set forth Section XI-10-56.03(B).
 3. Changes of Use Within the Same Use Classification. An existing, ongoing nonconforming use may be changed to a different use within the same use classification. For example, a nonconforming auto repair shop use may be changed to a tire shop use, since both uses fall within the same use classification (auto service uses).
 4. Change of Use to a Different Nonconforming Use Classification. An existing, ongoing nonconforming use may be changed to a nonconforming use of a different use classification only if it can be found that the proposed use is equivalent to or more appropriate than the existing nonconforming use at the project location. The proposed use may be allowed only by way of a conditional use permit and only if, in addition, all of the following findings can be made:
 - a. The proposed nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).
 - b. The proposed nonconforming use would be compatible with the general character of the surrounding neighborhood or district.
 - c. The proposed nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.
- B. Re-establishment of Discontinued Nonconforming Uses Within the Midtown and Transit Area Specific Plan Areas (Sunsetting Provision).
1. Once discontinued for a year or more, nonconforming uses only within the Midtown Specific Plan Area and the Transit Area Specific Plan Area may be re-established if

the following findings can be made:

- a. The proposed re-establishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).
- b. The proposed re-establishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district.
- c. The proposed re-establishment of a nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.

In addition to the above findings, the re-establishment of a discontinued nonconforming use may only be approved by the Planning Commission by way of a conditional use permit, with the above additional findings, if (1) the proposed use lies within 1,000 feet of any residential use or (2) the proposed use would require conditional use permit review under current zoning requirements for the zoning district listed in the zoning map in existence at the time the use became nonconforming. The re-establishment of a discontinued nonconforming use may be approved administratively by Planning Division staff in all other circumstances, contingent on the existence of findings by Planning Division staff that the above listed grounds for re-establishment exist.

2. This Section XI-10-56.03(B) shall become inoperative June 16, 2016, and shall be considered repealed on that date, unless a later enacted ordinance that becomes effective on or before June 16, 2016, deletes or extends that date. All other provisions of Section XI-10-56.03 shall be unaffected by this sunset clause.

(Ord. No. 38.817, § 2, 9/16/14; Ord. No. 38.793, § 3, 5/17/11; Ord. 38.777 (14) (part), 6/17/08)

PHASE I ENVIRONMENTAL SITE ASSESSMENT SUMMARY

1.0 SUMMARY

A&M Environmental Services (A&M) has performed a Phase I Environmental Site Assessment (ESA) in conformance with the scope and limitation of the American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments E 1527-13, the Environmental Protection Agency Standards and Practices for All Appropriate Inquiries (AAI) (40 CFR Part 312 and 33 CFR Part 137). Any exceptions to, or deletions from this practice are described in Section 2.4 of this report.

Property Description

The subject property described as Santa Clara County Assessor Parcel Number (APN): 086-36-012 is located at 1700 Sango Court, Milpitas, Santa Clara County, California. The subject property is accessed off Sango Court. The subject property consists of one (1) parcel with the following description:

- 1) APN: 086-36-012
Legal Description: Parcel 6, as shown on that Parcel Map filed for record in the office of the Recorder Of the County of Santa Clara, State of California on April 22, 1974, in Book 338 of Maps, pages 42.
Use Type: Commercial
Lot Acres: 1.307
Number of Units: 1
Bldg / Liv Area: 9,600 ft²

Findings

A *recognized environmental condition* (REC) refers to the presence or likely presence of any hazardous substance or petroleum products in, or at a property: due to release to the environment; under conditions indicative of a release to the environment; or under conditions that pose a material threat of a future release to the environment. The following was identified during the course of this assessment:

- A&M did not identify any recognized environmental conditions during the course of this assessment.

A *controlled recognized environmental condition* (CREC) refers to a REC resulting from a past release of hazardous substances or petroleum products that has addressed to the satisfaction of the applicable regulatory authority, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls. The following was identified during the course of this assessment:

- A&M did not identify any controlled recognized environmental conditions during the course of this assessment.

A *historic recognized environmental condition* (HREC) refers to a past release of any hazardous substances or petroleum products that has occurred in connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the property to any required controls. The following was identified during the course of this assessment:

- A&M did not identify any historic recognized environmental conditions during the course of this assessment.

An *environmental issue* refers to environmental concerns identified by A&M, which do not qualify as RECs; however, warrant further discussion. The following was identified during the course of this assessment.

- The subject property is listed in the following databases based on the generation, storage, and disposal of used machine oil at the subject property: 1) CA HAZNET, 2) CA NPDES, 3) CA CIWQS, 4) CA CERS HAZ WASTE, and 5) CA CHIMIRS.

The subject property is listed in the following databases based on a historic underground storage tank (UST) located on the subject property: 1) CA SWEEP UST, and 2) CA HIST UST. The UST was properly abated under the supervision of the City of Milpitas Fire Department and confirmation soil samples indicated that the property was not impacted by the use of the UST.

After careful review of all databases listed and local regulatory agency records, A&M has determined that no recognized environmental conditions (RECs) are associated with these listings.

- During the site inspection performed on 8 January 2019 the A&M representative observed a 55 gallon drum full of used machine oil. The drum was not marked with a legible label identifying the contents. The drum was located outside and the label had become weathered. The drum was in good shape and the caps were secured tightly. There was no sign of spills or leaks and there was no observed staining of the asphalt in the vicinity of the drum. When the A&M representative inquired about the drum the owner produced the proper permit information for the drum and the manifest from the recycling company that documents the proper disposal of the contents of the drum. A&M was also able to verify the permit conditions with the County of Santa Clara Department of Environmental Health and the City of Milpitas Fire Department.

Within the scope of this investigation, A&M did not discover evidence of a recognized environmental condition in connection with the subject or adjacent properties.

While no environmental site assessment can fully eliminate the uncertainty regarding the potential for recognized environmental conditions, the ASTM standard does cite the balance between appropriate levels of inquiry and the cost of such exhaustive investigations. It is A&M's opinion that a full assessment of the site has been completed. Based on the results of this report, **No Further Investigation is Warranted.**

CONDITION OF TITLE GUARANTEE

CLTA GUARANTEE

Guarantee No.: **54606-18-1594796-01**

Agent's File No.: **54606-1594796-18**



1855 Gateway Boulevard, Suite 600, Concord, CA 94520 (925) 935-5599

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, AND THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,

GUARANTEES

the Assured named in Schedule A of this Guarantee against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A.

In witness whereof, North American Title Insurance has caused this policy to be signed and sealed as of the Date of Policy.

Date of Guarantee: **October 01, 2018**

NORTH AMERICAN TITLE INSURANCE COMPANY

BY

A handwritten signature in black ink, appearing to read "Emilio Fernandez".

Emilio Fernandez, **PRESIDENT**

ATTEST

A handwritten signature in black ink, appearing to read "Jefferson E. Howeth".

Jefferson E. Howeth, **SECRETARY**



North American Title Company, Inc.

Policy Issuing Agent

BY:

A handwritten signature in black ink, appearing to read "D. L. Lamm".
Authorized Signature

SCHEDULE A

Condition of Title Guarantee

Order No.	54606-1594796-18	Amount of Liability	\$2,500.00
Guarantee No.	54606-18-1594796-01	Fee	\$500.00
Date of Guarantee	October 01, 2018		

1. **Name of Assured:** Associated Right of Way Services
2. The estate or interest in the Land that is the subject of this Guarantee is: Fee

The land described in this guarantee is situated in the City of Milpitas, County of Santa Clara, State of California, and is described as follows:

PARCEL 6, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 22, 1974, IN BOOK 338 OF MAPS, PAGE 42.

APN: 086-36-012

3. Assurances:

According to the Public Records as of the Date of Guarantee,

- (a) Title to said estate or interest in the Land is vested in: Henry W. Chung and Olivia Y. Chung Partnership, a California General Partnership
- (b) Title to said estate or interest is subject to the defects, liens, encumbrances or other matters shown in **Schedule B**, which are not necessarily shown in the order of their priority.

Guarantee No. 54606-18-1594796-01

SCHEDULE B

1. General and special taxes and assessments for the fiscal year 2018-2019.
First Installment: \$7,088.05, OPEN
Penalty: \$728.80
Second Installment: \$7,088.05, OPEN
Penalty: \$728.80
Tax Rate Area: 012-056
A. P. No.: 086-36-012
2. The land lies within the boundaries of proposed community facilities District No. City of Milpitas Community Facilities District No. 2005-1 (Public Services), as disclosed by a map filed in Book 47, Page 28 of maps of assessment and community facilities districts.
3. The lien of special tax for the following community facilities district, which tax is collected with the county taxes.
District: 2013-1 - Library JPA - Mello Roos
4. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
5. The lien of bonds and assessment liens, if applicable, collected with the general and special taxes.
6. An easement for public service facilities, including poles, wires, conduits, storm sewer, sanitary sewers, water mains, public utilities and appurtenances and incidental purposes, recorded April 9, 1974 in Book 0840, Page 267 of Official Records.
In Favor of: City of Milpitas, a Municipal Corporation
Affects: A portion of said land as described therein
7. An easement for public utilities and incidental purposes, recorded May 28, 1975 in Book B431, page 640 of Official Records.
In Favor of: City of Milpitas, a Municipal Corporation
Affects: A portion of said land as described therein
8. The fact that the land lies within the boundaries of the Milpitas Redevelopment Project Area, as disclosed by the document recorded January 12, 1977 in Book C534 Page 1 of Official Records.

Document(s) declaring modifications thereof recorded December 29, 1979 in Book E901, Page 236 of Official Records.

Document(s) declaring modifications thereof recorded November 16, 1984 in Book J043, Page 665 of Official Records.

Document(s) declaring modifications thereof recorded October 18, 1996 as Instrument No. 13489204 of Official Records.

Document(s) declaring modifications thereof recorded June 8, 2003 as Instrument No. 17119592 of Official Records.

Document(s) declaring modifications thereof recorded December 19, 2006 as Instrument No. 19232155 of Official Records.

Document(s) declaring modifications thereof recorded May 11, 2010 as Instrument No. 20708005 of Official Records.

9. An unrecorded lease dated August 1, 1996, executed by Henry W. Chung and Olivia Y. Chung, husband and wife as lessor and Ka Tool & Supply Inc. as lessee, as disclosed by a Memorandum of Lease recorded September 6, 1996 as Instrument No. 13435778 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records.

10. A Deed of Trust to secure an original indebtedness of \$1,350,000.00 recorded June 30, 2004 as Instrument No. 17875925 of Official Records.

Dated: June 28, 2004

Trustor: Henry W. Chung and Olivia Y. Chung Partnership

Trustee: Chicago Title Company

Beneficiary: Grand Pacific Financial Corporation, a California Corporation

According to the public records, the beneficial interest under the deed of trust was assigned to Wells Fargo Bank, National Association, as Indenture Trustee for the Grand Pacific Business Loan Trust 2005-1 by assignment recorded January 24, 2006 as Instrument No. 18780114 of Official Records.

According to the public records, the beneficial interest under the deed of trust was assigned to Grand Pacific Holdings Corp. by assignment recorded June 6, 2017 as Instrument No. 23666267 of Official Records.

11. A financing statement recorded July 14, 2004 as Instrument No. 17897037 of Official Records.

Debtor: Henry W. Chung and Olivia Y. Chung Partnership

Secured party: Grand Pacific Financing Corporation

According to the public records, the security interest of the secured party was assigned to Wells Fargo Bank, National Association, as Trustee as Indenture Trustee for The Grand Pacific Business Loan Trust 2005-1 by document recorded January 24, 2006 as Instrument No. 18780113 of Official Records.

A continuation statement was recorded May 5, 2009 as Instrument No. 20238636 of Official Records.

An amendment to the financing statement was recorded January 17, 2014 as Instrument No. 22500277 of Official Records.

An amendment to the financing statement was recorded February 20, 2014 as Instrument No. 22523379 of Official Records.

According to the public records, the security interest of the secured party was assigned to Grand Pacific Holdings Corp by document recorded June 6, 2017 as Instrument No. 23666268 of Official Records.

12. Rights of parties in possession.
13. With respect to Henry W. Chung and Olivia Y. Chung Partnership, a California General Partnership, a general partnership:
 - a. That a certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporations Code (form GP-1), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), be recorded in the public records;
 - b. A full copy of the partnership agreement and any amendments;
 - c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

EXCLUSIONS FROM COVERAGE

Except as expressly provided by the assurances in Schedule A, the Company assumes no liability for loss or damage by reason of the following:

- (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land.
- (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; or (2) that result in no loss to the Assured.
- (c) Defects, liens, encumbrances, adverse claims or other matters not shown by the Public Records.
- (d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
- (e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
- (f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
- (g) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

GUARANTEE CONDITIONS

1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in Schedule A, or on a supplemental writing executed by the Company.
- (b) "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "Land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "Mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "Public Records": those records established under California statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "Date of Guarantee": the Date of Guarantee set forth in Schedule A.
- (f) "Amount of Liability": the Amount of Liability as stated in Schedule A.

2. Notice of Claim to be Given by Assured.

The Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claim of title or interest that is contrary to the assurances set forth in Schedule A Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4 (b), or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.
- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured.. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss or Damage.

- (a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
- (b) In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this paragraph shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To pay or tender payment of the Amount of Liability together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.
- (b) To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
- (c) To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.

7. Limitation of Liability.

- (a) This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of this Guarantee.
- (b) If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (c) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.
- (d) The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

8. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the Amount of Liability under this Guarantee pro tanto.

9. Payment of Loss.

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions, the loss or damage shall be payable within thirty (30) days thereafter.

10. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

11. Arbitration.

Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

12. Liability Limited to This Guarantee; Guarantee Entire Contract.

- (a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
- (c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. Severability

In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

14. Choice of Law; Forum

- (a) Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guaranties of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

- (b) Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at **North American Title Insurance Company, Attn: Claims, 1855 Gateway Boulevard, Suite 600, Concord, CA 94520 (800) 869-3434 Western States or (800) 374-8475 Eastern States.**



North American Title Group Family of Companies

FACTS	WHAT DOES NORTH AMERICAN TITLE GROUP, LLC FAMILY OF COMPANIES DO WITH YOUR PERSONAL INFORMATION?		
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some, but not all, sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.		
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and income • Transaction history and payment history • Purchase history and account balances		
How?	All financial companies need to share customers’ personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers’ personal information, the reasons North American Title Group, LLC Family of Companies (“NATG”) chooses to share, and whether you can limit this sharing.		
Reasons we can share your personal information		Does NATG share?	Can you limit this sharing?
For our everyday business purposes Such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		Yes	No
For our marketing purposes To offer our products and services to you		Yes	No
For joint marketing with other financial companies		No	We don’t share
For our affiliates’ everyday business purposes Information about your transactions and experiences		Yes	No
For our affiliates’ everyday business purposes Information about your creditworthiness		No	We don’t share
For our affiliates to market to you		Yes	Yes
For nonaffiliates to market to you		No	We don’t share
To limit our sharing		• Visit the following webpage for full instructions and a link to the Opt Out process via our NATTRACK system: www.nat.com/Opt-Out OR • Mail the form below Please note: If you are a new customer, we can begin sharing your information 30 days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.	
Questions?		Call 1 (844) 654-5408	



Mail-in Form	
If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choices only to me.	Mark any/all you want to limit: ☐ Do not allow your affiliates to use my personal information to market to me.
	Name
	Address
	City, State, Zip
	Account #

Mail To: North American Title Group, LLC Family of Companies
ATTN: General Counsel
760 Northwest 107th Avenue, Suite 400
Miami, FL 33172

Who we are	
Who is providing this notice?	North American Title Group, LLC Family of Companies (identified below), which offers title insurance and settlement services and property and casualty insurance
What we do	
How does NATG protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secure files and buildings.
How does NATG collect my personal information?	We collect your personal information, for example, when you • Apply for insurance; • Apply for financing; • Give us your contact information • Provide your mortgage information • Show your government-issued ID We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only • Sharing for affiliates' everyday business purposes – information about your creditworthiness • Affiliates from using your information to market to you • Sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.
What happens when I limit sharing for an account I hold jointly with someone else?	Your choices will apply to everyone on your account – unless you tell us otherwise.
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • Our affiliates include companies with a Lennar name; financial companies such as Eagle Home Mortgage, Eagle Home Mortgage of California, CalAtlantic Mortgage, Inc., and Rialto Capital Management; and nonfinancial companies, such as Lennar Corporation, Lennar Multifamily Companies, Lennar Commercial, Lennar Homes USA, Lennar Family of Builders, CalAtlantic Homes, Lennar Sales Corp., SPH Title, Inc., Sunstreet Energy Group, Five Point Communities, WCI Communities, LLC, Watermark Realty Referral, Inc., and WCI Realty, Inc.
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. • Nonaffiliates we share with can include collection agencies, IT service providers, companies that perform marketing services on our behalf, and consumer reporting agencies.
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. • NATG doesn't jointly market.

The North American Title Group, LLC Family of Companies consists of the following entities:

North American Title Company
 North American Title Company, Inc.
 North American Title Insurance Company
 North American Services, LLC
 North American Title Agency, Inc.
 CalAtlantic Title, Inc.
 CalAtlantic Title of Maryland, Inc.

North American Abstract Agency
 NASSA, LLC
 North American Title, LLC
 North American Advantage Insurance Services, LLC
 North American National Title Solutions, LLC
 North American Title Agency, LLC
 CalAtlantic Title Atlanta, LLC
 CalAtlantic Title Charleston, LLC

APPRAISER QUALIFICATIONS

BRIAN DRAKE, R/W-AC*Industry experience since 2004***Current Responsibilities**

Brian C. Drake joined **Associated Right of Way Services, Inc.**, in 2011, with 7 years professional appraisal and valuation experience, and currently serves as **Real Estate Appraiser**. The scope of Mr. Drake's work includes complex appraisals on improved and unimproved properties for public improvement projects, as well as valuations for full and partial acquisitions of residential, commercial, industrial, and agricultural properties for transportation and utility improvement projects. Mr. Drake's work is performed in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act, Uniform Standards of Professional Appraisal Practice, Caltrans standards, and state and federal guidelines.

Prior Experience

Prior to joining the AR/WS team, Mr. Drake was a Real Estate Appraiser at **The Schmidt-Prescott Group** (San Jose, CA), where he appraised proposed and existing commercial, industrial, agricultural, and residential property. His experience includes appraising offices, medical offices, surgery centers, self-storage facilities, warehouses, R&D facilities, retail strip and shopping centers, auto dealerships, restaurants, fast food restaurants, commercial condominiums, apartment complexes, and single-family and multi-family dwellings. Mr. Drake prepared appraisal reports for commercial, retail, industrial and residential properties throughout the greater Bay Area and Central Valley. His assignments also included the preparation of rent surveys for commercial, retail and industrial properties. Mr. Drake gained knowledge in various agricultural specific markets in the counties of Alameda, Contra Costa, Merced, Santa Clara, San Benito, San Joaquin and Stanislaus during his career as an appraiser. Valuation of property rights included fee simple, leased fee, leasehold, and ground rent. His clients included lenders, attorneys, accountants, corporations, municipalities, and individuals for eminent domain, estate planning, mortgage lending, litigation support, partnership disputes, taxation, gifting, investment, purchase, and sale.

Education

San Francisco State University, BA, Broadcast Communications

Mr. Drake has taken several courses in matters of real property appraisal through the Appraisal Institute to broaden his scope of knowledge and provide higher levels of service.

State of California Certified General Real Estate Appraiser No. AG031568

Practicing Affiliate Member, Appraisal Institute

Member, International Right of Way Association

R/W-AC, Appraisal Certified, International Right of Way Association

Related Course Work:**The Appraisal Institute**

Effective Appraisal Writing; Appraisal Principals; Basic Appraisal Procedures; Uniform Standards of Professional Appraisal Practice; Basic Income Capitalization; General Applications; Report Writing and Valuation Analysis; Business Practices & Ethics; Advanced Income Capitalization; Condemnation Appraising: Principals and Applications; and USPAP Continuing Education

International Right of Way Association (IRWA)

Ethics and the Right of Way Profession; The Valuation of Partial Acquisitions; Easement Valuation; Principals of Real Estate Engineering; Property Descriptions; Standards of Practice for the Right of Way Professional; and Environmental Due Diligence and Liability

National Highway Institute (US Department of Transportation)

Real Estate Acquisition Under the Uniform Act

Other

Real Estate Principles; Real Estate Practice; Legal Aspects of Real Estate

June 25, 2004

**PHASE I
ENVIRONMENTAL SITE ASSESSMENT**

1700 Sango Court
Milpitas, California 95035

Project No. 8979

Prepared For

Grand Pacific Financing Corporation
1350 Bayshore Highway, Suite 520
Burlingame, CA 94010

Prepared By

AEI Consultants
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EXECUTIVE SUMMARY

AEI Consultants (AEI) was retained by Grand Pacific Financing Corporation to conduct a Phase I Environmental Site Assessment (ESA), in conformance with the scope and limitations of ASTM Practice E1527, for the property located at 1700 Sango Court in the City of Milpitas, Santa Clara County, California. Any exceptions to, or deletions from, this practice are described in Section 1.2 of this report.

Property Description

The subject property is located at the end of Sango Court in a light industrial and commercial area of Milpitas. The property totals approximately 1.31 acres and is improved with a single-story building totaling approximately 9,600 square feet. The building is occupied by KA Tool and Supply, which manufactures fixtures for the electronic industry. The building is divided into a small machine shop, distribution warehouse, laser equipment room, and professional offices. The remaining portions of the property are utilized for parking, or an outdoor storage yard. The property was developed with the current building in 1978-79 for use by KKW Trucking, Inc. as a trucking terminal, warehouse, and distribution center. Prior to development, the property was vacant, unimproved land (1970s) and orchards (prior to the 1970s).

Findings

Recognized environmental conditions (RECs) are defined by the ASTM Standard as the presence or likely presence of any hazardous substances or petroleum products under conditions that indicate an existing release, a past release, or a material threat of a release into structures on the property or into the ground, groundwater, or surface water of the property. AEI's investigation has revealed the following recognized environmental conditions associated with the subject property or nearby properties:

- According to historical resources, the subject property was formerly equipped with a 12,000-gallon diesel underground storage tank (UST). The UST was likely installed when the property was developed (late 1970s). One groundwater monitoring well was installed at the property prior to mid-1994. Results of sampling from this well conducted in August 1994 reported no concentrations of total petroleum hydrocarbons as diesel (TPH-d) or benzene, toluene, ethylbenzene, or xylenes (BTEX). A second groundwater monitoring well was installed downgradient of the UST in June 1985. One soil sample collected at a depth corresponding to the approximate depth of the bottom of the UST revealed three parts per million (ppm) TPH-d. Subsequent groundwater sampling activities conducted in August 1995 reported no concentrations of TPH-d or BTEX. A tank tightness report was submitted in July 1995.

Ms. Oliva Chung, the property owner, indicated the UST was removed sometime in the mid-1990s. However, the report detailing UST removal activities and any subsequent subsurface sampling is in the process of being imaged at the Milpitas Fire Department (MFD), and will not be available for review until the end of July. The MFD Chief indicated that standard

protocol would be to refer any significant releases detected during UST removal to the Santa Clara Valley Water District (SCVWD). In cases where a significant release was not detected or the contamination was adequately remediated with soil excavation, no other agencies would be notified. As no information concerning the UST removal was on file with the other regulatory agencies contacted and the site was not identified as a leaking underground storage tank (LUST), AEI presumes that significant subsurface contamination was not detected following removal of the UST. In addition, groundwater monitoring conducted prior to the UST removal would indicate that significant impact from the UST was not identified on-site. However, the absence of residual concentrations of impacted soil or implementation of appropriate sampling protocol cannot be confirmed without reviewing the removal report from the MFD. Therefore, AEI recommends verification that the UST was properly closed by a review of this information.

Historical recognized environmental conditions are defined by the ASTM Standard as an environmental condition which in the past would have been considered a recognized environmental condition, but which may or may not be considered a recognized environmental condition currently. AEI's investigation has revealed the following historical recognized environmental conditions associated with the subject property or nearby properties:

- No on-site historical recognized environmental conditions were identified during the course of this investigation.

Environmental issues include environmental concerns identified by AEI that warrant discussion but do not qualify as recognized environmental conditions, as defined by the ASTM Standard. AEI's investigation has revealed the following environmental issues associated with the subject property or nearby properties:

- Based on a review of aerial photographs, the subject property was used for agricultural purposes prior to the 1970s. There is a potential that pesticides, herbicides, and fertilizers were used on-site. However, it is likely that potential concentrations of these chemicals have degraded over time, as the property has not been used for agricultural purposes for approximately 34 years. No pesticide mixing or storage areas were observed in the aerial photographs reviewed. Based on the length of time since agricultural use, and the lack of pesticide mixing and storage areas located onsite, the former agricultural use is not expected to represent a significant environmental concern. In addition, the entire area of the subject property is either paved over or covered by improvements that make direct contact with any potential remaining concentrations in the soil unlikely.
- The Viking Freight System site at 355 Sango Court is the adjacent property to the north of the subject property. According to files reviewed at the Regional Water Quality Control Board (RWQCB), a leaking 1,500-gallon clarifier was removed from the site in October 1996. The clarifier reportedly collected wastewater from floor washing activities associated with vehicle maintenance at the truck repair facility. Confirmation samples collected following the excavation of over 46 cubic yards of soil in the vicinity of the clarifier revealed up to 47,000

ppm TPH as oil and grease (TPH-og), 0.95 ppm naphthalene, and 1.4 ppm 1,2,4-trimethylbenzene. No concentrations of volatile organic compounds (VOCs) were reported above laboratory detection limits in the groundwater sample collected; TPH-og was not analyzed and groundwater was encountered from 11-12 feet bgs.

Previous subsurface investigations conducted in 1994 had characterized impacted soil (up to 2,300 ppm TPH-og) and groundwater (up to 420,000 parts per billion (ppb) TPH-og) along the eastern site boundary. All of the soil samples collected either down- or upgradient from the clarifier detected TPH-og, most of which increased concentrations with sample depth. Groundwater samples collected closest to the subject property (approximately 80 feet to the north) and upgradient from the clarifier were reported below laboratory detection limits (5,000 ppb). Soil samples collected at these same locations revealed up to 2,300 ppm TPH-og. The RWQCB did not specifically address the elevated contamination concentrations detected in 1994, but noted that the residual soil contamination detected in the 1996 sampling event did not represent a significant threat to beneficial uses of groundwater in the vicinity. Based on these conclusions, the site was granted case closure in March 1997 and it not expected to represent a significant environmental concern.

- Due to the age of the subject property building, there is a potential that asbestos-containing materials (ACMs) and/or lead-based paint are present. All suspect ACMs and painted surfaces were observed in good condition and do not pose a health and safety concern to the occupants of the subject property at this time.

Conclusions, Opinions, and Recommendations

As previously discussed, based on groundwater sampling conducted at the subject property in the 1990s, there is no indication that the former UST has significantly impacted the subsurface of the subject property. However, without reviewing the UST removal report maintained by the MFD, these assumptions cannot be confirmed. Therefore, AEI recommends verification that the UST was properly closed by a review of this information.

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FIGURES

- 1 SITE LOCATION MAP
- 2 SITE PLAN

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- A PROPERTY PHOTOGRAPHS
- B REGULATORY DATABASE
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1.0 INTRODUCTION

This report documents the methods and findings of the Phase I Environmental Site Assessment of the property located at 1700 Sango Court in the City of Milpitas, California (Figure 1: Site Location Map, Figure 2: Site Map, and Appendix A: Property Photographs).

1.1 Scope of Work

The purpose of the Phase I Environmental Site Assessment is to identify potential environmental liabilities associated with the presence of hazardous materials, its use, storage, and disposal at and in the vicinity of the subject property, as well as regulatory non-compliance that may have occurred at the subject property. Property assessment activities focused on: 1) a review of federal, state, and local lists which identify and describe underground fuel tank sites, leaking underground fuel tank sites, hazardous waste generation sites, and hazardous waste storage and disposal facility sites within the ASTM approximate minimum search distance; 2) a property and surrounding site reconnaissance with personal interviews to identify environmental contamination; and 3) a review of historical sources to help ascertain previous land use at the site and in the surrounding area.

The goal of AEI Consultants in conducting the environmental site assessment was to identify the presence or likely presence of any hazardous substances or petroleum products on the property that may indicate an existing release, a past release, or a material threat of a release of any hazardous substance or petroleum product into the soil, groundwater, or surface water of the property.

1.2 Limitations

Property conditions, as well as local, state, and federal regulations can change significantly over time. Therefore, the recommendations and conclusions presented as a result of this study apply strictly to the environmental regulations and property conditions existing at the time the study was performed. Available information has been analyzed using currently accepted assessment techniques and it is believed that the inferences made are reasonably representative of the property. AEI Consultants makes no warranty, expressed or implied, except that the services have been performed in accordance with generally accepted environmental property assessment practices applicable at the time and location of the study.

Considerations identified by ASTM as beyond the scope of a Phase I ESA that may affect business environmental risk at a given property include the following: asbestos-containing materials, radon, lead-based paint, lead in drinking water, wetlands, regulatory compliance, cultural and historic resources, industrial hygiene, health and safety, ecological resources, endangered species, indoor air quality, and high voltage lines. These environmental issues or conditions may warrant assessment based on the type of the property transaction; however, they are considered non-scope issues under ASTM Standard E 1527-00.

If requested by the client, these non-scope issues are discussed in Section 5.2. Otherwise, the purpose of this investigation is solely to satisfy one of the requirements to qualify for the innocent landowner defense under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), that is, the practices constitute "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice" as defined in 42 USC § 9601(35)(B), referenced in the ASTM E 1527-2000 Standard.

The Phase I Environmental Site Assessment is not, and should not be construed as, a warranty or guarantee about the presence or absence of environmental contaminants that may affect the property. Neither is the assessment intended to assure clear title to the property in question. The sole purpose of investigation into property title records is to ascertain a historical basis of prior land use. This investigation was prepared for the sole use and benefit of Grand Pacific Financing Corporation. Neither this report, nor any of the information contained herein shall be used or relied upon for any purpose by any person or entity other than Grand Pacific Financing Corporation.

1.3 Limiting Conditions

Pursuant to ASTM Standards, historical sources were obtained to document property use back to the property's first developed use or back to 1940, whichever is earlier. Historical data source failure may occur when standard historical sources are not reasonably ascertainable. Based on the quality of historical data obtained for this assessment, AEI does not expect historical data source failure to impact the conclusions or recommendations of this report.

The performance of this Phase I Environmental Site Assessment was limited in the following way:

- Certain records at the Milpitas Fire Department were not available for review within the timeframe provided for this investigation. This limitation is discussed in Section 3.2.2.

AEI was granted full and complete access to the subject property.

2.0 SITE AND VICINITY DESCRIPTION

2.1 Site Location and Description

The subject property is located at the end of Sango Court in a light industrial and commercial area of Milpitas. The property totals approximately 1.31 acres and is improved with a single-story building totaling approximately 9,600 square feet. The building is occupied by KA Tool and Supply, which manufactures fixtures for the electronic industry. The building is divided into a small machine shop, distribution warehouse, laser equipment room, and professional offices. The remaining portions of the property are utilized for parking, or an outdoor storage yard. The property was developed with the current building in 1978-79 for use by KKW Trucking, Inc. as a trucking terminal, warehouse, and distribution center.

Heating and cooling systems on the subject property are fueled by natural gas and electricity provided by Pacific Gas & Electric (PG&E). Potable water and sewage disposal are provided by municipal services.

Refer to Figure 1: Site Location Map, Figure 2: Site Map, and Appendix A: Property Photographs for site location.

2.2 Site and Vicinity Characteristics

The subject property is located in a mixed light industrial and commercial area of Milpitas. The immediately surrounding properties consist of Pro Stars Auto Service and Towing to the north; Dynamic Details, Inc. (printed circuit board manufacturer) to the northeast; Phototronics to the east (semiconductor parts manufacturer); Pick Your Part Auto Recycling and P&C Auto Wreckers to the south; and Sango Court and Olson Brothers body shop to the west. Several of these properties were identified in the regulatory database, as discussed in Section 4.3.

2.3 Geology and Hydrogeology

Based on a review of the USGS San Francisco Quadrangle Geologic Map, the area surrounding the subject property is underlain by Holocene and Late Pleistocene era sandstone-, shale-, and diatomite-clast loamy colluvium which is characterized by commonly gray or yellowish-brown sandy loam to clay loam.

Based on a review of the USGS Milpitas Quadrangle Topographic Map, the subject property is situated 46 feet above mean sea level, and local topography slopes to the west. The nearest surface water is Berryessa Creek, located approximately 0.50 mile northeast of the subject property. Based on groundwater monitoring reports reviewed at regulatory agencies, the assumed flow direction of groundwater at the subject property is to the northwest. Depth to groundwater ranges from 6 to 8 feet below ground surface (bgs).

3.0 HISTORICAL REVIEW OF SITE AND VICINITY

According to historical sources, the current subject property building was constructed in 1978-79 by KKW Trucking, Inc. as a trucking terminal, warehouse, and distribution center. Prior to development, the property was vacant, unimproved land (1970s) and orchards (prior to the 1970s).

Based on a review of aerial photographs, the subject property was used for agricultural purposes prior to the 1970s. There is a potential that pesticides, herbicides, and fertilizers were used on-site. However, it is likely that potential concentrations of these chemicals have degraded over time, as the property has not been used for agricultural purposes for approximately 34 years. No pesticide mixing or storage areas were observed in the aerial photographs reviewed. Based on the length of time since agricultural use, and the lack of pesticide mixing and storage areas located onsite, the former agricultural use is not expected to represent a significant environmental concern. In addition, the entire area of the subject property is either paved over or covered by improvements that make direct contact with any potential remaining concentrations in the soil unlikely.

3.1 Aerial Photograph Review

On June 23, 2004, AEI Consultants reviewed aerial photographs of the subject property and surrounding area. Aerial photographs were reviewed for the following years:

Date: 1954
Scale: 1:9,600

Date: 1980
Scale: 1:12,000

Date: 1957
Scale: 1:12,000

Date: 1990
Scale: 1:12,000

Date: 1960
Scale: 1:30,000

Date: 1999
Scale: 1:12,000

Date: 1970
Scale: 1:48,000

In the 1954 aerial photograph, the subject property and adjacent properties to the north and west were utilized as orchards. The other adjacent properties were also utilized for some type of agricultural application.

No significant changes were noted in the 1957 and 1960 aerial photographs.

In the 1970 aerial photograph, the subject property and adjacent properties to the north and west were vacant, unimproved land. Adjacent to the east was agricultural land and adjacent to the south was an auto wrecker/salvage business.

In the 1980 aerial photograph, the subject property was improved with the current building. Several trucks were parked throughout the site, and features associated with the former UST were observed east of the subject property building. Portions of the current adjacent property to the west were apparently included as part of the subject property and utilized as a paved parking lot. Adjacent to the north was vacant land, adjacent to the northeast was the current building, adjacent to the east was vacant land, and adjacent to the south was the current building for use as an auto wrecker/salvage business.

No significant changes were observed on the subject property or adjacent property to the west. The remaining adjacent properties were all developed as they are today.

In the 1999 aerial photograph, the subject property and surrounding properties were developed as they are today. The adjacent property to the west was no longer associated with the subject property.

3.2 Local Agencies

Local agencies, such as environmental health departments, fire prevention bureaus, and building departments are contacted to identify any current or previous reports of hazardous materials use, storage, and/or unauthorized releases that may have impacted the subject property.

3.2.1 Health Department

On June 22, 2004, the Santa Clara County Environmental Health Department (SCCEHD) was visited to review files on the subject property and nearby sites of concern. Files at the SCCEHD may contain information regarding hazardous materials storage, as well as information regarding unauthorized releases of petroleum hydrocarbons or other contaminants that may affect the soil or groundwater in the area.

An inspection conducted in November 1999 noted that no hazardous wastes were stored on the subject property at that time. Evidence of spilled waste oil was noted under some of the machinery. A letter from KA Tool and Supply dated November 1999 explained their waste oil disposal methods, which included collection in 55-gallon drum(s) and transfer off-site by All Chemical Disposal, Inc. An inspection conducted in March 2003 noted several violations: improperly labeled and stored hazardous materials containers, lack of secondary containment, and lack of hazardous waste management training. A subsequent inspection conducted in June 2003 indicated that all of these violations had been corrected.

3.2.2 Fire Department

On June 22, 2004, the Milpitas Fire Department (MFD) was visited for information on the subject property to identify any evidence of previous or current hazardous material usage.

Information on file with the MFD indicates the subject property was formerly equipped with a diesel underground storage tank (UST). The UST was likely installed when the property was developed (late 1970s). One groundwater monitoring well was installed at the property prior to mid-1994. Results of sampling from this well conducted in August 1994 reported no concentrations of total petroleum hydrocarbons as diesel (TPH-d) or benzene, toluene, ethylbenzene, or xylenes (BTEX). A second groundwater monitoring well was installed downgradient of the UST in June 1985. One soil sample collected at a depth corresponding to the approximate depth of the bottom of the UST revealed three parts per million (ppm) TPH-d. Subsequent groundwater sampling activities conducted in August 1995 reported no concentrations of TPH-d or BTEX. A tank tightness report was submitted in July 1995. A copy of this sampling documentation is included in Appendix C.

Ms. Oliva Chung, the property owner, indicated the UST was removed sometime in the mid-1990s. However, the report detailing UST removal activities and any subsequent subsurface sampling is in the process of being imaged at the MFD, and will not be available for review until the end of July. The MFD Chief indicated that standard protocol would be to refer any significant releases detected during UST removal to the Santa Clara Valley Water District (SCVWD). In cases where a significant release was not detected or the contamination was adequately remediated with soil excavation, no other agencies would be notified. As no information concerning the UST removal was on file with the other regulatory agencies contacted and the site was not identified as a leaking underground storage tank (LUST), AEI presumes that significant contamination was not detected following removal of the UST. In addition, groundwater monitoring conducted prior to the UST removal would indicate that significant impact from the UST was not identified on-site. However, the absence of residual concentrations of impacted soil or implementation of appropriate sampling protocol cannot be confirmed without reviewing the removal report from the MFD. Therefore, AEI recommends verification that the UST was properly closed by a review of this information.

A 2001 Hazardous Materials Business Plan (HMBP) indicated that 75 gallons of electropolish solution (10% water, 60% phosphoric acid, and 30% sulfuric acid), and various quantities of compress gases were stored on-site. An inspection conducted in August 2003 revealed no indication of a release or significant violations. A minor labeling infraction was noted.

3.2.3 Building Department

On June 22, 2004, the Milpitas Building Department (MBD) was visited for information on the subject property in order to identify historical tenants and property use. Please refer to the following table for a listing of permits reviewed:

Building Permits Reviewed

Year(s)	Applicant	Description of Permit / Building Use
1978	The Best Electric Company, Inc. Bryan Plumbing, Inc. KKW Trucking	Install wiring and equipment Install plumbing and equipment Inspection record for warehouse building
1979	KKW Trucking	Install plumbing and equipment
1992	KKW Trucking, Inc.	Application for occupancy Building utilized as truck terminal, warehouse, and distribution facility
1997	Henry Chung	Enclose patio, construct new ramps, construct stairs inside warehouse building Install 5-ton HVAC unit Add/change fixtures, water heater, and natural gas connection

Plans dated July 1978 for the construction of a one-story warehouse building for KKW Trucking indicate that a 12,000-gallon UST was installed east of the subject property building. A fuel dispenser island was located north of the UST.

3.2.4 Other Agencies

The Regional Water Quality Control Board (RWQCB) was visited on June 21, 2004 and the Santa Clara Valley Water District (SCVWD) was visited on June 22, 2004 to review files on the subject property and nearby sites of concern. Files at the RWQCB and SCVWD may contain information regarding hazardous materials storage, as well as information regarding unauthorized releases of petroleum hydrocarbons or other contaminants that may affect the soil or groundwater in the area.

No information was on file for the subject property. Files reviewed for nearby sites of concern are discussed in Section 4.3.

3.3 Sanborn Fire Insurance Maps

Sanborn Fire Insurance maps were developed in the late 1800s and early 1900s for use as an assessment tool for fire insurance rates in urbanized areas. A search was made of Los Angeles' Public Library online collection of Sanborn Fire Insurance maps on June 21, 2004. Sanborn map coverage was not available for the subject property.

3.4 City Directories

A search of historic city directories was conducted for the subject property at the San Jose Public Library on June 22, 2004. Directories were available and reviewed for the years 1968, 1972, 1975, 1981, 1985, 1989, 1994, and 1999-2000. The following table summarizes the results of the city directory search.

City Directory Search Results

Year(s)	Occupant Listed
1968, 1972, 1975	No listing
1981, 1985, 1989, 1994	KKW Trucking, Inc.
1999-2000	Henry Chung KA Tool and Supply KA Tool and Supply, Inc.

3.5 Client-Provided Information and Interviews

The client did not report to AEI any environmental liens encumbering the subject property or report any information to AEI regarding previous uses or ownership of the subject property that indicated recognized environmental conditions in connection with the subject property.

The property owner provided the following previous environmental reports to AEI for review:

Transaction Screen Report. Sequoia Environmental (Sequoia). March 1999.

- At the time of this assessment, the subject property was improved with the current building and occupied by KA Tool and Supply, a machine shop that manufactures and distributes fixtures to electronic industries. There was no evidence of a sump, UST, or monitoring wells observed at the subject property during this assessment. The property was reportedly listed in several regulatory databases (HAZNET, CHMIRS, and UST). These records indicated that diesel and motor oil were formerly used or stored at the subject property. However, Sequoia concluded that, "there are no site characteristics or lack of it that would constitute any environmental liability."

The property owner, Ms. Oliva Chung, indicated that a fuel UST was removed from the property sometime in the mid-1990s. Ms. Chung indicated that a *Phase I ESA* and subsequent subsurface investigation in the vicinity of the former UST were conducted at that time, however she was unable to provide a copy of these reports.

Information obtained during interviews with local government officials is incorporated into the appropriate segments of this section.

4.0 REVIEW OF REGULATORY AGENCY RECORDS

The following information was obtained through a search of electronically compiled federal, state, county, and city databases provided by Track Info Services Environmental FirstSearch. The database search includes regulatory agency lists of known or potential hazardous waste sites, landfills, hazardous waste generators, and disposal facilities in addition to sites under investigation. The information provided in this report was obtained from publicly available sources. The locations of the sites listed in this report are plotted with a geographic information system utilizing geocoding of site addresses. The accuracy of these locations is generally +/- 300 feet. AEI's field representative has attempted to confirm the locations of listings on or adjacent to the subject property. Refer to the radius map (Appendix B: Regulatory Database Review Report) for a location of the sites in relation to the subject property.

4.1 Records Summary

DATABASE REVIEWED	SUBJECT PROPERTY	ADJACENT PROPERTY
Identification as National Priorities List (NPL) "Superfund" site	No	No
Identification as RCRA CORRACTS site	No	No
Identification as State (CalSites SPL/SCL) site	No	Yes
Identification as CERCLIS and/or CERCLIS/NFRAP site	No	No
Reported as leaking underground storage tanks (LUST) site	No	No
Identification as solid waste landfill (SWLF)	No	No
Registered underground/aboveground storage tanks (UST/AST)	No	Yes
Identification as an Emergency Response Notification Systems (ERNS) site	No	Yes
Identification as hazardous waste handler and/or generator (RCRA-TSD, LG-GEN and/or SM-GEN)	No	Yes
Identification as SPILLS Site	No	Yes

The subject property was not identified during the regulatory database search. The adjacent property to the north, formerly Viking Freight System, was identified as an ERNS and SPILLS site, and a RCRA small quantity generator. The adjacent property to the northeast was identified as a State site, RCRA large quantity generator, and UST site. The adjacent property to the west was identified as a RCRA small quantity generator.

4.2 Contaminant Migration

Migration of petroleum hydrocarbon or volatile organic compound (VOC) contamination is generally via groundwater. Therefore, only those contaminant release sites located hydrologically upgradient relative to the subject property are expected to represent a potential environmental concern to the subject property. Contaminated sites located hydrologically downgradient of the subject property are not expected to represent a potential threat to the groundwater quality beneath the subject property. Sites that are situated hydrologically cross-gradient relative to the subject property are not expected to represent a concern unless close proximity allows for the potential of lateral migration. As discussed in Section 2.3, groundwater in the vicinity of the subject property is assumed to flow to the northwest.

4.3 Record Details

National Priorities List (NPL) is EPA's national listing of contaminated sites targeted for cleanup because they pose a threat to human health and the environment. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) authorizes and requires the EPA to investigate, categorize, and enforce the cleanup of hazardous waste sites on the NPL. An NPL site on or near a particular property may threaten the environmental integrity of the property or affect its marketability.

No sites within a 1-mile radius of the subject property were identified during the NPL database search.

CORRACTS is an EPA-maintained database of Resource Conservation and Recovery Act (RCRA) facilities undergoing "corrective action". A "corrective action order" is issued when there has been a release of hazardous waste or constituents into the environment from a RCRA facility. Corrective actions may be required beyond the facility's boundary and can be required regardless of when the release occurred, even if it predates RCRA.

One site within a 1-mile radius of the subject property was identified during the CORRACTS database search.

- The site at 945 Ames Avenue, GWC Properties, Inc., is approximately 0.99 mile northeast of the subject property. According to files reviewed at the SCVWD, the subsurface of this site has been impacted by various VOCs. The most recent groundwater sampling event, conducted in November 2003, did not indicate that the release had migrated to the subject property. Groundwater flow was determined to the northwest. Based on the most recent sampling event and direction of groundwater flow, this site is not expected to represent a significant environmental concern.

California Sites (CalSites) are provided by the California Environmental Protection Agency, Department of Toxic Substances Control and include state equivalent NPL (SPL) and CERCLIS (SCL) sites.

Thirteen sites within a 1-mile radius of the subject property were identified during the CalSites database search. The site at 945 Ames Avenue was previously discussed. The San Jose Graphics site at 696 Trimble Road, incorrectly plotted in the database, is in excess of one mile southwest of the subject property.

- The site at 1831 Tarob Court is the adjacent property to the northeast. According to the regulatory database, the site consists of an industrial building and outside chemical storage area for different types of acids. In 1990, groundwater samples were collected from on-site monitoring wells, revealing up to 320 parts per billion (ppb) trichloroethene (TCE) and 9 ppb dichloroethene (DCE). Soil samples collected from the vicinity revealed concentrations of priority metals below state action limits. The site was reportedly referred to the RWQCB. However, no additional information was on file with either the RWQCB or SCVWD. AEI presumes that further characterization activities have not been conducted to date. Groundwater sampling conducted approximately 20 feet west of this site in October 1996, for the site located at 355 Sango Court (adjacent to the north of the subject property), revealed no concentrations of volatile organic compounds (VOCs) above laboratory detection limits. Based on these results and the presumed direction of groundwater flow, it is unlikely that this release has significantly impacted the subsurface of the subject property.
- The site at 1980 Tarob Court is approximately 325 feet east of the subject property. According to an Applied Geosystems (AG) *Groundwater Monitoring* report dated February 1991, the subsurface of this site was impacted with VOCs. In this round of sampling, concentrations of 6 ppb TCE, 4 ppb DCE, and 21 ppb Freon 113 were reported in the monitoring well closest to the subject property. These concentrations are either under or within 2 ppb of the maximum contaminated levels (MCLs) established by the Department of Health Services for drinking water. Elevated concentrations detected in other monitoring wells were attributed to an off-site source. Groundwater flow was determined to the west-northwest, and was first encountered from 6 to 8 feet bgs. The regulatory database indicated that groundwater monitoring continued until July 1993, when the site was issued a no further action required status as there was no evidence for an on-site release. Based on the low concentrations of VOCs detected in February 1991 and regulatory status of the site, it is unlikely that the subsurface of the subject property has been significantly impacted by this release. Therefore, this site is not expected to represent a significant environmental concern.

Monitoring reports for a site at 551 Lundy Place, approximately 600 feet east of the subject property, were included in the information provided for 1980 Tarob Court. As discussed in an AG *Additional Environmental Assessment* report dated April 1991, the site was formerly occupied by a circuit board manufacturer and stored various quantities of VOCs. In the February 1991 sampling event, up to 1,100 ppb Freon 113 was detected in on-site groundwater monitoring wells. No concentrations of other VOCs were reported above

laboratory detection limits. Groundwater flow was determined to the northwest. Although this concentration of Freon 113 is below the MCL, it is possible that this release accounted for the detections of Freon 113 at 1980 Tarob Court, the property immediately downgradient from this site. However, there is no indication in sampling conducted from 1980 Tarob Court that this release has migrated to the subject property. Therefore, this site is not expected to represent a significant environmental concern.

- The Doudell Trucking site at 555 East Capitol Avenue is approximately 0.17 mile northeast of the subject property. According to files reviewed at the SCVWD, two USTs were removed from the site in January 1990. Confirmation samples collected following the excavation of impacted soil revealed no concentrations of contamination above laboratory reporting limits. The site was granted case closure in November 1996.

During the UST removal activities, the MFD noted two areas of stained soil. Samples collected from this vicinity revealed up to 34,000 part per million (ppm) total petroleum hydrocarbons (TPH) and 23,000 ppm oil and grease. The regulatory database indicated that this contamination "appears to be localized". There is no indication that groundwater samples have been collected. Based on this information and the relative distance from the subject property, this site is not expected to represent a significant environmental concern.

- The Kaiser Refractories sites at 1600 South Main Street is approximately 0.45 mile west of the subject property. According to files reviewed at the subject property, the site was formerly utilized for ceramic tile manufacturing, the manufacture and testing of refractories, and auto storage/repair. A subsurface investigation conducted in January 1991 revealed elevated concentration of metals in the soil greater than three times the background levels. Two municipal wells situated hydraulically up- and downgradient from the site were sampled, which revealed no contamination concentrations of concern. The site was assigned a low priority status. Subsequent remedial activities were performed in January 1992, when areas of stained soil associated with the auto storage/repair were excavated and removed off-site. To date, no further remedial or characterization activities have been completed. However, based on the presumed direction of groundwater flow and lack of documented groundwater impact, this site is not expected to represent a significant environmental concern.
- The Ford Motor Company site at 1100 South Main Street is approximately 0.45 mile northwest of the subject property. According to files reviewed at the RWQCB, two plumes of TPH-impacted groundwater were detected following the removal of several fuel USTs. Groundwater flow had been documented to the northwest, and cleanup activities were completed in March 1997. Based on the remedial actions conducted and presumed direction of groundwater flow, this site is not expected to represent a significant environmental concern.
- The site at 1696 South Main Street is approximately 0.48 mile southwest of the subject property. According to information reviewed at the RWQCB, elevated concentrations of lead

were detected in subsurface soils from this ceramic and terra cotta tile manufacturing facility. These were reportedly remediated to concentrations less than 500 ppm, and the site was certified in November 1989. Historically, concentrations of lead above background levels were not detected in the groundwater in the vicinity. Based on the latter and the relative distance from the subject property, this site is not expected to represent a significant environmental concern.

- The North American Transformer site at 1200 Piper Drive is approximately 0.50 mile northeast of the subject property. According to files reviewed at the RWQCB, a release from underground piping carrying used and new transformer oil was detected in the early 1990s. Currently, groundwater monitoring also characterizes a release of VOCs that has migrated to the site from an off-site source, Jones Chemical (discussed in detail below), and commingled with on-site sources. The plume of impacted groundwater extends towards the northwest, in the predominant direction of groundwater flow. There is no indication that the release has migrated to the subject property. Based on this information, this site is not expected to represent a significant environmental concern.
- The Jones Chemical Company at 985 Montague Expressway is approximately 0.50 mile northeast of the subject property. According to files reviewed at the SCVWD, groundwater in the vicinity of the site is impacted by VOCs from a solvent tank that exploded in the early 1980s and released 2-4,000 gallons of chlorinated solvents. From groundwater sampling conducted in July 2003, it appears the release has not appreciably migrated south of the Montague Expressway. Groundwater flow was determined to flow to the northwest. Based on this information, this site is not expected to represent a significant environmental concern.
- The Exide Corporation site at 700 Montague Expressway is approximately 0.59 mile northeast of the subject property. According to the regulatory database, the site operated as a lead acid battery manufacturer from 1956 to 1981. Subsurface soils impacted with lead as well as several waste settling ponds were remediated under oversight by the RWQCB. Based on the remedial actions conducted and presumed direction of groundwater flow, this site is not expected to represent a significant environmental concern.
- The site at 690 Gilbralter Drive is approximately 0.86 mile northwest of the subject property. According to the regulatory database, subsurface soils were impacted with nickel and zinc from former plating operations. Impacted soils were excavated and disposed off-site. Groundwater in the vicinity of the site was impacted by an unnamed off-site source. The latter is presumably the Jones Chemical Company (discussed previously) based on the direction of groundwater flow and relative distance to the site. As the on-site release had been mitigated, the DTSC granted the site a no further action status in 2001. Based on the latter and presumed direction of groundwater flow, this site is not expected to represent a significant environmental concern.
- The Stonegate Development site at 1260 Dempsey Road is approximately 0.98 mile northeast of the subject property. Based on the presumed direction of groundwater flow and the

relative distance from the subject property, this site is not expected to represent a significant environmental concern.

CERCLIS and CERCLIS/NFRAP are lists of sites that the EPA has investigated or is presently investigating for release or threatened release of hazardous substances, which may be subject to review in accordance with the terms and conditions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, also known as Superfund). Sites listed on the "No Further Remedial Action Planned" (NFRAP) database are sites where, following an initial investigation, no contamination was found, contamination was removed quickly, or the contamination was not serious enough to require federal Superfund or NPL consideration.

Three sites within a ½-mile radius of the subject property were identified during the CERCLIS/NFRAP database search. All of these sites (696 East Trimble Road, 1200 Piper Drive, and 1600 South Main Street) were previously discussed.

Leaking Underground Storage Tanks (LUST) List is a list produced by the Regional Water Quality Control Board (RWQCB) of known sites with current or former leaking underground storage tanks on the premises.

Although the subject property was formerly equipped with an UST, as previously discussed, it was not listed on the UST or LUST database.

Thirty-six sites within a ½-mile radius of the subject property were identified during the LUST database search.

- The site at 329 Sango Court, listed twice in the database, is approximately 150 feet northwest of the subject property. According to files reviewed at the SCVWD, a 1,000-gallon gasoline UST was removed from the site in January 1990. The final round of groundwater sampling, conducted in 2001, revealed no concentrations of TPH or benzene, toluene, ethylbenzene, and xylenes (BTEX) above laboratory detection limits. Methyl tertiary butyl ether (MTBE) was detected at 1.8 ppb. Groundwater was encountered at approximately 8 feet bgs, and determined to flow to the northwest. The site was granted case closure in March 2001. Based on the regulatory status of the site, it is not expected to represent a significant environmental concern.

The remaining sites within 0.25 mile of the subject property have all been granted case closure. Based on the regulatory status, presumed direction of groundwater flow, and/or the relative distance from the subject property, none of the remaining sites within 0.50 mile of the subject property are expected to represent a significant environmental concern.

Solid Waste Landfills (SWLF) is a database generated by the State of California Solid Waste Information System (SWIS), which includes active and inactive landfills and transfer stations within the state maintained by the California Integrated Waste Management Board.

Two sites within a 1/2-mile radius of the subject property were identified during the SWLF database search.

- The site at 1680 South Main Street, listed twice in the database, is approximately 0.37 mile west of the subject property. According to the regulatory database, this site accepts waste tires only. Based on the nature of waste accepted, this site is not expected to represent a significant environmental concern.

Underground/Aboveground Storage Tanks (UST/AST) List is a comprehensive listing of registered underground and aboveground storage tanks located within the State of California.

Although the subject property was formerly equipped with an UST, as previously discussed, it was not listed on the UST or LUST database.

Six sites within a 1/4-mile radius of the subject property were identified during the UST/AST database search. One of these was the adjacent property to the northeast at 1831 Tarob Court. Due to the lack of a documented release or factors discussed in the LUST segment of Section 4.3, the storage of hazardous materials within registered tanks is not a significant environmental concern.

Emergency Response Notification Systems (ERNS) List is EPA's database of emergency response actions.

One site within a 1/8-mile radius of the subject property was identified during the ERNS database search.

- The Viking Freight System site at 355 Sango Court is the adjacent property to the north of the subject property. According to files reviewed at the RWQCB, a leaking 1,500-gallon clarifier was removed from the site in October 1996. The clarifier reportedly collected wastewater from floor washing activities associated with vehicle maintenance at the truck repair facility. Confirmation samples collected following the excavation of over 46 cubic yards of soil in the vicinity of the clarifier revealed up to 47,000 ppm TPH as oil and grease (TPH-og), 0.95 ppm naphthalene, and 1.4 ppm 1,2,4-trimethylbenzene. No concentrations of VOCs were reported above laboratory detection limits in the groundwater sample collected; TPH-og was not analyzed and groundwater was encountered from 11-12 feet bgs.

Previous subsurface investigations conducted in 1994 had characterized impacted soil (up to 2,300 ppm TPH-og) and groundwater (up to 420,000 parts per billion (ppb) TPH-og) along the eastern site boundary. All of the soil samples collected either down- or upgradient from the clarifier detected TPH-og, most of which increased concentrations with sample depth. Groundwater samples collected closest to the subject property (approximately 80 feet to the north) and upgradient from the clarifier were reported below laboratory detection limits (5,000 ppb). Soil samples collected at these same locations revealed up to 2,300 ppm TPH-og. The RWQCB did not specifically address the elevated contamination concentrations

detected in 1994, but noted that the residual soil contamination detected in the 1996 sampling event did not represent a significant threat to beneficial uses of groundwater in the vicinity. Based on these conclusions, the site was granted case closure in March 1997 and it not expected to represent a significant environmental concern.

Resource Conservation and Recovery Act (RCRA) Program identifies and tracks hazardous waste from the point of generation to the point of disposal. Information from the RCRA database is divided into three categories: TSD, LG GEN and SM GEN. The TSD category is searched to a 1-mile radius and tracks facilities which treat, store and/or dispose of hazardous waste. LG GEN, or large generators, are facilities that generate more than 1000 kg of hazardous waste per month. SM GEN, or small generators, are facilities that generate between 100 and 1000 kg of hazardous waste per month. The LG-GEN and SM-GEN databases are searched up to a $\frac{1}{8}$ -mile radius from the subject property.

One site within a 1-mile radius of the subject property was identified during the RCRA-TSD database search. The site at 945 Ames Avenue was previously discussed.

Four sites within a $\frac{1}{8}$ -mile radius of the subject property were identified during the RCRA (LG- and SM-GEN) database search. Three of these were adjacent properties: 328 Sango Court (adjacent to the west), 355 Sango Court (adjacent to the north), and 1831 Tarbo Court (adjacent to the northeast). The remaining site is located at 300 Sango Court, approximately 350 feet to the west of the subject property.

The storage, treatment, disposal and/or generation of hazardous materials at these sites is not a significant environmental concern based on the lack of a documented release or factors discussed in prior segments of Section 4.3.

SPILLS sites are provided by the Regional Water Quality Control Board (RWQCB). This list includes sites that have recorded spills, leaks, investigations, and cleanups.

One site within a $\frac{1}{8}$ -mile radius of the subject property was identified during the SPILLS database search. The site at 355 Sango Court was previously discussed.

5.0 SITE INSPECTION AND RECONNAISSANCE

On June 22, 2004, a site reconnaissance of the subject property and adjacent properties was conducted by Lynn Smith of AEI in order to obtain information indicating the likelihood of recognized environmental conditions at the subject property and adjacent properties as specified in ASTM E1527 §8.4.2, 8.4.3 and 8.4.4.

5.1 On-Site Observations

Identified		Observation
Yes	No	
☒	☐	Hazardous Substances and/or Petroleum Products in Connection with Property Use
☐	☒	Aboveground & Underground Hazardous Substance or Petroleum Product Storage Tanks (ASTs / USTs)
☐	☒	Hazardous Substance and Petroleum Product Containers and Unidentified Containers not in Connection with Property Use
☐	☒	Unidentified Substance Containers
☒	☐	Electrical or Mechanical Equipment Likely to Contain PCBs
☒	☐	Interior Stains or Corrosion
☐	☒	Strong, Pungent or Noxious Odors
☐	☒	Pool of Liquid
☒	☐	Drains and Sumps
☐	☒	Pits, Ponds and Lagoons
☒	☐	Stained Soil or Pavement
☐	☒	Stressed Vegetation
☐	☒	Solid Waste Disposal or Evidence of Fill Materials
☐	☒	Waste Water Discharges
☐	☒	Wells
☐	☒	Septic Systems
☒	☐	Other

The subject property building is currently occupied by KA Tool and Supply, which manufactures fixtures for the electronic industry. The building is utilized for a machine shop, distribution warehouse, and professional offices. A laser equipment room (uses lasers to cut sheets of metal) is located within the warehouse area. The remaining portions of the property are utilized for parking, or an outdoor storage yard.

Hazardous Substances and/or Petroleum Products in Connection with Property Use

Hazardous materials observed during the site inspection included six 5-gallon containers of way oil, 5 gallons of soluble oil, 10 gallons latex paint, 15 gallon epoxy adhesive, and a flammable liquids storage cabinet stored with various quantities of paints and enamels. Several 55-gallon

drums filled with scrap metal and cylinders of compressed gasses were stored in the warehouse area. Ten gallons silicon polymer, 5 gallons drywall sealer, and a 5 gallon container partially filled with some type of petroleum fluid were noted in the rear storage yard. With the exception of a few areas of de minimis staining observed in the rear storage yard, no evidence of spills, leaks, or stains was observed in the vicinity of these materials. Based on these observations and the small quantities stored, no significant environmental concerns are identified by the presence of these materials.

Electrical or Mechanical Equipment with the Potential to Contain PCBs

Electrical transformers can potentially contain toxic polychlorinated biphenyls (PCBs). Transformers that contain 50 to 500 parts per million (ppm) PCBs are classified as PCB contaminated. The management of potential PCB-containing transformers is the responsibility of the local utility or the transformer owner. Actual material samples need to be collected to determine if transformers are PCB-containing.

One belowground transformer, presumably maintained by PG&E, was observed on the subject property during the site inspection. Due to the subsurface nature of this equipment, a visual inspection of its condition could not be conducted. However, based on the presumed regular maintenance performed on the equipment, the transformer is not expected to represent a significant environmental concern.

Interior Stains or Corrosion

Evidence of staining, typical of these type operations, were noted throughout the machine shop area. Based on the size of the staining, it can be characterized as de minimis and is not expected to represent a significant environmental concern.

Drains and Sumps

A French drain was located along the northern property boundary, which channeled storm water runoff from the parking area into an adjacent storm water drain. Based on the use of the drain solely for storm water runoff, the presence of this system is not expected to represent a significant environmental concern.

Stained Soil or Pavement

As previously discussed, de minimis staining was observed in the outdoor storage yard.

Other

Electropolishing equipment was observed on the southwestern portion of the warehouse. As all of the equipment was stored in a plastic berm, it was provided with secondary containment. According to Ms. Chung, all of the hazardous materials associated with these operations were disposed off-site when these operations were discontinued. Electropolishing operations are no longer conducted at the subject property. No evidence of significant spills, leaks, or stains were noted in the secondary containment, and no floor drains were observed in the warehouse

building. Based on these observations, no significant environmental concerns are identified by the presence of this equipment.

Other materials stored in the machine shop area included six gallons of Kool Mist (biodegradable) and five gallons Bisolv parts cleaner. Due to the non-hazardous nature of these materials, they are not expected to represent a significant environmental concern.

Materials stored throughout the warehouse and outdoor storage yard included machine shop equipment, metal racks for supply storage, an outdoor table saw, an air compressor, three dust collection systems, metal siding, and wooden pallets. Due to the non-hazardous nature of these materials, no significant environmental concerns were identified by their presence.

5.2 Non-ASTM Services

Asbestos-Containing Building Materials

For buildings constructed prior to 1980, the Code of Federal Regulations (29 CFR 1926.1101) states that all thermal system insulation (boiler insulation, pipe lagging, and related materials) and surface materials must be designated as "presumed asbestos-containing material" (PACM) unless proven otherwise through sampling in accordance with the standards of the Asbestos Hazard Emergency Response Act.

Due to the age of the subject property building, there is a potential that ACMs are present. The condition and friability of the identified suspect ACMs is noted in the following table:

Suspect Asbestos Containing Materials (ACMs)

Material	Location	Friable	Condition
Drywall Systems	Throughout	Yes	Good
Vinyl Flooring	Offices	No	Good
Acoustic Ceiling Tiles	Offices	No	Good
Ceramic Floor Tiles	Offices	No	Good
Roofing Systems	Roof	Not Inspected	Not Inspected

All observed suspect ACMs were in good condition and are not expected to pose a health and safety concern to the occupants of the subject property at this time.

Regardless of building construction date, the EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) requires that an asbestos survey adhering to AHERA sampling protocol be performed prior to demolition or renovation activities that may disturb ACMs. This requirement is typically enforced by the local air pollution control or air quality management district, and specifies that all suspect asbestos-containing materials (ACMs) be sampled to determine the presence or absence of asbestos prior to any renovation or demolition activities to prevent potential exposure to workers and/or building occupants. Similarly, OSHA regulations require that specific work practices be implemented when handling construction materials and debris that contain lead-containing materials (see below).

Lead-Based Paint

Lead-based paint is any paint, varnish, stain, or other applied coating that has 1 mg/cm² (or 5,000 ug/g by dry weight) or more of lead. In Section 1017 of the Housing and Urban Development Guidelines, Residential Lead-Based Paint Hazard Reduction Act of 1992, otherwise known as "Title X", states that a lead-based paint hazard is "any condition that causes exposure to lead that would result in adverse human health effects" resulting from lead-contaminated dust, bare, lead-contaminated soil, and/or lead-contaminated paint that is deteriorated or present on accessible, friction, or impact surfaces. Therefore, under Title X, intact lead-based paint on most walls and ceilings would not be considered a "hazard", although the paint should be maintained and its condition monitored to ensure that it does not deteriorate and become a hazard. In buildings constructed after 1978, it is very unlikely that lead-based paint is present.

Due to the age of the subject property building, there is a potential that lead-based paint is present. Both interior and exterior painted surfaces were observed to be in good condition and are not expected to pose a health and safety concern to the occupants of the subject property at this time. However, actual material samples would need to be collected in order to determine if lead-based paint is present.

5.3 Adjacent Property Reconnaissance Findings

Identified		Observation
Yes	No	
☒	☐	Hazardous Substances and Petroleum Products in Connection with Adjacent Property Use
☐	☒	Aboveground & Underground Hazardous Substance or Petroleum Product Storage Tanks (ASTs / USTs)
☐	☒	Hazardous Substance and Petroleum Product Containers and Unidentified Containers not in Connection with Property Use
☐	☒	Unidentified Substance Containers
☒	☐	Electrical or Mechanical Equipment Likely to Contain PCBs
☐	☒	Strong, Pungent or Noxious Odors
☐	☒	Pools of Liquid
☐	☒	Drains and Sumps
☐	☒	Pits, Ponds and Lagoons
☐	☒	Stained Soil or Pavement
☐	☒	Stressed Vegetation
☐	☒	Solid Waste Disposal or Evidence of Fill Materials
☐	☒	Waste Water Discharges
☐	☒	Wells
☐	☒	Septic Systems
☐	☒	Other

Hazardous Substances and/or Petroleum Products in Connection with Property Use

Based on the nature of use, AEI presumes that hazardous materials are stored on all of the adjacent properties. The adjacent properties to the north, northeast, and west were identified in the regulatory database and are discussed in Section 4.3. Based on the lack of a documented release at the properties to the south and east, no environmental concerns are identified at this time.

Electrical or Mechanical Equipment with the Potential to Contain PCBs

Electrical transformers can potentially contain toxic polychlorinated biphenyl's (PCB's). Transformers that contain 50 to 500 parts per million (ppm) PCB's are classified as PCB contaminated. The management of potential PCB-containing transformers is the responsibility of the local utility or the transformer owner. Actual material samples need to be collected to determine if transformers are PCB-containing.

Several pad-mounted transformers were observed on the adjacent properties during the site inspection. No spills, staining or leaks were observed on or around the transformers. Based on the good condition of the equipment, the transformers are not expected to represent a significant environmental concern.

6.0 FINDINGS AND CONCLUSIONS

Findings

Recognized environmental conditions (RECs) are defined by the ASTM Standard as the presence or likely presence of any hazardous substances or petroleum products under conditions that indicate an existing release, a past release, or a material threat of a release into structures on the property or into the ground, groundwater, or surface water of the property. AEI's investigation has revealed the following recognized environmental conditions associated with the subject property or nearby properties:

- According to historical resources, the subject property was formerly equipped with a 12,000-gallon diesel underground storage tank (UST). The UST was likely installed when the property was developed (late 1970s). One groundwater monitoring well was installed at the property prior to mid-1994. Results of sampling from this well conducted in August 1994 reported no concentrations of total petroleum hydrocarbons as diesel (TPH-d) or benzene, toluene, ethylbenzene, or xylenes (BTEX). A second groundwater monitoring well was installed downgradient of the UST in June 1985. One soil sample collected at a depth corresponding to the approximate depth of the bottom of the UST revealed three parts per million (ppm) TPH-d. Subsequent groundwater sampling activities conducted in August 1995 reported no concentrations of TPH-d or BTEX. A tank tightness report was submitted in July 1995.

Ms. Oliva Chung, the property owner, indicated the UST was removed sometime in the mid-1990s. However, the report detailing UST removal activities and any subsequent subsurface sampling is in the process of being imaged at the Milpitas Fire Department (MFD), and will not be available for review until the end of July. The MFD Chief indicated that standard protocol would be to refer any significant releases detected during UST removal to the Santa Clara Valley Water District (SCVWD). In cases where a significant release was not detected or the contamination was adequately remediated with soil excavation, no other agencies would be notified. As no information concerning the UST removal was on file with the other regulatory agencies contacted and the site was not identified as a leaking underground storage tank (LUST), AEI presumes that significant subsurface contamination was not detected following removal of the UST. In addition, groundwater monitoring conducted prior to the UST removal would indicate that significant impact from the UST was not identified on-site. However, the absence of residual concentrations of impacted soil or implementation of appropriate sampling protocol cannot be confirmed without reviewing the removal report from the MFD. Therefore, AEI recommends verification that the UST was properly closed by a review of this information.

Historical recognized environmental conditions are defined by the ASTM Standard as an environmental condition which in the past would have been considered a recognized environmental condition, but which may or may not be considered a recognized environmental

condition currently. AEI's investigation has revealed the following historical recognized environmental conditions associated with the subject property or nearby properties:

- No on-site historical recognized environmental conditions were identified during the course of this investigation.

Environmental issues include environmental concerns identified by AEI that warrant discussion but do not qualify as recognized environmental conditions, as defined by the ASTM Standard. AEI's investigation has revealed the following environmental issues associated with the subject property or nearby properties:

- Based on a review of aerial photographs, the subject property was used for agricultural purposes prior to the 1970s. There is a potential that pesticides, herbicides, and fertilizers were used on-site. However, it is likely that potential concentrations of these chemicals have degraded over time, as the property has not been used for agricultural purposes for approximately 34 years. No pesticide mixing or storage areas were observed in the aerial photographs reviewed. Based on the length of time since agricultural use, and the lack of pesticide mixing and storage areas located onsite, the former agricultural use is not expected to represent a significant environmental concern. In addition, the entire area of the subject property is either paved over or covered by improvements that make direct contact with any potential remaining concentrations in the soil unlikely.
- The Viking Freight System site at 355 Sango Court is the adjacent property to the north of the subject property. According to files reviewed at the Regional Water Quality Control Board (RWQCB), a leaking 1,500-gallon clarifier was removed from the site in October 1996. The clarifier reportedly collected wastewater from floor washing activities associated with vehicle maintenance at the truck repair facility. Confirmation samples collected following the excavation of over 46 cubic yards of soil in the vicinity of the clarifier revealed up to 47,000 ppm TPH as oil and grease (TPH-og), 0.95 ppm naphthalene, and 1.4 ppm 1,2,4-trimethylbenzene. No concentrations of volatile organic compounds (VOCs) were reported above laboratory detection limits in the groundwater sample collected; TPH-og was not analyzed and groundwater was encountered from 11-12 feet bgs.

Previous subsurface investigations conducted in 1994 had characterized impacted soil (up to 2,300 ppm TPH-og) and groundwater (up to 420,000 parts per billion (ppb) TPH-og) along the eastern site boundary. All of the soil samples collected either down- or upgradient from the clarifier detected TPH-og, most of which increased concentrations with sample depth. Groundwater samples collected closest to the subject property (approximately 80 feet to the north) and upgradient from the clarifier were reported below laboratory detection limits (5,000 ppb). Soil samples collected at these same locations revealed up to 2,300 ppm TPH-og. The RWQCB did not specifically address the elevated contamination concentrations detected in 1994, but noted that the residual soil contamination detected in the 1996 sampling event did not represent a significant threat to beneficial uses of groundwater in the vicinity.

Based on these conclusions, the site was granted case closure in March 1997 and it not expected to represent a significant environmental concern.

- Due to the age of the subject property building, there is a potential that asbestos-containing materials (ACMs) and/or lead-based paint are present. All suspect ACMs and painted surfaces were observed in good condition and do not pose a health and safety concern to the occupants of the subject property at this time.

Conclusions, Opinions, and Recommendations

As previously discussed, based on groundwater sampling conducted at the subject property in the 1990s, there is no indication that the former UST has significantly impacted the subsurface of the subject property. However, without reviewing the UST removal report maintained by the MFD, these assumptions cannot be confirmed. Therefore, AEI recommends verification that the UST was properly closed by a review of this information.

7.0 SIGNATURE OF ENVIRONMENTAL PROFESSIONALS

AEI Consultants has performed a Phase I Environmental Site Assessment for the property located at 1700 Sango Court in the City of Milpitas, Santa Clara County, California, in conformance with the scope and limitations of ASTM Standard E1527. Any exceptions to, or deletions from, this practice are described in Section 1.2 of this report.

Prepared By:



Lynn Smith
Environmental Scientist

Reviewed By:



Nick Walchuk, REA
Senior Author



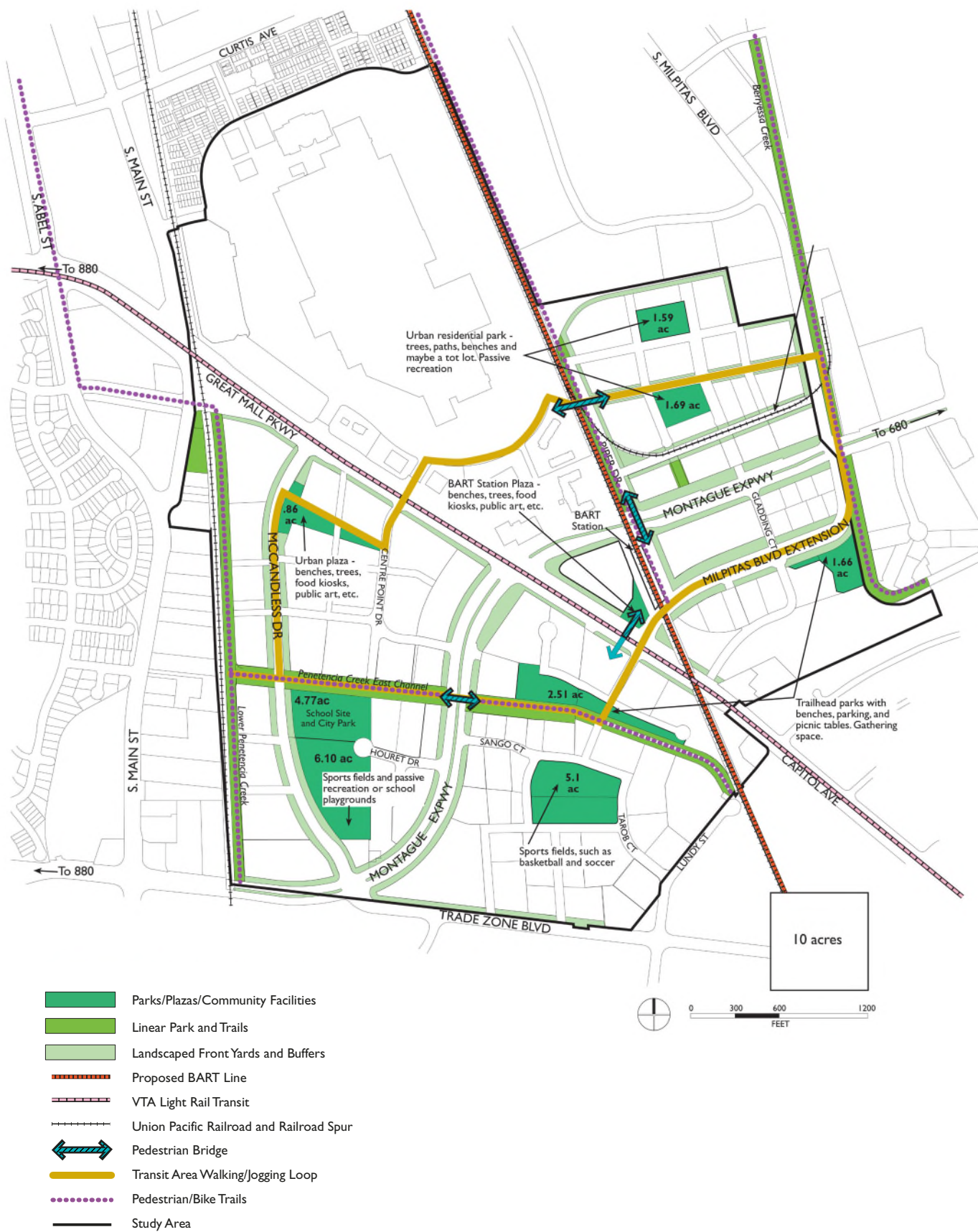


Figure 3-6

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	350-2931	\$5,305,000	350-951-4811	\$5,305,000

Adopt a Resolution Authorizing the City Manager to Execute a Purchase and Sale Agreement and all related closing documents for Property located at 1700 Sango Court (APN 086-36-012) within the Transit Area Specific Plan (TASP) to accommodate expansion of Augustus Rathbone Public Park and Approve a Budget Amendment

Background:

The subject property is a 1.31 acre (56,926 SF) site with a 9,600 square foot industrial building located at 1700 Sango Court. The site is bounded by the recently approved future 308 Sango Court affordable housing project site to the north, existing legal non-conforming industrial use to the east, existing Augustus Rathbone Public Park to the south, and existing legal non-conforming industrial use to the west. The site resides within the Transit Area Specific Plan (TASP) with a land use designation of Parks/Plazas/Community Facilities. The TASP Zoning is R5-TOD.

The City Council adopted the TASP in June 2008 to support future BART service as well as existing VTA transit options in the community. Since that time, the TASP has facilitated the transformation of an older industrial area into a vibrant, high-intensity mixed-use, transit-oriented district. The TASP area of Milpitas is unique in the Bay Area in that it features large land acreages, access to two freeways and a regional expressway, two light rail stations, the new Milpitas BART station, and the Great Mall as a regional retail destination.

The TASP envisions a walkable, transit-oriented neighborhood with a mix of land uses to minimize vehicle trips and encourage walking, biking, and transit ridership. The Plan is designed to accommodate substantial new development, minimize traffic impacts on local roadways, and reduce urban sprawl. It establishes not only the land use vision but also includes specific policies, standards, and capital improvement projects needed to achieve the vision. It also provides detailed standards for street design and building form.

Public improvements and services needed to serve the TASP area's future residents and workers are set forth in the Plan. These basic infrastructure requirements include streets, parks, pedestrian/bike bridges, community facilities, sewer and water facilities, storm drainage, etc. The Plan is accompanied by a separate Transit Area Development Impact Fee (TADIF) financing strategy to ensure that the Plan is fiscally responsible for the City and property owners. TADIF fees are paid by development occurring exclusively within the TASP and are applied to construction of streets, parks, and infrastructure. A copy of the TASP and TADIF is available at <http://www.ci.milpitas.ca.gov/planning-documents/transit-area-specific-plan/>.

Recommendation:

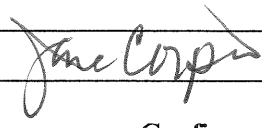
Adopt a Resolution Authorizing the City Manager to Execute a Purchase and Sale Agreement and all related closing documents for Property located at 1700 Sango Court (APN 086-36-012) within the Transit Area Specific Plan (TASP) to accommodate expansion of Augustus Rathbone Park.

Attachments:

- A) Purchase and Sale Agreement
- B) Appraisal Report dated January 2019
- C) Environmental Phase I Report (attached to appraisal report); and
- D) TASP Figure 3-6 Public Parks, Spaces, Trails (Informational)
- E) Budget Change Form

☒ Check if City Council Approval required.

Meeting Date: May 07, 2019

Requested by:	Department Head: Steve McHarris	Date: May 07, 2019
Reviewed by:	Interim Finance Director: Jane Corpus 	Date: May 07, 2019
Date approved by City Council, if required:		Confirmed by:

FI/24786/V

Form 30-222 (Rev. 1/92)

Item Attachment Documents:

- C9. Adopt a Resolution Approving a Reimbursement Resolution Authorizing Reimbursement of Certain Water and Wastewater Capital Improvement Expenditures from the Proceeds of Future Indebtedness

Recommendations:

Adopt a Resolution Authorizing Reimbursement of Certain Water and Wastewater Capital Improvement Expenditures from the Proceeds of Future Indebtedness



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving a Reimbursement Resolution Authorizing Reimbursement of Certain Water and Wastewater Capital Improvement Expenditures from the Proceeds of Future Indebtedness
Category:	Leadership and Support Services
Meeting Date:	5/7/2019
Staff Contact:	Jane Corpus, 408-586-3125
Recommendations:	Adopt a Resolution Authorizing Reimbursement of Certain Water and Wastewater Capital Improvement Expenditures from the Proceeds of Future Indebtedness

Background:

As part of the rates approved by the City Council for the Water and Wastewater Utilities, bond financing was contemplated as part of the financial plan for those Utilities. Bond financing allows the City to fund important capital projects that would not be practical from a cash perspective to fund via pay as you go without dramatic increases in the rates. Those projects have been identified in the 2019-2024 Capital Improvement Program budget, reviewed by the City Council in a study session on March 12, 2019.

The City Council is being asked to adopt a Resolution to allow the Water and Sewer Funds to be reimbursed at a later date from the proceeds of the future bond sales for capital improvement projects already begun. This will allow the City to optimize the timing of the bond sale at a later date. Council is not being asked tonight to approve any bond sales; passing this Resolution does not obligate the City to any action in the future. Staff will return to Council at a later date when all of the necessary bond documents are ready for Council consideration and approval. The Wastewater Fund timing is still being discussed; staff expects to bring forward to the City Council the bond documents for Water capital improvements in August. The Water Fund is facing a more critical cash flow need the Wastewater Fund.

Analysis:

Bond proceeds must be used in certain ways to comply with federal Internal Revenue Service (IRS) guidelines in order to qualify as tax exempt, that is, with a lower interest rate than taxable bonds. Tax exempt bonds save the City and ratepayers money, as they come with lower interest costs. One of the IRS' requirements is that tax exempt bonds can only be used to pay for capital improvement expenditures expended not more than 60 days prior to the issuance of bonds unless a reimbursement Resolution had been passed (Resolution) beforehand.

If the City Council approves this Resolution, staff can more optimally time the issuance of tax exempt bonds based on actual projects' cash flow needs. Timing of the bond sale would be optimized to provide flexibility for staff and lowers overall interest costs by timing the bond sale closer to when funds are needed, not when a capital improvement project construction commences.

Policy Alternatives:

Alternative 1: Do not approve the Reimbursement Resolution.

Pros: None

Cons: The City will not be able to reimburse itself in order to recover cash it spent on the Water and Wastewater capital projects up until the time of the bond sale(s), thereby reducing City funding that could otherwise be used for other important Water and Wastewater priorities.

Reason not recommended: The capital improvement budget and Water and Wastewater rates were set as part of a 5 year rate plan in February 2019 anticipating bond sales to pay for various capital projects. The proposed resolution will allow the City maximum flexibility in determining which projects should be financed.

Fiscal Impact:

There is no fiscal impact from passing this Resolution. Unquantifiable interest expense savings will be realized if a bond sale can be delayed until funds are needed, rather than when project construction begins.

Recommendation:

Adopt the attached Resolution Authorizing reimbursement of certain Water and Wastewater capital improvement expenditures from the proceeds of future indebtedness.

Attachment:

Resolution

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DECLARING
INTENTION TO REIMBURSE EXPENDITURES RELATING TO THE WATER SYSTEM AND
WASTEWATER SYSTEM FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS**

WHEREAS, the City of Milpitas (the “City”) owns and operates a system for the supply, treatment and distribution of water within the service area of the City (the “Water System”) and anticipates constructing various capital improvements to the Water System (the “Water Projects”); and

WHEREAS, the City owns and operates a system for the collection and conveyance of wastewater within the service area of the City (the “Wastewater System”) and anticipates constructing various capital improvements to the Wastewater System (the “Wastewater Projects”); and

WHEREAS, in order to provide funds to finance the Water Projects, the City Council intends to issue and sell tax-exempt bonds, certificates of participation, or lease revenue bonds, either through the City or a joint-powers-agency of which the City is a member, in the aggregate principal amount of approximately \$20,000,000 which are payable from revenues of the Water System (the “Water Bonds”); and

WHEREAS, in order to provide funds to finance the Wastewater Projects, the City Council intends to issue and sell tax-exempt bonds, certificates of participation, lease revenue bonds, or via a line of credit, either through the City or a joint-powers-agency of which the City is a member, in the aggregate principal amount of approximately \$35,000,000 which are payable from revenues of the Wastewater System (the “Wastewater Bonds”); and

WHEREAS, in order to use the proceeds of the Water Bonds and Wastewater Bonds to reimburse advances made by the City for the Water Projects or Wastewater Projects, as applicable, before the date of issuance of such bonds, but not more than 60 days before the date of adoption of this Resolution, Section 1.150-2 of the United States Income Tax Regulations requires that the City Council declare its intention to reimburse such advances from the proceeds of the Water Bonds and Wastewater Bonds, respectively; and

WHEREAS, it is in the public interest and for the public benefit that the City Council declare its official intent to reimburse the expenditures referenced herein;

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

Section 1. Declaration of Intent – Water Bonds. The City Council hereby declares that it reasonably expects to issue the Water Bonds and to use a portion of the proceeds thereof to reimburse expenditures made by the City for the Water Projects before the date of issuance of the Water Bonds, and not more than 60 days before the date of adoption of this Resolution. The Water Bonds shall be issued in an aggregate principal amount which is sufficient to raise funds for the Water Projects in the approximate amount of \$20,000,000. The Bonds may, at the election of the City, be issued by the City or a joint-powers-agency of which the City is a member, for the purpose of providing tax-exempt financing for the Water Projects.

Section 2. Declaration of Intent – Wastewater Bonds. The City Council hereby declares that it reasonably expects to issue the Wastewater Bonds and to use a portion of the proceeds thereof to reimburse expenditures made by the City for the Wastewater Projects before the date of issuance of the

Wastewater Bonds, and not more than 60 days before the date of adoption of this Resolution. The Wastewater Bonds shall be issued in an aggregate principal amount which is sufficient to raise funds for the Wastewater Projects in the approximate amount of \$35,000,000. The Bonds may, at the election of the City, be issued by the City or a joint-powers-agency of which the City is a member, for the purpose of providing tax-exempt financing for the Wastewater Projects.

Section 3. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this _____ day of _____ 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Item Attachment Documents:

C10. Approve the 5-Year Professional Services Agreement with Precision K9 for Police Canine Training (Staff Contacts: Lt. John Torrez, 408-586-2408 and Chris Schroeder, 408-586-3161)

Recommendation: Approve the 5-Year Professional Services Agreement with Precision K9 in the amount not to exceed \$195,000.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve the 5-Year Professional Services Agreement with Precision K9 for Police Canine Training
Category:	Consent Calendar-Public Safety
Meeting Date:	5/7/2019
Staff Contact:	Lt. John Torrez, 408-586-2408 and Chris Schroeder, 408-586-3161
Recommendation:	Approve the 5-Year Professional Services Agreement with Precision K9 in the amount not to exceed \$195,000.

Background:

City Purchasing staff worked with the Police Department Canine Unit to develop specifications for a Police Canine Training Professional Services Agreement. Invitation for Bid #2304 was released on March 25, 2019 and was advertised on the City website and on Public Purchase. Eleven vendors viewed the solicitation and seven vendors downloaded the bid package. Two bidders responded and the results are summarized below:

Bidder

Precision K9

Witmer-Tyson Imports, Inc.

5 Year Base Bid

\$ 171,000.00

\$ 200,100.00

The contract will provide Monthly Maintenance Training, Basic K9 Handler, Basic Narcotics K9 Handler, Basic K9 Tracking Courses, AKC Canine Good Citizen Training, and Optional Additional Maintenance Training. An additional 48 hours of "Optional Additional Maintenance Training" was added to the base bid at the Bidders proposed rate.

Analysis:

Invitations for Bid are awarded to the lowest responsible, lowest responsive bidder. The lowest responsible, lowest responsive bidder for IFB 2304 was Precision K9. Additional Optional Maintenance Training is priced at \$100.00 dollars per hour; multiplied by 48 hours per year results in \$4,800.00 per year. The Additional Optional Maintenance Training over 5 years equals \$24,000.00. This total was added to the base bid amount of \$171,000.00 for a 5 year total of \$195,000.00.

Policy Alternative:

Alternative 1: Not approve the 5-Year Professional Services Agreement with Precision K9.

Pros: No additional City funds would be expended for the monthly maintenance training of the police department's four police canines and their handlers.

Cons: Four Milpitas Police canines and their handlers would be working without the 16-hours of monthly maintenance training as recommended in the California Peace Officer Standards and Training Law Enforcement K-9 Guidelines.

Reason not recommended: Milpitas Police canines and their handlers require regular maintenance training in order to operate safely on a day to day basis, maintain a level of proficiency, and successfully pass the California Peace Officer Standards and Training Law Enforcement K-9 Guidelines certification.

Fiscal Impact:

Approval of the Police Canine Training Professional Services Agreement of \$39,000 would be funded from the Police Department's FY 2019-20 Police operating budget.

California Environmental Quality Act:

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA.

Recommendation:

Approve the 5-Year Professional Services Agreement with Precision K9 in the amount not to exceed \$195,000.

Attachments:

- a) Professional Services Agreement with Precision K9
- b) IFB No. 2304 Evaluation Matrix

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of June 1, 2019 (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **Precision K9**, a Sole Proprietorship with its principal place of business at **33 Quail Way, Watsonville, CA 95076** (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Police Canine Training (hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Work attached hereto as Exhibit A.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **One Hundred Ninety Five Thousand Dollars and Zero (\$195,000.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement term and for four (4) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be Five (5) years from **June 1, 2019** to **May 30, 2024**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement. The City has specific yearly milestones in the "Activity Schedule" set forth as Exhibit C.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from

employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code

Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

c. The Consultant understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Consultant's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign **Jimmy Vanhove** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas

1275 N. Milpitas Blvd

Milpitas, California 95035

Attn: Armando Corpuz, Chief of Police

CONSULTANT:

Precision K9

Jimmy Vanhove

33 Quail Way

Watsonville, CA 95076

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-

discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Wage Theft Prevention

a. Consultant, and any subconsultant it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

b. BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONSULTANT OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONSULTANT AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONSULTANT OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Consultant or a subconsultant it employs to perform work under this Agreement has violated any applicable wage and hour law, or Consultant learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Consultant shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Consultant or its subconsultant(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Consultant or its subconsultant is subject to a payment or other alternative plan, the Consultant or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

d. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

e. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

f. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND PRECISION K9**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

PRECISION K9

Approved By:

Julie Edmonds-Mares
City Manager

Signature

Name

Date

Title

Approved As To Form:

Christopher J. Diaz
City Attorney

Date

Approved As To Scope:

DIR Registration Number (If Applicable)

Jane Corpus
Interim Director of Finance

Approved As To Content:

Armando Corpuz, Chief of Police

EXHIBIT A

Scope of Work

The City of Milpitas currently has four (4) K9 teams.

Item No. 1: Maintenance Training

- 16 hours of maintenance training per month.
- 4 maintenance training sessions per month (4 hours per session).
- Maintenance training sessions shall be within the City of Milpitas.
- Maintenance training sessions on a day and time designated by the Milpitas Police Department K9 Unit. All sessions must be during the on-duty hours of the handlers.
- **Maintenance training sessions will involve the Milpitas Police Department K9 Units only. No other agencies are to be involved.**
- Weekly K9 Training Email shall be completed by the trainer at the conclusion of each session. The report shall contain a summary of each K9 team's performance during the training session and areas that need improvement. The report shall be emailed to the K9 Unit supervisor and the individual handlers.
- 24/7 Phone and/or email support at no extra cost.
- Maintenance training rate based on a flat fee/rate and not a fee based on the number of K9 teams participating in the training.
- Remain in regular contact with the K9 Unit supervisors regarding the progress of each K9 team.
- Assist in the selection of new handlers and new canines at no extra cost.
- Provide training materials as needed (handouts, articles, multimedia, etc.) to handlers during maintenance training sessions.
- Provide helpers, decoys, and/or agitators for maintenance training sessions to enable handlers and their dog's to receive the maximum amount of training time possible.
- Provide maintenance training that is consistent with the training methods received during the current handler's Basic K9 Handler course.

Item No. 2: Basic K9 Handler, Basic Narcotics K9 Handler and Basic Tracking Course

- Provide a 160 hour Basic K9 Handler, Basic Narcotic K9 Handler, and Basic Tracking course.
- The Basic K9 Handler, Basic Narcotic K9 Handler, and Basic Tracking courses shall include classroom and field exercises.
- Provide training materials as needed (handouts, articles, multimedia, etc.) to handlers during maintenance training sessions and the Basic K9 Handler, Basic Narcotic K9 Handler and Basic Tracking course at no extra cost.
- Train all canine teams to meet the requirements of the Training Guidelines and Testing and Evaluation Guidelines listed in the California Peace Officer Standards and Training Law Enforcement Service Dogs Guidelines.
- In addition to the "core" training (obedience, search, apprehension, and handler protection), training shall also consist of tracking, evidence search, and tactical deployments during the Basic K9 Handler course and maintenance training sessions at no extra cost.
- Narcotic detection dog maintenance training and/or tracking maintenance training shall be incorporated into the patrol maintenance training sessions for cross trained K9 teams.
- The Basic K9 Handler, Basic Narcotic K9 Handler, and Basic Tracking courses and maintenance training sessions shall be taught by only one trainer in order to keep a consistency during training.
- Low student to trainer ratio of no more than 1 to 4 during the Basic K9 Handler, Basic Narcotic K9 Handler, and Basic Tracking courses.

Item No. 3: AKC Canine Good Citizen Program

- Certify all K9 teams under the AKC Canine Good Citizen program.

Item No. 4: Additional Optional Maintenance Training

- 4 hours of additional maintenance training per month.
- 1 maintenance training sessions per month (4 hours per session).
- Maintenance training sessions shall be within the City of Milpitas.
- 24/7 Phone and/or email support at no extra cost.
- Maintenance training rate based on a flat fee/rate and not a fee based on the number of K9 teams participating in the training.
- Trainer shall remain in regular contact with the K9 Unit supervisors regarding the progress of each K9 team.
- Provide training materials as needed (handouts, articles, multimedia, etc.) to handlers during maintenance training sessions.
- Train all K9 teams to meet the requirements in the California Peace Officer Standards and Training Law Enforcement Service Dogs Guidelines.
- In addition to the “core” training (obedience, search, apprehension, and handler protection), training shall also consist of tracking, evidence search, and tactical deployments.
- **Additional Optional Maintenance training sessions will involve the Milpitas Police Department K9 Units only. No other agencies are to be involved.**

Additional General Requirements

- If a K9 team is unavailable due to calls for service or other extenuating circumstances, a make-up maintenance training session shall be made available to the K9 team at an agreed upon date and time.
- If the maintenance training session must be cancelled due to unforeseen circumstances, the K9 Unit supervisors and trainer shall reschedule the session on a mutually agreed upon date and time (but still during the handler’s on-duty hours) and will not forfeit the session.
- The Milpitas Police Department shall reserve the right to cancel the training contract with the trainer at any time and not be subjected to any cancellation fees.

California Peace Officer Standards and Training

Law Enforcement Service Dogs Guidelines

POST has developed these guidelines for law enforcement agencies who have established service dog programs. These guidelines contain information to consider when addressing the broad range of issues related to the development and use of law enforcement service dogs.

Law enforcement agencies should establish well defined policies and procedures for the service dog program. The topics in the agency policies and procedures should include selection criteria of the dog, handler, veterinarian, and the department trainer, deployment and use of force, and minimum standards of certification and performance...

Chapter 2 – Training Guidelines

Guideline #8: Training Policy

Agencies must select training programs that meet the department needs and are consistent with department policies. The agency training policies should at minimum include a required for participation in a law enforcement service dog basic training course and training that is designed to maintain the skills needed to work for the agency and to be certified.

The efficiency of any K-9 program is proportional to the quantity and the quality of training that the K-9 teams receive. Because a dog learns through repetition, it is necessary to continue the team's training once "basic" training is completed. All training should be frequent, ongoing and structured to address the basic skills that a K-9 team is expected to perform.

The designated department trainer for basic and advanced K-9 team training should be a qualified and experienced law enforcement trainer who is familiar with California law enforcement policies and practices.

Guideline #9: Selection of the Agency Trainer

For a variety of reasons, it is important for agencies to carefully select who is going to be responsible for providing training. The selection criteria of agency trainers is critical to the success of the K-9 program.

Guideline #10: Basic K-9 Team Training

It is important for agencies to train the prospective K-9 team in the basics of the law enforcement service dog program. This foundation training will prepare the K-9 team for service through classroom instruction and simulation exercises.

The K-9 team should be tested at the conclusion of the basic training program and certified for service. The certification confirms the K-9 team successfully meets the department standards for use.

Basic K-9 training includes the following primary subjects: Obedience, agility, search, protection, apprehension, and other specialized areas if applicable (such as narcotics detection, tacking, evidence search, explosive detection, etc.). The basic K-9 training should also include other applicable subject areas.

Guideline #11: Maintenance Training For K-9 Teams

It is important for agencies to select training programs that meet the department needs and is consistent with department policies. The selected department trainer should be qualified and experienced law enforcement service dog trainer who is capable of training the team to meet the POST guidelines for certification.

Regular and ongoing maintenance training is necessary to ensure that the dog teams continue to meet department standards and POST guidelines. Continuous professional training is beneficial to further develop the dog teams. K-9 teams can prepare for incidents through training and simulation exercises.

Guideline #12: Training Documentation

Agencies should document the training of the K-9 team's basic, maintenance, and continuing professional training for statistical accounting; to determine unit cost effectiveness; for remediation; to determine individual and K-9 unit training needs; to determine future department training needs, and for verification of K-9 team expertise.

All training should be thoroughly documented and filed in the K-9 team's training file.

Chapter 3 – Testing and Evaluation Guidelines

Guideline #13: Testing and Evaluation

The purpose of testing and evaluating within the law enforcement service program is to ensure that the K-9 team can demonstrate the skills required for agency certification. The goal is to ensure the newly acquired and experienced K-9 teams meet or exceed minimum agency standard of performance.

The certification process should include the requirement for each K-9 team to demonstrate obedience, search, apprehension, and handler protection. In addition, other specialty dogs should be able to track, locate narcotics, firearms, and explosives as trained. The performance testing and evaluation is usually given at the conclusion of the K-9 team's basic training. Certification should occur at least annually thereafter.

Milpitas Police Department Policy Manual – Canine Program

318.7 Training

Before assignment in the field, each canine team shall be trained and certified to meet current POST standards. Cross-trained dog teams or those dog teams trained exclusively for the detection of narcotics and/or explosives shall be trained and certified to meet the standards established for such detection dogs by the California Narcotic Canine Association or other recognized and approved certification standards.

The Unit Coordinator shall be responsible for scheduling periodic training for all department personnel in order to familiarize them with how to conduct themselves in the presence of department canines.

318.7.1 Continued Training

Each canine team shall thereafter be recertified to current POST standards and the California Narcotic Canine Association or other recognized and approved certification standards on an annual basis. Additional considerations are as follows:

- (a) Canine teams shall receive training as defined in the current contract with the department's canine training provider.
- (b) Canine handlers are encouraged to engage in additional training with the approval of the Unit Coordinator.
- (c) To ensure that all training is consistent, no handler, trainer, or outside vendor is authorized to train to a standard that is contrary to the policies of the Milpitas Police Department.
- (d) All canine training shall be conducted while on-duty unless otherwise approved by the Unit Coordinator or Watch Commander.

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials Agreement.

FEE SCHEDULE		
Description	Rate	U/M
Maintenance Training	\$ 100.00	Hour
Additional Optional Maintenance Training	\$ 100.00	Hour
Basic K9 Handler Course	\$ 5,000.00	Each
Basic Narcotics K9 Handler Course	\$ 5,000.00	Each
Basic Tracking K9 Handler Course	\$ 5,000.00	Each

EXHIBIT C

Activity Schedule

ACTIVITY SCHEDULE PER YEAR		
Description	Quantity	U/M
Maintenance Training	192	Hour
Additional Optional Maintenance Training	48	Hour
Basic K9 Handler Course	1	Each
Basic Narcotics K9 Handler Course	1	Each
Basic Tracking K9 Course	1	Each

EXHIBIT D

Insurance Requirements

Please refer to the insurance requirements listed below. Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

☐ Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

☒ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

☐ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

___ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

___ Insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

___ Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor’s or Consultant’s Pollution Legal Liability:

___ Contractor’s or Consultant’s pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X **Additional Insured Status:**

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s or Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor’s policy shall be “primary and non-contributory” and will not seek contribution from the City’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

X **Primary Coverage:**

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

 Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

X **Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

Each insurance policy required above shall contain, or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X **Waiver of Subrogation:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

____ Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

LIST OF BID DOCUMENTS TO BE RETURNED - RESPONSIVENESS DETERMINATION

Police Canine Training
Submittal Due Date: March 15, 2019
IFB 2304

DESCRIPTION	Precision K9	Witmer Tyson
1) BID FORMS	x	x
Acknowledge Addenda and Questions	n/a	n/a
Base Bid Schedule	x	x
Total Bid Price written in numbers	x	x
2) Bidder Experience Statement		
Section A	x	x
Section B	x	x
Section C	none	none
Section D	x	x
3) Local Purchasing Certificate (Yes, No, or N/A if not returned)	Yes	Yes
4) Non-Discriminatory Employment Certificate	x	x
6) Non-Collusion Declaraion	x	x
7) Worker's Comp Insurance Cetification	x	x
8) Wage Theft Certification	x	x
Determination (Accept or Disqualified)	Accept	Accept

Police Canine Training								
IFB 2304								
*If a Local Purchasing Preference Certificate is submitted and validated, certain provisions apply. See Purchasing Agent for assistance								
**If a Recycled Product Certificate is submitted and validated, insert "10" in column F for the corresponding company, otherwise leave blank. See Purchasing Agent for assistance if the certificate is submitted								
Proposer	Base Bid Price	Add Alternate Price(s)	Total Price	LPPC (Y/N)*	RPC**	Bid Evaluation Price	Final Bid Ranking	Comments
Precision K9	\$ 171,000.00		\$ 171,000.00	y		\$ 171,000.00	1	
Witmer Tyson	\$ 200,100.00		\$ 200,100.00	n		\$ 200,100.00		

COMMENTS	[Company Name]	[Company Name]
***If Any Section of the bid warrants additional notes or information, add the section title here and the note under the corresponding company name. Adjust and modify as needed to capture necessary information. If none, delete this sheet ***]	Precision K9	Witmer Tyson
	None	None

Item Attachment Documents:

- C11. Permanently change the Milpitas National Night Out day to align with the Nationally recognized date of the first Tuesday in August.

Captain Raj Maharaj, 408-586-2416

Recommendation:

Move to permanently change the Milpitas National Night Out day to align with the Nationally recognized date of the first Tuesday in August.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Permanently change the Milpitas National Night Out day to align with the Nationally recognized date of the first Tuesday in August.
Category:	Consent Calendar-Public Safety
Meeting Date:	5/7/2019
Staff Contact:	Captain Raj Maharaj, 408-586-2416
Recommendation:	Move to permanently change the Milpitas National Night Out day to align with the Nationally recognized date of the first Tuesday in August.

Background:

National Night Out was established in 1984 and it is a nationwide annual community-building campaign that promotes strong police-community partnerships and neighborhood camaraderie to make our neighborhoods safer. National Night Out is meant to enhance the relationship between neighbors and law enforcement while bringing back a true sense of community. Furthermore, it provides a great opportunity to bring police and neighbors together under positive circumstances.

On the first Tuesday in August, neighbors take part in National Night Out across thousands of communities from all fifty states, U.S. territories, and military bases. Neighborhoods host block parties, festivals, parades, cookouts, and various other community events with safety demonstrations, seminars, youth events, visits from emergency personnel, and exhibits. Today, 38 million neighbors in 16 thousand communities across the nation take part in National Night Out.

Analysis:

The City of Milpitas has traditionally held National Night Out on the first Thursday in August. This is inconsistent with the nationally recognized date set forth by the National Association of Town Watch. The celebration date was modified, in the City of Milpitas, to avoid a scheduling conflict with the City Council meeting held on the first Tuesday, in August.

Celebrating National Night Out on the first Tuesday in August would bring the City in line with the rest of the nation, thus making it truly a National Night Out. A celebration in unity with the rest of the nation may encourage more participation from our community members. If the recommendation is approved, staff will work with the newly established Rules Subcommittee and City Council to develop a Council meeting agenda on the first Tuesday in August that will still enable Council participation in National Night Out events.

Policy Alternatives:

Alternative 1: Do not authorize the date change to recognize National Night Out.

Pros: The City Council meeting on the first Tuesday of August would not be impacted.

Cons: Milpitas citizens would not celebrate National Night Out on the nationally recognized date.

Reason not recommended: National Night Out is a national event. Celebrating the event on a different day is inconsistent with celebrating a national event.

Fiscal Impact:

None

California Environmental Quality Act:

Not applicable

Recommendation:

Move to permanently change the National Night Out for the City of Milpitas from the first Thursday in August to the first Tuesday in August to be consistent with the nationally recognized date.

Attachment:

Official National Night Out 2019 flyer.

**TUESDAY
AUGUST 6
2019**

POLICE • COMMUNITY PARTNERSHIPS



NATW

ring



Associa



AT&T



Academy
SPORTS & OUTDOORS



Renewal
by Andersen



Item Attachment Documents:

- C12. Approve and Authorize the City Manager to Execute Master Professional Service Agreements with Environmental Consultants for On-Call Environmental Services

Rozalynne Thompson, 408-586-3278

Recommendation:

Approve and authorize the City Manager to execute Master Professional Service Agreements with the selected consulting firms to provide on-call environmental consulting services



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute Master Professional Service Agreements with Environmental Consultants for On-Call Environmental Services
Category:	Consent Calendar-Community Development
Meeting Date:	5/7/2019
Staff Contact:	Rozalynne Thompson, 408-586-3278
Recommendation:	Approve and authorize the City Manager to execute Master Professional Service Agreements with the selected consulting firms to provide on-call environmental consulting services

Background:

In 2013, the Planning Department initiated a best practice of contracting with City-approved consultants to provide environmental consulting services on an on-call basis. At that time, the City executed master service agreements with five firms for on-call environmental services over the next five-year period. The previous master agreements expired in November 2018, but the Planning Department has been able to continue working with one of the consulting firms under a six-month contract extension, as provided in the master agreement.

Analysis:

In February 2019, the Planning Department issued a Request for Qualifications (RFQ) for selection of on-call environmental consultants to provide environmental consulting services for the City's private development and City-initiated projects. The on-call environmental consultants will be responsible for the preparation of Initial Studies, Negative Declarations, Mitigated Negative Declarations, Environmental Impact Reports (EIRs), technical studies, and other documentation for proposed projects as required under the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA).

After review of the submitted qualifications and interviews with firms, the Department has selected six firms to provide consulting services whose qualifications demonstrate they are the most qualified, responsive, and advantageous to the City. The firms chosen include: Baseline Environmental Consulting; First Carbon Solutions; Impact Sciences; LSA Associates; MIG; and WRA. The Master Service Agreements with each have a term of five years and maximum budgetary allocation of \$1,000,000 per consulting firm. The City will enter into Master Professional Service Agreements with each of the six firms.

Policy Alternatives:

Alternative 1: Do not approve and authorize the City Manager to execute a Master Professional Service Agreement with identified consulting firms and request proposals for environmental services on a project-by-project basis.

Pros: Environmental services are requested as-needed

Cons: No immediate access to environmental expertise, additional staff time and cost to the City, no immediate access to alternative consultants

Reason not recommended: This approach is not recommended because it would require additional staff time and cost to prepare a Request for Proposal (RFP), select a firm, and prepare and execute a project-specific professional services agreement. Furthermore, this process could become problematic because develop

applications are subject to State-mandated processing deadlines, and the time to prepare and execute a professional services agreement for each project would jeopardize the City's ability to comply with those deadlines. Finally, this alternative is not recommended because the City would not have immediate access to alternate firms should the availability or resources of the selected firm change. Instead, the City would have to prepare and release another RFP and undertake the selection process again, using additional staff time and incurring additional costs.

Fiscal Impact:

Payment for all requested services will be the responsibility of the applicant, developer, property owner, or other authorized representative on behalf of the project sponsor. Payment for services related to a City-initiated projects will be the responsibility of the City.

California Environmental Quality Act:

Approving and authorizing the City Manager to execute Master Professional Services Agreements with the selected consulting firms is not a "project" as defined in Section 15378 of the CEQA Guidelines and, therefore, no environmental review is required.

Recommendation:

Approve and authorize the City Manager to execute a Master Professional Services Agreements with the selected consulting firms to provide on-call environmental and CEQA-related consulting services.

Attachment:

Master Professional Services Agreement for On-Call Environmental Consultant Services

MASTER PROFESSIONAL SERVICES AGREEMENT

FOR PROFESSIONAL SERVICES – DEFINED AS:

ON-CALL ENVIRONMENTAL CONSULTING SERVICES

CITY OF MILPITAS PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of May 7, 2019 (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

On-call Environmental Consulting Services (hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$1,000,000. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within

thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement term and for four (4) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be from May 7, 2019 to May 7, 2023, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement. The City reserves the right to extend this Agreement for a six (6) month option exercisable at the City's sole discretion. The City may exercise the renewal option years by written notice to the Consultant by US Mail, fax or email, including a Purchase Order, sent no later than the last day of the current term. If a renewal option is exercised and/or a price increase is granted it will be transmitted to the Consultant using the Notice of Exercise of Option to Extend Agreement attached hereto as Exhibit E.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not

limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

c. The Consultant understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Consultant's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Scope of Work described in Exhibit A.

19. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: [***INSERT NAME & DEPARTMENT***]

CONSULTANT:

[***INSERT NAME, ADDRESS & CONTACT PERSON***]

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

31. Wage Theft Prevention

a. Consultant, and any subconsultant it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

b. BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONSULTANT OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONSULTANT AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONSULTANT OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Consultant or a subconsultant it employs to perform work under this Agreement has violated any applicable wage and hour law, or Consultant learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Consultant shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Consultant or its subconsultant(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order.

If the Consultant or its subconsultant is subject to a payment or other alternative plan, the Consultant or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

d. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

e. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

f. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND [***INSERT NAME***]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

[*INSERT CONSULTANT NAME***]**

Approved By:

Julie Edmonds-Mares
City Manager

Signature

Name

Date

Title

Approved As To Form:

Christopher J. Diaz
City Attorney

Date

DIR Registration Number (If Applicable)

Approved As To Scope:

Jane Corpus
Acting Director of Finance

Approved As To Content:

Ned Thomas, AICP
Planning Director

EXHIBIT A

Scope of Services

Consultant shall provide to the City's Department of Planning on-call environmental consulting services for various City initiated and/or private development projects, on an as needed basis. Consultant's services shall be provided as requested by the City's Planning Director on an as needed basis, as set forth in a specific project Service Order in the form attached as **Exhibit C** to this Agreement.

SECTION 1. GENERAL PROVISIONS

- A. Consultant shall perform all services to the satisfaction of the City's Planning Director.
- B. All of the services furnished by the Consultant under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among environmental Consultant professionals of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by Consultant shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by City shall detail the nature of the specific services to be performed by the Consultant, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which Consultant shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. Consultant shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by Consultant shall be at no cost to the City.
- D. Consultant shall begin work under the service order only after receipt of the service order bearing the approval signature of the Director and the signature of the City Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by City shall be incorporated into the terms and conditions of this AGREEMENT.
- E. City will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. Consultant shall coordinate with the designated Project Manager on the performance of each Service Order.
- F. Consultant shall be responsible for the coordination with City and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.
- G. **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. The Service Order may name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

SECTION 2. BASIC SERVICES.

- A. Consultant shall provide environmental consulting services for various City and private development projects, as more particularly described in the authorized Service Order. The authorized Service Order may include any of the specific environmental tasks set forth below in Section 3. The authorized Service Order may also include any other environmental services described and agreed to be performed by the Consultant, including, but not limited to, the following:
- I. Input regarding environmental and land use compatibility issues during the initial evaluation of the project; and
 - II. Preparation of the appropriate program or project-level analysis and documents for each as necessary to comply with the City's environmental requirements, the requirements of the California Environmental Quality Act and its implementing regulations and guidelines, and/or, if necessary, the requirements of the National Environmental Policy Act and its implementing guidelines; and
 - III. Assist in public outreach efforts including public notification, coordination of the Office of Planning and Research (OPR) community meeting facilitation, and responding to public comments.

B. Service Initiation

Prepare Service Order - Upon request of City's Project Manager, Consultant shall meet with the Project Manager to discuss the Project. Consultant shall become familiar with the Project description, scope and goals and develop proposed scope of services.

Consultant shall prepare a proposed scope of work for Project services consistent with City's standard form of Service Order (attached hereto as **Exhibit C**). The proposed scope of services shall, at a minimum, include the following: Project Description, Scope of Services including deliverables, and Schedule of Performance and Schedule of Compensation. Consultant shall submit the proposed scope of services to the Project Manager in electronic format.

The Project Manager will review and comment on proposed scope of work, and the parties shall agree on the terms of the final Service Order. Consultant shall not be compensated for work performed in preparing a draft scope of services for a Service Order.

C. Service Implementation

Upon receipt of an authorized Service Order, Consultant shall begin Project services described in the Service Order in accordance with the Schedule of Performance in the Service Order. For each Project, in addition to the specified services, products and deliverables detailed in the Service Order, Consultant shall perform the following tasks:

Initial Meeting - Prior to beginning substantive work on a project, Consultant shall meet and/or confer with City to establish procedures and notifications for any necessary meetings and communications with City staff; collect available data from the City and establish additional data needs and availability; confirm the format for all project products and deliverables; and address any preliminary project concerns. The meeting will be the primary opportunity to discuss the City's intent, schedule and budget for the project.

The Consultant shall prepare minutes of the meeting and distribute minutes to meeting participants.

Project Coordination Meetings - Consultant shall attend and/or conduct project coordination meetings as required to perform authorized services and as required by Project Manager. Consultant shall prepare minutes of each meeting and distribute minutes to participants.

Project Schedule - Consultant shall prepare and submit a detailed schedule of performance consistent with the schedule contained in the Service Order to the Project manager for review and approval. Consultant shall confirm or update the schedule monthly at a minimum. Any changes to the schedule shall only be permitted with the written approval of City's Project Manager.

Project Progress Report - Consultant shall submit a monthly report to the Project Manager detailing progress on the Project services.

Request for Payment / Invoice - Consultant shall submit progress payment invoices to the Project Manager monthly, as specified in Exhibit C. The updated Project schedule and progress report may be submitted as attachments to the invoice.

Project Record - Consultant shall develop and maintain a detailed record of the chronology of the project tasks and milestones completed that are decisive, conclusive or relevant to the outcome of the Project. Consultant shall submit a copy of the Project Record to the Project Manager prior to final payment for services performed on the Project. The Record shall be submitted in both paper and electronic format.

Project Documents - Aside from deliverables specified in the Service Order, and before the conclusion of the Project and final payment for services performed on the Project, Consultant shall submit to the Project Manager a copy of all project documents that are decisive, conclusive or relevant to the outcome of the Project. Such documents may include, without limitation, topographical surveys and mapping, utility mapping, site inventories, base plans, reports and studies, permit applications and permits, environmental documentation, records of meetings, and communication documents. Documents shall be submitted in both paper and electronic format, as available.

SECTION 3. SPECIFIC ENVIRONMENTAL SERVICES.

- A. In addition to any other environmental services contained in the authorized Service Order, the Service Order may incorporate any of the services set forth below in this Section 3 by simply identifying the particular Task, in which case the Task is considered to have been incorporated into the authorized Service Order and Consultant shall perform the Task as set forth herein.
- B. Tasks: Listed below are the Tasks which may be included in the Service Order depending on the scope of the project.

Task 1 - CEQA Documentation and Clearance

Consultant shall prepare an Initial Study ("IS") and Mitigated Negative Declaration ("MND") for the Project to the satisfaction of the Director of Planning and Neighborhood Services. For purposes of this task, the City is assuming that a mitigated negative declaration is a sufficient and appropriate level of environmental review. If preparation of the IS leads the Consultant to conclude that some other level of

environmental review is needed, then Consultant shall stop all work under this Service Order and consult with the City on how to proceed.

Consultant shall prepare an Administrative Draft Initial Study/Mitigated Negative Declaration ("ADIS/MND") for the Project, in accordance with California Environmental Quality Act (CEQA) and City requirements. The ADIS/MND will describe in detail the Project, the regulatory setting, the existing environmental conditions on the Project site, and assess potentially significant impacts associated with the Project. The impact analysis will apply specific thresholds for determining the significance of impacts, consistent with CEQA, and other applicable standards. The analysis will identify all potential environmental impacts of the Project, including direct, indirect, temporary, and permanent. The Consultant will identify mitigation measures for the significant impacts.

The ADIS/MND will contain the following required items: 1) Project Description, 2) Environmental Setting, Impacts and Mitigation 3) Mitigation Monitoring and Reporting Program; 4) List of Preparers; 5) References; 6) Appendices; and 7) appropriate graphics.

Consultant will prepare the ADIS/MND in accordance with CEQA and the City requirements.

City shall obtain names and addresses of contiguous property owners within the required distance from Project site and provide appropriate notice of the Project to such property owners.

Consultant shall revise the ADIS/MND based on comments received from the City and prepare the Initial Study/Mitigated Negative Declaration ("IS/MND"). Upon approval of the document by the City, Consultant shall submit black and white copies of the IS/MND to the State Clearinghouse for processing and public circulation and submit copies to the City for local agency distribution. City will provide the Notice of Completion to accompany the copies. Consultant shall submit one PDF copy of the IS and each technical report formatted to the City's specifications.

Upon conclusion of the 30-day public review period for the IS/MND, Consultant shall prepare written responses to any comments received on the IS/MND, in coordination with the City.

After the 30 day review period and as directed by the City, Consultant shall prepare a Mitigation and Monitoring Reporting Program for the Project in the format determined by the City. The monitoring program shall identify responsibility, timing, funding, and reporting of mitigation measures identified in the DIS.

Task 2 - NEPA Documentation and Clearance

If necessary, Consultant shall provide National Environmental Policy Act (NEPA) documentation in accordance with the Council on Environmental Quality (CEQ) requirements. Consultant shall prepare the following analysis (in addition to CEQA); the specific requirements of such analysis shall be done in accordance with the regulations of the NEPA administering agency (e.g. Caltrans, FTA, HUD, CDBG, etc.):

- Purpose and Need
- Section 106 and 4f Evaluation for Cultural Resources and Park and Historic Resources
- Floodplain Management and Wetland Evaluation per Executive Orders 11998 and 11990
- Environmental Justice Evaluation per Executive Order 12898

- NEPA noticing, e.g. Notice of Intent (stone as Notice of Preparation for an Environmental Impact Report)
- Natural Environmental Studies as required for biology for FHWA/Caltrans projects

Task 3 - Archaeological Survey

If necessary, Consultant shall prepare an Archaeological Survey Report (ASR) and Historic Properties Survey Report (HPSR) - short form. The report shall be prepared by a qualified historian and/or archaeologist. These studies will require the Consultant to perform the following tasks: 1) establishment of the anticipated Area of Potential Effect (APE), 2) complete archival research, 3) field survey and inventory, and 4) findings/recommendations.

Consultant shall submit one draft of the report to the City and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft report.

Task 4 -Air Quality Evaluation

If necessary, Consultant shall prepare an Air Quality evaluation. It will describe the regulatory setting for air quality policy set forth by the California Air Resources Board and the Bay Area Air Quality Management District (BAAQMD). Consultant shall perform the air quality evaluation in accordance with the most current State BAAQMD CEQA guidelines applicable to such evaluations. The Consultant shall identify mitigations as necessary.

Consultant shall submit one draft of the report to the City and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft report.

Task 5 - Traffic Study/Impact Report

If necessary, Consultant shall prepare a traffic study/impact report for the Project. Consultant shall conduct a transportation impact analysis (TIA) as required by the City to evaluate traffic and/or parking impacts of the Project. If the TIA for the proposed Project shows that the proposed Project will generate more than 100 net new peak-hour trips on a typical weekday, the Consultant shall prepare a Congestion Management Program (CMP) analysis in accordance with City guidelines.

Consultant shall submit two draft copies of the report to the City and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft report.

Task 6 - Noise Report

If necessary, Consultant shall prepare a noise report that describes the regulatory setting for controlling environmental noise, as set forth by the State of California and City noise standards.

Consultant shall calculate the operational noise level at the Project site, and evaluate the operational noise level against the most current noise standards of the City and/or of those most current applicable noise standards of any other regulatory agencies. If the operational noise level exceeds the City's or those applicable noise standards of another regulatory agency, whichever is lower, Consultant shall develop noise mitigation measures to achieve compliance with the standards. Consultant shall prepare and submit a report of the Noise Studies to the City.

Consultant shall submit one draft of the report to the City and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft report.

Task 7 - Biological Assessment Report

If necessary, Consultant shall prepare a report which will identify the biological resources of the Project site, and assess potential impacts from the Project on these resources, based on a Natural Environment Study (NES) in accordance with the most current CEQA requirements, if CEQA is applicable to the Project, or NEPA requirements, if NEPA is applicable to the Project, and as directed by the City. The report shall be prepared by a qualified biologist. The discussion in the report will include a description of the regulatory environment, including but not limited to, requirements of U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and California Department of Fish & Wildlife. The report will address the potentially significant impacts of the Project on biological resources.

Consultant shall submit one draft of the report to the City and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft report.

Task 8 - Wetlands Delineation

If necessary, Consultant shall prepare a wetlands delineation report per the most current U.S. Army Corp of Engineers requirements applicable to the preparation of such reports and as directed by the City.

Consultant shall submit one draft of the report to the City and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft report.

Task 9 - Health Risk Assessment

If necessary, Consultant shall prepare a site-specific Health Risk Assessment that will address potential human health impacts to the future users of the Project arising from the presence of the hazardous material found at the Project site. The Health Risk Assessment ("HRA") will be prepared by a toxicologist. Consultant shall prepare the HRA in accordance with the most current Cal/EPA Supplemental Guidance for Human Health Multimedia Risk Assessments for Hazardous Waste Sites and Permitted Facilities (Cal/EPA 1996) regulations, and to the satisfaction of the Department of Planning and Neighborhood Services. The HRA will consider compound concentrations, transport and fate of compounds, exposure pathways, and property use. The HRA will involve the following steps:

- The selection of chemicals of concern
- Exposure assessment
- Toxicity assessment
- Risk characterization

Consultant shall submit one draft of the report to the City and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft report.

Task 10 - Phase I Environmental Site Assessment

If necessary, Consultant shall perform a Phase I Environmental Site Assessment to identify potential presence of hazardous substances and soil or groundwater contamination on the site. Consultant shall

perform the Phase I Environmental Site Assessment per the most current American Society for Testing Materials (ASTM) guidelines applicable to such assessments and the City's requirements.

Consultant shall submit one draft of the report to the City and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft report.

Task 11 - Phase II Environmental Site Assessment

If necessary, Consultant shall perform a Phase II Environmental Site Assessment on the Project site. Consultant shall perform the Phase II Environmental Site Assessment per the most current ASTM guidelines applicable to such assessments and the City's requirements.

Consultant shall submit one draft of the report to the City and then a final report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft report.

Task 12 - Habitat Mitigation and Monitoring Plan (HMMP) Report

If necessary, Consultant shall prepare a Habitat Mitigation and Monitoring Plan Report that identifies the mitigation measures for the Project needed to avoid those habitat impacts discussed in the CEQA document. The HMMP shall include mitigation measures as necessary, as per previous related studies and as per meetings with the City. The Consultant shall coordinate the preparation of the Habitat Mitigation and Monitoring Plan with the City. The Consultant shall attend a total of two (2) meetings with the City in this task to review changes to HMMP and coordinate the preparation of the Plan. The HMMP shall be prepared in a format as directed and approved by the City and in coordination with the City Planning and Neighborhood Services Department

The Consultant shall review the content of the Mitigation and Monitoring Plan with the City and identify features that are expected to be required by the City and regulatory agencies (e.g. riparian vegetation for CDFW 1601 agreement; wetland impact minimization measures for COE Nationwide Permit; water quality protection features for RWQCB permit).

Consultant shall prepare the Habitat Mitigation and Monitoring Plan in a format acceptable to the regulatory agencies and to the City, and shall include tables, plans, graphics and other pertinent related information. The Consultant shall prepare draft Project goals and a Draft Mitigation and Monitoring Outline and submit two (2) copies to the City for review comments and approval.

Consultant shall revise the draft goals and draft Plan outline as per City and other regulatory agencies review and comments. Based on the draft Plan outline and project goals, the Consultant shall prepare a Draft Habitat Mitigation and Monitoring Plan and submit it to the City for review, comments and approval. Consultant shall submit four (4) copies to the City. All plans and graphics shall be clear and concise. Base source maps shall be based on sources approved by the City. The Plan shall describe the goals of the habitat mitigation, the features of the mitigation site, a detailed implementation plan (i.e. site preparation techniques, schematic planting plan, schedule), establishment success criteria, and maintenance and monitoring activities.

Consultant shall develop and include in the Habitat Mitigation and Monitoring Plan a preliminary habitat mitigation/revegetation plant list based on the expected type and size of habitat mitigation for the Project. The Consultant shall submit the preliminary plant list to the City for review and approval. The plant list shall be a part of the Habitat Mitigation and Monitoring Plan.

The Consultant shall prepare and submit to the City a pre-final "screencheck" of the Final Habitat Mitigation and Monitoring Plan based on comments from the City. The Consultant shall submit two (2) copies to the City for review and approval. Upon review and approval by the City, the Consultant shall prepare and submit to the City the Final Habitat Mitigation and Monitoring Plan. The Consultant shall submit ten (10) copies, one camera ready (an original copy which can be clearly duplicated, including half tone copies of photographic graphics as directed by the City) copy, and one electronic copy to the City. The scope of services assumes that there will not be substantive changes to the mitigation site or mitigation design between the draft and screen-check final reports, such as a change in the size or location of the mitigation site(s).

Task 13 - Pre-construction Burrowing Owl Survey

If necessary, Consultant shall conduct pre-construction surveys as outlined below. Consultant shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the Consultant shall conduct a preconstruction survey for Burrowing Owls in accordance with the most current

California Department of Fish and Wildlife (CDFW) survey protocol. The preconstruction survey shall be conducted by a qualified wildlife biologist. Consultant shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the City. The Consultant shall submit the results of the pre-construction survey to the CDFW for review and approval prior to site construction.

If, as a result of the survey, the Consultant finds one or more active nests within the project area, the Consultant shall have a qualified wildlife biologist mark the outside perimeter edge of a 250 feet buffer around each active nest with plastic fencing ("Buffer Area"). Prior to commencement of construction activities, the Consultant shall have a qualified wildlife biologist inform the City's contractor and the contractor's workers of the presence of Burrowing Owls, their protected status, work boundaries, and measures to be implemented to avoid loss of these species during construction activities. The qualified wildlife biologist shall inform the construction workers that no construction activities are to occur within the Buffer Area until directed.

If pre-construction surveys are conducted during the non-breeding season and burrowing owls are observed on the site, the Consultant shall consult with CDFW on burrowing owl eviction only after the habitat mitigation plan and mitigation agreement have been finalized between CDFW and the City.

Task 14 - Pre-Construction Nesting Raptor and Migratory Nesting Bird Survey.

If necessary, Consultant shall conduct pre-construction surveys as outlined below. Consultant shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs earlier, the Consultant shall conduct a pre- construction survey for nesting raptors and migratory nesting birds to determine if they occur within the project site in accordance with the most current CDFW protocol. The pre-construction survey shall be conducted by a qualified wildlife biologist. If raptors or migratory nesting birds are nesting on the site, the wildlife biologist shall recommend to the City a

suitable buffer area between the nest site and construction activity. The wildlife biologist shall document that the young have fledged prior to construction work occurring within the buffer area. Consultant shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the City.

Task 15 - Pre- Construction Bats Survey

If necessary, Consultant shall conduct pre-construction surveys as outlined below. Consultant shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading, demolition, or construction, whichever occurs first, the Consultant shall conduct pre-construction surveys for roosting bats in accordance with the most recent California Department of Fish and Wildlife (CDFW) protocols, if buildings or trees suitable for roosting bats are present on or within 50 feet of the construction site. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that bats are roosting on or within 50 feet of the construction site, the Consultant shall consult with CDFW regarding the appropriate measures to minimize impacts to the roosting bats and provide this information to the City. Such measures may include maintenance of a disturbance-free buffer around an active maternity roost during the breeding season (generally 1 April to 31 August, or until the young are flying, whichever occurs first). If, as a result of the survey, the Consultant finds roosting bats within structures or trees that will be physically disturbed by the Project, the Consultant shall have a qualified wildlife biologist evict bats from those roosts during the non-breeding season (generally, 1 September to 31 March), in accordance with CDFW protocols. Consultant shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the City.

Task 16 - Pre-Construction California Tiger Salamander Survey

If necessary, Consultant shall conduct pre-construction surveys as outlined below. Consultant shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft survey report.

No earlier than fifteen (15) calendar days prior to commencement of grading or construction, whichever occurs first, the Consultant shall conduct preconstruction surveys for California tiger salamanders in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by qualified wildlife biologist. If the pre-construction survey determines that California tiger salamanders are present on the construction site, the Consultant shall consult with CDFW and U.S. Fish and Wildlife Services (USFWS) regarding the appropriate measures to take to avoid or minimize take of individuals and provide this information to the City. If, as a result of the survey, the Consultant finds California tiger salamanders on the Project site, the Consultant shall have a qualified wildlife biologist implement any measures that have been approved by the CDFW and USFWS for that particular Project, such as relocation of individuals. Consultant shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW, USFWS, and the City.

Task 17 - Pre-Construction Nesting Pond Turtle Survey

If necessary, Consultant shall conduct pre-construction surveys as outlined below. Consultant shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the Consultant shall conduct a preconstruction survey for nesting pond turtles in accordance with the most recent CDFW protocols. The pre-construction survey shall be performed by a qualified wildlife biologist. If the Consultant identifies a suitable nesting habitat, the Consultant will direct the City on where and how to install an exclusionary fence so as to exclude turtles from entering the construction work area. The City will be responsible for installing the fence prior to pond-turtle breeding season. The City will be responsible for removing the fencing when directed by the biologist. Consultant shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the City.

Task 18 - Pre-Construction Nesting Woodrat Survey

If necessary, Consultant shall conduct pre-construction surveys as outlined below. Consultant shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft survey report.

No earlier than thirty (30) calendar days prior to commencement of grading or construction, whichever occurs first, the Consultant shall conduct preconstruction surveys for nesting woodrats in accordance with the most recent

CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If the pre-construction survey determines that woodrats are nesting on the construction site, the Consultant shall consult with CDFW regarding the best method for relocation of the nest(s) and provide this information to the City. If, as a result of the survey, the Consultant finds one or more nests within the Project area, the Consultant shall have a qualified wildlife biologist re-locate the nests in accordance with CDFW protocol. Consultant shall document the findings of the survey in letter format and, submit a hard copy and electronic copy of the letter to the CDFW and the City.

Task 19 - Pre-Construction Red-legged Frog Survey

If necessary, Consultant shall conduct pre-construction surveys as outlined below. Consultant shall submit one draft of the survey and then a final survey report (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft survey report.

No more than fourteen (14) calendar days prior to commencement of grading or construction, whichever occurs earlier, in the riparian habitat, the Consultant shall conduct pre-construction surveys for red-legged frogs in accordance with the most recent CDFW protocols. The pre-construction survey shall be conducted by a qualified wildlife biologist. If Consultant observes any red-legged frogs, the Consultant shall consult with the US Fish and Wildlife Service (USFWS) on avoidance measures before construction work proceeds and provide the information to the City. If, as a result of the survey, the Consultant finds red-legged frogs within the Project area, the Consultant shall have a qualified wildlife biologist re-locate the red-legged frogs in accordance with CDFW protocol. Consultant shall document the findings of the survey in letter format and submit a hard copy and electronic copy of the letter to the CDFW and the City.

Task 20 - Archaeological Field Monitoring

If necessary, the City shall provide the Consultant with the grading and excavation plans for the Project. Consultant shall review the grading and excavation plans to determine Project impacts within potentially sensitive archaeological areas. The review shall be done by a qualified archaeologist. The archaeologist shall develop an archaeological Field Monitoring Plan that includes the frequency and duration of the

monitoring based upon his/her proposed/expected construction monitoring observations. If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, the City will issue a separate service order for additional archaeological work. The archaeologist shall submit a report summarizing his/her monitoring activities and findings (two hard copies and one electronic copy) to the City. One copy shall be provided to Director of Planning and Neighborhood Services.

Task 21 - Evaluation of Potential Mitigation Areas

If necessary, the City and regulatory agencies with jurisdiction over the Project and the approval of a habitat mitigation site have approved and adopted a Habitat Mitigation and Monitoring Plan for the Project. Consultant shall perform the following services with regard to evaluating potential mitigation sites.

Consultant shall review a proposed habitat mitigation site and assess the site for its suitability to provide environmental habitat mitigation for the Project.

Consultant shall review and assess the proposed habitat mitigation site in accordance with all applicable regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction over the Project and approval of the mitigation site, and as directed by the City. One field meeting with City staff shall be included in this task in order to review the potential mitigation site.

Consultant shall prepare and submit a letter of findings (one hard copy and one electronic copy) that address the site's existing resources, its suitability to provide the required mitigation and the site's consistency with mitigation measures outlined in the Project's existing Habitat Mitigation and Monitoring Plan.

Task 22 - Hydraulic Study

If necessary, Consultant shall prepare a Hydraulic Study for the Project in accordance with the regulations, requirements, guidelines and policies of regulatory agencies having jurisdiction of the Project and as directed by the City. The report shall address, but not be limited to drainage, conveyance, water quality and Nonpoint Source (NPS) requirements.

Consultant shall submit one draft of the study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft study.

Task 23 - Tree Survey

If necessary, Consultant shall prepare a tree survey for the Project as directed by the City. The tree survey will consist of the Consultant visiting the construction site one time and documenting all trees by species, diameter, and condition, in accordance with City's Arborist and City's tree survey form, which will be provided by the City.

Consultant shall submit one draft of the survey and then a final survey (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft survey.

Task 24 - Greenhouse Gas (GHG) Emission

If necessary, Consultant shall evaluate greenhouse gas emissions related to the proposed project. The net increase in emissions resulting from the project will be quantified using current URBEMIS software and the Bay Area Air Quality Management District's (BAAQMD) Greenhouse gas model (BGM) calculator.

The project's emissions will be compared to BAAQMD's adopted greenhouse gas emissions thresholds. Measures incorporated into the project to reduce greenhouse gas emissions will be described, as appropriate.

Consultant shall submit one draft of the greenhouse gas emissions study and then a final study (one hard copy and one electronic copy) that incorporates and responds to any comments made by the City on the draft study.

END OF EXHIBIT A

EXHIBIT B

Schedule of Charges/Payments

EXHIBIT C

Service Order

1 CONSULTANT MASTER AGREEMENT

This Service Order is made and entered into by and between the CITY OF MILPITAS, a municipal corporation of the State of California and XXXXXXXXXX. CITY and CONSULTANT have entered into a Master Service Agreement dated May 7, 2019 which authorizes the proposed services and compensation as outlined below.

2 SERVICE ORDER

Service Order No: _____ Date: _____

Service Order Compensation Amount: \$ _____

CONSULTANT Firm Name: _____

Address: _____

Contact: _____

Phone/Email: _____

3 PROJECT DESCRIPTION

Project Name: _____

Brief Description of Services: _____

Exhibit A: *Attach Full Scope of Services, Schedule of Performance and Compensation*

4 APPROVALS

CONSULTANT: _____ Date: _____

Assistant CITY Attorney: _____ Date: _____

Director of Planning: _____ Date: _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.

Authorized Signature: _____ Date: _____

EXHIBIT D

Insurance Requirements

Please refer to the insurance requirements listed below. Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit **[**LIST EXHIBIT LETTER**]**. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

___ Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

___ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

___ Insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

___ Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor’s or Consultant’s Pollution Legal Liability:

___ Contractor’s or Consultant’s pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

___ **Additional Insured Status:**

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s or Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor’s policy shall be “primary and non-contributory” and will not seek contribution from the City’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

____ **Primary Coverage:**

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

____ **Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)**

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

____ **Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

Each insurance policy required above shall contain, or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

____ **Waiver of Subrogation:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the

City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

____ Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the

Contractor or Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor’s work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

EXHIBIT E

NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE and DATE:	
CONTRACTOR Name and Address:	
DATE OF OPTION:	

(Date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section 5 of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin date:	
End date:	

☐ CHANGES IN RATE OF COMPENSATION

Percentage change in CPI Index upon which adjustment is based:	
---	--

Pursuant to Section 2(c) of the Agreement the Rates of Compensation are hereby adjusted as follows:

(Use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF MILPITAS
a municipal corporation

CONTRACTOR
(Insert Name)

By _____

By _____

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative:

Title of Authorized Representative

Item Attachment Documents:

C13. Consider and approve a \$500 donation to Milpitas Historical Society (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Consider request received by the City Clerk and approve donation of \$500 to Milpitas Historical Society to defray costs of touring bus for historical tour of Milpitas on June 22, 2019.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider and approve a \$500 donation to Milpitas Historical Society
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	5/7/2019
Staff Contact:	City Clerk Mary Lavelle, 408-586-3001
Recommendation:	Consider request received by the City Clerk and approve donation of \$500 to Milpitas Historical Society to defray costs of touring bus for historical tour of Milpitas on June 22, 2019.

Background:

On April 23, 2019, the City Clerk received a "Donation or Fee Waiver/Reduction Request Application Forms." This is a request for a cash donation to Milpitas Historical Society.

Analysis

A donation request was received from the Milpitas Historical Society (MHS) for a donation of \$500 towards its 2019 Annual Historical Tour scheduled for Saturday, June 22, 2019. The donation is for funding toward the cost of a rented touring bus in support of the annual historical tour of Milpitas given by the local non-profit. It is a similar request to one that was approved by City Council for the MHS bus tour in 2018. The required information from the California Office of the Attorney General demonstrating the non-profit (Public Benefit Charity) status was received. Also, MHS provided a follow-up report to the 2018 donation received, and a copy is included as an attachment in the agenda packet.

Milpitas City Council adopted the "City Council Donation and Fee Waiver/Reduction Policy" on April 16, 2013. A copy is included as an attachment. This policy allows Milpitas non-profit organizations to request city fees to be waived up to \$1,500 or a donation amount up to \$500 to be granted upon request. The requesting groups must be local Milpitas non-profits and provide proof of non-profit status from the federal Internal Revenue Service or the state Franchise Tax Board. Groups are requested to file a follow up report with City Clerk after the event for which the fee waiver or funds were requested.

Policy Alternative:

Alternative 1: Do not approve the donation as requested

Pros: The City's General Fund will not incur the cost of the donation.

Con: Denial of this request would negatively impact a valuable non-profit organization in the community.

Reason not recommended: There is no reason to deny the request since there is adequate funding available and the eligible non-profit has completed the correct paperwork and is seeking City Council approval based on adopted policy.

Fiscal Impact:

\$20,000 was approved and included in the FY 2018-19 City budget for City Council's Unallocated Community Promotions. If the donation is approved, then \$16,467.23 would remain in that line item of the current year's budget. Three fee waivers and one donation were approved by City Council in the current fiscal year (during 2018) prior to this one.

Recommendation:

Consider request received by the City Clerk and approve donation of \$500 to Milpitas Historical Society to defray costs of tour bus for historical tour of Milpitas on June 22, 2019.

Attachments:

- a) Application and info. from Milpitas Historical Society
- b) Report to City Clerk following 2018 donation
- c) Donation and Fee Waiver Policy

City of Milpitas
Donation or Fee Waiver/Reduction Request Application Form
For Non-Profit Organizations

Complete this form and return it to Milpitas City Clerk

City Clerk's Office
APR 23 2019
RECEIVED

Please provide a copy of the IRS tax-exempt letter with the application

Name of Organization: **Milpitas Historical Society**

Is there a Milpitas branch or affiliation? **YES**

Mailing Address: **160 N. Main Street**
Milpitas, CA 95035

Contact Person: **Joseph Ehardt (Treasurer)** Telephone: **408-384-1366**

Email Address: **joseph.ehardt@comcast.net**

What is your request? **Donation Amount Requested \$500** OR

Fee Requested to be waived (type and \$ amount) **Not applicable**

Event Date: **June 22, 2019 (possible minor date change to synchronize with the apricot harvest)**

What is the purpose of the event: ***This is the Society's free, annual docent-led tour of selected historic sites in Milpitas that is offered to the citizens of Milpitas. The tour is conducted on an air-conditioned, 56-seat touring bus to minimize City traffic and parking demands at each site, and a \$500 donation would defray 62.5% of the approximate \$800+ expense to the Society.***

How will the Milpitas community benefit from this event? ***This public service event is designed to help the current citizens of Milpitas learn about the city's rich history starting with its local native Americans (Muwekma Ohlones), followed by the arrival in Alta California of Spanish colonists of the de Anza expedition of 1775-6 and their formation of pueblos and Catholic Missions, the subsequent transformation of those Mission lands into large private ranchos during the late Spanish era but especially the new Mexicana Republica period (three such ranchos form modern Milpitas), and finally with the subdivision of those ranchos into smaller farms and ranches sold to the unrelenting Eastern settlers initially attracted to the California Gold Rush. The Ford Motor Assembly Plant in 1955-1983 led Milpitas into the Industrial Age, and it was the forerunner into the current period of post-industrial development.***

What % of the fund-raising proceeds will benefit the Milpitas community: **100%**

How will the City's contribution (if granted) be recognized in any publicity? ***Each participant receives a free 12-16 page professionally-printed color pamphlet of the historic sites, the back cover of which acknowledges the tour sponsors.***

Within 60 days after completion of the event for which a donation was received or a fee waiver/reduction was granted by the City of Milpitas, your organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Signature of Officer: **Joseph Ehardt** Date: **April 22, 2019**

Print Name & Title: **Joseph Ehardt, Treasurer, Director of Membership, and Annual Tour Docent**



State of California Secretary of State

N

Statement of Information

(Domestic Nonprofit, Credit Union and Consumer Cooperative Corporations)

Filing Fee: \$20.00. If this is an amendment, see instructions.
IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

1. CORPORATE NAME

MILPITAS HISTORICAL SOCIETY

2. CALIFORNIA CORPORATE NUMBER

1128862

This Space for Filing Use Only

Complete Principal Office Address (Do not abbreviate the name of the city. Item 3 cannot be a P.O. Box.)

3. STREET ADDRESS OF PRINCIPAL OFFICE IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
		CA	
4. MAILING ADDRESS OF THE CORPORATION	CITY	STATE	ZIP CODE
160 N. MAIN ST	MILPITAS	CA	95035

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

5. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
BILL HARE	4001 CALAVERAS RD	MILPITAS	CA	95035
6. SECRETARY	ADDRESS	CITY	STATE	ZIP CODE
IRMA MUNZEL	542 WALNUT DR	MILPITAS	CA	95035
7. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
JOSEPH EHARDT	2229 YOSEMITE DR	MILPITAS	CA	95035

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 9 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 9 must be left blank.

8. NAME OF AGENT FOR SERVICE OF PROCESS
BILL HARE

9. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE
4001 CALAVERAS RD	MILPITAS	CA	95035

Common Interest Developments

10. ☐ Check here if the corporation is an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (California Civil Code section 4000, et seq.) or under the Commercial and Industrial Common Interest Development Act, (California Civil Code section 6500, et seq.). The corporation must file a Statement by Common Interest Development Association (Form SI-CID) as required by California Civil Code sections 5405(a) and 6760(a). Please see instructions on the reverse side of this form.

11. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

2/17/2018

JOSEPH EHARDT

TREASURER

DATE

TYPE/PRINT NAME OF PERSON COMPLETING FORM

TITLE

SIGNATURE

Joseph Ehardt

State of California
Department of Justice



Office of the
Attorney General

Home	About the AG	In the News	Careers	Services & Information	Programs A - Z	Contact Us
Below is the detailed data for the registrant you selected. You may CLOSE this window to return to the Search Results and choose another registrant.						
Registrant Information						
Full Name:	MILPITAS HISTORICAL SOCIETY			FEIN:	770006334	
Type:	Public Benefit			Corporate or Organization Number:	1128862	
Registration Number:	049790			Registration Type:	Charity Registration	
Record Type:	Charity			Renewal Due Date:	5/15/2017	
Issue Date:	12/31/2005			Date This Status:	4/8/2013	
Registration Status:	Current					
Date of Last Renewal:	4/28/2016					
Address Information						
Address Line 1:	160 NORTH MAIN STREET					
Address Line 2:						
Address Line 3:						
Address Line 4:	MILPITAS CA 95035					
Annual Renewal Information						

ARTICLES OF INCORPORATION
OF
MILPITAS HISTORICAL SOCIETY

1128862
ENDORSED
FILED
In the office of Secretary of State
of the State of California

NOV 30 1982

MARCH FONG EU, Secretary of State
By MaryAnn Mayhugh
Deputy

1. The name of this corporation is MILPITAS HISTORICAL SOCIETY.
2. (A) This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes.

(B) The specific purpose of this corporation is to encourage the preservation of the history and heritage of Milpitas and of buildings, sites and trees deemed to be historically and architecturally significant to the City of Milpitas.

(C) Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this corporation.
3. The name and address in the State of California of this corporation's initial agent for service of process is

Ed Cavallini
c/o Calaveras Library
1345 East Calaveras Boulevard
Milpitas, California, 95035
4. (A) This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

(B) Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

(C) No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.
5. The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation

or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

Dated: Sept 29, 1982

Carmel M. Sexton
[Signature of Incorporator]

CARMEL M. SEXTON
[Name of Incorporator]

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

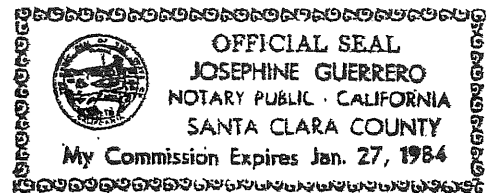
Carmel M. Sexton
[Signature of Incorporator]

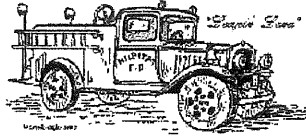
STATE OF CALIFORNIA)
) SS
COUNTY OF SANTA CLARA)

On September 29, 1982, before me, a Notary Public for the State of California, personally appeared Carmel M. Sexton known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my signature and official seal.

Josephine Guerrero
NOTARY PUBLIC, STATE OF CALIFORNIA
Josephine Guerrero





MILPITAS HISTORICAL SOCIETY

2018 Annual Historical Tour

Saturday, June 23rd, 9:00 AM to 1:30 PM

Great Mall of the Bay Area, Entrance 4

THE BUS TOUR IS FREE & OPEN TO THE PUBLIC

- 9:00 am** CHECK-IN: Outside Entrance 4 (Food Court) of the Great Mall.
- 9:30 am** BEGIN TOUR: Docent-led discussion of Milpitas historical items in the Society's exhibit inside the Great Mall.
- 10:15 am** STOP BUT REMAIN ON BOARD: South Main Street: Hear about the history of sites near Serra Way: 1912 Bank of Milpitas, the Cannery, 1850s Rathbone's Store & Smith/Campbell's Corner, the 1857 Milpitas Hotel, the Pashote Building, and Dr. Boyd's Veterinary Hospital.
- 10:40 am** STOP BUT REMAIN ON BOARD: North Main Street: the 1856 Milpitas Grammar School, the 1916 Milpitas Grammar School and the 1915 Dr. Renselaer Smith House (both designed by famous architect Frank Delos Wolfe), Leapin' Lena, and 1922 Winsor Blacksmith Shop.
- 11:00 am** STOP AND UNLOAD: Enter the 1828 José Higuera Adobe on Rancho Tularcitos and learn about its 190-year history, including a discussion of the connection between the Higuera Adobe and the Curtner Ranch.
- 11:45 am** STOP AND UNLOAD: Learn about the (mostly) restored 1837 José Alviso Adobe and the history of Rancho Milpitas.
- 12:30 pm** STOP AND UNLOAD: Enjoy a tour of the 1950s Silva apricot ranch, including an owner-led demonstration of how apricots are processed
- 1:25 pm** TOUR-END: Return to tour parking at the Great Mall.

To reserve a seat on the 56-seat tour bus or to obtain additional information, please call 1-408-489-7657. On June 23rd, anyone not on the reservation list will join the tour if seating is available.

The Society thanks two sponsors whose donations provided the tour bus:

The City of Milpitas and The Core Group



2018 Historical Tour Bus Sponsors:



THE CORE GROUP
BUILDING WITH PASSION

890 N. McCARTHY BLVD., SUITE 100
MILPITAS, CA 95035
(408) 321-6450

2018 Historical Tour Pamphlet Sponsors:

"Local Knowledge You Can Trust"

MASTER BROKERS
REAL ESTATE SPECIALISTS
1916 Grand Teton Drive
Milpitas, CA 95035

Debbie Indihar Giordano
Broker/Owner / CalDRE# 00705857
giordanodj@aol.com

Office: (408) 945-8988 • www.debbiegiordano.com

FAMILY DENTISTRY

CHARLES H. MARGIOTTA

Charles H. Margiotta, DDS

824 N. Hillview Dr.
Milpitas, CA 95035
Ph (408) 262-0510
www.drmarginotta.com

MARK TIERNAN COMMUNICATIONS
GOVERNMENT RELATIONS
LAND USE
PUBLIC RELATIONS

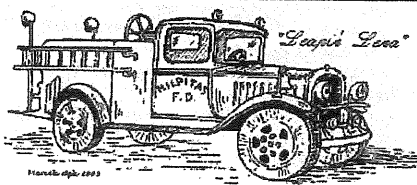
408-582-3782 Mstcs2000@aol.com
Milpitas Chamber of Commerce Board of Directors 2015-2018
Milpitas Rotary President 2012-2014

KIM PARKER PLANTS, INC.
www.kimparkerplants.com
430 Evans Road, Milpitas, CA 95035
E-mail: kp@kimparkerplants.com

Check-in Refreshments Provided by:



Victor Palacios
Starbucks Coffee
Great Mall of the Bay Area
Entrance 1



Milpitas Historical Society

JUN 28 2018

CITY OF MILPITAS – FEE WAIVER/DONATION REPORT TO CITY CLERK

RECEIVED

ORGANIZATION: Milpitas Historical Society

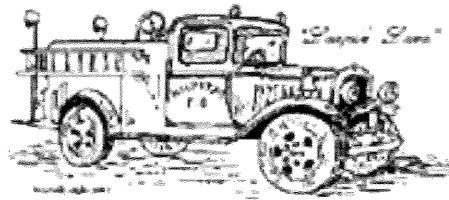
FUNCTION and DATE: Annual Community Tour – June 23, 2018

SUBMITTED BY: Linda Arbaugh

1. Number of participants on bus: 53 (75 registered for the tour)
2. Copies of all publicity of the event (attach):
 - a. Over 1,200 iterations in 6 days of a 3.5 minute PowerPoint presentation running on the Milpitas Historical Society computer-driven 44" LED TV kiosk system in its exhibit at the Great Mall that included specific acknowledgements of its sponsors
 - b. One 8.5"x11" flyer on the Milpitas Community Center's Announcement Board
 - c. One 8.5"x11" flyer in the Milpitas Senior Citizen Center's Announcement Case
 - d. Captioned photo announcement in the Milpitas Post June 15th edition
 - e. Article in the Tri-City Voice June 19th edition
 - f. Captioned photo announcement in the Milpitas Post June 22th edition
 - g. Three 11"x17" posters in the Society's exhibit space in the Great Mall
 - h. 22"x17" poster group on Great Mall Entrance 1 Starbucks Community Board
 - i. One 8.5"x11" flyer on South Park Victoria Starbucks Community Board
 - j. One 8.5"x11" flyer on East Calaveras Blvd Starbucks Community Board
3. Benefit to the community: This annual tour introduces the public to the history of Milpitas by showcasing our historic buildings and sites. The use of a bus for transport makes the tour even more enjoyable for the group as our docent talks about the various elements while traveling from place to place. Also, one bus substantially reduces traffic congestion and parking requirements because it replaces 25-40 cars if people were self-transporting to the various sites. Also, there were 5 school-age children on the tour this year. Such events help make history come alive for young and old alike.
4. Amount of funds raised: \$104 in cash sales of Milpitas Historical Society merchandise (T-shirts and history of Milpitas books) and \$155 in cash donations from the participants after the tour.
5. Accounting of how the proceeds of the event have been or will be dispersed:
 - a. The \$500 grant from the City of Milpitas was used to partially pay for the \$799.20 rental of the Royal Coach tour bus.
 - b. A \$300 donation from The CORE Group paid for the remainder of the rental fee.
 - c. Other sponsors donated funds for the \$300 cost of printing of the 16-page tour guide with color photos and historical information that was given to each person on the tour.
 - d. Pending Board of Directors approval, additional funds raised on the day of the event will pay for a \$200-300 portable PA sound system for use on subsequent annual tours to help participants better hear docent lectures in challenging audio locations.

DATE: June 25, 2018

SIGNATURE: Linda E. Arbaugh



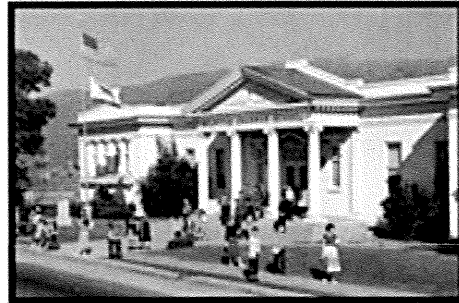
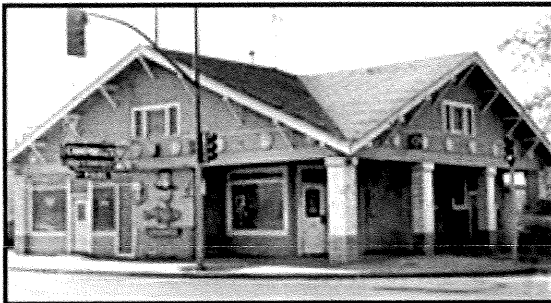
MILPITAS HISTORICAL SOCIETY

2018 Annual Historical Tour

Saturday, June 23rd, 9:00am – 1:30pm

Great Mall of the Bay Area, Entrance 4

BUS TOUR IS FREE. THE PUBLIC IS INVITED.



To reserve a seat on the tour coach, 1-408-489-7657

The Society thanks two sponsors who provided the tour bus:

The City of Milpitas and The Core Group



THE MILPITAS HISTORICAL SOCIETY

2018 Annual Historical Tour

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The City of Milpitas and The Core Group

CITY OF MILPITAS, CALIFORNIA
STANDARD OPERATING PROCEDURE

SUBJECT: CITY COUNCIL DONATION AND FEE WAIVER/REDUCTION POLICY

1. Purpose

The City of Milpitas recognizes the value of partnership with other agencies and organizations in providing services that benefit the community and its residents. To that end, the City may provide a donation or grant a reduction and/or waiver of fees to intergovernmental agencies or non-profit organizations that provide Milpitas community benefit.

2. Donation and Fee Waiver Budget

With each budget cycle, the City Council will establish an annual budget amount for donations or fee waivers/reductions for unspecified community events. Except for extraordinary circumstances, donations and or fee waivers/reductions will not be granted once the budgeted amount has been expended.

3. Requirements

- a) Any requests for donation or fee waiver/reduction must be submitted in writing using the attached application form.
- b) Requests for donations or fee waivers/reductions will be considered by the City Council during a regularly scheduled meeting.
- c) To be eligible, the organization must be a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency. In either case, only events that provide community benefit within the City of Milpitas shall be eligible. If fund raising is involved, the organization must demonstrate that at least 60% of fund raised will be of general benefit to the Milpitas community. The organization must be non-discriminatory, and non-political in nature, based in Milpitas or have a local affiliation within the City.
- d) If the request for donation or fee waiver/reduction is for a community event, the event must be advertised, open to the public and no entrance fee shall be charged for the event.
- e) Fee waivers/reductions only apply to services provided by the City during its regular course of business. Such fees may include rental fees for the City's facilities or equipment, building permit fees or fire permit fees. Any City staff overtime costs required due to the event cannot be waived.
- f) The City Council may grant donation or fee waiver/reduction to each organization once annually, regardless of how many branches or affiliations it may have in the City.
- g) The fee waiver/reduction amount is further subject to \$1,500 maximum annually and the donation amount is subject to \$500 maximum annually for each organization. A fee waiver/reduction request cannot be combined with a donation request.
- h) To the extent possible, the City's contribution should be recognized in the event fliers and/or advertising.
- i) Within 60 days after completion of the event in which a donation was received or a fee waiver/reduction was granted by the City, the organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.
- j) Failure to abide by the rules and procedures as set forth in this document will result in the organization being denied for funding and/or fee waiver/reduction in the future.

City of Milpitas
Donation or Fee Waiver/Reduction Request Application Form
for Non-Profit Organizations

Complete this form and return it to Milpitas City Clerk

Please provide a copy of the IRS tax-exempt letter with the application.

Name of Organization: _____

Is there a Milpitas branch or affiliation? _____

Mailing Address: _____

Contact Person: _____ Telephone No. _____

Email Address: _____

What is your request? Donation Amount Requested _____ OR

Fee Requested to be waived (type and \$ amount) _____

Event date(s): _____

What is the purpose of the event? _____

How will the Milpitas community benefit from this event? _____

What % of the fund raising proceeds will benefit Milpitas community? _____

How will the City's contribution (if granted) be recognized in any publicity? _____

Within 60 days after completion of the event for which a donation was received or a fee waiver/reduction was granted by the City of Milpitas, your organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Signature of Officer: _____

Date: _____

Print Name & Title: _____

Item Attachment Documents:

C14. Consider and approve a Fee Waiver for the Nuñez Community Foundation (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Consider request received by the City Clerk on April 23 and approve waiving the fee of \$1,080 to rent the Senior Center Auditorium on June 1, 2019 for the Nuñez Community Foundation, host of a Youth Health and Wellness Fair.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider and approve a Fee Waiver for the Nuñez Community Foundation
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	5/7/2019
Staff Contact:	City Clerk Mary Lavelle, 408-586-3001
Recommendation:	Consider request received by the City Clerk on April 23 and approve waiving the fee of \$1,080 to rent the Senior Center Auditorium on June 1, 2019 for the Nuñez Community Foundation, host of a Youth Health and Wellness Fair.

Background:

On April 23, 2019, the City Clerk received two "Donation or Fee Waiver/Reduction Request Application Forms." This one is a request to waive City rental fee for a City facility.

Analysis

The Nuñez Community Foundation has planned and will host a Youth Health and Wellness Fair at the Milpitas Senior Center Auditorium on June 1, 2019. The non-profit group requests the City Council to waive the costs to rent the facility. Recreation Service indicated the fee to be charged would be \$1,080, based on the \$180 hourly rate for 6 hours on Saturday, June 1. The Health Fair event is scheduled from 9:00 AM to 3:00 PM. As required, the Foundation provided a copy of its determination letter from the California Franchise Tax Board stating it is a tax-exempt organization.

Milpitas City Council adopted the "City Council Donation and Fee Waiver/Reduction Policy" on April 16, 2013. This policy allows Milpitas non-profit organizations to request city fees to be waived up to \$1,500 or a donation amount up to \$500 to be granted upon request. The requesting groups must be local Milpitas non-profits and provide proof of non-profit status from the federal Internal Revenue Service or the state Franchise Tax Board. Groups are requested to file a follow up report with City Clerk after the event for which the fee waiver or funds were requested.

Policy Alternative:

Alternative 1: Do not approve either the fee waiver as requested

Pros: Save financial resources of the City's General Fund. Require organizations to raise funds elsewhere.

Con: Deny the opportunity to valuable non-profit organization in the community.

Reason not recommended: There's no stated reason to deny the group, which is an eligible non-profit, completed the correct paperwork, and now seeking a positive vote of the City Council based on adopted policy.

Fiscal Impact:

\$20,000 was approved and included in the FY 2018-19 City budget for City Council's Unallocated Community Promotions. If this request and another donation requested on the same agenda are approved by City Council, then \$15,387.23 would remain in that line item of the current year's budget.

Three fee waivers and one donation were approved by City Council in the current fiscal year (during 2018), prior to the two requests presented in this report. A list of those is included (as attachment).

Recommendation:

Consider the request and move to waive the fee of \$1,080 for rental of the Senior Center Auditorium on June 1 for the Nuñez Community Foundation, host of a Health and Wellness Fair for Milpitas young people.

Attachments:

- a) Application and info. from Nuñez Community Foundation
- b) List of FY 2018-19 requests granted by City Council to date
- c) Health Fair flyer for June 1, 2019

APR 23 2019

RECEIVED

City of Milpitas
Donation or Fee Waiver/Reduction Request Application Form
for Non-Profit Organizations

Complete this form and return it to Milpitas City Clerk

Please provide a copy of the IRS tax-exempt letter with the application.

Name of Organization: The Nuñez Community Foundation

Is there a Milpitas branch or affiliation? Principal office is located in Milpitas

Mailing Address: 1313 N. Milpitas Blvd., #175

Milpitas, CA 95035

Contact Person: Rita Lu Telephone No. 408-893-4574 cell

Email Address: rita_yang@yahoo.com

What is your request? Donation Amount Requested _____ OR

Fee Requested to be waived (type and \$ amount) Hourly Rental Fee \$1080 for Senior Center

Event date(s): June 1, 2019 9 AM - 3 PM USE: \$180 x 6 hours

What is the purpose of the event? Health and Wellness Resource Fair hosted by the Nuñez Community Foundation and the Milpitas Executive Lions Club

How will the Milpitas community benefit from this event? Our mission is to provide public awareness of health and safety resources from local public and private health providers, as well as provide services such as flu shots, eye exams, and hearing exams, benefiting the local community at no cost.

What % of the fund raising proceeds will benefit Milpitas community? This will not be a fundraiser.

This event will provide health and wellness resources and services will be open to the public and no cost to the community.

How will the City's contribution (if granted) be recognized in any publicity? Marketing resources, such as flyers, banners, posters, and handouts, will include recognition of the City of Milpitas, The Nuñez Community Foundation, and the Milpitas Executive Lions Club.

Within 60 days after completion of the event for which a donation was received or a fee waiver/reduction was granted by the City of Milpitas, your organization will provide a written report to the City Clerk to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Signature of Officer: Rita Lu Date: 4/23/19

Print Name & Title: Rita Lu, Executive Assistant



State of California
Franchise Tax Board
PO Box 1286
Rancho Cordova CA 95741-1286

THE NUNEZ COMMUNITY FOUNDATION
ATTN: KELLY NUNEZ
30141 ANTELOPE RD D-606
MENIFEE CA 92584

Date: 03.15.16
Case: 26600594473215416
Case Unit: 26600594473215420
In reply refer to: 760:TS:F120

Regarding : Tax-Exempt Status
Organization's Name : THE NUNEZ COMMUNITY FOUNDATION
CCN : 3470279
Purpose : Charitable
R&TC § : 23701d
Form of Organization : Incorporated
Accounting Period Ending : 12/31
Tax-Exempt Status Effective : 11/18/2012

Exempt Determination Letter

We have determined the organization is tax-exempt from California franchise or income tax as stated in the above Revenue and Taxation Code (R&TC) section (§).

To retain tax-exempt status, the organization must be organized and operating for nonprofit purposes within the provisions of the above R&TC section. An inactive organization is not entitled to tax-exempt status.

We have based our decision on the information submitted and the assumption that the organization's present operations will continue unchanged or conform to those proposed in the organization's application. In order for us to determine any affect on the tax-exempt status, the organization must immediately report to us any change in:

- Operation
- Character
- Purpose
- Name
- Address

Our determination may no longer be applicable, if these changes occur:

- Material facts or circumstances relating to the organization application.
- Relevant statutory, administrative, or judicial case law.
- Federal interpretation of federal law in cases where our decision was based on such interpretation.

It is the organization's responsibility to be aware of these changes should they occur. This paragraph constitutes written advice, other than a chief counsel ruling, within the meaning of R&TC §21012(a)(2).

For filing requirements, get Pub. 1068, *Exempt Organizations - Filing Requirements and Filing Fees*. Go to ftb.ca.gov and search for **1068**.

This exemption is for state franchise or income tax purposes only. For information regarding sales tax exemption, contact the State Board of Equalization at 800.400.7115, or go to their website at boe.ca.gov.

Theresa L. Schock
Telephone: 916.845.4171
Fax: 916.843.0932

Milpitas Non-Profit Organization	Donation \$ request	Fee Waiver amount	Event date	Type of Event	Event Location	Date app rec'd	rec'd IRS or FTB letter?	Date to Council	\$20,000 start / balance
<u>FY 2018-19 requests</u>									
St. Elizabeth Catholic Church	n/a	\$902.77	8/12/18	Parish Festival	Church grounds	5/23/2018	yes	June 19, 2018	\$19,097.23
Korean Language & Culture Foundation	\$500	n/a	9/15/2018	Hanguel Day	Library	8/27/2018	yes	Sept. 4, 2018	\$18,597.23
Sunnyhills Neighborhood Association	n/a	\$430	10/27/2018	Halloween Neighborhood Alert	Augustine Park	8/22/2018	yes	Sept. 18, 2018	\$18,167.23
Kiwanis Club	n/a	\$1,200	02/08/2019	Crab Fest	Community Center	12/4/2018	yes	Dec. 18, 2018	\$16,967.23
Milpitas Historical Society	\$500	n/a	06/22/2019	Historical tour	around Milpitas	4/23/2019	yes	May 7, 2019	
Nunez Community Foundation	n/a	\$1,080	06/01/2019	Youth health fair	Senior Center	4/23/2019	yes	May 7, 2019	

MAKE A DIFFERENCE DAY HEALTH AND WELLNESS FAIR

***FREE Health Screening with Lions AJ Robinson Mobile Health Van**

***Milpitas Police Department-Child Finger Printing and Canine
Demonstration**

***Milpitas Fire Department**

***Diabetes Awareness Presentation**

***FREE refreshments (while supplies last)**

***Entertainment**

***Raffle**

***Games and prizes for kids**

***Community Resources**

***And MUCH MORE!**

**BARBARA LEE SENIOR CENTER
40 N MILPITAS BLVD, MILPITAS, CA 95035**

JUNE 1, 2019

11AM - 3PM



*Sponsored by: the Nuñez Community Foundation
Milpitas Executive Lions Club
Silicon Valley Scholars Cyber Lions Club*



Item Attachment Documents:

C15. Receive Update on State Legislation of Critical Importance to Cities and authorize the City Manager to submit letters of support to State Legislators

Ashwini Kantak, Assistant City Manager, (408) 586-3053

Recommendation:

1. Authorize the City Manager to submit letters of support to State Legislators for Assembly Bill 1235 - Youth Homelessness Prevention Centers; Assembly Bill 291 - Local Emergency Preparedness and Hazard Mitigation Fund; Assembly Bill 344 – New Beginnings California Program; Assembly Bill 916 - Suicide prevention; Assembly Bill 688 - Firearms: vehicle storage; Senate Bill 438 - Emergency Medical Services: Dispatch; Senate Bill 531 - Local Agencies: Retailers;
 2. Receive informational update on Senate Bill 50 - Planning and Zoning: Housing Development: Incentives



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Update on State Legislation of Critical Importance to Cities and authorize the City Manager to submit letters of support to State Legislators
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	5/7/2019
Staff Contact:	Ashwini Kantak, Assistant City Manager, (408) 586-3053
Recommendation:	1. Authorize the City Manager to submit letters of support to State Legislators for Assembly Bill 1235 - Youth Homelessness Prevention Centers; Assembly Bill 291 - Local Emergency Preparedness and Hazard Mitigation Fund; Assembly Bill 344 – New Beginnings California Program; Assembly Bill 916 - Suicide prevention; Assembly Bill 688 - Firearms: vehicle storage; Senate Bill 438 - Emergency Medical Services: Dispatch; Senate Bill 531 - Local Agencies: Retailers; 2. Receive informational update on Senate Bill 50 - Planning and Zoning: Housing Development: Incentives

Background:

In an effort to keep the City Council apprised of State legislation that may impact the City, staff is continually monitoring and reviewing legislative advocacy efforts, with particular attention paid to measures that are aimed at maintaining local control of policies, jurisdiction and funding. The City of Milpitas engages with the Cities Association, which represents all cities within the County of Santa Clara, and the League of California Cities, which engages in legislative advocacy and lobbying efforts at the State level on behalf of local municipalities.

Analysis:

As the California State Legislature is currently in session, this report presents an update on several key bills being considered in Sacramento. Included are details related to the following bills:

1. Assembly Bill 1235 - Youth homelessness prevention centers
 - o Recommended position: Support
2. Assembly Bill 291 - Local Emergency Preparedness and Hazard Mitigation Fund
 - o Recommended position: Support
3. Assembly Bill 344 – New Beginnings California Program
 - o Recommended position: Support
4. Assembly Bill 916 - Suicide prevention
 - o Recommended position: Support
5. Assembly Bill 688 - Firearms: vehicle storage
 - o Recommended position: Support
6. Senate Bill 438 - Emergency medical services: dispatch
 - o Recommended position: Support
7. Senate Bill 531 - Local agencies: retailers

- Recommended position: Support

8. Senate Bill 50 - Planning and zoning: housing development: incentives

- Recommended position: No action. Informational update only.

AB 1235 (Chu D) Youth homelessness prevention centers.

The California Community Care Facilities Act, provides for the licensing and regulation of runaway and homeless youth shelters by the State Department of Social Services. Current law requires these shelters to offer short-term, 24-hour, nonmedical care and supervision and personal services to homeless youth and runaway youth, as those terms are defined, who voluntarily enter the shelter. Current law defines “short-term” to mean no more than 21 consecutive days. This bill would rename these facilities “youth homelessness prevention centers,” and would expand the categories of youth for which the center is required to provide services to also include youth at risk of homelessness and youth exhibiting status offender behavior, as those terms are defined by the bill.

AB 1235 renames the community care facility licensing category “runaway and homeless youth shelter” to “homeless youth prevention center” and authorizes “youth at risk of homelessness” and “youth exhibiting status offender behavior” to receive shelter and services from such centers. This bill also extends the maximum allowable stay at these centers from 21 to 90 consecutive days.

Fiscal Impact

1. Potential loss of federal Runaway and Homeless Youth Act (RHYA) funding to nonprofits and local agencies of an unknown amount due to the expanded duration from 21 days to 90 days. Federal funding is conditioned on, among other things, shelter not being provided for more than 21 days. It is unknown how many of the state’s shelters receive this funding and in what amounts.
2. Minor and absorbable costs to the Department of Social Services (DSS) to reflect the name change.

There is currently support from many non-profits, including Bill Wilson Center (sponsor), John Burton Advocates for Youth (sponsor), California Alliance of Child and Family Services, California Coalition for Youth and more. The County of Santa Clara also has registered support. This bill was approved on April 24, 2019 by the Assembly Appropriations Committee to be placed on Consent Calendar. Staff is recommending a support position on this bill as it directly supports the Council Priorities - Neighborhoods and Housing and Community Wellness and Open Space.

AB 291 (Chu D) Local Emergency Preparedness and Hazard Mitigation Fund.

Would establish a Local Emergency Preparedness and Hazard Mitigation Fund to support staffing, planning, and other emergency mitigation priorities to help local governments meet emergency management, preparedness, readiness, and resilience goals. The bill would, upon appropriation by the Legislature, require the Controller to transfer \$500,000,000 to the fund. The bill would require the Office of Emergency Services to establish the Local Emergency Preparedness and Hazard Mitigation Fund Committee under the Standardized Emergency Management System Advisory Board.

This measure would establish a Local Emergency Preparedness and Hazard Mitigation Fund with the purpose and intent of helping local jurisdictions to meet their emergency preparedness goals and boosting programs throughout the state that remain underfunded or neglected.

This bill was first introduced in January 2019. It was heard on April 29, was not passed as amended but was re-referred to the Committee. The League of California Cities, the California Fire Chiefs Association, Fire Districts Association of California, California Emergency Services Association and the City of San Jose support this bill. The County of Santa Clara is in opposition to the bill unless further amended. Staff is recommending a support position on this bill as it directly supports City Council Priority – Public Safety.

AB 344 (Calderon D) New Beginnings California Program.

Would establish the New Beginnings California Program in the Department of Community Services and Development and create the New Beginnings California Account for the purpose of providing matching grant funding to cities and local continuum of care programs to implement, expand, or continue employment

programs for homeless individuals, as specified. The bill would define city for purposes of the bill to include a city, county, or a city and county. The bill would require qualifying employment programs to, among other things, connect program participants with employment and pay them an hourly wage that is at or above minimum wage.

This bill will incentivize local governments to either pursue a homeless employment program of their own, or expand an existing one.

This bill was first introduced in February 2019 and was passed by the Assembly – Housing and Community Development Committee on April 25, 2019. The California Police Chiefs Association, California Workforce Association United Way Bay Area and several other cities and entities support this bill. Staff is recommending a support position on this bill as it directly supports City Council Priorities – Public Safety and Neighborhoods and Housing.

AB 916 (Muratsuchi D) Suicide prevention.

The California Suicide Prevention Act of 2000 authorizes the State Department of Health Care Services to establish and implement a suicide prevention, education, and gatekeeper program to reduce the severity, duration, and incidence of suicidal behaviors. Current law authorizes the department to contract with an outside agency to establish and implement a targeted public awareness and education campaign on suicide prevention and treatment. Existing law requires the target populations to include junior high and high school students. This bill would additionally require the target populations to include community college, 4-year college, and university undergraduate and graduate students.

Existing law, the California Suicide Prevention Act of 2000, authorizes the State Department of Health Care Services to establish and implement a suicide prevention, education, and gatekeeper program to reduce the severity, duration, and incidence of suicidal behaviors. Existing law authorizes the department to contract with an outside agency to establish and implement a targeted public awareness and education campaign on suicide prevention and treatment. Existing law requires the target populations to include junior high and high school students. This bill would additionally require the target populations to include community college, 4-year college, and university undergraduate and graduate students.

This bill was first introduced in February 2019. It was ordered to the Senate on April 25, 2019. The California Police Chiefs Association supports this bill. Staff is recommending support of this bill as it directly supports City Council Priorities – Public Safety and Community Wellness and Open Space.

AB 688 (Chu D) Firearms: vehicle storage.

Existing law requires a person, when leaving a handgun in an unattended vehicle, to lock the handgun in the vehicle's trunk, lock the handgun in a locked container and place the container out of plain view, lock the handgun in a locked container that is permanently affixed to the vehicle's interior and not in plain view, or to lock the handgun in a locked toolbox or utility box. This bill would make these requirements applicable to all firearms and would additionally require the firearm to be secured to the vehicle's frame using a steel cable lock or chain and padlock or in a locked container that is secured using a steel cable lock or chain and padlock or that is permanently affixed to the vehicle, as specified. Because a violation of these new requirements would be a crime, this bill would impose a state-mandated local program.

The bill was first introduced in February 2019 and was passed by the Committee – Public Safety on March 26, 2019. The County of Santa Clara, District Attorney, and the Alameda County District Attorney's Office (sponsor) support the bill. The National Rifle Association – Institute for Legislative Action, California State Sheriff's Association, Gun Owners of California, Inc, as well as other entities oppose the bill. Staff is recommending support of this bill as it directly supports City Council Priority – Public Safety.

SB 438 (Hertzberg D) Emergency medical services: dispatch.

Would prohibit a public agency from delegating, assigning, or contracting for "911" emergency call processing or notification duties regarding the dispatch of emergency response resources unless the delegation or assignment is to, or the contract is with, another public agency or made pursuant to a joint powers agreement.

or cooperative agreement. The bill would state the Legislature's intent to affirm and clarify a public agency's duty and authority to develop emergency communication procedures and respond quickly to a person seeking emergency services through the "911" emergency telephone system.

SB 438 would make it clear that county Emergency Medical Services (EMS) administrators do not have the power to dictate when city or fire district units can be dispatched to respond to a 9-1-1 call in their own jurisdictions or empower a private ambulance company to bypass potentially closer fire-based units or downgrade the severity of medical emergencies so that it can dispatch its own ambulances

Specifically, SB 438 would:

1. Prohibit a public agency from delegating, assigning, or entering into a contract for "911" call processing or emergency notification duties regarding the dispatch of emergency response resources except under one of the following circumstances:
 - a) The delegation or assignment is to, or the contract is with, another public agency;
 - b) The delegation, assignment, or contract is made pursuant to a joint powers agreement, as specified; or,
 - c) The delegation, assignment, or contract is made by cooperative agreement.
2. Prohibit provisions of law governing medical control or medical direction and management of an EMS system, notwithstanding any provision of the EMS Act, from being construed to limit, supplant, prohibit, or otherwise alter a public safety agency's authority to do either of the following:
 - a) Directly receive, process, and administer requests for assistance originating within the public safety agency's territorial jurisdiction through the 911 system; or,
 - b) Determine the appropriate deployment of public safety emergency response resources within the public safety agency's territorial jurisdiction.
3. Prohibit a public safety agency's voluntary consent to limit, modify, or alter the nature of its prehospital response or response mode pursuant to an emergency medical dispatch protocol approved by a Local EMS Agency (LEMSA) from constituting a transfer of any of the public safety agency's authorities regarding the administration of EMS.

This bill is scheduled to be heard by the Senate Committee on Health on May 1. The bill has strong support from many other cities, counties, and professional associations, including the California Fire Chiefs Association, Santa Clara County Fire, and the California Professional Firefighters (sponsor). Staff is recommending a support position on this bill as it directly supports City Council Priority – Public Safety.

SB 531 (Glazer D) Local agencies: retailers.

Would prohibit, on or after January 1, 2020, a local agency from entering into any form of agreement that would result, directly or indirectly, in the payment, transfer, diversion, or rebate of Bradley-Burns local tax revenues to any retailer, as defined, in exchange for the retailer locating or continuing to maintain a place of business that serves as the place of sale, as defined, within the territorial jurisdiction of the local agency if that place of business would generate revenue, from the sale of tangible property delivered to and received by the purchaser in the territorial jurisdiction of another local agency, for the local agency under the Bradley-Burns Uniform Local Sales and Use Tax Law.

In brief, the measure would, on and after January 1, 2020, prospectively ban sales tax rebate agreements between retailer with sales nexus in a warehouse, sales office or fulfillment center and a local agency involving Bradley-Burns Sales and Use Taxes revenue derived from the sales of tangible property delivered to and received by the purchaser in the territorial jurisdiction of another city or county. Under California's existing situs allocation rules, purchases made over the Internet are often allocated to a warehouse, sales office or fulfillment center from which the goods are shipped. With the increasing volume of Internet sales, a tremendous amount

of sales tax revenue can be concentrated in a retailer's warehouse, sales office or fulfillment center, which make locating these facilities an enticing prospect for local agencies.

This bill was first introduced in February 2019. On April 29, 2019, it was read for the second time, amended and ordered to a third reading. The League of California Cities has officially supported this bill. Staff is recommending a support position on this bill as it directly supports City Council Priority – Economic Development and Growth; however, it should be noted that, if passed, it will commence in 2021.

SB 50 (Wiener D) Planning and zoning: housing development: incentives.

SB 4 (McGuire D) Housing.

Related to the state's housing crisis, there were two bills that staff has been closely tracking – SB 50 (Wiener) and SB 4 (McGuire). On April 24, 2019, Senators Wiener and McGuire agreed on a composite version of their competing housing plans and an amended SB 50 won unanimous approval by the Senate Governance and Finance Committee. Senator McGuire pulled SB 4 from further consideration, as he wove components of his bill into amended SB 50. In general, SB 50 incentivizes denser and buildings up to seven stories high near transit and job-rich areas. SB 50 will now head to the Senate Appropriations Committee for consideration. At the time of preparation of this agenda report, the official amended SB 50 from April 24 was not available; however, a very high-level synopsis is provided below.

In summary, the amendments to SB 50 will do the following, which would be applicable to Milpitas:

Statewide provisions:

- Creation of fourplexes by right in residential areas on vacant land.
- Technical amendments to clarify how density bonus will work.
- Height requirements.
- Commitment to include inclusionary percentages that are agreeable to housing advocates and the Senate Governance and Finance Committee.
- Certain exemptions, including very high fire hazard severity zones and in coastal cities.

In counties over 600,000 population:

- SB 50 zoning provisions regarding rail, ferry, job rich, and bus stop (as modified):
 - Exempt contributing parcels in legislatively-adopted historic districts in existence as of 2010, and density bonus language moving forward
 - Shorten bus stop headways to 10 minutes during peak times to qualify, which must have been met for the past 5 years
- SB 50 parking clarification: no parking around rail, 0.5 spaces per unit minimum elsewhere

City staff will continue to monitor the compromised SB 50 closely. This update is being provided as information only and staff is recommending a neutral position until the amended bill is available for thorough review and analysis, at which time, staff will return to Council. This bill is directly related to City Council Priority – Neighborhoods and Housing.

Recommendations:

1. Authorize the City Manager to submit letters of support to State Legislators for Assembly Bill 1235 - Youth Homelessness Prevention Centers; Assembly Bill 291 - Local Emergency Preparedness and Hazard Mitigation Fund; Assembly Bill 344 – New Beginnings California Program; Assembly Bill 916 - Suicide prevention; Assembly Bill 688 - Firearms: vehicle storage; Senate Bill 438 - Emergency Medical Services: Dispatch; Senate Bill 531 - Local Agencies: Retailers; and
2. Receive the informational update on Senate Bill 50 - Planning and Zoning: Housing Development: Incentives.

AB 1235 ([Chu](#) D) Youth homelessness prevention centers.

Status

4/25/2019 - Read second time. Ordered to Consent Calendar.

Calendar:

5/2/2019 #165 ASSEMBLY CONSENT CALENDAR 2ND DAY-ASSEMBLY BILLS

Summary

Existing law, the California Community Care Facilities Act, provides for the licensing and regulation of runaway and homeless youth shelters by the State Department of Social Services. Existing law requires these shelters to offer short-term, 24-hour, nonmedical care and supervision and personal services to homeless youth and runaway youth, as those terms are defined, who voluntarily enter the shelter. Existing law defines "short-term" to mean no more than 21 consecutive days. This bill would rename these facilities "youth homelessness prevention centers," and would expand the categories of youth for which the center is required to provide services to also include youth at risk of homelessness and youth exhibiting status offender behavior, as those terms are defined by the bill. The bill would expand the definition of "short-term" to mean no more than 90 consecutive days, and would make technical, conforming changes to related provisions. (Based on text date 4/11/2019)

Bill Text

04/11/2019 Amended [pdf](#) [htm](#)

03/13/2019 Amended [pdf](#) [htm](#)

02/21/2019 Introduced [pdf](#) [htm](#)

Analysis

04/22/2019 [Assembly - Appropriations](#)

04/08/2019 [Assembly - Human Services](#)

Votes

04/24/2019 [Asm. Appr.](#) (Y: 18 N: 0 A: 0) (Pass)

04/09/2019 [Asm. Hum. S.](#) (Y: 8 N: 0 A: 0) (Pass)

History

04/25/2019 Read second time. Ordered to Consent Calendar.

04/24/2019 From committee: Do pass. To Consent Calendar. (Ayes 18. Noes 0.) (April 24).

04/22/2019 Re-referred to Com. on APPR.

04/11/2019 Read second time and amended.

04/10/2019 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 8. Noes 0.) (April 9).

03/14/2019 Re-referred to Com. on HUM. S.

03/13/2019 From committee chair, with author's amendments: Amend, and re-refer to Com. on HUM. S.

Read second time and amended.

03/11/2019 Referred to Com. on HUM. S.

02/22/2019 From printer. May be heard in committee March 24.

02/21/2019 Read first time. To print.

5/1/2019 5:24:18 PM

AB 291 (Chu D) Local Emergency Preparedness and Hazard Mitigation Fund.

Status

4/30/2019 - Read second time and amended.

Summary

The California Emergency Services Act creates within the office of the Governor the Office of Emergency Services, which is responsible for the state's emergency and disaster response services, as specified. Existing federal law requires a state mitigation plan as a condition for disaster assistance and authorizes the Federal Emergency Management Agency to condition mitigation grant assistance upon state, local, and Indian tribal governments undertaking coordinated disaster mitigation planning and implementation measures. This bill would establish a Local Emergency Preparedness and Hazard Mitigation Fund to support staffing, planning, and other emergency mitigation priorities to help local governments meet emergency management, preparedness, readiness, and resilience goals. The bill would, upon appropriation by the Legislature, require the Controller to transfer \$500,000,000 to the fund. The bill would require the Office of Emergency Services to establish the Local Emergency Preparedness and Hazard Mitigation Fund Committee under the Standardized Emergency Management System Advisory Board. The bill, on or before July 1, 2020, would require the committee to adopt guidelines identifying eligible uses of the funds by establishing an outline of standard activities for the mitigation, prevention, preparedness, response, and recovery phases of emergency management that supports the development of a resilient community. The bill would require, upon appropriation by the Legislature, the Office of Emergency Services to receive \$1,000,000 annually and each county to receive \$500,000 annually for specified purposes. The bill would require the Office of Emergency Services to distribute funds to lead agencies, subject to certain requirements and restrictions, as specified. The bill would require lead agencies to further distribute those funds to local governments pursuant to a specified schedule for specified purposes, and impose various requirements on local governments that receive funds pursuant to these provisions. The bill would include related legislative findings.

This bill contains other related provisions and other existing laws.

(Based on text date 4/30/2019)

Bill Text

04/30/2019 Amended [pdf](#) [htm](#)

04/22/2019 Amended [pdf](#) [htm](#)

03/25/2019 Amended [pdf](#) [htm](#)

01/28/2019 Introduced [pdf](#) [htm](#)

Analysis

04/23/2019 [Assembly - Governmental Organization](#)

Votes

04/24/2019 [Asm. G.O.](#) (Y: 15 N: 1 A: 5) (Pass)

History

04/30/2019 Read second time and amended.

04/29/2019 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 15. Noes 1.) (April 24).

04/23/2019 Re-referred to Com. on G.O.

04/22/2019 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.

03/26/2019 Re-referred to Com. on G.O.

03/25/2019 Referred to Com. on G.O. From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.

01/29/2019 From printer. May be heard in committee February 28.

01/28/2019 Read first time. To print.

5/1/2019 5:25:24 PM

SB 438 ([Hertzberg D](#)) Emergency medical services: dispatch.

Status

4/23/2019 - Set for hearing May 1.

Calendar:

5/1/2019 1:30 p.m. - John L. Burton Hearing Room (4203) SENATE HEALTH, PAN, Chair

Summary

Existing law, the Warren-911-Emergency Assistance Act, requires every local public agency to establish within its jurisdiction a basic emergency telephone system that includes, at a minimum, police, firefighting, and emergency medical and ambulance services. Existing law authorizes a public agency to incorporate private ambulance service into the system. This bill would prohibit a public agency from delegating, assigning, or contracting for "911" emergency call processing or notification duties regarding the dispatch of emergency response resources unless the delegation or assignment is to, or the contract is with, another public agency or made pursuant to a joint powers agreement or cooperative agreement. The bill would state the Legislature's intent to affirm and clarify a public agency's duty and authority to develop emergency communication procedures and respond quickly to a person seeking emergency services through the "911" emergency telephone system.

This bill contains other related provisions and other existing laws.

(Based on text date 3/25/2019)

Bill Text

03/25/2019 Amended [pdf](#) [htm](#)

02/21/2019 Introduced [pdf](#) [htm](#)

Analysis

04/29/2019 [Senate - Health](#)

04/05/2019 [Senate - Governance And Finance](#)

Votes

04/10/2019 [Sen. Gov. & F.](#) (Y: 6 N: 1 A: 0) (Pass)

History

04/23/2019 Set for hearing May 1.

04/22/2019 April 24 hearing postponed by committee.

04/12/2019 Set for hearing April 24.

04/11/2019 From committee: Do pass and re-refer to Com. on HEALTH. (Ayes 6. Noes 1. Page 713.) (April 10). Re-referred to Com. on HEALTH.

04/04/2019 Set for hearing April 10.

04/03/2019 Re-referred to Coms. on GOV. & F. and HEALTH.

03/25/2019 From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

03/07/2019 Referred to Com. on RLS.

02/22/2019 From printer. May be acted upon on or after March 24.

02/21/2019 Introduced. Read first time. To Com. on RLS. for assignment. To print.

5/1/2019 5:26:12 PM

SB 531 ([Glazer D](#)) Local agencies: retailers.

Status

4/29/2019 - Read second time and amended. Ordered to third reading.

Calendar:

5/2/2019 #64 SENATE SENATE BILLS -THIRD READING FILE

Summary

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose a local sales and use tax in accordance with that law for tangible personal property sold at retail in the county or city, or purchased for storage, use, or other consumption in the county or city. That law requires the county or city to contract with the California Department of Tax and Fee Administration for the administration of the taxes and requires the department to transmit those taxes to the city or county. That law provides that for the purpose of a local sales tax adopted pursuant to that law, all retail sales are consummated at the place of business of the retailer unless otherwise specified. This bill would additionally prohibit, on or after January 1, 2020, a local agency from entering into any form of agreement that would result, directly or indirectly, in the payment, transfer, diversion, or rebate of Bradley-Burns local tax revenues to any retailer, as defined, in exchange for the retailer locating or continuing to maintain a place of business that serves as the place of sale, as defined, within the territorial jurisdiction of the local agency if that place of business would generate revenue, from the sale of tangible property delivered to and received by the purchaser in the territorial jurisdiction of another local agency, for the local agency under the Bradley-Burns Uniform Local Sales and Use Tax Law.

This bill contains other related provisions and other existing laws.

(Based on text date 4/29/2019)

Bill Text

04/29/2019 Amended [pdf](#) [htm](#)

04/22/2019 Amended [pdf](#) [htm](#)

03/25/2019 Amended [pdf](#) [htm](#)

02/21/2019 Introduced [pdf](#) [htm](#)

Analysis

04/23/2019 [Senate - Governance And Finance](#)

04/22/2019 [Senate - Governance And Finance](#)

Votes

04/24/2019 [Sen. Gov. & F.](#) (Y: 5 N: 2 A: 0) (Pass)

History

04/29/2019 Read second time and amended. Ordered to third reading.

04/25/2019 From committee: Do pass as amended. (Ayes 5. Noes 2.) (April 24).

04/22/2019 From committee with author's amendments. Read second time and amended. Re-referred to Com. on GOV. & F.

04/04/2019 Set for hearing April 24.

04/03/2019 Re-referred to Com. on GOV. & F.

03/25/2019 From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

03/07/2019 Referred to Com. on RLS.

02/22/2019 From printer. May be acted upon on or after March 24.

02/21/2019 Introduced. Read first time. To Com. on RLS. for assignment. To print.

5/1/2019 5:26:40 PM



SB 50 ([Wiener D](#)) Planning and zoning: housing development: incentives.

Status

4/30/2019 - From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 6. Noes 1.) (April 24).

Calendar:

5/2/2019 #15 SENATE SENATE BILLS - SECOND READING FILE

Summary

Existing law, known as the Density Bonus Law, requires, when an applicant proposes a housing development within the jurisdiction of a local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or for the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low, low-, or moderate-income households or qualifying residents. This bill would require a city, county, or city and county to grant upon request an equitable communities incentive when a development proponent seeks and agrees to construct a residential development, as defined, that satisfies specified criteria, including, among other things, that the residential development is either a job-rich housing project or a transit-rich housing project, as those terms are defined; the site does not contain, or has not contained, housing occupied by tenants or accommodations withdrawn from rent or lease in accordance with specified law within specified time periods; and the residential development complies with specified additional requirements under existing law. The bill would require that a residential development eligible for an equitable communities incentive receive waivers from maximum controls on density and minimum controls on automobile parking requirements greater than 0.5 parking spots per unit, up to 3 additional incentives or concessions under the Density Bonus Law, and specified additional waivers if the residential development is located within a 1/2-mile or 1/4-mile radius of a major transit stop, as defined. The bill would authorize a local government to modify or expand the terms of an equitable communities incentive, provided that the equitable communities incentive is consistent with these provisions.

This bill contains other related provisions and other existing laws.

(Based on text date 3/11/2019)

Bill Text

03/11/2019 Amended [pdf](#) [htm](#)

12/03/2018 Introduced [pdf](#) [htm](#)

Analysis

04/22/2019 [Senate - Governance And Finance](#)

03/28/2019 [Senate - Housing](#)

Votes

04/24/2019 [Sen. Gov. & F.](#) (Y: 6 N: 1 A: 0) (Pass)

04/02/2019 [Sen. Housing](#) (Y: 9 N: 1 A: 1) (Pass)

History

04/30/2019 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 6. Noes 1.) (April 24).

04/04/2019 Set for hearing April 24.

04/03/2019 From committee: Do pass and re-refer to Com. on GOV. & F. (Ayes 9. Noes 1. Page 551.) (April 2). Re-referred to Com. on GOV. & F.

03/26/2019 Set for hearing April 2.

03/19/2019 Set for hearing April 2.

03/11/2019 From committee with author's amendments. Read second time and amended. Re-referred to Com. on HOUSING.

01/24/2019 Referred to Coms. on HOUSING and GOV. & F.

12/04/2018 From printer. May be acted upon on or after January 3.

12/03/2018 Introduced. Read first time. To Com. on RLS. for assignment. To print.

5/1/2019 5:27:07 PM



SB 4 ([McGuire D](#)) Housing.

Status

4/26/2019 - Failed Deadline pursuant to Rule 61(a)(2). (Last location was GOV. & F. on 4/2/2019)(May be acted upon Jan 2020)

Summary

(1)The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law requires an attached housing development to be a permitted use, not subject to a conditional use permit, on any parcel zoned for multifamily housing if at least certain percentages of the units are available at affordable housing costs to very low income, lower income, and moderate-income households for at least 30 years and if the project meets specified conditions relating to location and being subject to a discretionary decision other than a conditional use permit. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing. This bill would authorize a development proponent of a neighborhood multifamily project or eligible transit-oriented development (TOD) project located on an eligible parcel to submit an application for a streamlined, ministerial approval process that is not subject to a conditional use permit. The bill would define a “neighborhood multifamily project” to mean a project to construct a multifamily unit of up to 2 residential dwelling units in a nonurban community, as defined, or up to 4 residential dwelling units in an urban community, as defined, that meets local height, setback, and lot coverage zoning requirements as they existed on July 1, 2019. The bill would define an “eligible TOD project” as a project located in an urban community, as defined, that meets specified height requirements, is located within 1/2 mile of an existing or planned transit station parcel or entrance, and meets other floor area ratio, density, parking, and zoning requirements. The bill also requires an eligible TOD project development proponent to develop a plan that ensures transit accessibility to the residents of the development in coordination with the applicable local transit agency. The bill would require specified TOD projects to comply with specified affordability, prevailing wage, and skilled and trained workforce requirements. The bill would also define “eligible parcel” to mean a parcel located within a city or county that has unmet regional housing needs and has produced fewer housing units than jobs over a specified period; is zoned to allow residential use and qualifies as an infill site; is not located within a historic district, coastal zone, very high fire hazard severity zone, or a flood plain; the development would not require the demolition of specified types of affordable housing; the parcel is not eligible for development under existing specified transit-oriented development authorizations; and the parcel in question has been fully reassessed on or after January 1, 2021, to reflect its full cash value, following a change in ownership.

This bill contains other related provisions and other existing laws.

(Based on text date 4/10/2019)

Bill Text

04/10/2019 Amended [pdf](#) [htm](#)

02/28/2019 Amended [pdf](#) [htm](#)

12/03/2018 Introduced [pdf](#) [htm](#)

Analysis

04/22/2019 [Senate - Environmental Quality](#)

04/22/2019 [Senate - Governance And Finance](#)

03/28/2019 [Senate - Housing](#)

Votes

04/02/2019 [Sen. Housing](#) (Y: 8 N: 1 A: 2) (Pass)

History

04/24/2019 April 24 set for first hearing canceled at the request of author.

04/12/2019 Set for hearing April 24 in EQ. pending receipt. Set for hearing April 25 in EQ. pending receipt.

04/10/2019 From committee with author's amendments. Read second time and amended. Re-referred to Com. on GOV. & F.

04/04/2019 Set for hearing April 24.

04/03/2019 From committee: Do pass and re-refer to Com. on GOV. & F. (Ayes 8. Noes 1. Page 551.) (April 2). Re-referred to Com. on GOV. & F.

03/19/2019 Set for hearing April 2.

03/13/2019 Withdrawn from committee. Re-referred to Com. on RLS. Re-referred to Coms. on HOUSING, GOV. & F., and EQ.

03/07/2019 Re-referred to Coms. on HOUSING, GOV. & F., and RLS.

02/28/2019 From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.

01/16/2019 Referred to Com. on RLS.

12/04/2018 From printer. May be acted upon on or after January 3.

12/03/2018 Introduced. Read first time. To Com. on RLS. for assignment. To print.

5/1/2019 5:27:30 PM



AB 344 ([Calderon D](#)) New Beginnings California Program.

Status

4/25/2019 - From committee: Do pass and re-refer to Com. on APPR. (Ayes 7. Noes 0.) (April 24). Re-referred to Com. on APPR.

Summary

Under existing law, several state agencies have prescribed responsibilities relating to homeless persons. Existing law requires the Department of Housing and Community Development to administer the California Emergency Solutions Grants Program and make grants under the program to qualifying recipients to implement activities that address the needs of homeless individuals and families and assist them to regain stability in permanent housing as quickly as possible. This bill would establish the New Beginnings California Program in the Department of Community Services and Development and create the New Beginnings California Account for the purpose of providing matching grant funding to cities and local continuum of care programs to implement, expand, or continue employment programs for homeless individuals, as specified. The bill would define city for purposes of the bill to include a city, county, or a city and county. The bill would require qualifying employment programs to, among other things, connect program participants with employment and pay them an hourly wage that is at or above minimum wage. The bill would direct the department to apportion funds in the account, upon appropriation, to cities and local continuum of care programs with eligible employment programs, not to exceed \$50,000 annually per city or continuum of care program. The bill would authorize a maximum of 50 grants to be awarded annually and would require cities and local continuum of care programs to match any funds received from the program, as specified. The bill would be operative only to the extent that funding is provided in the annual Budget Act for the purposes of the bill. (Based on text date 2/4/2019)

Bill Text

02/04/2019 Introduced [pdf](#) [htm](#)

Analysis

04/22/2019 [Assembly - Housing And Community Development](#)

Votes

04/24/2019 [Asm. H. & C.D.](#) (Y: 7 N: 0 A: 1) (Pass)

History

04/25/2019 From committee: Do pass and re-refer to Com. on APPR. (Ayes 7. Noes 0.) (April 24). Re-referred to Com. on APPR.

02/11/2019 Referred to Com. on H. & C.D.

02/05/2019 From printer. May be heard in committee March 7.

02/04/2019 Read first time. To print.

AB 688 (Chu D) Firearms: vehicle storage.

Status

4/3/2019 - In committee: Set, first hearing. Referred to APPR. suspense file.

Summary

Existing law requires a person, when leaving a handgun in an unattended vehicle, to lock the handgun in the vehicle's trunk, lock the handgun in a locked container and place the container out of plain view, lock the handgun in a locked container that is permanently affixed to the vehicle's interior and not in plain view, or to lock the handgun in a locked toolbox or utility box. This bill would make these requirements applicable to all firearms and would additionally require the firearm to be secured to the vehicle's frame using a steel cable lock or chain and padlock or in a locked container that is secured using a steel cable lock or chain and padlock or that is permanently affixed to the vehicle, as specified. Because a violation of these new requirements would be a crime, this bill would impose a state-mandated local program.

This bill contains other related provisions and other existing laws.

(Based on text date 2/15/2019)

Bill Text

02/15/2019 Introduced [pdf](#) [htm](#)

Analysis

04/01/2019 [Assembly - Appropriations](#)

03/25/2019 [Assembly - Public Safety](#)

Votes

03/26/2019 [Asm. Pub. S.](#) (Y: 5 N: 2 A: 1) (Pass)

History

04/03/2019 In committee: Set, first hearing. Referred to APPR. suspense file.

03/26/2019 From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (March 26). Re-referred to Com. on APPR.

02/28/2019 Referred to Com. on PUB. S.

02/19/2019 From printer. May be heard in committee March 21.

02/15/2019 Read first time. To print.



AB 916 ([Muratsuchi D](#)) Suicide prevention.

Status

4/25/2019 - Read third time. Passed. Ordered to the Senate. In Senate. Read first time. To Com. on RLS. for assignment.

Summary

Existing law, the California Suicide Prevention Act of 2000, authorizes the State Department of Health Care Services to establish and implement a suicide prevention, education, and gatekeeper program to reduce the severity, duration, and incidence of suicidal behaviors. Existing law authorizes the department to contract with an outside agency to establish and implement a targeted public awareness and education campaign on suicide prevention and treatment. Existing law requires the target populations to include junior high and high school students. This bill would additionally require the target populations to include community college, 4-year college, and university undergraduate and graduate students. (Based on text date 2/20/2019)

Bill Text

02/20/2019 Introduced [pdf](#) [htm](#)

Analysis

04/08/2019 [Assembly - Appropriations](#)

04/03/2019 [Assembly - Health](#)

Votes

04/25/2019 [Asm. Consent Calendar](#) (Y: 76 N: 0 A: 4) (Pass)

04/10/2019 [Asm. Appr.](#) (Y: 17 N: 0 A: 1) (Pass)

03/26/2019 [Asm. Health](#) (Y: 15 N: 0 A: 0) (Pass)

History

04/25/2019 Read third time. Passed. Ordered to the Senate. In Senate. Read first time. To Com. on RLS. for assignment.

04/11/2019 Read second time. Ordered to Consent Calendar.

04/10/2019 From committee: Do pass. To Consent Calendar. (Ayes 17. Noes 0.) (April 10).

03/27/2019 From committee: Do pass and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 15. Noes 0.) (March 26). Re-referred to Com. on APPR.

03/04/2019 Referred to Com. on HEALTH.

02/21/2019 From printer. May be heard in committee March 23.

02/20/2019 Read first time. To print.

Item Attachment Documents:

- 16. Per Request from Councilmember Montano, Receive an Update and Presentation from Santa Clara Valley Transportation Authority Staff on Bay Area Rapid Transit Extension and Montague Expressway Pedestrian Overcrossing Projects (Staff Contact: Steve Chan, 408-586-3324)**

Recommendation: Receive update and presentation from Valley Transportation Authority staff on Bay Area Rapid Transit (BART) Extension and Montague Expressway Pedestrian Overcrossing Projects.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Per Request from Council Member Montano, Receive an Update and Presentation from Santa Clara Valley Transportation Authority Staff on Bay Area Rapid Transit Extension Project and Montague Expressway Pedestrian Overcrossing Project
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	5/7/2019
Staff Contact:	Steve Chan, 408-586-3324 and Steve Erickson, 408-586-3301
Recommendation:	Receive update and presentation from Valley Transportation Authority staff on Bay Area Rapid Transit (BART) Extension and Montague Expressway Pedestrian Overcrossing Projects.

BACKGROUND

Silicon Valley Berryessa Extension Project

The Silicon Valley Berryessa Extension (SVBX) Project is a 10-mile extension of the Bay Area Rapid Transit (BART) system, from the Warm Springs Station in Fremont, through the Milpitas Station to the Berryessa Station in San Jose. It includes two new BART stations that are part of two new larger transit centers: the Milpitas Transit Center and the Berryessa Transit Center. When BART service to Santa Clara County begins, the Milpitas and Berryessa/North San José BART Stations are intended to be served by two lines providing direct and connecting service to the entire BART system. The extension of the Bay Area Rapid Transit (BART) system into Santa Clara County is being implemented by Santa Clara Valley Transportation Authority's (VTA) Silicon Valley Rapid Transit (SVRT) program, which began construction in 2012.

SVBX project is substantially completed. However, passenger service has been delayed as a result of various circumstances, including some beyond VTA's control. VTA is taking the appropriate measures to mitigate the delay wherever possible and continues to look for potential ways to accelerate the start of passenger service.

VTA has reassessed the schedule risks moving forward and anticipates the start of passenger service no later than December 31, 2019.

VTA staff will provide an update and a presentation of current project activities to meet the targeted date for passenger service at the May 7th, 2019 City Council meeting.

Montague Expressway Pedestrian OverCrossing (POC) Project

The City's Transit Area Specific Plan (TASP) envisioned a pedestrian overcrossing spanning over Montague Expressway at the future Milpitas BART station. Montague pedestrian overcrossing will provide a safe and convenient pedestrian facility to transit, regional mall, and new developments in the city's Transit Area.

As a means to expediting construction of the POC to better align with the opening of new Milpitas BART station, the City and VTA partnered on this project. Amendment No. 10 to the VTA/City of Milpitas Master Agreement for the BART Extension Program specified POC Project funding, administration, design, and construction responsibilities between VTA and the City. It was agreed the VTA will design and construct the POC, and Milpitas will provide funding through TASP development impact fee and grants.

Design phase of the project has been completed. VTA is currently in advertising for construction bid proposal.

VTA staff will provide an update and a presentation of Montague POC project activities and schedules.

Fiscal Impact: Not applicable

California Environmental Quality Act: Not applicable

Rcommendation:

Receive update and presentation from Valley Transportation Authority staff on Bay Area Rapid Transit (BART) Extension and Montague Expressway Pedestrian Overcrossing Projects.

Attachment: None

Item Attachment Documents:

17. HOUSING AUTHORITY: Adopt a Resolution Authorizing \$6.5 million development loan for Sango Court for 355 Sango Court Affordable Housing Development and Approve Budget Appropriation

Recommendation:

1. Adopt a Resolution of the Milpitas Housing Authority to authorize the development loan to Sango Court L.P. in the amount of \$6.5 million.
2. Approve a budget appropriation of \$6.5 million from the Housing Authority Fund reserve into the FY 18-19 Nondepartmental Operating Budget.



HOUSING AUTHORITY AGENDA REPORT (AR)

Item Title:	HOUSING AUTHORITY: Adopt a Resolution Authorizing \$6.5 million development loan for Sango Court for 355 Sango Court Affordable Housing Development and Approve Budget Appropriation
Category:	Community Development
Meeting Date:	5/7/2019
Staff Contact:	Sharon Goei, 408-586-3260; Robert Musallam, 408-586-3275
Recommendation:	1. Adopt a Resolution of the Milpitas Housing Authority to authorize the development loan to Sango Court L.P. in the amount of \$6.5 million. 2. Approve a budget appropriation of \$6.5 million from the Housing Authority Fund reserve into the FY 18-19 Nondepartmental Operating Budget.

Background:

On November 7, 2017, the City Council/Milpitas Housing Authority approved a \$150,000 predevelopment loan from the Housing Authority Fund to assist with the predevelopment expenditures of the 355 Sango Court Apartments.

On June 12, 2018, the City Council approved and entitled 355 Sango Court for 101 affordable units and one manager's unit. The 102-unit development would include units for veterans, many of whom are homeless or formerly homeless. The remaining units are for low or very low-income households not exceeding 60% of Area Median Income (AMI). For reference, a 4-person household at 60% AMI in Santa Clara County earns approximately \$75,120 per year. Part of the entitlement approval included the following items that have a total fiscal impact of approximately \$2 million: 1) Density bonus concession – exemption of reconstruction of Transit Area Specific Plan (TASP) street frontage; 2) Density bonus concession – 50% reduction in the Transit Area Development Impact Fee (TADIF); and 3) 50% reduction in the Public Art Fee. The Council meeting minutes noted the fiscal impact discussion of the applicant's request. Staff will identify a funding source to pay for the approximately \$2 million subsidies approved and bring it back to Council. While there is a fiscal impact, a cross-departmental effort is underway to address the issue, recognizing that the project will provide a significant benefit to the community in the form of affordable housing.

On January 15, 2019, the City Council directed staff to research a commitment level up to \$6.5 million of Housing Authority Funds for affordable housing construction at 355 Sango Court.

On January 29, 2019, Sango Court L.P. officially closed escrow on the land at 355 Sango Court. The City provided Sango Court L.P. a \$299,097 loan using Community Development Block Grant (CDBG) funds to assist with land acquisition. The CDBG allocation was approved by Council in August 2018.

Analysis:

The overall development budget for 355 Sango is estimated to be \$82.4 million. Sango Court L.P. has secured Santa Clara County Measure A funding at \$16 million and will be applying for additional construction funding, including state HOME Funds, Multifamily Housing Program (MHP) Funds, and Low Income Tax Credits. In order to be competitive for the state funds, and in order to apply for the Low Income Tax Credits, the project needs to have the Housing Authority's \$6.5 million commitment in place. If the developer does not have the Housing Authority funding committed, it will affect the scoring for the state funds, and the developer will not have a complete financing package, which is needed to apply for tax credits. Additionally, the delay in

securing the full amount of funds needed to close on the construction financing may prevent the project from moving forward.

Currently, the Housing Authority has approximately \$7.5 million in funds with \$1 million in annual expenditure. The Housing Authority fund does not expect any major loan payoff from any previous properties or developers.

With the opportunity to partner with Santa Clara County to develop affordable housing on the Housing Authority-owned 1432-1446 and City-owned 1452-1488 South Main Street properties, the City/Housing Authority may sell the properties with the County developing the properties through Measure A funding along with input from the City. The Housing Authority Fund and City fund would be funded by the sale accordingly. While an official appraisal must be completed in order to confirm the actual value, as it could vary substantially, a conservative estimate for the parcels combined is approximately \$10 million. In discussion with Santa Clara County staff, if the City proceeds with this option of developing the site, the approximate timeframe for the sale could be as early as winter 2019-2020. As such, a Letter of Interest to purchase the City/Housing Authority-owned properties from Santa Clara County is being submitted to the City as part of the consideration to support the funding for 355 Sango Court.

In addition, note that five projects are expected to pay approximately \$3 million into the Affordable Housing Ordinance Fund in the next two years. While the Housing Authority Fund and Affordable Housing Ordinance Fund each has its own statutes and restrictions, both funds are sources of funding for affordable housing production.

The developer is requesting to secure the Housing Authority's \$6.5 million commitment in order to have the project move forward. Note that the Housing Authority funds will only be expended once the developer provides evidence that all other construction funding sources have been committed to the project. Furthermore, as the developer estimates that the \$6.5 million from the Housing Authority would not be needed until April 2020 for the construction phase, in consideration of the funding analysis and timing described above, staff believes that it would be adequate for the Housing Authority to reserve \$6.5 million for the construction of 355 Sango Court and authorize the development loan in this amount.

Policy Alternative:

Alternative 1: Fund an alternative amount, lower than what Sango L.P. is requesting.

Pros: These savings could be used to fund alternative projects in the future.

Cons: By not funding the full \$6.5 million, the developer would have to secure alternative financing from currently unknown sources. At present, the City's commitment amount will allow the developer to be very competitive when applying for the state funds and Low Income Tax Credits. Additionally, the delay in securing the full amount of funds needed to close on the construction financing may prevent the project from moving forward.

Reason not recommended: Staff believes it is in the best interest of the City to fully commit the \$6.5 million and ensure the project stays on track for timely completion of the 101 affordable units which will count toward Milpitas' Regional Housing Needs Allocation (RHNA) goals.

Fiscal Impact:

The \$6.5 million development loan would be funded from the Housing Authority Fund. A budget appropriation of \$6.5 million from the Housing Authority Fund reserve into the FY 2018-19 Nondepartmental Operating Budget will be required. The total fiscal impact, taking into account the predevelopment loan, density bonus concessions, Public Art Fee reduction, loan using CDBG fund, and the development loan using Housing Authority Fund, is approximately \$9 million.

California Environmental Quality Act:

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

Recommendations:

1. Adopt a Resolution of the Milpitas Housing Authority to authorize the development loan to Sango Court L.P. in the amount of \$6.5 million.
2. Approve a budget appropriation of \$6.5 million from the Housing Authority Fund reserve into the FY 2018-19 Nondepartmental Operating Budget.

Attachments:

- a) Resolution
- b) Budget Change Form
- c) Budget Summary Page (Pro Forma)

RESOLUTION NO. _____

**A RESOLUTION OF THE MILPITAS HOUSING AUTHORITY TO AUTHORIZE THE
DEVELOPMENT LOAN TO SANGO COURT L.P. IN THE AMOUNT OF \$6,500,000**

WHEREAS, on November 7, 2017, a Joint Meeting of the Milpitas Housing Authority and Milpitas City Council approved a predevelopment loan between City of Milpitas Housing Authority and Resources for Community Development in the amount of One Hundred and Fifty Thousand dollars (\$150,000) from the Housing Authority Fund to assist with the predevelopment expenditures of the 355 Sango Court Apartments; and

WHEREAS, on June 12, 2018, the Milpitas City Council approved and entitled 355 Sango Court for 101 affordable units and 1 Manager's unit; and

WHEREAS, on August 7, 2018, the City Council allocated 355 Sango Court \$299,097 in Community Development Block Grant funding to support the acquisition of the new development site; and

WHEREAS, on January 15, 2019, the City Council directed staff to research a commitment level up to \$6.5 million of Housing Authority Funds for Affordable Housing Construction at 355 Sango Court; and

WHEREAS, on January 29, 2019, the acquisition of the property at 355 Sango Court was officially completed by Sango Court, L.P.; and

WHEREAS, the Santa Clara County Office of Supportive Housing has committed \$16,000,000 of Measure A funding for the acquisition and construction of 355 Sango Court; and

WHEREAS, there is still a need for other construction funding, including HOME Funds, State Multifamily Housing Program (MHP) Funds, and Low Income Tax Credits for the balance of the financing.

NOW, THEREFORE, the Housing Authority Commission of the City of Milpitas hereby finds, determines, declares, and resolves as follows:

1. The Housing Authority Commission has considered the full record before it, which includes, but is not limited to, the supporting documentation, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Housing Authority Commission hereby authorizes its staff to reserve \$6.5 million from the Housing Authority Fund for the construction of 355 Sango Court.
3. The Housing Authority Commission hereby directs Housing Authority staff to finalize loan documents, regulatory agreements, and other necessary documents to the satisfaction of the Executive Director and Housing Authority Counsel.
4. The Housing Authority Commission hereby authorizes the Executive Director or designee authority to execute the loan documents and other necessary documents, on behalf of the Milpitas Housing Authority, once it is determined by Housing Authority staff that all other funding sources have been committed to the development.
5. The Housing Authority Commission hereby designates the City Clerk as the custodian of the documents and other materials which constitute the record of proceedings upon which the

decision herein is based. These documents may be found at the City Clerk's Office at 455 East Calaveras Boulevard, Milpitas, California 95035.

PASSED AND ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Housing Authority Secretary

Rich Tran, Chair

APPROVED AS TO FORM:

Christopher J. Diaz, Housing Authority Counsel

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one:	295-2909	\$6,500,000	295-910-4237	\$6,500,000
☒ Budget Appropriation				
☐ Budget Transfer				

Item Title:

Approve funding commitment and development loan of \$6.5 million for Sango Court L.P. for 355 Sango Court

Background:

On November 7, 2017, the City Council/Milpitas Housing Authority approved a \$150,000 predevelopment loan from the Housing Authority Fund to assist with the predevelopment expenditures of the 355 Sango Court Apartments.

On June 12, 2018, the City Council approved and entitled 355 Sango Court for 101 affordable units and one manager's unit. The 102-unit development would include units for veterans, many of whom are homeless or formerly homeless. The remaining units are for low or very low-income households not exceeding 60% of Area Median Income (AMI). For reference, a 4-person household at 60% AMI in Santa Clara County earns approximately \$75,120 per year. Part of the entitlement approval included the following items that have a total fiscal impact of approximately \$2 million: 1) Density bonus concession – exemption of reconstruction of Transit Area Specific Plan (TASP) street frontage; 2) Density bonus concession – 50% reduction in the Transit Area Development Impact Fee (TADIF); and 3) 50% reduction in the Public Art Fee. The Council meeting minutes noted the fiscal impact discussion of the applicant's request. While there is a fiscal impact, a cross-departmental effort is underway to address the issue, recognizing that the project will provide a significant benefit to the community in the form of affordable housing.

On January 15, 2019, the City Council directed staff to research a commitment level up to \$6.5 million of Housing Authority Funds for affordable housing construction at 355 Sango Court.

On January 29, 2019, Sango Court L.P. officially closed escrow on the land at 355 Sango Court. The City provided Sango Court L.P. a \$299,097 loan using Community Development Block Grant (CDBG) funds to assist with land acquisition. The CDBG allocation was approved by Council in August 2018.

Recommendation:

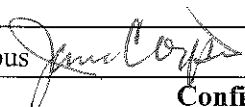
1. Adopt a Resolution of the Milpitas Housing Authority to authorize the development loan to Sango Court L.P. in the amount of \$6.5 million.
2. Approve a budget appropriation of \$6.5 million from the Housing Authority Fund reserve into the FY 18-19 Nondepartmental Operating Budget.

Attachments:

- a) Resolution
- b) Budget Change Form
- c) Pro Forma

☒ Check if City Council Approval required.

Meeting Date: May 07, 2019

Requested by:	Department Head: Sharon Goei	Date: May 07, 2019
Reviewed by:	Interim Finance Director: Jane Corpus 	Date: May 07, 2019
Date approved by City Council, if required:	Confirmed by:	

Summary

Property Address:	355 Sango Court, Milpitas
Financing Scenario:	4%, AHSC, HOME, 40 PSB
Revised:	9/28/2018

UNIT MIX		Number of Bedrooms						
Area	Median Income	SRO	0 bed	1 bed	2 bed	3 bed	4 bed	TOTAL
30%	Net Rent:	\$666	\$666	\$697	\$834	\$963	\$1,072	
	#	-	23	32	12	4	-	71
50%	Net Rent:	\$1,132	\$1,132	\$1,196	\$1,432	\$1,655	\$1,844	
	#	-	-	4	6	4	-	14
60%	Net Rent:	\$1,364	\$1,364	\$1,445	\$1,731	\$2,000	\$2,229	
	#	-	-	4	8	4	-	16
Manager	#	-	-	-	1	-	-	1
TOTAL		-	23	40	27	12	-	102

40 Op Subs. (39.6%) of units

EXPENSES (not incl. manager's apartment)

\$7,352	per unit per year w/out reserves
\$8,884	per unit per year with reserves

DEVELOPMENT USES

	RESIDENTIAL	COMMERCIAL
ACQUISITION/OFFSITES/DEMO	\$7,398,560	\$0
REHABILITATION	\$0	\$0
NEW CONSTRUCTION	\$45,974,532	\$0
ARCHITECTURAL FEES	\$1,870,770	\$0
SURVEY & ENGINEERING	\$289,190	\$0
CONST. INTEREST & FEES	\$4,891,377	\$0
PERMANENT FINANCING	\$97,365	\$0
LEGAL FEES	\$189,400	\$0
RESERVES	\$365,566	\$0
APPRAISAL	\$15,500	\$0
CONST. CONTINGENCY	\$4,597,453	\$0
OTHER	\$7,215,139	\$0
DEVELOPER FEE	\$9,377,812	\$0
SYNDICATION EXPENSES	\$100,000	\$0
TOTAL	\$82,382,664	\$0
TOTAL USES	\$82,382,664	

DEVELOPMENT STATISTICS

Total Site Acreage	1.26
Total Residential SF	107,470
Community Room	3,000
Commercial Space	-
Garage spaces	60
Uncovered parking spaces	
Density	81
Commercial in basis?	Yes
Cost per total building GSF	350
Cost/Unit	792,036
TCAC High Cost (Yes/No)	No

FUNDING PRIORITIES

QCT eligible	No
SADDA eligible	Yes
AHSC DAC	No

DATASET SELECTION

County:	Santa Clara County
Utility Allowance:	Santa Clara
Type of Credit:	4%
Credit Rate:	\$0.95

DEVELOPMENT SOURCES

	AMOUNT	INT. RATE	AMORT. PERIOD	ADDITIONAL TERMS
First Trust Deed	\$0	5.50%	240.00	-
Tranche B: Operating Subsidy	\$6,736,516	6.50%	240.00	-
City of Milpitas	\$6,500,000	0.00%	-	-
County of Santa Clara	\$16,000,000	0.00%	-	-
HCD HOME	\$5,000,000	0.00%	-	-
AHP	\$1,010,000	0.00%	-	-
City of Milpitas CDBG and predev	\$449,097	0.00%	-	-
Seller Remediation Allowance	\$75,000	0.00%	-	-
Income from Holding Period	\$0	0.00%	-	-
GP Capital Contribution	\$6,382,812	0.00%	-	-
HTSV Milpitas Set-Aside	\$400,000	0.00%	-	-
HCD Loans	\$9,202,078	0.00%	-	-
Deferred developer fee	\$1,595,000	0.00%	-	DDF Paid in 10 years
Tax Credit Equity	\$29,032,161	0.00%	-	-
TOTAL SOURCES	\$82,382,664			
OVER/(UNDER)	(\$0)			

Summary

CASH FLOW SUMMARY

Revenues	Yr <u>1</u>	Yr <u>5</u>	Yr <u>10</u>	Yr <u>15</u>	Yr <u>30</u>
Gross residential rent	\$1,189,384	\$1,312,858	\$1,485,378	\$1,680,569	\$2,433,965
-Vacancy	<u>\$(59,469)</u>	<u>\$(65,643)</u>	<u>\$(74,269)</u>	<u>\$(84,028)</u>	<u>\$(121,698)</u>
= Residential income	\$1,129,915	\$1,247,215	\$1,411,109	\$1,596,540	\$2,312,266
Other Income	\$21,216	\$23,418	\$26,496	\$29,978	\$43,417
-Vacancy	<u>\$(1,061)</u>	<u>\$(1,171)</u>	<u>\$(1,325)</u>	<u>\$(1,499)</u>	<u>\$(2,171)</u>
= Other income	\$20,155	\$22,248	\$25,171	\$28,479	\$41,246
Operating Subsidy	\$551,954	\$609,253	\$689,314	\$779,896	\$1,129,522
= Effective Gross Income	<u>\$1,674,426</u>	<u>\$1,848,253</u>	<u>\$2,091,129</u>	<u>\$2,365,920</u>	<u>\$3,426,558</u>
Expenses	\$-	\$-	\$-	\$-	\$-
- Operating Expenses	\$(776,114)	\$(890,609)	\$(1,057,764)	\$(1,256,292)	\$(2,104,728)
Reserves					
- Transfer to Repl. Reserve	\$(61,200)	\$(61,200)	\$(61,200)	\$(61,200)	\$(61,200)
- Draw/+ Fund Op. Reserve	\$-	\$-	\$-	\$-	\$-
= Net Operating Income	<u>\$739,542</u>	<u>\$783,822</u>	<u>\$856,717</u>	<u>\$929,625</u>	<u>\$1,127,488</u>
Loan Payments					
First Trust Deed	\$-	\$-	\$-	\$-	\$-
Tranche B: Operating Subsidy	\$(602,708)	\$(602,708)	\$(602,708)	\$(602,708)	\$-
HCD Loans	\$(38,649)	\$(38,649)	\$(38,649)	\$(38,649)	\$(38,649)
= Cash Flow Available for	<u>\$98,185</u>	<u>\$142,465</u>	<u>\$215,361</u>	<u>\$288,269</u>	<u>\$1,088,840</u>
Distribution					
Debt Coverage Ratio- All loans	<u>1.15</u>	<u>1.22</u>	<u>1.34</u>	<u>1.45</u>	<u>29.17</u>

# of SN	Property	AMI	Tax Credit Tranche							Project Based Voucher Tranche based on FMRs from								
			Size of Unit	Rent/Unit	Gross Rent	UA	Net Rent	Units at rent	Mo. Net Rent	Ann. Net Rent	Units at Rent	FMR: Gross	% of FMR Subs. (Gross)	MR or existing	FMR Overhang	Mo Net Overhang	Net Overhang	
	Property 1	30%	Efficiency	\$698		\$32	\$666	23	\$15,324	\$183,885	17	1,657	100%		\$1,625	\$959	\$16,299	\$195,585
	Property 1	30%	1 BR	\$748		\$51	\$697	32	\$22,308	\$267,696	17	1,950	100%		\$1,899	\$1,202	\$20,432	\$245,183
	Property 1	30%	2 BR	\$898		\$64	\$834	12	\$10,005	\$120,060	6	2,442	100%		\$2,378	\$1,544	\$9,266	\$111,186
	Property 1	30%	3 BR	\$1,037		\$74	\$963	4	\$3,854	\$46,243		3,385	100%		\$3,311	\$2,348	\$0	\$0
	Property 1	50%	Efficiency	\$1,164		\$32	\$1,132		\$0	\$0		1,657	100%		\$1,625	\$493	\$0	\$0
	Property 1	50%	1 BR	\$1,247		\$51	\$1,196	4	\$4,784	\$57,402		1,950	110%		\$2,094	\$898	\$0	\$0
	Property 1	50%	2 BR	\$1,496		\$64	\$1,432	6	\$8,594	\$103,122		2,442	110%		\$2,622	\$1,190	\$0	\$0
	Property 1	50%	3 BR	\$1,729		\$74	\$1,655	4	\$6,620	\$79,440		3,385	110%		\$3,650	\$1,995	\$0	\$0
	Property 1	60%	Efficiency	\$1,396		\$32	\$1,364		\$0	\$0		1,657	100%		\$1,625	\$261	\$0	\$0
	Property 1	60%	1 BR	\$1,496		\$51	\$1,445	4	\$5,780	\$69,360		1,950	100%		\$1,899	\$454	\$0	\$0
	Property 1	60%	2 BR	\$1,795		\$64	\$1,731	8	\$13,848	\$166,176		2,442	100%		\$2,378	\$647	\$0	\$0
	Property 1	60%	3 BR	\$2,074		\$74	\$2,000	4	\$8,000	\$96,000		3,385	100%		\$3,311	\$1,311	\$0	\$0
	Property 1	Manager	Efficiency						\$0	\$0								
	Property 1	Manager	1 BR						\$0	\$0								
	Property 1	Manager	2 BR					1	\$0	\$0								
			Total Tax Credit + Managers Units							102	99,115	1,189,384	40 : Total Number of Project Based Vouchers				45,996	551,954
													40% Total % PBV					
													Total PBV=				40	

	Assumptions	Check for Cost from Master Budget	ENTER TOTAL PROJECT COST	TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	New Construction or Rehab 70%	Acquisition 30% PVC
ACQUISITION/OFFSITES/DEMO								
Total Land Cost or Value		☐	\$6,900,000	\$6,900,000	\$6,900,000	\$0	XXXXXXXX	XXXXXXXX
Legal/Broker Fees		☐	\$207,000	\$207,000	\$207,000	\$0	XXXXXXXX	XXXXXXXX
Off-Site Improvements		☐		\$0	\$0	\$0	XXXXXXXX	XXXXXXXX
Demolition		☐	\$291,560	\$291,560	\$291,560	\$0	XXXXXXXX	XXXXXXXX
Existing Improvements Value		☐		\$0	\$0	\$0	XXXXXXXX	\$0
Total Acquisition Cost			\$7,398,560	\$7,398,560	\$7,398,560	\$0	\$0	\$0
REHABILITATION								
Site Work		☐	\$0	\$0	\$0	\$0	\$0	
Structures		☐	\$0	\$0	\$0	\$0	\$0	
General Requirements		☐	\$0	\$0	\$0	\$0	\$0	
Contractor Overhead		☐	\$0	\$0	\$0	\$0	\$0	
Contractor Profit		☐	\$0	\$0	\$0	\$0	\$0	
Prevailing Wages		☐	\$0	\$0	\$0	\$0	\$0	
General Liability Insurance		☐	\$0	\$0	\$0	\$0	\$0	
Total Rehab. Costs			\$0	\$0	\$0	\$0	\$0	\$0
NEW CONSTRUCTION								
Site Work	see cell N2	☐		\$0	\$0	\$0	\$0	
Structures	Nibbi Estimate, 6/18/18	☐	\$45,974,532	\$45,974,532	\$45,974,532	\$0	\$45,974,532	
General Requirements		☐		\$0	\$0	\$0	\$0	
Contractor Overhead		☐		\$0	\$0	\$0	\$0	
Contractor Profit		☐		\$0	\$0	\$0	\$0	
Prevailing Wages		☐		\$0	\$0	\$0	\$0	
General Liability Insurance		☐		\$0	\$0	\$0	\$0	
Total New Const. Costs			\$45,974,532	\$45,974,532	\$45,974,532	\$0	\$45,974,532	\$0
ARCHITECTURAL FEES								
Design	David Baker Estimate	☐	\$1,870,770	\$1,870,770	\$1,870,770	\$0	\$1,870,770	
Supervision		☐	\$0	\$0	\$0	\$0	\$0	
Total Architectural Costs			\$1,870,770	\$1,870,770	\$1,870,770	\$0	\$1,870,770	\$0
SURVEY & ENGINEERING		☐	\$289,190	\$289,190	\$289,190	\$0	\$289,190	
CONST. INTEREST & FEES								
Const. Loan Interest	4.00%	☐	\$3,655,022	\$3,655,022	\$3,655,022	\$0	\$1,827,511	
Predevelop. Loan Interest/Fees	County Acquisition Loan (deferred interest)	☐		\$0	\$0	\$0	\$0	
Origination Fee	1.00%	☐	\$435,122	\$435,122	\$435,122		\$435,122	
Credit Enhance. & App. Fee		☐	\$238,233	\$238,233	\$238,233	\$0	\$20,000	
Bond Premium		☐		\$0	\$0	\$0	\$0	
Taxes	1% for 2 years	☐	\$138,000	\$138,000	\$138,000	\$0	\$138,000	
Insurance		☐	\$375,000	\$375,000	\$375,000	\$0	\$375,000	
Title and Recording		☐	\$50,000	\$50,000	\$50,000	\$0	\$50,000	
Total Const. Interest & Fees			\$4,891,377	\$4,891,377	\$4,891,377	\$0	\$2,845,633	\$0
PERMANENT FINANCING								
Loan Origination Fee	1.00%	☐	\$67,365	\$67,365	\$67,365	\$0	XXXXXXXX	XXXXXXXX
Credit Enhance. & App. Fee		☐		\$0	\$0	\$0	XXXXXXXX	XXXXXXXX
Title and Recording		☐	\$10,000	\$10,000	\$10,000	\$0	XXXXXXXX	XXXXXXXX
Other: (RCD Legal)		☐	\$20,000	\$20,000	\$20,000	\$0	XXXXXXXX	XXXXXXXX
Total Perm. Financing Costs			\$97,365	\$97,365	\$97,365	\$0	XXXXXXXX	XXXXXXXX
LEGAL FEES								
Lender Legal Pd. by Applicant		☐	\$139,400	\$139,400	\$139,400	\$0		
Other: Owner legal	RCD RE Construction legal	☐	\$50,000	\$50,000	\$50,000	\$0	\$50,000	
Total Attorney Costs			\$189,400	\$189,400	\$189,400	\$0	\$50,000	\$0
RESERVES								
Rent Reserves	3 months debt plus op exp estimate	☐	\$365,566	\$365,566	\$365,566		XXXXXXXX	XXXXXXXX
Other: Transition reserves		☐	\$0	\$0	\$0	\$0	XXXXXXXX	XXXXXXXX
Other: Oper. reserve in cash flow		☐	\$0	\$0	\$0	\$0	XXXXXXXX	XXXXXXXX
Total Reserve Costs			\$365,566	\$365,566	\$365,566	\$0	XXXXXXXX	XXXXXXXX
TOTAL APPRAISAL COSTS	Appraisal, Market Study	☐	\$15,500	\$15,500	\$15,500	\$0	\$15,000	
CONTINGENCY COSTS	10%	☐	\$4,597,453	\$4,597,453	\$4,597,453	\$0	\$4,597,453	
OTHER								
TCAC App/Alloc/Monitor Fees		☐	\$73,973	\$73,973	\$73,973	\$0	XXXXXXXX	XXXXXXXX
Environmental Audit		☐	\$90,950	\$90,950	\$90,950	\$0	\$90,950	
Transit Passes	3 years (AHSC Requirement)	☐	\$38,021	\$38,021	\$38,021	\$0	\$38,021	
Permit Fees		☐	\$200,000	\$200,000	\$200,000	\$0	\$200,000	
Impact/Capital Fees	City of Milpitas Fees	☐	\$2,535,698	\$2,535,698	\$2,535,698	\$0	\$2,535,698	
Marketing/Lease-Up		☐	\$170,000	\$170,000	\$170,000	\$0	XXXXXXXX	XXXXXXXX
Wage Monitor		☐	\$25,600	\$25,600	\$25,600	\$0	\$25,600	
Utility Hookups		☐	\$120,000	\$120,000	\$120,000	\$0	\$120,000	
Security	Included in GC Cost	☐		\$0	\$0	\$0	\$0	
Construction Management	construction manager	☐	\$120,000	\$120,000	\$120,000	\$0	\$120,000	
Furnishings	\$735/unit	☐	\$75,000	\$75,000	\$75,000	\$0	\$75,000	
Other:		☐		\$0	\$0	\$0	\$0	
Other:Audit + Finance Cons	finance consultant, audit	☐	\$95,000	\$95,000	\$95,000	\$0		
Other:	Environmental remediation	☐	\$52,680	\$52,680	\$52,680	\$0	\$52,680	
Other:	Hard Cost Escalation	☐	\$3,218,217	\$3,218,217	\$3,218,217	\$0	\$3,218,217	
Other:Soft Cost Contingency		☐	\$400,000	\$400,000	\$400,000	\$0	\$400,000	
Total Other Costs			\$7,215,139	\$7,215,139	\$7,215,139	\$0	\$6,876,165	\$0
Subtotals			\$72,904,852	\$72,904,852	\$72,904,852	\$0	\$62,518,744	\$0
			Cost		Residential	Commercial		
DEVELOPER COSTS								
Developer Overhead/Profit (5% Acq.)	4%	☐	\$0	\$0	\$0		XXXXXXXX	\$0
eveloper Overhead/Profit (NC/ Rehab.)		☐	\$9,377,812	\$9,377,812	\$9,377,812		\$9,377,812	
Consultant/Processing Agent		☐	\$0	\$0	\$0	\$0	\$0	
Project Administration		☐	\$0	\$0	\$0	\$0	\$0	
Broker Fees Paid with Project Funds to a Related Party		☐	\$0	\$0	\$0	\$0	\$0	
Construction Management Oversight by Developer		☐	\$0	\$0	\$0	\$0	\$0	
Other (specify)		☐	\$0	\$0	\$0	\$0	XXXXXXXX	XXXXXXXX
Total Developer Costs			\$9,377,812	\$9,377,812	\$9,377,812	\$0	\$9,377,812	\$0
TOTAL w/out syndication			\$82,282,664	\$82,282,664	\$82,282,664	\$0	\$71,896,555	\$0
Syndication Expenses								
TCAC performance deposit	investor legal, org legal	☐	\$100,000	\$100,000	\$100,000			
	4% of federal for 9% only						\$0	
TOTAL			\$82,382,664		\$82,382,664	\$0	\$71,896,555	\$0
Source			Total		Residential	Commercial	Interest Rate	Amort. Period
First Trust Deed			\$0		\$0		5.50%	240
Tranche B: Operating Subsidy			\$6,736,516		\$6,736,516		6.50%	240
City of Milpitas			\$6,500,000		\$6,500,000			
County of Santa Clara	\$158,416 per unit		\$16,000,000		\$16,000,000			
HCD HOME			\$5,000,000		\$5,000,000			
AHP			\$1,010,000		\$1,010,000			
City of Milpitas CDBG and predev			\$449,097		\$449,097			
Seller Remediation Allowance			\$75,000		\$75,000			
Income from Holding Period			\$0					
GP Capital Contribution			\$6,382,812		\$6,382,812			
HTSV Milpitas Set-Aside			\$400,000		\$400,000			
HCD Loans	, AHSC: 9202078		\$9,202,078		\$9,202,078			
Deferred developer fee			\$1,595,000		\$1,595,000			
Tax Credit Equity			\$29,032,161		\$29,032,161	\$0		
TOTAL SOURCES			\$82,382,664		\$82,382,664	\$-		
OVER/(UNDER)			\$ (0)		\$ (0)	\$-		

355 Sango Court, Milpitas 30 Year Cash Flow		2.50% Rental/Other Income Inflation								772973															
		2.50% Operating Subsidy Inflation								711773															
		3.50% Expenses Inflation																							
Revenues		Base	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	Yr 11	Yr 12	Yr 13	Yr 14	Yr 15	Yr 16	Yr 17	Yr 18	Yr 19	Yr 20			
Gross residential rent		\$1,189,384	\$1,189,384	\$1,219,119	\$1,249,597	\$1,280,837	\$1,312,858	\$1,345,679	\$1,379,321	\$1,413,804	\$1,449,149	\$1,485,378	\$1,522,512	\$1,560,575	\$1,599,590	\$1,639,579	\$1,680,569	\$1,722,583	\$1,765,648	\$1,809,789	\$1,855,033	\$1,901,409			
-Vacancy		(\$59,469)	(\$59,469)	(\$60,956)	(\$62,480)	(\$64,042)	(\$65,643)	(\$67,284)	(\$68,966)	(\$70,690)	(\$72,457)	(\$74,269)	(\$76,126)	(\$78,029)	(\$79,979)	(\$81,979)	(\$84,028)	(\$86,129)	(\$88,282)	(\$90,489)	(\$92,752)	(\$95,070)			
= Residential income		\$1,129,915	\$1,129,915	\$1,158,163	\$1,187,117	\$1,216,795	\$1,247,215	\$1,278,395	\$1,310,355	\$1,343,114	\$1,376,692	\$1,411,109	\$1,446,387	\$1,482,546	\$1,519,610	\$1,557,600	\$1,596,540	\$1,636,454	\$1,677,365	\$1,719,299	\$1,762,282	\$1,806,339			
Other Income		\$21,216.00	\$21,216	\$21,746	\$22,290	\$22,847	\$23,418	\$24,004	\$24,604	\$25,219	\$25,850	\$26,496	\$27,158	\$27,837	\$28,533	\$29,246	\$29,978	\$30,727	\$31,495	\$32,283	\$33,090	\$33,917			
-Vacancy		\$(1,060.80)	(\$1,061)	(\$1,087)	(\$1,115)	(\$1,142)	(\$1,171)	(\$1,200)	(\$1,230)	(\$1,261)	(\$1,292)	(\$1,325)	(\$1,358)	(\$1,392)	(\$1,427)	(\$1,462)	(\$1,499)	(\$1,536)	(\$1,575)	(\$1,614)	(\$1,654)	(\$1,696)			
= Other income		\$20,155	\$20,155	\$20,659	\$21,176	\$21,705	\$22,248	\$22,804	\$23,374	\$23,958	\$24,557	\$25,171	\$25,800	\$26,445	\$27,107	\$27,784	\$28,479	\$29,191	\$29,921	\$30,669	\$31,435	\$32,221			
Operating Subsidy		\$551,954	\$551,954	\$565,752	\$579,896	\$594,394	\$609,253	\$624,485	\$640,097	\$656,099	\$672,502	\$689,314	\$706,547	\$724,211	\$742,316	\$760,874	\$779,896	\$799,393	\$819,378	\$839,863	\$860,859	\$882,381			
-Vacancy		(\$27,598)	(\$27,598)	(\$28,288)	(\$28,995)	(\$29,720)	(\$30,463)	(\$31,224)	(\$32,005)	(\$32,805)	(\$33,625)	(\$34,466)	(\$35,327)	(\$36,211)	(\$37,116)	(\$38,044)	(\$38,995)	(\$39,970)	(\$40,969)	(\$41,993)	(\$43,043)	(\$44,119)			
= Effective Gross Income		\$1,674,426	\$1,674,426	\$1,716,287	\$1,759,194	\$1,803,174	\$1,848,253	\$1,894,459	\$1,941,821	\$1,990,366	\$2,040,126	\$2,091,129	\$2,143,407	\$2,196,992	\$2,251,917	\$2,308,215	\$2,365,920	\$2,425,068	\$2,485,695	\$2,547,837	\$2,611,533	\$2,676,821			
Expenses																									
- Operating Expenses		(\$749,869)	(\$776,114)	(\$803,278)	(\$831,393)	(\$860,492)	(\$890,609)	(\$921,780)	(\$954,043)	(\$987,434)	(\$1,021,994)	(\$1,057,764)	(\$1,094,786)	(\$1,133,104)	(\$1,172,762)	(\$1,213,809)	(\$1,256,292)	(\$1,300,262)	(\$1,345,772)	(\$1,392,874)	(\$1,441,624)	(\$1,492,081)			
- Services		(\$70,000)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)	(\$72,450)			
- County		(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)	(\$10,200)			
- Bond Admin		(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)	(\$4,000)			
- HOME		(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)	(\$10,920)			
- Transit Passes		(\$12,674)				(\$14,543)	(\$15,052)	(\$15,579)	(\$16,124)	(\$16,689)	(\$17,273)	(\$17,877)	(\$18,503)	(\$19,151)	(\$19,821)	(\$20,515)	(\$21,233)	(\$21,976)	(\$22,745)	(\$23,541)	(\$24,365)	(\$25,218)			
Reserves																									
- Transfer to Repl. Reserve		(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)	(\$61,200)			
- Draw/+ Fund Op. Reserve																									
= Net Operating Income		\$755,564	\$739,542	\$754,238	\$769,031	\$769,369	\$783,822	\$798,330	\$812,884	\$827,473	\$842,088	\$856,717	\$871,348	\$885,968	\$900,564	\$915,121	\$929,625	\$944,060	\$958,408	\$972,653	\$986,774	\$1,000,753			
Loan Payments																									
First Trust Deed		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0				
Tranche B: Operating Subsidy		(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)	(\$602,708)			
HCD Loans		(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)	(\$38,649)			
= Cash Flow Available for Distribution		\$114,207	\$98,185	\$112,882	\$127,674	\$128,012	\$142,465	\$156,973	\$171,527	\$186,117	\$200,732	\$215,361	\$229,991	\$244,611	\$259,207	\$273,765	\$288,269	\$302,704	\$317,052	\$331,296	\$345,418	\$359,396			
Debt Coverage Ratio- All loans		1.18	1.15	1.18	1.20	1.20	1.22	1.24	1.27	1.29	1.31	1.34	1.36	1.38	1.40	1.43	1.45	1.47	1.49	1.52	1.54	1.56			
- Investor Asset Mgt. Fees		5,000.00	\$5,000	\$5,125	\$5,253	\$5,384	\$5,519	\$5,657	\$5,798	\$5,943	\$6,092	\$6,244	\$6,400	\$6,560	\$6,724	\$6,893	\$7,065	\$0	\$0	\$0	\$0				
- Deferred Dev. Fee Payments		\$0	(\$103,185)	(\$118,007)	(\$132,927)	(\$133,397)	(\$147,984)	(\$162,630)	(\$177,326)	(\$192,060)	(\$206,824)	(\$220,660)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0				
- Partnership Mgt. Fees		(15,000.00)	-	-	-	-	-	-	-	-	-	(944.78)	(35,264.97)	(36,499.24)	(37,776.72)	(39,098.90)	(40,467.36)	(41,883.72)	(43,349.65)	(44,866.89)	(46,437.23)	(48,062.53)			
= Residual Receipts Available for Distribution		104,206.94	-	-	-	-	-	-	-	-	-	-	201,126.79	214,672.58	228,155.03	241,558.47	254,866.37	260,819.78	273,702.23	286,429.29	298,980.37	311,333.78			

Item Attachment Documents:

- 18. Approve the Schematic Design/Conceptual Plan and Provide Direction to Staff on Funding Options for the Replacement of Fire Station No. 2, Project No. 3447 (Staff Contact: Steve Erickson, (408-586-3301))**

Recommendation:

Approve the Schematic Design/Conceptual Plan and Provide Direction to Staff on Funding Options for the Replacement of Fire Station No. 2, Project No. 3447

**CITY OF MILPITAS
AGENDA REPORT
(AR)**

Item Title:	Approve the Schematic Design/Conceptual Plan and Provide Direction to Staff on Funding Options for the Replacement of Fire Station No. 2, Project No. 3447 (Staff Contact: Steve Erickson, (408-586-3301))
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	5/7/2019
Staff Contact:	Steve Erickson, 408-586-3301
Recommendation:	Approve the Schematic Design/Conceptual Plan and Provide Direction to Staff on Funding Options for the Replacement of Fire Station No. 2, Project No. 3447 (Staff Contact: Steve Erickson, (408-586-3301))

Background:

Fire Station No. 2 is located at 1263 Yosemite Drive and was constructed in 1968. The station has reached the end of its service life and is in need of replacement. The 2018-2023 Capital Improvement Program (CIP) was approved by the City Council on June 5, 2018, and included Project No. 3447 for the replacement of Fire Station No. 2. Council direction during creation of the 2018-2024 CIP document was to start this high priority public safety project in 2019.

As requested by Council, design services for the replacement of Station 2 started last December, and the project is currently in the schematic design/conceptual plan phase. Several versions of the station design were reviewed by fire and engineering department staff, and the version included as **Attachment 1** to this report is recommended for approval.

Funding

At the March 12, 2019 CIP Study Session, staff discussed the use of long term financing for infrastructure with long asset life. Long term financing for large infrastructure projects enables intergenerational equity and balances the use of cash for other smaller capital projects and other service delivery needs. Staff presented options for financing the Fire Station No. 2 project with 30-year bond financing. Council directed staff to bring back information about prior City projects that had been financed and also asked staff to bring forward other options for financing terms that were shorter than 30 years.

Analysis:

Schematic Design:

The recommended schematic design/conceptual plan includes a 10,300 square foot station to be located on the same parcel as the existing station. The new station is sized to include an apparatus bay for up to four engines and sufficient room for department staff. The design includes a meeting room, available for use by the public, as well as space for public parking. . The estimated total project cost including design, administration, construction, and construction administration services is \$20.72M. The estimated construction cost alone, including new building, site work and related items is \$17.2M and would be completed in two phases. Phase I includes building a temporary station facility, demolition of the existing fire station and site preparation for the construction of the new station. Phase II includes construction of the new station building, site improvements, fixtures, equipment, commissioning, close-out and warranty to provide a complete fire station.

The recommended station schematic design/conceptual plan provides sufficient room for staff and equipment. The new station and materials used for construction will incorporate “green” technology, and will be designed for cost effective usage and maintenance. The station will be designed to meet current building code

requirements for an essential facility, allowing it to better withstand disasters. To allow the project to remain on schedule, staff recommends approval of the schematic design/conceptual plan allowing staff to move forward with refinement of the concept and preparation of construction documents.

Funding

The total project cost for Phase I is estimated at \$4.3 million, with estimated construction cost at \$2.6 million. Construction is estimated to start Spring/Summer 2020 with estimated completion in Fall/Winter 2020. The proposed 2019-2024 Capital Improvement Program (CIP) document includes a budget of \$4.3 million in funding for FY 2019-20 from the General Government CIP Fund to complete Phase 1 work.

The current estimate for Phase I assumes location of temporary facilities on the existing site, however, this may present some operational and logistical challenges. Staff is reviewing other site options for the location of the temporary station facility, which may increase costs due to utilities and other required site preparation.

Phase 2 construction is estimated to start Winter/Spring 2021 with estimated completion in Spring/Summer 2022. The estimated construction cost for Phase 2 is \$14.6 million, and the estimated total cost for Phase 2 including construction management, administration, and inspection is \$15.2 million. The proposed 2019-2024 Capital Improvement Program (CIP) document includes a budget of \$7.82 million in funding from the General Fund, however additional funding of approximately \$13 million is required.

In response to Council direction on March 12, staff has developed two funding options for Council consideration. For both of these options (bond financing a portion of the project versus bond financing for the entire project), staff has identified several bond length/term options in response to Councilmembers' concerns at the CIP study session for the length of time the City was to go into debt. These options are shown as Attachment 2.

Funding Strategy Option 1:

Fund the project using \$7.82 million from the General Fund, and use bond financing to fund the remaining \$13 million of the total Fire Station No. 2 costs.

Staff recommends using a 20-year financing term for this option. The estimated average annual debt service would be \$0.9 million and the total amount in debt service over the 20-year bond term would be \$18.1 million. If a shorter term were desired, the annual debt service would be higher and could range from an average of \$1.55 million - \$3.1 million. Per the City's Financial Advisor, tax-exempt bonds are not likely to be available for a term of less than 10 years so the City would need to use private equity, such as a bank loan, for a term that is less than 10 years. See summary of financing options in Table 1.

Table 1

No.	Type of Financing	Term of Financing	Average Annual Debt Service	Total Debt Service
1	Tax Exempt Bonds	10 years	\$1,500,000	\$14,900,000
2	Tax Exempt Bonds	20 years	\$900,000	\$18,000,000
3	Tax Exempt Bonds	30 years	\$750,000	\$22,000,000
4	Private Equity	5 years	\$3,000,000	\$14,000,000
5	Private Equity	8 years	\$1,900,000	\$14,900,000
6	Private Equity	10 years	\$1,600,000	\$15,400,000

The City could choose to exercise the options of paying the bonds off early or refinancing them in the future if that were found to be more cost effective. Staff recommends the financing occur prior to the start of Phase 2 work (Fall 2020) so that all funds are in hand to award the construction contract for Phase 2.

Funding Strategy Option 2:

Finance the entire project cost of \$20.72 million with long-term financing. This would free up \$7.82 million of General Fund funding for other critical capital projects, such as improvements to storm drain systems, City buildings, and parks, that are identified in the Capital Improvement Program with unidentified funding. For example, in the proposed five year 2019-2024 CIP, approximately \$76 million in funding is needed to rehabilitate or rebuild the other fire stations and community improvements, \$68 million is needed to fund park improvements, \$179 million is needed to fund street improvements, and \$26 million is needed to fund storm drain infrastructure.

Staff would recommend using the 30-year financing term if Council were to wish to move forward with this option. The estimated average annual debt service would be \$1.2 million and the total amount in debt service over the 30-year bond term would be \$35.2 million. If a shorter term was desired, the annual debt service would be higher and could range from an average of \$1.5 million to \$4.8 million

See the summary of financing options in Table 2 below. Similar to Option 1, staff recommends the financing occur prior to the start of Phase 2 work (Fall 2020) so that all funds are in hand to award the construction contract for Phase 2.

Table 2

No.	Type of Financing	Term of Financing	Average Annual Debt Service	Total Debt Service
1	Tax Exempt Bonds	10 years	\$2,450,000	\$23,600,000
2	Tax Exempt Bonds	20 years	\$1,500,000	\$28,700,000
3	Tax Exempt Bonds	30 years	\$1,200,000	\$35,200,000
4	Private Equity	5 years	\$4,800,000	\$22,500,000
5	Private Equity	8 years	\$3,100,000	\$23,600,000
6	Private Equity	10 years	\$2,520,000	\$24,400,000

Financing Information for Prior City Projects

In response to the City Council's questions at the March 12 CIP study session, staff prepared the table below which shows the history of Milpitas bond issuances since 1993 that information is summarized below:

Bond Issuance	Purpose/Facilities Financed	Amount	Term	Average Annual Debt Service	Type of Bond/ Funding Source
1993 Tax Allocation Bonds	Construction of a new Corporation Yard, police facility, fire station, library, sports center, and City Hall improvements	\$30 million	20 years	\$1.5-3.0 million (Escalating payments)	Tax Allocation Bonds
1997 Tax Allocation Bonds	Highway 880 Interchanges, Senior Housing and Senior Center Improvements, Tasman Extension, and Fire Station Improvements,	\$39 million	18 years	\$2.8 million	Tax Allocation Bonds
2000 Tax Allocation Bonds	Land Acquisition and Construction of New City Hall	\$38 million	10 Years	\$5.5 million	Tax Allocation Bonds
2000 Public Safety Technology Improvements/	Acquisition and Installation of Equipment and Software related to Fire and Police	\$8.6 million	8 years	\$1.2 million	Certificates of Participation

Bond Issuance	Purpose/Facilities Financed	Amount	Term	Average Annual Debt Service	Type of Bond/ Funding Source
2003 Tax Allocation Bonds	Acquisition of and public improvements on Elmwood site; new Main Library; rehabilitation of community center into Senior Center; Main and Abel Streets Reconstruction	\$198 million	30 years	\$13.4 million	Tax Allocation Bonds

Note: None of the financings above were voter approved.

Next Steps

If Council were to approve the schematic design/concept plan and direct staff to move forward with a funding strategy to enable the construction of the replacement Fire Station No. 2, staff will bring forward an agreement for a construction management firm in late May/early June. The financing documents will be brought forward for Council consideration in August.

Policy Alternatives:

Alternative 1: Do not approve the proposed schematic design/conceptual plan.

Pros: The City will not need to spend additional funds on the Fire Station No. 2 project.

Cons: Not approving the recommended schematic design/conceptual plan will delay the project and prevent moving forward to the next design phase, which is development of construction drawings.

Reason not recommended: Fire Station No. 2 is more than 50 years old and needs to be replaced. This project was already identified as a high priority in the current CIP budget and not moving forward with the design will further delay the project and will likely result in higher costs due to continuing escalation of construction costs in a tight construction market.

Alternative 2: Do not direct staff to move forward with any of the proposed funding options for the Fire Station No. 2. Project.

Pros: The City will not commit future General Fund dollars to an infrastructure project.

Cons: Fire Station 2 has reached the end of its service life and it should be replaced. Approximately \$10.5 million in funding is required for Phase II construction of the fire station, and a financing mechanism such as a bond would be required to provide the funding. If one of the proposed funding options is not approved, the design process for the station would need to stop until the additional funding is located.

Reason not recommended: As mentioned above, Fire Station No. 2 has reached the end of its service life and should be replaced.

Fiscal Impact:

The fiscal impact will vary depending on which financing option Council directs staff to move forward with. The replacement of Station 2 will offset Public Works Department maintenance and repair costs for Station No. 2 because the building and fixtures will be new with modern equipment requiring less maintenance for the first 5 to 10 years of service.

It is important to note that over the last several years, the City has made significant investment in Public Safety improvements for the Fire Department with the implementation of various Capital Improvement Projects

cost of \$4.4M. In FY 2020-21 and FY 2021-22 additional projects are planned to start, with an estimated cost of \$1.2M.

California Environmental Quality Act:

As this project is still in the design phase, any environmental impacts associated with the project would be speculative to analyze at this time until final design is complete. All environmental impacts will be analyzed and CEQA findings brought forward to the City Council before any actual construction and/or physical change in the environment.

Recommendation:

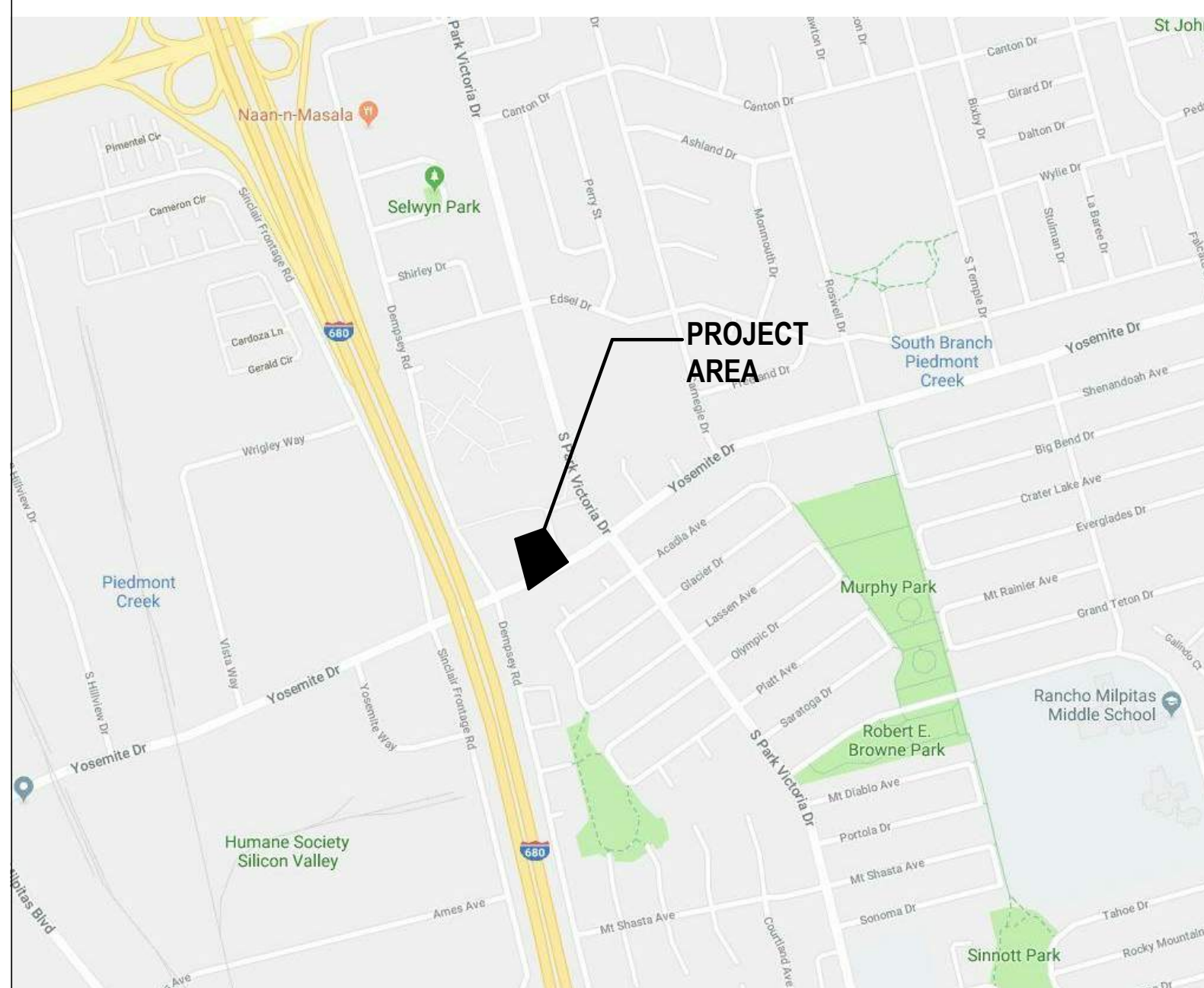
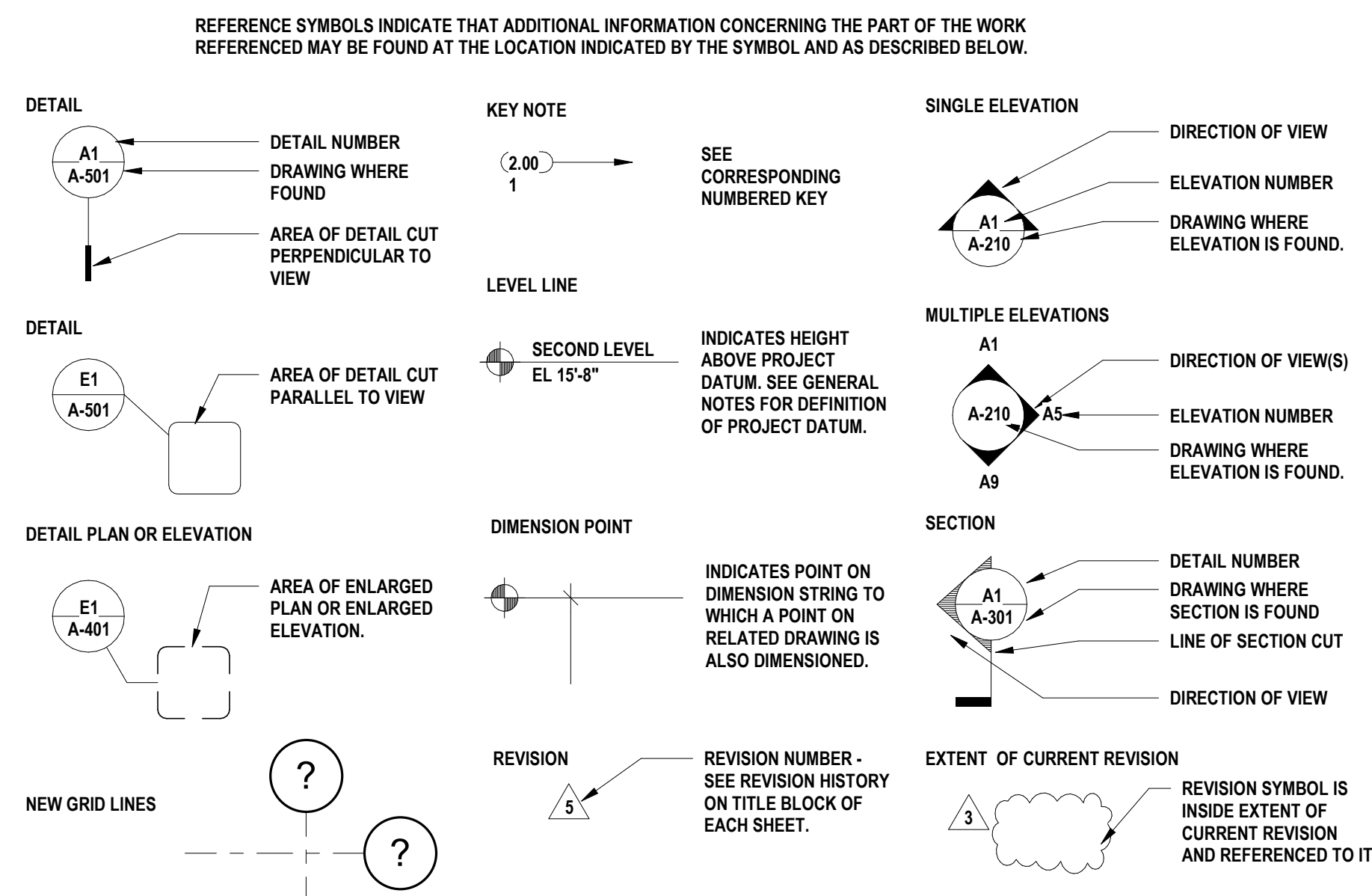
Approve the Fire Station Schematic Design/Conceptual Plan and Discuss Funding Options for the Replacement of Fire Station No. 2, Project No. 3447, and Provide Direction to Staff

Attachments:

1. Attachment 1 Schematic Design/Conceptual Plan



PROJECT AREA



SHEET INDEX	
Sheet Number	Sheet Name
ARCHITECTURAL	
A-000	COVER SHEET
A-002	ABBREVIATIONS & CODE SUMMARY
A-003	CODE DIAGRAM / MEANS OF EGRESS
A-004	SIGHTLINE AND BUILDING SECTIONS DIAGRAMS
A-101	SITE PLAN VICINITY PLAN
A-102	TEMPORARY RELOCATION PLAN DIAGRAM
A-120	FLOOR PLAN
A-121	ROOF PLAN
A-201	EXTERIOR ELEVATIONS
A-301	BUILDING SECTIONS
A-401	RENDERED PERSPECTIVES

NOTE: If this drawing is not 34"x22" it has been revised from its original size and the scales noted on drawing/details are no longer applicable.

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**CITY OF MILPITAS FIRE STATION NO. 2
REPLACEMENT**
1263 YOSEMITE DR. MILPITAS, CA 95035

Architect of Record
S H A H
KAWASAKI
ARCHITECTS
570 10th Street, Suite 201

Consultant

COVER SHEET

Drawing No.

A-000

SKA Project Number: 18725.00

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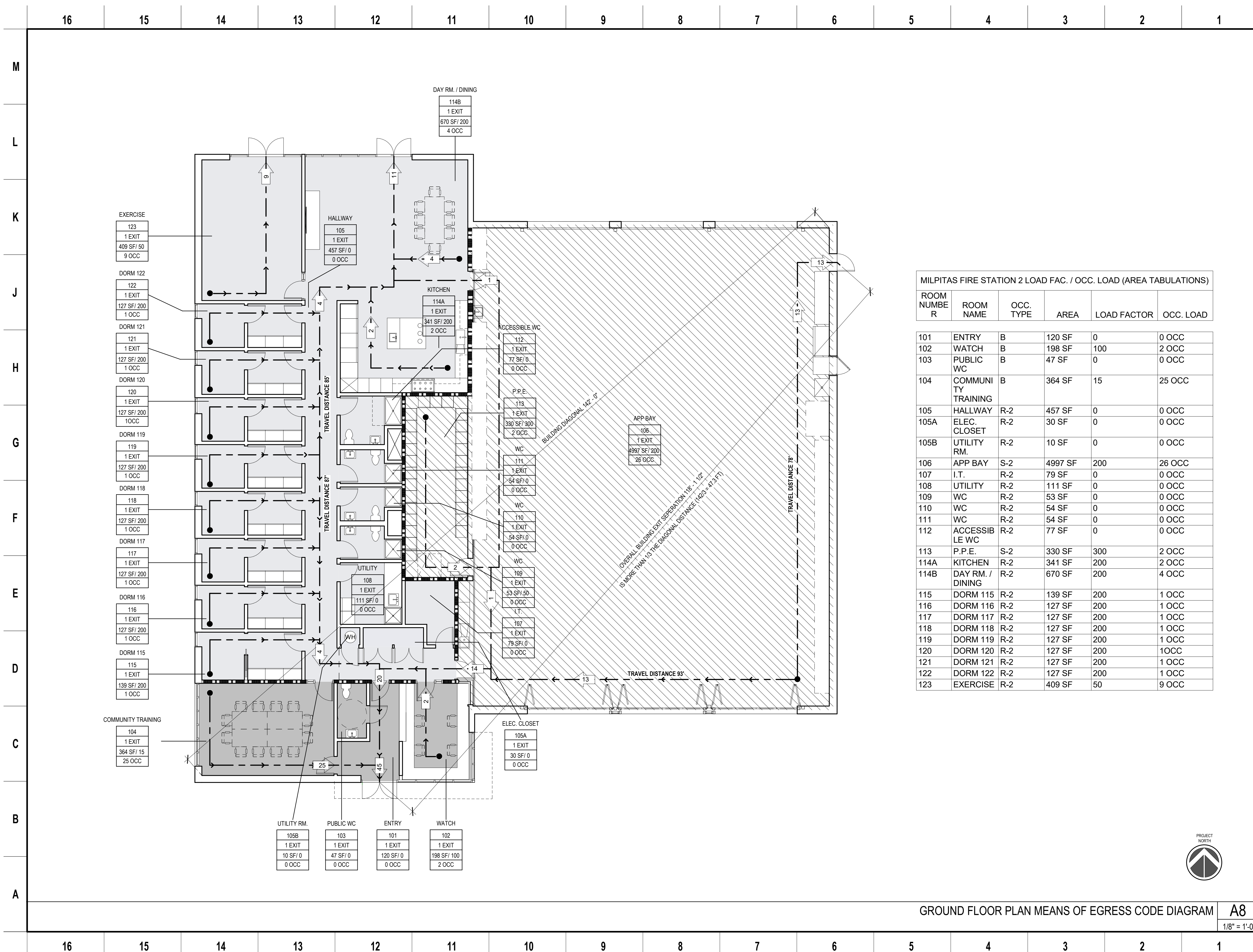
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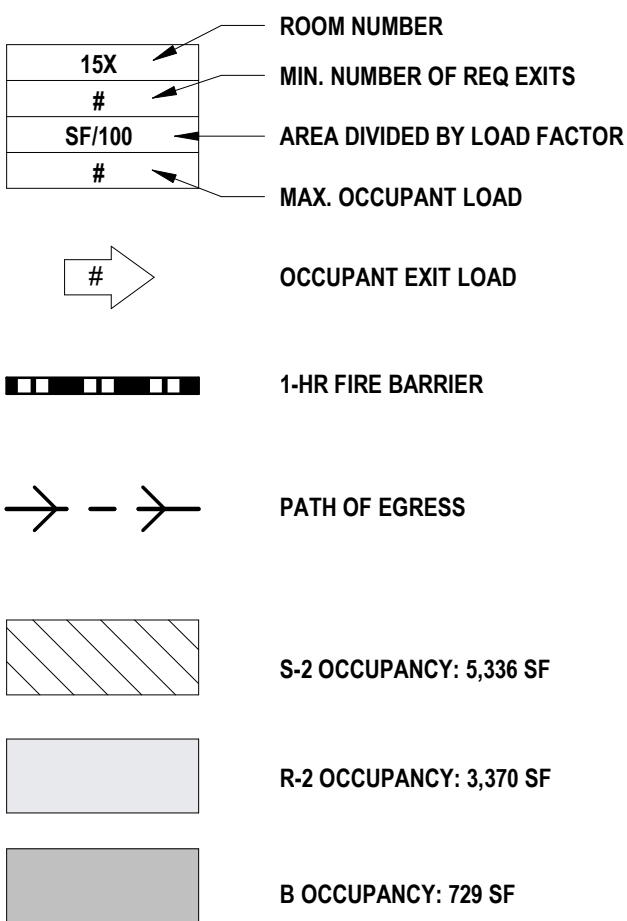
423

423



SHEET NOTES

KEY LEGEND



NOTE: If this drawing is not 34"x22" it has been revised from its original size and the scales noted on drawing/details are no longer applicable.

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[illegible]

**CITY OF MILPITAS FIRE STATION NO. 2
REPLACEMENT**
1263 YOSEMITE DR. MILPITAS, CA 95035

Architect of Record
S H A H
KAWASAKI
ARCHITECTS
570 10th Street, Suite 201
Oakland, CA 94607

Drawing Title

**CODE DIAGRAM / MEANS OF
EGRESS**

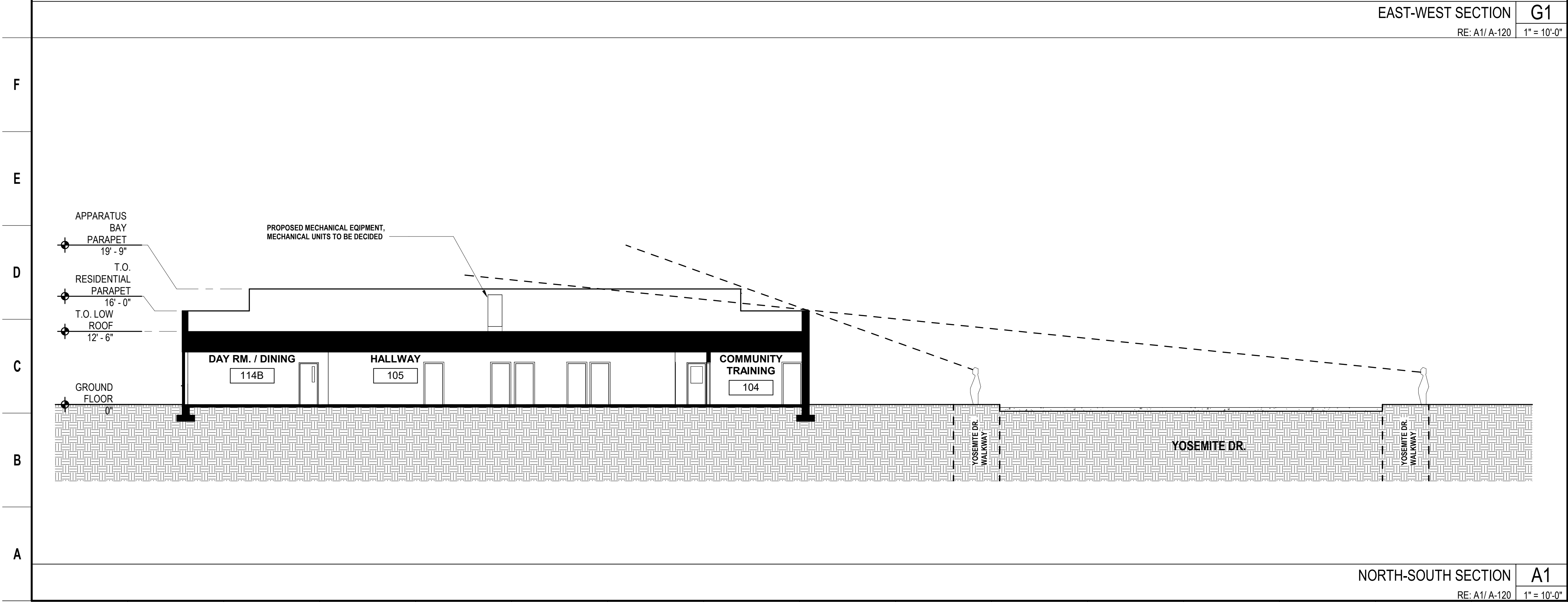
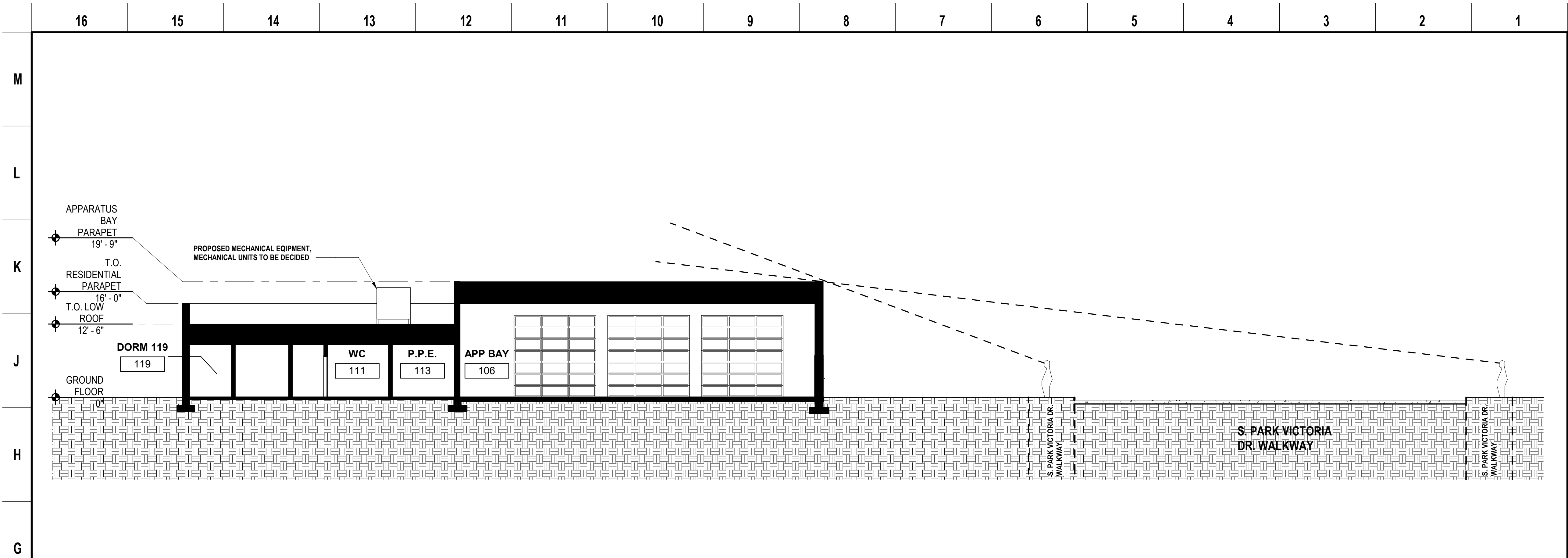
Drawing No.

A-003

SKA Project Number: 18725.00

GROUND FLOOR PLAN MEANS OF EGRESS CODE DIAGRAM	A8
	1/8" = 1'

NOT FOR CONSTRUCTION



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NO.	DATE	ISSUE DESCRIPTION
	04/08/2019	SCHEMATIC DESIGN

CITY OF MILPITAS FIRE STATION NO. 2 REPLACEMENT
1263 YOSEMITE DR. MILPITAS, CA 95035

Architect of Record
SHAH KAWASAKI
ARCHITECTS
570 10th Street, Suite 201
Oakland, CA 94607

Consultant

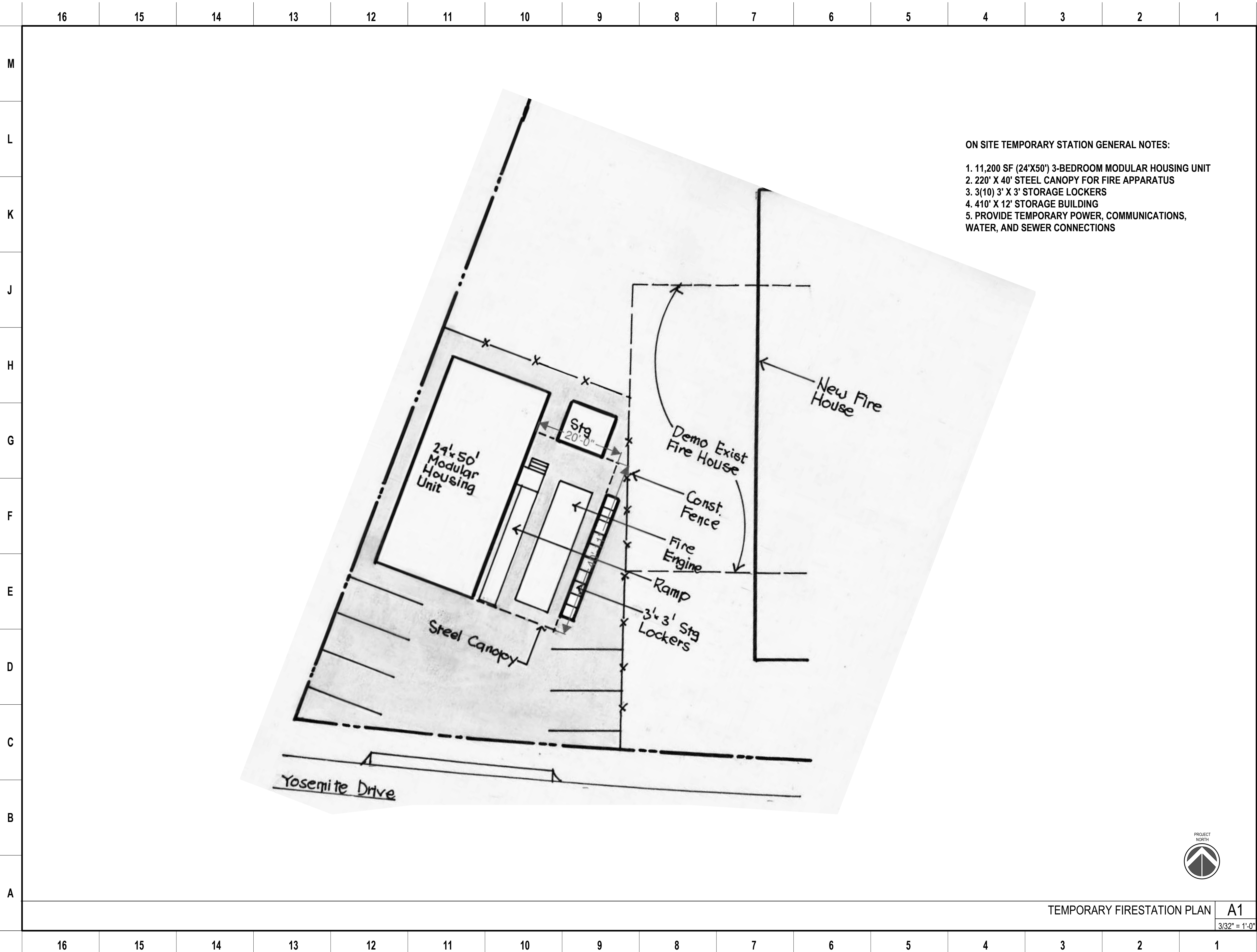
Drawing Title
SIGHTLINE AND BUILDING SECTIONS DIAGRAMS

Drawing No.

A-004

SKA Project Number: 18725.00

NOT FOR CONSTRUCTION



ON SITE TEMPORARY STATION GENERAL NOTES:

- 1. 11,200 SF (24'X50') 3-BEDROOM MODULAR HOUSING UNIT
- 2. 220' X 40' STEEL CANOPY FOR FIRE APPARATUS
- 3. 3(10) 3' X 3' STORAGE LOCKERS
- 4. 410' X 12' STORAGE BUILDING
- 5. PROVIDE TEMPORARY POWER, COMMUNICATIONS, WATER, AND SEWER CONNECTIONS



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NO.	DATE	ISSUE DESCRIPTION
	04/08/2019	SCHEMATIC DESIGN

CITY OF MILPITAS FIRE STATION NO. 2
REPLACEMENT
1263 YOSEMITE DR. MILPITAS, CA 95035

Architect of Record
**SHAH
KAWASAKI**
ARCHITECTS
570 10th Street, Suite 201
Oakland, CA 94607

Consultant

Drawing Title
**TEMPORARY RELOCATION
PLAN DIAGRAM**

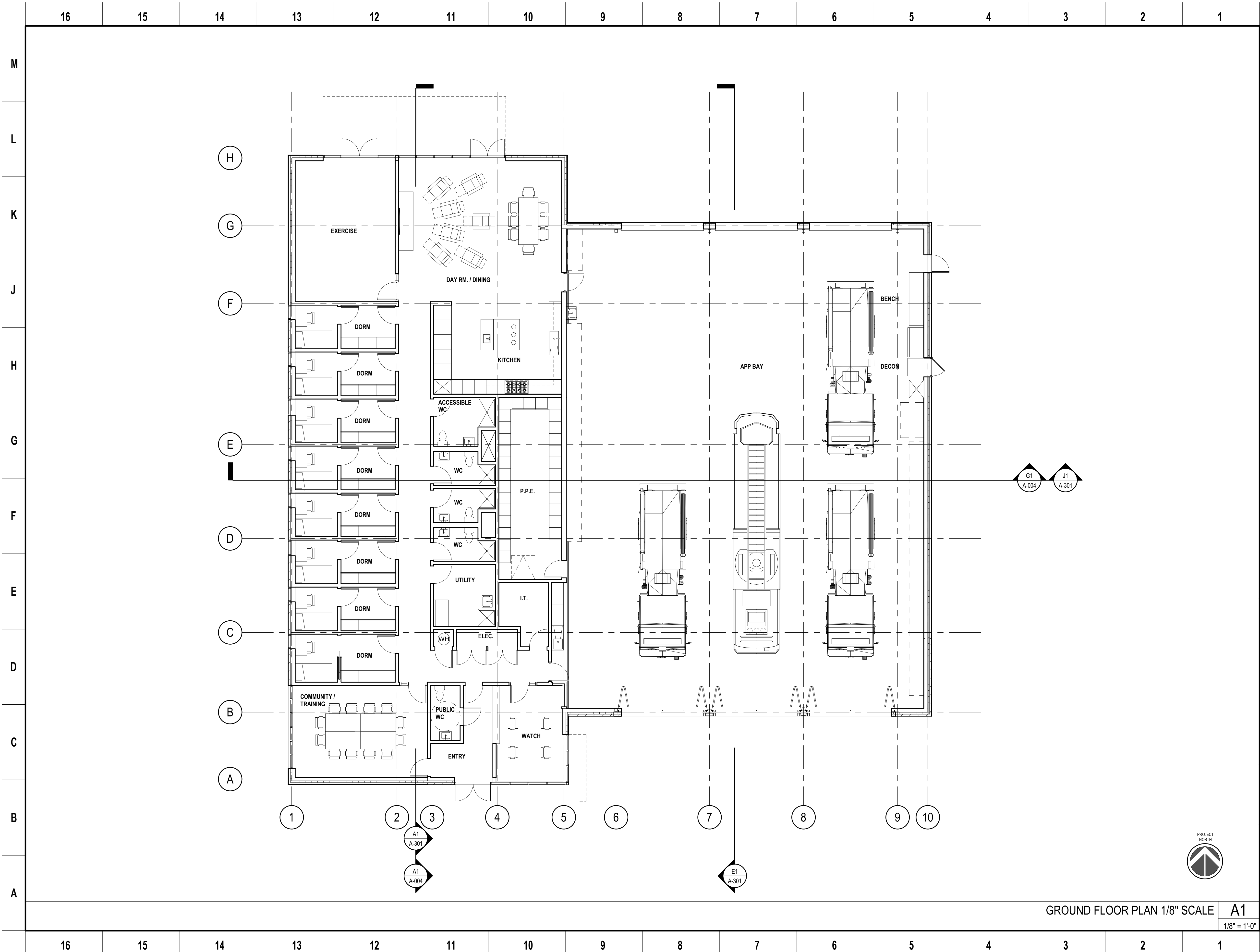
Drawing No.

A-102

SKA Project Number: 18725.00

TEMPORARY FIRESTATION PLAN
A1
3/32" = 1'-0"

NOT FOR CONSTRUCTION



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	04/08/2019	SCHEMATIC DESIGN

CITY OF MILPITAS FIRE STATION NO. 2
REPLACEMENT
1263 YOSEMITE DR. MILPITAS, CA 95035

Architect of Record
SHAH
KAWASAKI
ARCHITECTS
570 10th Street, Suite 201
Oakland, CA 94607

Consultant

Drawing Title
FLOOR PLAN

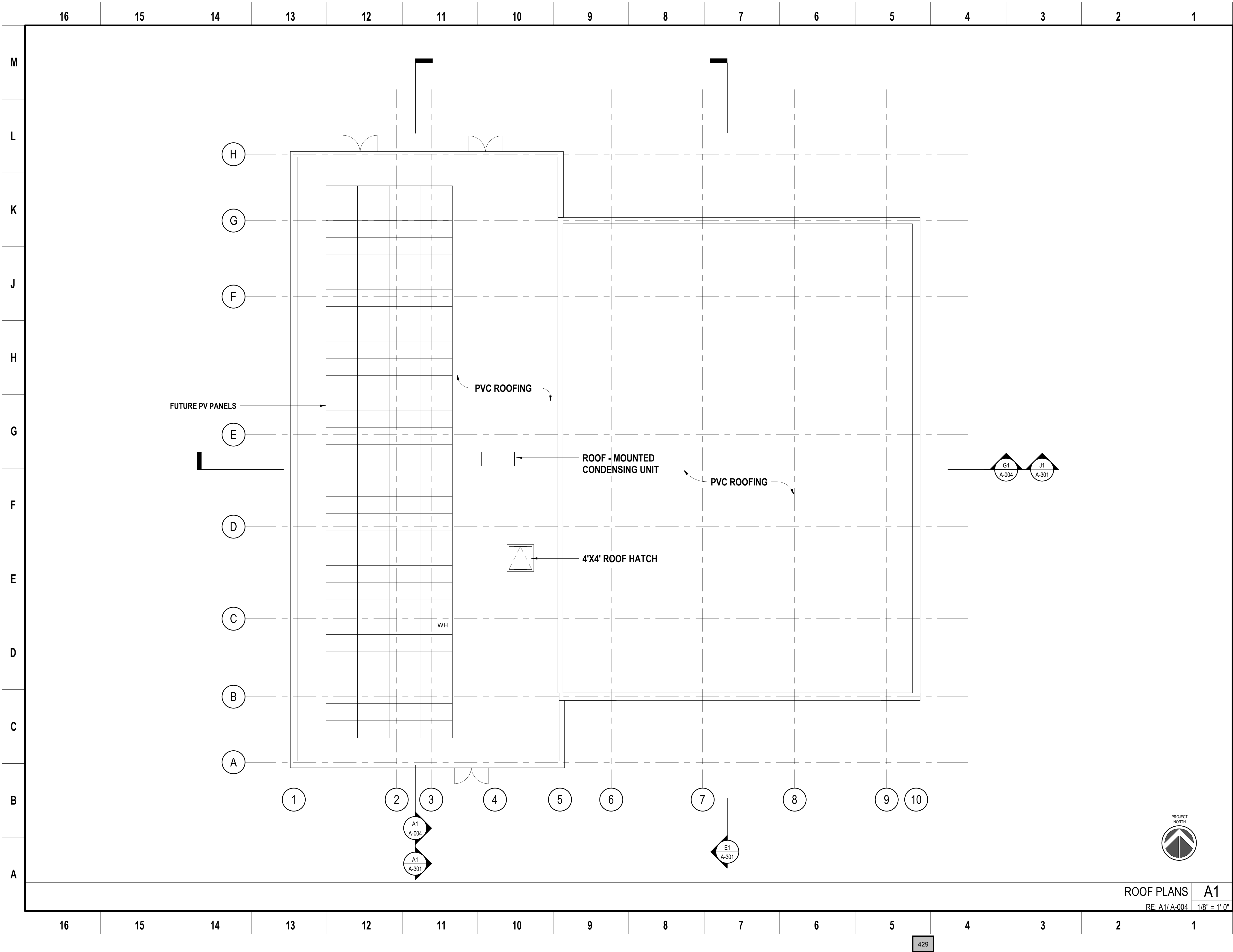
Drawing No.

A-120

SKA Project Number: 18725.00

GROUND FLOOR PLAN 1/8" SCALE
A1
1/8" = 1'-0"

NOT FOR CONSTRUCTION



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NO.	DATE	ISSUE DESCRIPTION
	04/08/2019	SCHEMATIC DESIGN

CITY OF MILPITAS FIRE STATION NO. 2
REPLACEMENT
1263 YOSEMITE DR. MILPITAS, CA 95035

Architect of Record
SHAH
KAWASAKI
ARCHITECTS
570 10th Street, Suite 201
Oakland, CA 94607

Consultant

Drawing Title
ROOF PLAN

Drawing No.

A-121

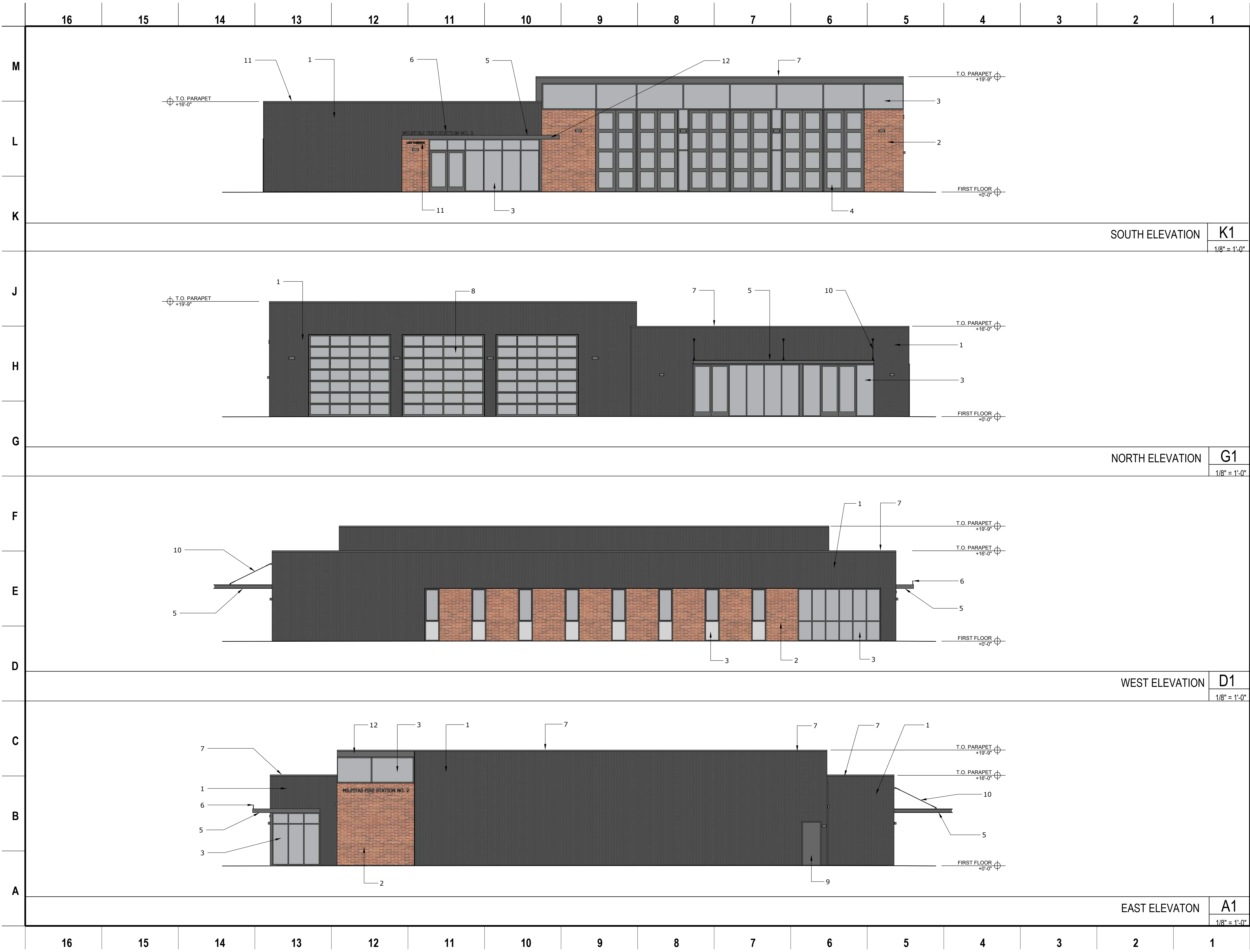
SKA Project Number: 18725.00

ROOF PLANS
RE: A1/ A-004

A1

1/8" = 1'-0"

NOT FOR CONSTRUCTION



SHEET NOTES

1

VERTICAL CORRUGATED METAL PANEL

2

BRICK

3

ALUMINUM STOREFRONT SYSTEM

4

4-FOLD STEEL AND GLAZED DOOR

5

STEEL CANOPY

6

PAINTED METAL COPING

7

PAINTED METAL COPING

8

ALUMINUM ROLL-UP SECTIONAL DOOR

9

PAINTED HOLLOW METAL DOOR

10

STAINLESS STEEL ROD

11

STAINLESS STEEL ADDRESS SIGN

12

PAINTED METAL FASCIA

NOTE: If this drawing is not 34"x22" it has been revised from its original size and the scales noted on drawing/details are no longer applicable.

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NO.	DATE	ISSUE DESCRIPTION
	04/08/2019	SCHEMATIC DESIGN

CITY OF MILPITAS FIRE STATION 2

1263 YOSEMITE DR. MILPITAS, CA 95035

Architect of Record

SHAH KAWASAKI ARCHITECTS

570 10th Street, Suite 201

Oakland, CA 94607

Consultant

Drawing Title

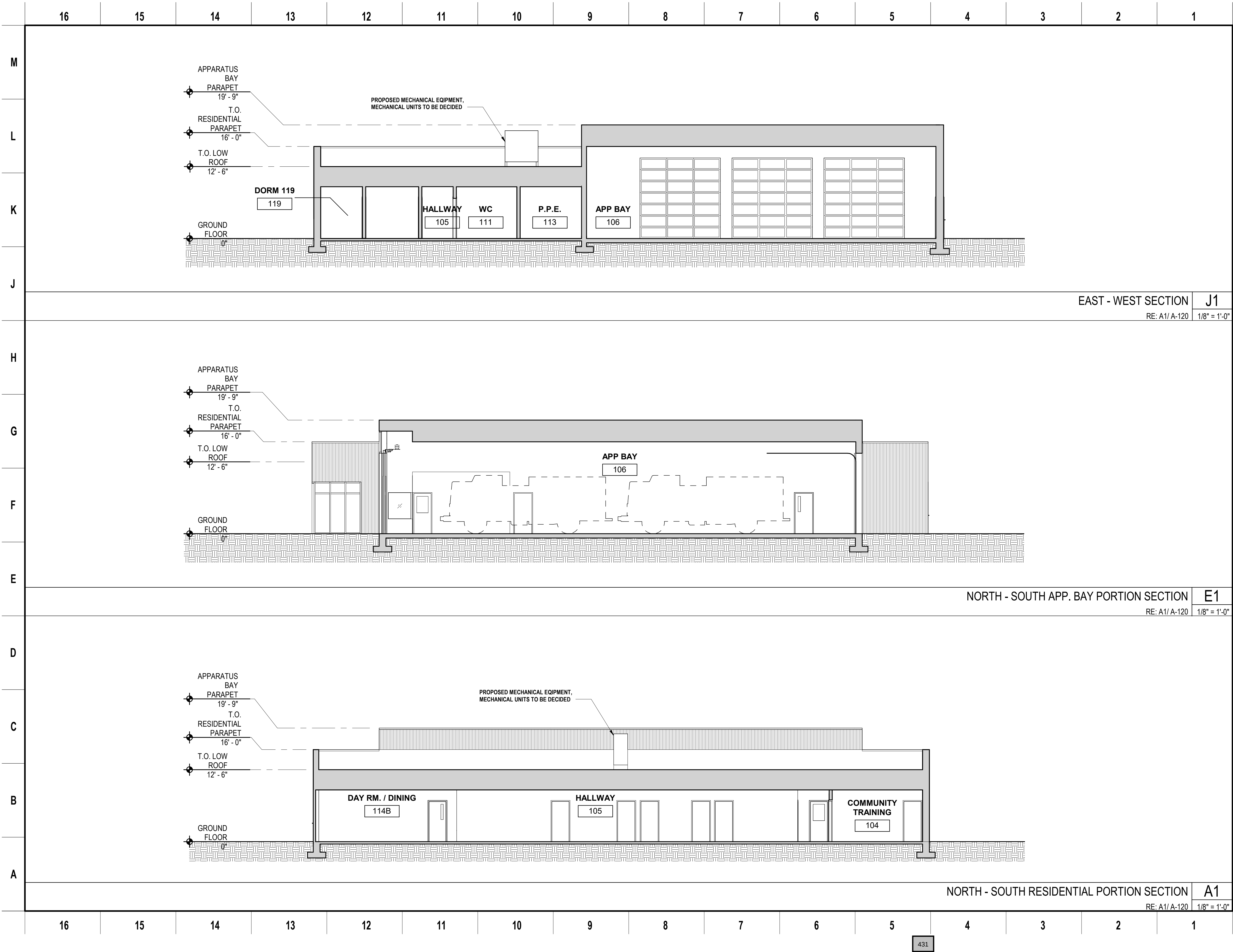
Exterior Elevations

Drawing No.

A-201

SKA Project Number: 18725.00

NOT FOR CONSTRUCTION



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NO.	DATE	ISSUE DESCRIPTION
04/08/2019	04/08/2019	SCHEMATIC DESIGN

CITY OF MILPITAS FIRE STATION NO. 2 REPLACEMENT
1263 YOSEMITE DR. MILPITAS, CA 95035

Architect of Record
S H A H
KAWASAKI
ARCHITECTS
570 10th Street, Suite 201
Oakland, CA 94607

Consultant

Drawing Title
BUILDING SECTIONS

Drawing No.

A-301

SKA Project Number: 18725.00

NOT FOR CONSTRUCTION

16151413121110987654321

M

L

K

J

H

G



SOUTH-WEST CORNER RENDER

16151413121110987654321

F

E

D

C

B

A



NORTH-WEST CORNER RENDER

87654321

M

L

K

J

H

G



SOUTH-EAST CORNER RENDER

87654321

F

E

D

C

B

A



NORTH-EAST CORNER RENDER



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NO.	DATE	ISSUE DESCRIPTION
	04/08/2019	SCHEMATIC DESIGN

CITY OF MILPITAS FIRE STATION NO. 2 REPLACEMENT

1263 YOSEMITE DR. MILPITAS, CA 95035

Architect of Record

SHAH KAWASAKI ARCHITECTS

570 10th Street, Suite 201
Oakland, CA 94607

Consultant

Drawing Title

RENDERED PRESPECTIVES

Drawing No.

A-401

SKA Project Number: 18725.00

NOT FOR CONSTRUCTION

432

Item Attachment Documents:

19. Consider Recommendation from Councilmember Nuñez for One Appointment to the Milpitas Planning Commission (Contact: Councilmember Nuñez, 408-586-3023)

Recommendation: Receive Councilmember Nuñez's recommendation of Ricky Ablaza, and consider confirming his appointment by Mayor Tran to a term on the City of Milpitas Planning Commission that would expire in December 2020.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Recommendation from Council member Nuñez for One Appointment to the Planning Commission (Contact: Council member Nuñez, 408-586-3023)
Category:	Reports of Mayor and Councilmembers
Meeting Date:	5/7/2019
Contact:	Councilmember Nuñez, 408-586-3023
Recommendation:	Receive Council member Nuñez's recommendation and consider confirming one additional appointment by Mayor Tran to a term on the City of Milpitas Planning Commission

Background:

Any member of the City Council may recommend to the Mayor a candidate for appointment to the Planning Commission. All appointees to the Planning Commission must be residents and registered voters in Milpitas and may not hold any other public office or employment in the government of the City of Milpitas. The Mayor will consider all nominations and present recommendations to the entire Council for review and approval.

The term of office for each member of the Milpitas Planning Commission is three years, commencing on the first day of January and concluding on the 31st day of December of the third year thereafter. In accordance with the Planning Commission bylaws, a Planning Commissioner whose term has expired may continue to serve an "extended" term until a successor is appointed. New appointees then complete the unexpired portion of the normal term of the appointed seat. Members of the Milpitas Planning Commission may serve up to three consecutive three-year terms.

The following table shows the status and expiration date of each current Commissioner's term of service.

Member	Term Expiration	Status
Timothy Alcorn	Dec. 2021	Current
Bill Chuan	Dec. 2020	Current
Sudhir Mandal	Dec. 2019	Current
Demetress Morris	Dec. 2019	Current
Evelyn Chua	Dec. 2021	Current
Steve Tao	Dec. 2021	Current
Larry Ciardella	Dec. 2017	Extended

Analysis:

Any resident interested in serving on the Planning Commission must submit an application to the City. The Clerk confirms each applicant's current voter registration and provides a list of qualified applicants to the Planning Director. The Planning Director reviews the list and provides input to the Mayor. The Mayor may seek for additional input from the Council and/or invite additional members of the community to submit applications.

The following 12 Milpitas residents submitted applications for consideration by the Mayor and Council for appointment to the Planning Commission.

Applicant's Name	Background Notes	Registered Voter
Ricardo Ablaza	Real Estate Broker; REO Agent for B of A; First Pacific Real Estate; Econ Dev Commission	Yes
Manpreet Badesha	Omniceil – Management Background in math/engineering	Yes
Russell Bargstadt	Director of Operations, DeVry Institute B.S., Electronics; Pines HOA; Zanker PTA	Yes
Spencer Hsu	Sales Manager; Optibus Real Estate investment; business development	Yes
Nagaraj Koranthota	Cisco	No
Michael Lee	Sr. Privacy Mgr. – global compliance, Intuit Current Member, Citizens Advisory Commission	Yes
Ernesto Martinez	Realtor, Century 21 Alliance; US History teacher at Ohlone College; former social worker	Yes
Sean Pan	System Engineer, Northrup Grumman; Toastmasters	Yes
Andrew Ridley	Transportation Demand Analyst; Consultant, ALTRANS Mgmt. Assoc.	Yes
Doug Sueoka	Auditor, Costco Wholesale 20+ yrs. retail management experience	Yes
Ken Wang	Mechanical Engineer; Thinfil Electronics; Fluent in Cantonese and Mandarin	Yes
Thomas Valore	Retired CFO Active member of Milpitas Chamber of Commerce	Yes
Suraj Viswanathan	U.S. Cricket Board of Directors	Yes

Council member Nuñez has recommended Ricardo Ablaza to complete the remainder of the Planning Commission term currently filled by Larry Ciardella. This term will expire at the end of December 2020. Mr. Ablaza served previously on the Economic Development Commission, and his term of service ended in April 2019 with the appointment of new members to serve on the recently organized Economic Development and Trade Commission.

Fiscal Impact: Appointments to City Commissions will result in no new fiscal impacts.

Recommendation:

Receive Council member Nuñez's recommendations and move to approve Ricardo Ablaza for appointment by Mayor Tran to the Milpitas Planning Commission in a term of service that will expire on December 31, 2020.

Attachment:

List of current applications for Milpitas Planning Commission

✓ registered voter

CITY OF MILPITAS COMMISSION/COMMITTEE APPLICATION

~~Arts Commission~~ PLANNING COMMISSION

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR ☐

☒ Mr. ☐ Mrs. ☐ Miss

City Clerk's Office

JUN 15 2018

Ricardo Palmer Ablaza
Name: First Middle Last
RECEIVED

603 Carlsbad Street Milpitas CA 95035
Address: Number Street (apt. # if needed) City & Zip Code

408-316-0793 rpablaza@comcast.net
Telephone Number(s) e-mail address

First Pacific Real Estate 408-316-0793
Present Employer Business Telephone

603 Carlsbad Street Milpitas CA 95035
Business Address Real Estate Broker Occupation

Education: If Youth Advisory Commission applicant, indicate your grade/school: _____

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
Ateneo de Manila University	Pre Med		
University of the East	Economics		AB Economics

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member
2007-2011	ResRac Commission	Commissioner
2009-Present	Economic Development Commission	Commission

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I AM AN EXPERIENCED REAL ESTATE BROKER. I AM ALSO AN AED AGENT FOR BANK OF AMERICA WHERE I NOT ONLY LIST THEIR FORECLOSED PROPERTIES BUT ALSO HANDLE PROPERTY VALUATION, ANALYSIS, PROPERTY PRESERVATION REGARD & EVICTION. AS A CONSEQUENCE I USE MY LEARNED SKILLS TO ASSIST MY INVESTOR CLIENTS IN FLIPPING & REHABbing HOMES & REAL ESTATE DEVELOPMENT. I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.


Signature

06/14/2018

Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year** from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mail, email or drop off your completed application to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

436

I FEEL MY EXPERIENCE & EXPERTISE IN THIS FIELD MAKE ME A GOOD CANDIDATE FOR THE POSITION OF COMMISSIONER IN THE PLANNING COMMISSION.

JUN 27 2018

**CITY OF MILPITAS PLANNING
COMMISSION SUPPLEMENTAL
QUESTIONNAIRE**

Ricardo P. Ablaza
603 Carlsbad Street
Milpitas, CA 95035

Please type or print responses to the following questions. Additional sheets may be attached. Submit responses with Application form to: City Clerk, Milpitas City Hall, 455 E Calaveras Blvd., Milpitas CA 95035.

1. Why are you interested in serving on the Planning Commission?

Please see my response in the following attached pages

2. Describe your understanding of how the City's General Plan, Zoning Ordinance, and planning procedures affecting the development of the community.

Please see my response in the following attached pages

3. In what way will your personal or work experience contribute to your role as a Planning Commissioner?

Please see my response in the following attached pages

4. What do you feel are the most pressing planning problems or issues in Milpitas? How do you think they should best be resolved?

Please see my response in the following attached pages

5. Do you have a long-term vision of how you think the City should develop?

Please see my response in the following attached pages

6. A major planning problem facing the entire Bay Area is the shortage of affordable housing. Do you have any thoughts on how the City should address this issue?

Please see my response in the following attached pages

7. What do you see as the different roles of City staff, the Planning Commission, and the City Council?

Please see my response in the following attached pages

Response to Question #1:

I want to help the City (in an advisory capacity) in developing and maintaining a comprehensive, integrated land use plan, not only for the majority of our community, but for all demographics and stakeholders. Coming from the Economic Development Commission, I know the importance for the City to develop more income streams so it can provide the residents and all stakeholders with exceptional and cost effective services.

Response to Question #2:

The General Plan, Zoning Ordinance and planning procedure is the vision, goals and objectives of the City of Milpitas in planning and developing land use, housing, circulation, conservation, noise, safety, open space and the fair treatment and meaningful involvement of all residents and stakeholders, regardless of race, color, origin and income.

Response to Question #3:

I am an experienced real estate broker. I am also an REO agent for Bank of America and several other asset management companies where I not only list their foreclosed properties but also handle property valuation, analysis, property preservation, rehab and eviction. As a consequence, I use my learned skills to assist my homebuyers, homesellers and investors in buying, selling, flipping and rehabbing homes as well as real estate development. I feel my experience and expertise in this field make me a good candidate for the position of Commissioner with the Planning Commission.

Response to Question #4:

Too much of our commercial / industrial spaces have been converted to housing. We do not want the City to be a bedroom community. Vallejo is a classic example of a bedroom community gone bankrupt. We need to provide more mixed use development as was the original concept of the midtown specific plan and the transit plan. Retail and commercial operations bring income to the city. We need to know the type of retail / commercial mix and size which the City can absorb and still allow its operations to be profitable. We also need to develop areas for businesses which also contribute to the City's Income. To attract businesses to the City, we need to increase the Floor Area Ratio (FAR) to allow vertical development and maximum usage of the little land we have left. The City also needs to reduce traffic which is becoming a problem. Road bypasses need to be built so that the traffic coming to and fro areas outside the Bay Area to Silicon Valley can be diverted from entering the City proper. Also, the various retail / commercial centers need to be connected with point to point public transportation. This way residents will not have to bring their cars when commuting to these centers thereby alleviating traffic congestion.

Response to Question #5:

The City needs to develop bypass roadways to minimize traffic congestion. As our population grows we need to invest in more schools, specially a second High School. We need to start developing vertically to maximize the little land we have left. We also need to develop public transportation in and around the City. We need to strengthen and improve / update our infrastructure to accommodate all the development in the City.

Response to Question #6:

The average price of sold homes in Milpitas is \$1M. To purchase a \$1M home one will need a minimum 20% downpayment (\$200,000) which leaves a debt of \$800,000. To be approved for a loan, one would need a gross annual income of \$144,000 / annum. This leaves the question, what about the marginal and low income earners? How will they fulfill their American Dream of home ownership? How can the City of Milpitas provide housing to this segment of our residents and stakeholders – affordable housing. A low income earner who earns \$5000 / month, who has \$90000 for downpayment can purchase a home worth \$450K. Providing homes in this price range will house marginal and low income earners, assuming they have \$90K tucked away for downpayment. However, not all marginal and low income earners have this kind of money tucked away. The answer is socialized housing. Provide rental units whose rents are affordable to this demographic. This will allow this demographic housing while they grow their financial capacity. When they can afford moving up and purchasing a home, they move out of socialized housing allowing the next low income earner to move in. This will be the continuous cycle of the socialized housing units.

I am very passionate about providing affordable housing to the marginal and low income earner segment of our city. Then, of course, there is the homeless segment which needs to be addressed as well. There are cities in the USA that have successfully developed housing for the homeless. We need to research and study the success of these cities so we can adapt a winning strategy and implement the same in our City.

Response to Question #7:

City Council – legislates city ordinances, resolutions and regulations; and, is the policy making body for the City's direction, goals, projects and infrastructure development.

City Staff – implements the legal and policy decisions made by the City Council

Planning Commission – advisory body, promote economic development, assist in writing specific or community plans, holds public hearings on such plans.

✓ registered voter

COMMISSION APPLYING FOR:

Planning Commission

Title

Mr.

Name

Manpreet S Badesha

Address Type

Residence

Address

2378 Edsel Drive

City

Milpitas

Postal/Zip Code

95035

Mobile Number

(408) 205-1663

E-Mail Address

badesha@me.com

City Clerk's Office

NOV 27 2018

RECEIVED

Present Employer

Omnciell

Other Phone

(408) 205-1663

Occupation

Management

Education: If Youth Advisory Commission applicant, indicate your grade/school:

AA Degree

College, Professional, Vocational, or other schools attended

AA Degree

Major Subject

Math, Eng

Degree

yes

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization

Sikh Temple

Member

Manager

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Date

Nov 27, 2018

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

registered
voter ✓

COMMISSION APPLYING FOR:

Planning Commission

Title

Mr.

Name

Russel C Bargstadt

Address Type

Residence

Address

1307 Stardust Way

City

Milpitas

Postal/Zip Code

95035

Mobile Number

(408) 910-9655

E-Mail Address

russel.c.bargstadt@raytheon.com

City Clerk's Office
MAR 11 2019
RECEIVED

Present Employer

Raytheon

Other Phone

(408) 522-3484

City

Sunnyvale

Postal / Zip code

94086

Occupation

Director of Operations

College, Professional, Vocational, or other schools attended

DeVRy Institute

Major Subject

Electronics

Degree

Bachelor of Science

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization

Pines HOA

Name of Organization

PTA (Zanker Elem)

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

Long term Milpitas resident (1991). Served on Pine HOA in many capacities including President, VP and board member from 1992 until 2014. Thorough understanding of project management, budgets, requirement definition, contracts and negotiation. My job includes interfacing and working with contractors, trades, and real estate brokers so I have a familiarity those processes and areas of expertise. I am pro responsible growth and believe we must encourage and support economic growth with in the city. Common sense and thoughtfulness will be my trademark. I have no conflicts of interest with the position

Date

Mar 08, 2019

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Fax (586-3030), e-mail (mlavelle@ci.milpitas.ca.gov), mail or drop off your completed application and supplemental questionnaire to:
City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035



PLANNING COMMISSION SUPPLEMENTAL QUESTIONNAIRE

(Please type or print responses on a separate paper[s] to the following questions)

1. Why are you interested in serving on the Planning Commission?

In the past I have been very active in my microcosm community (Starlite Pines), representing our views/needs to the Planning Commission and City Council and in the school district as my kids moved through it. My work and kids extra-curricular activities made it impossible to commit for a few years but circumstances have changed and I am able to re-engage. Community service is a responsibility to me and I am seeking opportunity to serve my community in an area I have interest in and believe I can provide value to

2. Describe your understanding of how the City's General Plan, Zoning Ordinance, and Planning procedures affect the development of the community.

The General Plan is just that, it is a frame work created to provide long term guidance and facilitate cohesive consistent decisions to meet a vision of the future. Zoning Ordinances control the type of activity and population density of specific areas, this impacts quality of life. Planning ensures compliance to zoning, fairness to petitioners and fit to the plan and community. Planning should weigh community impact, preferences and best interest against development desires. All three should work together to provide guidance to the City Council for the benefit of the community at large and the future

3. In what way will your personal or work experience contribute to your role as a Planning Commissioner?

My job requires interface with contractors, space planning for the company, oversight of construction projects as required, working with architects, contractors, and the trades (construction, electricians, plumbers, HVAC etc), EHSS requirements and basic awareness of codes. I am well versed in proposal analysis and contract negotiations. I have excellent people and collaborative skills and a desire to see my community thrive. I am objective and analytical with solid common sense. I listen.

4. What do you feel are the most pressing planning problems or issues in Milpitas? How do you think they should be best resolved?

Sane and reasonable growth vs traffic/infrastructure capacity. We have to balance desire to build high density near public transportation with the reality that not everyone who has access uses it. The growth will and should happen, we should levy requirements on Builders to help offset the cost of the infrastructure improvements and need to think creatively about solutions. One thought that comes to mind, could we use round-a-bouts instead of stop signals in intersections like Abel and Great Mall Drive or Calaveras and Abbott or Park Victoria and Landess or near any of the schools to alleviate drop off pressure

Affordable housing – we should preferentially target people that provide services to our community, i.e. teachers, fire/police, retail/hospitality workers, and etc who cannot afford to live in the community they serve, with creative and mutually beneficial alternatives

5. Do you have a long-term vision of how you think the City should develop?

I think we need to have our eyes open to the need for infrastructure improvement as population and inevitably traffic increases. We must also be open to and encourage business growth to increase our tax base so we can afford the population growth. Milpitas has some great advantages in terms of cost and location we should be exploiting that

6. A major planning problem facing the entire Bay Area is the shortage of affordable housing. Do you have any thoughts on how the City should address this issue?

We need to ensure we are getting any available and applicable County, State and Federal money that may be able to be used to help

We should seek community involvement to insure that all good and diverse ideas are being explored. I would be willing to create and chair a planning commission subcommittee to facilitate this or participate if something similar already exists

A program of below market housing with City right of first refusal to buy back at a controlled price increase relative to the market should owner choose to sell. This would keep a growing inventory of affordable housing, remove the risk of people buying and flipping in a few years and potentially reduce the pressure to continually have to find new alternatives. It would require the City to manage and monitor that inventory. We successfully did this on a small scale at a company I previously worked at in the late 80's. It allowed new college grads the ability to buy, build some equity and trade up with minimal effort on the part of the company

Another alternative would be to require that rental projects that have mixed use, retail under living space, maintain units that are specifically for the people that will be employed in the project when complete (retail, service employees) Giving occupancy and rent preference to those residents

7. What do you see as the different roles of City staff, the Planning Commission, and the City Council?

Staff are the experts, front line contact for petitioners and advisors to the commission and council

Commission reviews plans for relevance and fit in the community and the general plan, works with petitioners, staff and the community to create an acceptable project plan if possible and makes recommendation of approval or denial to council

Council has final word and approves or denies

City Clerk's Office

SEP 20 2018

RECEIVED

✓
registered
voter

COMMISSION APPLYING FOR: Planning Commission
Title Mr.
Name spencer hsu
Address Type Residence
Address 59 meadowland drive
City Milpitas
Postal/Zip Code 95035
Mobile Number (408) 223-5493
E-Mail Address sphsu2016@gmail.com

Present Employer Optibus
Occupation Sales Manager
College, Professional, Vocational, or other schools attended Santa Clara University
Major Subject Marketing
Degree MBA

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization VNARP
Member Yes
Name of Organization AREAA
Member Yes
Name of Organization CoreNet
Member Technology SIG

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have been investing in real estate for over 2.5 years
10+ years in technology business development
Born and raised in San Jose and Milpitas
Lived in Milpitas for over 23 years so I am very familiar with the changes and the businesses that came in and out.
I'd like to help out with the community and be more involved in my city.

Date Sep 18, 2018

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy.
I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

✓ registered voter

City Clerk's Office
AUG 13 2018
RECEIVED

CITY OF MILPITAS
COMMISSION/COMMITTEE APPLICATION

Arts Commission Planning

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR ☒

☒ Mr. ☐ Mrs. ☐ Miss

Name: Michael W Lee
First Middle Last

Address: 1613 Rocky Mountain Ave Milpitas 95035
Number Street (apt. # if needed) City & Zip Code

408-263-1577 privacymike@gmail.com
Telephone Number(s) e-mail address

Intuit Inc. 650-944-6000
Present Employer Business Telephone

2700 Marine Way Mountain View, CA 94043 Senior Privacy Manager
Business Address Occupation

Education: If Youth Advisory Commission applicant, indicate your grade/school: _____

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
San Jose State University	Business Administration	08/10/2018	BS

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member
Present	Milpitas Community Advisory Commission	Alternate

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):
I have experience as an auditor at a big 4 accounting firm and have spent the last 15 years in the legal profession as a global privacy compliance subject matter expert.

My profession requires me to have a thorough understanding of laws and regulations and apply those to the business while taking into consideration risks and opportunities to both the business and its customers. I feel that this experience would apply directly to the Planning Commission.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Michael W Lee
Signature

8/10/18
Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mail, email or drop off your completed application to:
City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

Mary Lavelle

From: Michael Lee <privacymike@gmail.com>
Sent: Friday, August 10, 2018 4:03 PM
To: Rich Tran; Marsha Grilli; Bob Nuñez
Cc: Mary Lavelle
Subject: [BULK] Planning Commission Application
Attachments: 20180810155641.pdf

Importance: Low

Dear Mayor Tran, Vice Mayor Girilli, and Councilman Nunez,
(cc: Mary Lavelle)

Attached is my City of Milpitas Commission Application. I am submitting an application for the vacant seat on the Milpitas Planning commission. Tim Wong, Housing & Neighborhood Services Manager, suggested I apply for the appointment.

A lifelong bay area resident and a resident of Milpitas for the past 12 years, I have been a part of the tremendous growth and opportunities our area has been seen over the past few decades. I believe that that Planning Commission plays a critical role helping to ensure that the city of Milpitas continues to prosper while balancing the needs and desires of its residents. In while balancing business opportunities. In recent years I have been an alternate member of the Community Advisory Commission and am looking for an opportunity to further expand the scope of service I provide the community and to help improve the community as a whole. An appointment of to the Planning Commission I believe is a means to accomplish these goals.

By way of background, I have a degree in Accounting and Management Information Systems. I have experience as an auditor at a big 4 accounting firm and have spent the last 15 years in the legal profession as a global privacy compliance subject matter expert. My profession requires me to have a thorough understanding of laws and regulations and apply those to the business while taking into consideration risks and opportunities to both the business and its customers. I feel that this experience would apply directly to the Planning Commission.

Sincerely,
Michael Lee
privacymike@gmail.com

=====
This is an **EXTERNAL EMAIL**.

Please do not open unexpected attachments or those sent by unknown senders.
=====

from M. Lee

City Clerk's Office

SEP 13 2018

RECEIVED

1. Why are you interested in serving on the Planning Commission?

I am interested in serving on the Planning Commission to help oversee and help ensure the appropriate growth of the city that I call home both now and for the foreseeable future. In today's environment there has been a significant increase in redevelopment and the replacement of commercial or industrial zoned areas for residential use. I want to help ensure that this trade off is well understood and that it does not undermine the future growth and opportunity for the city of Milpitas.

Furthermore, I believe I could be of service to the Planning Commission to help ensure that conversations and discussion are useful and beneficial to the City of Milpitas and reflects a professional demeanor. A case in point I raise is in a recent Planning Commission meeting, there was a lengthy conversation about including the name of Milpitas in a hotel name. I find this to be misdirected and unnecessary in a professional environment that wastes not only the time of the City as well as the public.

2. Describe your understanding of how the City's General Plan, Zoning Ordinance, and planning procedures affecting the development of the community.

A City's General Plan serves as the city's guideline for future development goals and provides broad directions on how to achieve them. The General Plan is composed of multiple elements encompassing a variety of topics that meet state law. The Milpitas General Plan is currently undergoing revision.

A zoning ordinance defines how property in a specific geographic location may be used. Zoning ordinances are a useful tool for urban planning, whereby it divides city land into residential, commercial and industrial areas.

City planning procedures, General Plan and Zoning Ordinances, work in concert to perform long term planning and decision making about various land use projects.

3. In what way will your personal or work experience contribute to your role as a Planning Commissioner?

I believe my work as a Senior Privacy Manager and former career as an Auditor contribute greatly to the role as a Planning Commissioner. As a Sr. Privacy Manager, I am tasked with interpreting international laws and regulations to determine how these may impact my company. This involves understand risks both financial and legal, determining the appropriate path forward based on industry best practices and advising our Senior Leadership Team on the proposed path forward. In that regard, I see the role of a Planning Commissioner to understand the General Plan, Zoning Ordinances, and Public Opinion to help guide the decisions of the Planning Commission and City Council.

4. What do you feel are the most pressing planning problems or issues in Milpitas? How do you think they should best be resolved?

I believe the most pressing planning issues with Milpitas is the need for low income housing, the loss of industrial and commercial business, and the lack of infrastructure for increased residential housing and the transit hub. While there are no easy solutions to these issues, a couple of thought I have would be to alter the ability for developers to pay into the city's affordable housing fund in-lieu of building affordable housing. I also believe that new high density housing projects should also be accompanied with commercial/retail space to ease the overcrowding of grocery stores and other fundamental services. This is not to be taken as a call for Trader Joe's to come to Milpitas. Rather, my intention is that by having commercial space available and the appropriate incentives, retailers should want to establish a presence in Milpitas.

5. Do you have a long-term vision of how you think the City should develop?

I believe the city needs to take a tempered approach to development. In the recent years it appears that the city is beginning to lose commercial and industrial businesses and replaced those with residential units. While increasing the city population at the cost of lost tax revenue we have seen a massive overpopulation of existing infrastructure. The City must take all these factors into account to ensure an appropriate balance of housing, commercial and infrastructure. This responsible approach should lead to an overall increase in all these factors. Increased housing provides a place to live for workers at new businesses. While new businesses and more residents drives the need for additional infrastructure. If we can achieve the right balance, it should be a win-win for all.

6. A major planning problem facing the entire Bay Area is the shortage of affordable housing. Do you have any thoughts on how the City should address this issue?

While there are no silver bullets for this issue, one possible solution is to look at the Facebook and Google models for residential development. Large companies have now taken up the fight for their own employees to help combat the ever growing issue. By drawing in large companies, this may be one solution. Another possibility is one address in question 4. Developers must incorporate affordable house into developments of a certain size.

7. What do you see as the different roles of City staff, the Planning Commission, and the City Council?

The groups have different roles that are dependent upon one another. The Planning Commission serves in an advisory role to the City Council on land use, zoning and development issues within the city. The City Council takes into consideration the advice and recommendations presented by the Commission. City Staff is fundamental to both the City Council and Planning Commission by providing a needed resource and subject matter expertise in these matters.

AUG 16 2018

✓ registered voter

CITY OF MILPITAS COMMISSION/COMMITTEE APPLICATION

RECEIVED

Veterans Commission
Youth Advisory Commission
Planning or Parks, Recreation & Cultural

COMMISSION APPLYING FOR

PROVIDE COMPLETE INFORMATION (in black ink)

☒ Mr. ☐ Mrs. ☐ Miss

Ernesto Martinez
Name: First Middle Last

70 Michalakis Dr 202 Milpitas, CA 95035
Address: Number Street (apt. # if needed) City & Zip Code

408-661-5304 ernestomartinez38@gmail.com
Telephone Number(s) e-mail address

Century 21 Alliance
Present Employer Business Telephone
2090 Concourse Dr #98 San Jose, CA 95131 Realtor
Business Address Occupation

Education: If Youth Advisory Commission applicant, indicate your grade/school:

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
SSSU	History	5/1997	B.A.
SSSU	Ethnic Studies	5/2002	M.A.

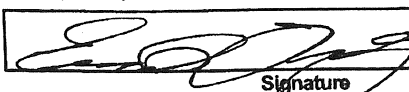
List community organizations to which you belong or have belonged (additional information may be attached). If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member
	N/A	

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I was a social worker & currently teach U.S History at chlore College. Also, work in Real Estate. I have a long history of working in non-profit & on board of school of arts & culture in San Jose.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.


Signature

8/16/18
Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mail, email or drop off your completed application to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

✓ registered voter

COMMISSION APPLYING FOR: Planning Commission
Title Mr.
Name Sean Pan
Address Type Residence
Address 261 n Abbott Ave
City Milpitas
Postal/Zip Code 95035
Mobile Number (408) 393-8448
E-Mail Address Seanjahaupan@gmail.com

City Clerk's Office
JAN 29 2019
RECEIVED

Present Employer Northrop Grumman

Occupation System engineer

College, Professional, Vocational, or other schools attended Ucla

Major Subject Electrical engineering

Degree Masters

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization Toastmasters international

Member Area director

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Date Jan 29, 2019

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

CITY OF MILPITAS PLANNING COMMISSION APPLICATION

City Clerk's Office

DEC 04 2018

RECEIVED



✓ registered voter

NOTE: Milpitas Municipal Code, Title I Chapter 500, requires "at all times during the term of office, a Planning Commissioner shall be a registered voter of the City of Milpitas and a resident of the City of Milpitas." Also, all applicants are required to complete a **SUPPLEMENTAL QUESTIONNAIRE** in addition to this application form.

PLEASE PROVIDE COMPLETE INFORMATION (in black ink)

Name: Andrew Steven Ridley
First Middle Last
Address: 2316 Mattos Dr Apt. #
408-202-7838 Telephone Number(s) Street e-mail address
RidleyAS@gmail.com

Are you a registered voter in the City of Milpitas? yes How long have you lived in Milpitas? 1 year

ALTRANS Transportation Management Association, Inc. 408-258-7267

Present Employer Business Telephone
2055 Junction Ave Ste 208 San Jose CA 95131 Director, TDM

Address Occupation

Education:

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
San Jose State University	Social Science	Grad. 2011	Global Studies

List community organizations to which you belong or have belonged (additional information may be attached):

Date	Name of Organization	Officer / Member

Briefly describe your personal qualifications that you believe would be an asset (additional information may be attached):

I have been working in the Transportation Demand Management field in the bay area for over seven years. This experience has provided opportunities to work extensively on the municipal level in Mountain View, Palo Alto and South SF on a wide variety of public facing transportation initiatives. A normal part of my work is engaging in the planning process on our clients' behalf, dealing with EIRs, conditions of approval, and entitlements, ensuring an equitable outcome. I hope to add to the Commission a perspective on the impacts of transportation as it regards planning.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

[Signature] Signature

12-04-2018 Date

Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD
Mail or drop off your completed application to the City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

PLANNING COMMISSION SUPPLEMENTAL QUESTIONNAIRE



(Please type or print responses on a separate paper[s] to the following questions)

1. Why are you interested in serving on the Planning Commission?
I believe it's important to participate in civic organizations, as we all share in the responsibility of guiding and shaping our communities. The Milpitas Planning Commission is a natural fit as I have been an active member of Milpitas life for 32 years, and now have the vocational experience to responsibly and effectively assist in its planning.
2. Describe your understanding of how the City's General Plan, Zoning Ordinance, and Planning procedures affect the development of the community.
The documentation listed above are guides for how different elements of any city are to interact and relate with one another regarding their: location, grouping, volume/magnitude, environmental impacts, and many other implications involved in the development and planning process. Without these documents, provision for future needs of the community is left up to chance as development would be occurring ad hoc.
3. In what way will your personal or work experience contribute to your role as a Planning Commissioner?
As mentioned above, I have been working in the Transportation Demand Management field in the bay area for over seven years. This experience has provided opportunities to work extensively on the municipal level in Mountain View, Palo Alto and South SF on a wide variety of public facing transportation initiatives. A normal part of my work is engaging in the planning process on our clients' behalf, dealing with EIRs, conditions of approval, and entitlements, ensuring an equitable outcome. I hope to add to the Commission a perspective on the impacts of transportation as it regards planning.
4. What do you feel are the most pressing planning problems or issues in Milpitas?
How do you think they should best be resolved?
Housing development and its impact on transportation is the most salient. One step towards resolving housing's impact on transportation is the formation of transportation management associations (TMAs). These can be publicly or privately funded, and in either case consist of a grouping of similar entities with a shared transportation pattern or need. In Mountain View, the MVGo TMA is notable as a coalition of a dozen or so corporate participants who share a peak commute hour shuttle program. With their combined resources, they can achieve at scale what otherwise wouldn't be possible.
5. Do you have a long-term vision of how you think the City should develop?
Not at the moment. I am looking forward to being a student-Commissioner for now, learning about the past and present planning initiatives so I can, in time, and in collaboration, help craft that vision for the future.
6. A major planning problem facing the entire Bay Area is the shortage of affordable housing. Do you have any thoughts on how the City should address this issue?
I am looking forward to learning more about successful strategies other cities have adopted regarding affordable housing.
7. What do you see as the different roles of City staff, the Planning Commission, and the City Council?
Each role supports the other. The Planning Commission and the City Council both work on behalf of the residents of Milpitas, relying on City staff to provide input and support on the matters at hand. Staff then execute operationally based on the outcome of Commission and Council decisions.
8. What do you believe should be the focus of the Milpitas Redevelopment Agency and program?
I'm uncertain as to the purview of the MRA since its transition to the Successor Agency (City Manager's Office). After reading through the Oversight Board Rules And Regulations, I cannot prescribe a focus since I cannot ascertain if the Agency indeed has a focus beyond being a trustee for city real estate and property.

✓ registered voter

COMMISSION APPLYING FOR: Planning Commission
Title Mr.
Name Doug Sueoka
Address 501 Greathouse Drive
City Milpitas
Postal/Zip Code 95035
Mobile Number (408) 707-0808
E-Mail Address dougsueoka@comcast.net

City Clerk's Office
NOV 28 2018
RECEIVED

Present Employer Costco Wholesale
City San Jose
Postal / Zip code 95123

Occupation Auditor

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization Cub Scouts

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have been a resident of Milpitas since 2004, so I am familiar with the city, its layout and its surroundings. I also have 20 years of retail management with responsibilities that included annual fiscal budgeting, facilities management, hazardous waste management, compliance with HIPAA rules and regulations, among others. While it's not an exact comparison, there are some parallels between managing a business and a city. I feel my professional experience will enable me to be an active participant in this commission.

Date Nov 28, 2018

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

COMMISSION APPLYING FOR:

Planning Commission

Title

Mr.

Name

KEN WANG

Address

77 DUTTONWOOD LN

City

MILPITAS

Postal/Zip Code

95035

Mobile Number

(415) 516-8046

E-Mail Address

ken_wang@yahoo.com

City Clerk's Office
FEB 04 2019
RECEIVED

Present Employer

Thinfilm Electronic Inc

City

San Jose

Postal / Zip code

95134

Occupation

Principal Assembly Engineer

Education: If Youth Advisory Commission applicant, indicate your grade/school:

Mechanical Engineering, BS

College, Professional, Vocational, or other schools attended

San Francisco State University

Major Subject

Mechanical Engineering

Degree

BS

List community organizations to which you belong or have belonged (additional information may be attached).**If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).****Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):**

I have about 20 years of engineering back ground in micro electronic field in various roll.

I am multilingual, fluent in Cantonese and Mandarin, both in reading, and some non-technical writing.

I strongly believe in planning, planning, planning then executing.

Any action w/o a plan is a plan to failure.

I am open to planning commission and other technical related commission.

I am also current in the DELAC program for the school district representing Joseph Weller.

Please feel free to check my linkedin profile at:

<https://www.linkedin.com/in/kenjwang/>**Date**

Feb 01, 2019

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

FEB 04 2019

RECEIVED



PLANNING COMMISSION SUPPLEMENTAL QUESTIONNAIRE

(Please type or print responses on a separate paper[s] to the following questions)

1. Why are you interested in serving on the Planning Commission?

I lived in Milpitas for more than 15 years. It is a great city from every aspect. Great location, weather, and utmost, we have great leadership ever!!! I want to join the commission team to make our city even better. Hopefully the best in the bay area!

2. Describe your understanding of how the City's General Plan, Zoning Ordinance, and Planning procedures affect the development of the community.

My understanding is the planning commission based on current and future growth projection, to come up with visionary plan for the city. Planning on zoning, and developmental sites, which on the path of city growth. Plan which can maximize benefit based on tax dollar and enable city growth.

3. In what way will your personal or work experience contribute to your role as a Planning Commissioner?

I am working in the technical field for more than 20 yrs. I heavily focus on planning and able to look at things in every angle. My track record is to bring project on time and taking high risk program back on track.

4. What do you feel are the most pressing planning problems or issues in Milpitas? How do you think they should be best resolved?

With the new communities that are upcoming by the BART station. We need to consider parking spaces. It could be potential a big challenge that comes along with new homes and residents. One Consideration is creating parking structure underground. Or Stack-able parking structures.

5. Do you have a long-term vision of how you think the City should develop?

Yes, I can see Milpitas as one of the best cities in the bay area for all, same level as Cupertino, and more. We have all the ingredients to be the best!

6. A major planning problem facing the entire Bay Area is the shortage of affordable housing. Do you have any thoughts on how the City should address this issue?

Yes, I do. We need to figure out what is the root for the issue. What is the real issue attached to the problem? If the root is jobless ness, let's figure a way to get more job, provide more training etc.

7. What do you see as the different roles of City staff, the Planning Commission, and the City Council?

Planning commission and city council should work together as a whole team. There should be seamless and transparent info flow between the group.

CITY OF MILPITAS PLANNING COMMISSION APPLICATION

City Clerk's Office

MAR 13 2019



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NOTE: Milpitas Municipal Code, Title I Chapter 500, requires "at all times during the term of office, a Planning Commissioner shall be a registered voter of the City of Milpitas and a resident of the City of Milpitas." Also, all applicants are required to complete a **SUPPLEMENTAL QUESTIONNAIRE** in addition to this application form.

PLEASE PROVIDE COMPLETE INFORMATION (in black ink)

☒ Mr.

Are you a registered City of Milpitas voter? YES

☐ Mrs./Ms.

How long have you lived in Milpitas? 30 yrs

Name: THOMAS First JOHN Middle VALORE Last

Address: 670 Number CARDIFF PLACE Street (apt. # if needed) Milpitas, CA 95035

Telephone Number(s) 408-946-0703 408-892-3991 trenterprise@comcast.net e-mail address

RETIRED Present Employer FINANCIAL ADVISOR Business Telephone Occupation

Business Address FINANCIAL ADVISOR Occupation

Education:

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
USC	Sys Mgmt	02/71	MS
NYU	AERO ENG	02/64	BS

List community organizations to which you belong or have belonged (additional information may be attached).

Date	Name of Organization	Officer / Member
	Milpitas Chamber of Commerce	CFO 17yrs
	MUSD Bond Oversight Committee	Member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

Over the past six or seven years I have attended virtually all City Council and School Board meetings in an effort to stay informed regarding the direction of the City

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true and that I am a registered voter and a resident of the City of Milpitas.

Thomas Valore Signature 03/13/2019 Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year** from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Fax (586-3030), e-mail (mlavelle@ci.milpitas.ca.gov), mail or drop off your completed application and supplemental questionnaire

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

456

PLANNING COMMISSION

SUPPLEMENTAL QUESTIONNAIRE



(Please type or print responses on a separate paper[s] to the following questions)

1. Why are you interested in serving on the Planning Commission?

Such a position would afford me the opportunity to give back, in a significant manner, to my community which has served me well these past many years.

2. Describe your understanding of how the City's General Plan, Zoning Ordinance, and Planning procedures affect the development of the community.

The cities growth is guided by a hierarchy of plans the top most of which is the General Plan, currently in the process of being updated. Below the General are the specific plans which provide a greater degree of specificity for given areas of the city. Zoning ordinances should reflect the proscriptions of the plans or be changed accordingly so as not to be an impediment to developments in consonance with the plans. Planning entities such as the Planning Commission and the City planning staff should be guided by such document as they proceed through the decision-making process and in framing their recommendations to the City Council.

3. In what way will your personal or work experience contribute to your role as a Planning Commissioner?

I spent twenty years in the Air Force principally in System Acquisition Management. My last assignment was a Program Manager where I started and managed what became a roughly 1 billion-dollar acquisition known as TRIGS. Subsequently, I worked as a senior manager in the Aerospace Industry. And concluded my work career as a Certified Financial Planner for twenty years. Thus, I am comfortable with the decision-making process and not intimidated by either high powered people or large dollar projects. Just as important I recognize the importance of boundaries in keeping containment.

4. What do you feel are the most pressing planning problems or issues in Milpitas? How do you think they should be best resolved?

The traffic congestion in Milpitas has become progressively worse in recent years and related to this is parking. An alternative route must be constructed connecting I880 and I680 to eliminate the press of traffic clogging our major thorough fares every week day. Obviously, State and more likely Federal aid/support will be required to accomplish such an under taking.

The construction of some strategically located parking structures within the city may be the only answer to the parking problem doing a better job of assuring that new developments will no further add to the problem.

5. Do you have a long-term vision of how you think the City should develop?

Smart development must be an imperative in that land is scarce and at a premium and the impacts of new developments are in all likelihood complex and potentially far reaching and thus the decision-making process must recognize this situation. Growth for the sake of growth or mere income growth is not in the long-term interest of the City or its residents. Improvement/enhancement should be what guides future development. Beautification may be another way to state it. Destination centers which provide cultural activities as well as high quality restaurants would serve to keep residents within the city for entertainment.

6. A major planning problem facing the entire Bay Area is the shortage of affordable housing. Do you have any thoughts on how the City should address this issue?

This unquestionably is a major problem for which there is no easy answer and will require a complex response to achieve any amelioration. I believe we will need to work on a regional basis in attacking the issue since it is a regional issue. I also believe it will take major investments by the city, and hopefully with added county and support, to increase the affordable housing stock

7. What do you see as the different roles of City staff, the Planning Commission, and the City Council?

City staff needs to provide appropriate research to enable the Planning Commission to make an informed decision regarding developments proposed by developers. The decisions of the Planning Commission then become recommendations to the City Council which is responsible for making the final decision to approve or not any development of consequence.

JAN 15 2019

RECEIVED

COMMISSION APPLYING FOR:

Planning Commission
Title Mr.
Name Suraj Karuppan Viswanathan
Address Type Residence
Address 1882 Snell pl
City Milpitas
Postal/Zip Code 95035
Mobile Number (408) 898-6537
E-Mail Address surajkviswanathan@gmail.com

Present Employer SMC Automotive Services

Other Phone (408) 898-6537

Business Address (Optional) 37600 Central Ct #261

City Newark

Postal / Zip code 94560

Occupation Business

College, Professional, Vocational, or other schools attended Madras University, Santhome High School

Major Subject Production Engineering

Degree BS

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization USA Cricket

Member Board Of Directors

Name of Organization Bay Area Cricket Alliance

Member Chairman

Name of Organization Parents Helping Parents

Member Volunteer

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have been running several successful organizations since 2005, have experience in negotiations, market development, sales/growth management, etc. Always wanted to serve the city of Milpitas in any capacity I could, and this provides me with that opportunity.

Date Jan 15, 2019

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy.
I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

COMMISSION APPLYING FOR:

Planning Commission

Title

Mr.

Name

Suraj K Viswanathan

Address Type

Residence

Address

1882 Snell place

City

Milpitas

Postal/Zip Code

95035

Mobile Number

(408) 898-6537

E-Mail Address

Surajkviswanathan@gmail.com

City Clerk's Office
SEP 04 2018
RECEIVED

Present Employer

Renegade Cricket LLC

Other Phone

(408) 824-7220

Occupation

COO

Major Subject

Production Engineer

Degree

Engineering

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization

Bay Area cricket Alliance

Member

President

Name of Organization

USA Cricket

Member

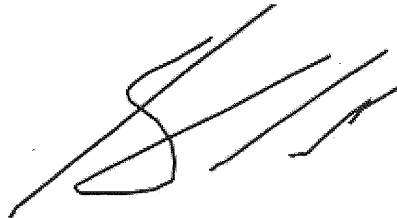
Director

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Date

Aug 31, 2018

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

COMMISSION APPLYING FOR: Planning Commission
Title Mr.
Name Suraj K Viswanathan
Address Type Residence
Address 1882 Snell place
City Milpitas
Postal/Zip Code 95035
Mobile Number (408) 898-6537
E-Mail Address Surajkviswanathan@gmail.com

Present Employer Renegade Cricket LLC
Other Phone (408) 824-7220

Occupation COO
Major Subject Production Engineer
Degree Engineering

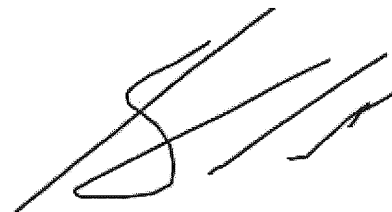
List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization Bay Area cricket Alliance
Member President
Name of Organization USA Cricket
Member Director

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Date Aug 31, 2018

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

City Clerk's Office
AUG 31 2018
RECEIVED

Item Attachment Documents:

20. Receive Update on the Rules Subcommittee and Provide Direction on Potential Items for the Rules Subcommittee

Ashwini Kantak, Assistant City Manager, (408) 586-3053

Recommendation:

Receive an Update on the Rules Subcommittee and Provide Direction on Potential Items for the Subcommittee's Consideration



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Update on the Rules Subcommittee and Provide Direction on Potential Items for the Rules Subcommittee
Category:	Leadership and Support Services
Meeting Date:	5/7/2019
Staff Contact:	Ashwini Kantak, Assistant City Manager, (408) 586-3053
Recommendation:	Receive an Update on the Rules Subcommittee and Provide Direction on Potential Items for the Subcommittee's Consideration

Background:

On April 16, 2019, the City Council approved the establishment of a new Rules Subcommittee, comprised of the Mayor and Vice Mayor. There was a robust discussion of the Subcommittee's intended role. The direction from Council was to have the new Subcommittee hold a preliminary meeting to finalize role, scope, and meeting format and frequency, and bring back recommendations to Council before the end of the fiscal year, with a goal to have the Subcommittee hold its first formal meeting as a Rules Subcommittee at the start of the new Fiscal Year 2019-20.

Analysis:

In accordance with Council direction, a preliminary Subcommittee meeting has been scheduled for May 10, 2019. At this initial meeting, the Subcommittee will discuss the Subcommittee's role and scope, meeting format and frequency and bring back recommendations to the full Council on June 18, 2019. After Council consideration and approval, it is anticipated that the Rules Subcommittee will begin its formal role in August 2019.

In advance of the preliminary Rules Subcommittee meeting, staff is soliciting feedback on any additional items that the Council may want the Subcommittee to incorporate into its discussion about the role and scope of the Subcommittee.

Furthermore, in response to recent questions from members of the Council, staff wanted to provide some clarification on items that the Council may want to discuss and provide feedback for the Rules Subcommittee to consider.

Proclamations and Commendations

The existing City Council handbook includes protocols for the issuance of Proclamations and Commendations as described below

Proclamations

Proclamations are issued by the Mayor without formal action by the City Council. Proclamations are public announcements directing attention to a person, organization or event, such as Citizen of the Year, Girl Scout Week, or International Year of the Child. Proclamations may be requested by the Mayor or any Councilmember.

Commendations

Commendations are acknowledgments of the activities of a person or organization, issued by the Mayor or by all Councilmembers without formal action being taken. Commendations typically acknowledge exception

endeavors or are given to retiring employees and departing board and commission members and are presented at an appropriate function or council meeting.

Invocations

The established City Council policy on Invocations is SOP No. 01.2 adopted on September 20, 2005. It was created to allow each City Councilmember to be assigned a month (2 regular meetings) to invite an appropriate person to provide a brief invocation (non-denominational prayer) to start each regular Council meeting. The City Clerk maintains the schedule of assigned months and sends a letter prescribed by the City Attorney to those invited to give the invocation.

The 2019 Calendar for assigned invocation month for each Councilmember and the policy are attached.

The City Clerk is available to coordinate with any person that Councilmembers invite to lead the invocation at a Council meeting.

Fiscal Impact

None

Recommendation:

Receive an Update on the Rules Subcommittee and Provide Direction on Potential Items for the Subcommittee's Consideration.

Attachment

1) Invocation SOP and List of Assigned Months

CITY OF MILPITAS, CALIFORNIA
STANDARD OPERATING PROCEDURE

SUBJECT: INVOCATIONS AT CITY COUNCIL MEETINGS

1. Purpose

All regular meetings of the Milpitas City Council shall be scheduled to begin with a short, non-denominational invocation, to be delivered by a clergy member or any other suitable person.

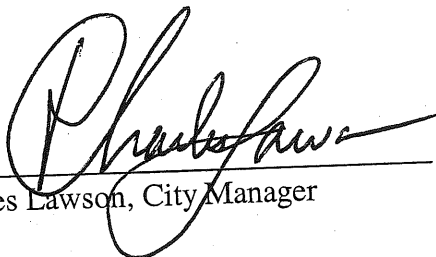
2. Responsible Party

Mayor and City Councilmembers

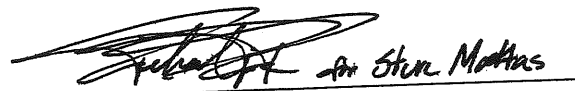
3. Policy and Procedure

- a. Each City Councilmember shall be assigned a month to be responsible for securing an appropriate person or persons to lead a non-denominational invocation. Sitting members of the City Council shall be assigned a month according to the following seniority: Mayor; Vice Mayor; remaining Councilmembers in descending order of seniority of tenure in office.
- b. A City Councilmember may elect to not participate. In the event that a City Councilmember elects to not participate, the responsibility for securing an appropriate person to deliver the invocation shall be on the next City Councilmember according to the seniority guide described in (a).
- c. Invocations shall be non-sectarian in nature.
- d. Invocations shall not proselytize, advance or disparage any religious belief or faith.
- e. Invocations shall be crafted so as to avoid references to specific deities or tenets associated with any particular religious faith or denomination.

Executed: September 30, 2005


Charles Lawson, City Manager

Approved as to Form:


Steve Mattas, City Attorney

INVOCATION ASSIGNMENT FOR 2019 MILPITAS CITY COUNCIL MEETINGS

<i>Council meeting date – 2019</i>	<i>CC member Assigned</i>	<i>Church or Denomination</i>	<i>Minister or representative</i>	<i>NOTES/ MISC</i>
January 15	Councilmember Nuñez			
February 5	Councilmember Phan			
February 19	Councilmember Phan			
March 5	Councilmember Montano			
March 19	Councilmember Montano			
April 2	Mayor Tran			
April 16	Mayor Tran			
May 7	Vice Mayor Dominguez			
May 21	Vice Mayor Dominguez			
June 4	Councilmember Nuñez			
June 18	Councilmember Nuñez			
<i>No July Meetings</i>				
August 6	Councilmember Phan			
August 20	Councilmember Phan			
September 3	Councilmember Montano			
September 17	Councilmember Montano			
October 1	Mayor Tran			
October 15	Mayor Tran			
November 5	Vice Mayor Dominguez			
November 19	Vice Mayor Dominguez			
December 3	Councilmember Nuñez			
December 17	Councilmember Nuñez			

Item Attachment Documents:

21. Consider Requests for an Urgency Tenant Protection Ordinance for Rent Control (Vice Mayor Dominguez and Mayor Tran) and an Urgency Tenant Protection Ordinance for Just Cause Eviction (Vice Mayor Dominguez and Councilmember Nuñez)

Recommendations:

3. Consider Council/Mayor requests related to:
 - a. Urgency Ordinance recommendation related to Tenant Protections – Just Cause Eviction; and
 - b. Urgency Ordinance recommendation related to Tenant Protections – Rent Control.
4. Provide direction to staff.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Requests for an Urgency Tenant Protection Ordinance for Rent Control (Vice Mayor Dominguez and Mayor Tran) and an Urgency Tenant Protection Ordinance for Just Cause Eviction (Vice Mayor Dominguez and Councilmember Nuñez)
Category:	Reports of Mayor and Councilmembers
Meeting Date:	5/7/2019
Staff Contact:	Sharon Goei, Director of Building & Housing, 408-586-3260
Recommendations:	1. Consider Council/Mayor requests related to: a. Urgency Ordinance recommendation related to Tenant Protections – Just Cause Eviction; and b. Urgency Ordinance recommendation related to Tenant Protections – Rent Control. 2. Provide direction to staff.

BACKGROUND:

At the April 16, 2019 City Council meeting, Councilmember Nuñez, with the consensus of the full Council, requested that the City Manager place an item on an upcoming agenda related to tenant protection ordinances as an update to the discussion and action from the April 2, 2019 City Council meeting.

On April 30, 2019, the City Manager received two memorandums also related to tenant protections for the Council consideration. The first memorandum, authored by Vice Mayor Dominguez and Councilmember Nuñez, recommends consideration of an Urgency Ordinance on Just Cause Eviction and the second, authored by Vice Mayor Dominguez and Mayor Tran, recommends consideration of an Urgency Ordinance on Rent Control (see memoranda attached).

Per state law, any urgency ordinance requires a four-fifths vote of the City Council to be adopted and implemented.

ANALYSIS:

As the specific request of potential Urgency Ordinances related to rent control and just cause evictions was received on April 30, 2019, staff has not had sufficient time to evaluate and analyze fiscal impact, legal aspects, and operations and administrative implementation requirements of the requests in detail. However, understanding the importance of the written requests from Vice Mayor Dominguez, Mayor Tran and Councilmember Nuñez, and with the necessity of a four-fifths vote of the City Council to implement, these requests are being transmitted for Council consideration on May 7, 2019 so that direction may be provided to staff by the full Council, accordingly.

Two additional reference documents of prior staff work on Tenant Protection have been included as attachments. The first is the agenda report from the April 2, 2019 Council meeting, where Council received a report on the efforts of the Tenant Protection Task Force. The second is an information memo regarding the history of Urgency Ordinances related to tenant protections.

FISCAL IMPACT:

No fiscal impact was evaluated.

RECOMMENDATIONS:

- 1) Consider Councilmember-Mayor requests related to:
 - a. Urgency Ordinance recommendation related to Tenant Protections – Just Cause Eviction; and
 - b. Urgency Ordinance recommendation related to Tenant Protections – Rent Control.
- 2) Provide direction to staff.

Attachments:

- a) Memorandum from Vice Mayor Dominguez and Councilmember Nuñez – Just Cause Eviction
- b) Memorandum from Vice Mayor Dominguez and Mayor Tran – Rent Control
- c) Agenda Report from April 2, 2019 – Efforts of Tenant Protection Task Force
- d) Information Memo: History of Urgency Ordinances related to Tenant Protections



MEMORANDUM

To: City Manager
From: Vice Mayor Karina R. Dominguez and Councilmember Bob Nunez
Date: April 29, 2019
Re: Urgency Tenant Protection Ordinance Recommendation (**Just Cause Eviction**)

Background:

The cost of rental housing in Milpitas and the region has soared in recent years as the pace of job growth has far exceeded the rate of housing growth. Housing that has been built is predominantly high-end or, to a lesser extent, subsidized, low-income housing. The needs of moderate-income and low-income workers and families too often have been ignored. These trends undermine our social and economic health and cannot be sustained. While Milpitas is working to increase our supply of housing, especially very low, low and moderate levels, many renters face precarious housing stability.

Recommendation:

I, Vice Mayor Karina R. Dominguez, and Councilmember Bob Nunez recommend the following: That, for the short-term, Council direct staff to immediately bring back to Council specific proposals to 1) develop a tenant protection ordinance and 2) implement an immediate **just cause** emergency ordinance to prevent tenant displacement in the City of Milpitas with language similar to the following after staff and the City Attorney's office has reviewed and modified as appropriate:

EVICCTIONS

- A. No landlord shall serve a notice to terminate tenancy (however denominated), file an unlawful detainer or otherwise evict a tenant unless the landlord has good cause for eviction. Grounds for eviction must be set forth in the notice to terminate tenancy. The following are the only permissible grounds for eviction under this ordinance:
- 1) **Failure to pay rent:** The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under provisions of state or local law.

- 2) **Material Breach of Lease:** Substantial breach of a material term of the rental agreement, other than the obligation to surrender possession on proper notice as required by law.
 - 1) **Protections for Families.** Notwithstanding any contrary provision in this Section, a Landlord shall not take any action to terminate a tenancy as a result of the addition to the Rental Unit of a Tenant's child, parent, grandchild, grandparent, brother, or sister, or the spouse or domestic partner (as defined in California Family Code Section 297) or other non-married partner of such relatives, or as a result of the addition of the spouse or domestic partner of a Tenant, so long as the number of occupants does not exceed the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code 17922. The Housing Department may promulgate regulations that will further protect families and promote stability for school-aged children.
- 3) **Nuisance:** Nuisance, waste or illegal conduct that substantially interferes with the health, safety, or quiet enjoyment of the landlord or neighbors
- 4) **Failure to Give Access.** The Tenant has continued to refuse, after the Landlord has served the Tenant with a Written Notice to Cease and without good cause, to grant the Landlord reasonable access to the Rental Unit as required by state or local law. A landlord must make a showing that the tenant acted in bad faith to proceed with an eviction for a tenant's failure to grant access to a unit.
- 5) **Necessary and Substantial Repairs Requiring Temporary Vacancy.** The Landlord, after having obtained all necessary permits from the City, and having provided written notice to the Tenant pursuant to state law, seeks in good faith to undertake substantial repairs that are necessary to bring the Rental Unit into compliance with applicable codes and laws affecting the health and safety of tenants of the building, provided that:
 - 1) The repairs necessitate that the Tenant vacate the Rental Unit because the work will render the rental unit uninhabitable for a period of not less than thirty (30) days;
 - 2) The Landlord gives advance notice to the Tenant of the Tenant's right to elect between:
 - i. The right of first refusal to any comparable vacant Rental Unit owned by the Landlord at the same Rent, if such comparable vacant unit exists; or
 - ii. The first right of return to reoccupy the unit upon completion of the repairs at the same Rent charged to the Tenant before the Tenant temporarily vacated the Rental Unit.

- 6) **Owner Move-In.** The Landlord seeks, after providing written notice to the Tenant pursuant to state law, to recover possession of the Rental Unit in good faith for use and occupancy as a Primary Residence by the Landlord, or the Landlord's spouse, domestic partner, children, parents or grandparents.
- 1) As used in this Subsection "Landlord," shall only include a Landlord that is a natural person and has at least a fifty percent (50%) recorded ownership interest in the Property.
 - 2) No eviction may take place under this Subsection if the same Landlord or enumerated relative already occupies a unit on the Property, or if a vacancy already exists on the Property.
 - 3) Any notice terminating tenancy pursuant to this Subsection shall contain the name, address and relationship to the Landlord of the person intended to occupy the Rental Unit.
 - 4) The Landlord or enumerated relative must intend in good faith to move into the Rental Unit within sixty (60) days after the Tenant vacates and to occupy the Rental Unit as a Primary Residence for at least thirty-six (36) consecutive months. The Housing Department may adopt regulations governing the determination of good faith, including, but not limited to, requiring a signed declaration of in good faith for use and occupancy as a Primary Residence by the Landlord, or the Landlord's spouse, domestic partner, children, parents or grandparent.
 - 5) If the Landlord or relative specified on the notice terminating tenancy fails to occupy the Rental Unit within sixty (60) days after the Tenant vacates, the Landlord shall:
 - i. Offer the Rental Unit to the Tenant who vacated it at the same Rent in effect when the Tenant vacated; and
 - ii. Pay to said Tenant all reasonable expenses incurred in moving to and from the Rental Unit.
 - 6) Landlord may not evict a Tenant pursuant to this Subsection if the Tenant (1) has resided in the Rental Unit for at least five (5) years and is either at least sixty-two (62) years old or Disabled; or (2) is certified as being terminally ill by the Tenant's treating physician. Notwithstanding the above, a Landlord may evict a Tenant who qualifies for the exemption herein if the Landlord or enumerated relative who will occupy the Rental Unit also meets the criteria for this exemption and no other units are available.
- 7) **Withdrawal of the Unit Permanently from Rental Market.** The Landlord seeks in good faith to recover possession to withdraw all Rental Units of an entire Property from the rental market. The Landlord first must have filed the requisite documents with the Housing Department initiating the procedure for withdrawing

Rental Units from rent or lease under Government Code Section 7060 et. seq. and all regulations passed by the Housing Department, with the intention of completing the withdrawal process and going out of the rental business. Tenants shall be entitled to a minimum of 120-day notice or one (1) year in the case Tenants are defined as senior or Disabled under Government Code Section 12955.3. Notice times may be increased by regulations if state law allows for additional time.

- 8) **Demolition.** The Landlord, having obtained all necessary permits from the City, and having provided written notice to the Tenant pursuant to state law, seeks in good faith to recover possession of the Rental Unit to remove the Rental Unit permanently from rental housing use through demolition.
- B. **Filing Termination Notices with Housing Department.** The Landlord shall file with the Housing Department a copy of any notice terminating tenancy within three (3) days after serving the notice on the Tenant.
- C. **Failure to comply.** A Landlord's failure to comply with any requirement of this Article, including without limitation the failure to serve any of the required notices on the Housing Department pursuant to Subsection (g) herein, is a complete affirmative defense in an unlawful detainer or other action brought by the Landlord to recover possession of the Rental Unit.



MEMORANDUM

To: City Manager
From: Vice Mayor Karina R. Dominguez and Mayor Rich Tran
Date: April 29, 2019
Re: Urgency Tenant Protection Ordinance Recommendation (**Rent Control**)

Background:

The cost of rental housing in Milpitas and the region has soared in recent years as the pace of job growth has far exceeded the rate of housing growth. Housing that has been built is predominantly high-end or, to a lesser extent, subsidized, low-income housing. The needs of moderate-income and low-income workers and families too often have been ignored. These trends undermine our social and economic health and cannot be sustained. While Milpitas is working to increase our supply of housing, especially very low, low and moderate levels, many renters face precarious housing stability.

Recommendation:

I, Vice Mayor Karina R. Dominguez and Mayor Rich Tran recommend the following: That, for the short-term, Council direct staff to immediately bring back to Council specific proposals to 1) develop a tenant protection ordinance and 2) implement **rent control** ordinance to prevent tenant displacement in the City of Milpitas with language similar to the following after staff and the City Attorney's office has reviewed and modified as appropriate:

RENT INCREASES

- A. No landlord shall increase rent by more than the allowable increase, as defined below, per year of tenancy.
 - 1) The allowable increase percentage shall be determined in July of each year commencing on September 1, and shall be calculated as follows:
 - a. 100% of the change in the Consumer Price Index for the San Francisco-Oakland-Hayward, CA area of California ("CPI") for the prior year, no less than 2% and no greater than 7% annually. The City shall publish the allowable increase percentage each year.

- 2) Allowable Rent increases pursuant to the Ordinance shall become effective only after the Landlord provides written notice to the Tenant in the manner prescribed by law, with at least thirty (30) days' advance written notice, ninety (90) days if the tenant has resided in the unit for more than one year.
- 3) The following are exempt from the rent increase limitations of this Ordinance:
 - a. Government owned housing units;
 - b. Government subsidized housing units where the rent is controlled by federal, state, or local laws or regulation, for as long as the governmental regulation applies;
 - c. Transient and hotel occupancy as defined in Civil Code Section 1940(b).
 - d. Single family homes, condominiums, and homes constructed on or after 1995 to the extent that regulation of rents is prohibited by the Costa Hawkins Rental Housing Act. If Costa Hawkins is repealed these housing units would be subject to this Ordinance.
- 4) Pursuant to state law, this Ordinance does not regulate the initial rent at which a unit is offered, unless such regulation is permitted by a repeal of the Costa Hawkins Rental Housing Act or any other change in state law, in which case the rent increase limits shall apply.
- 5) No Rent increase shall be effective if the Landlord:
 - a. Has failed to substantially comply with all provisions of this Article and all rules and regulations promulgated by the Housing Department; or
 - b. Has failed to maintain the Rental Unit in compliance with Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10; or
 - c. Has failed to make repairs ordered by a Hearing Officer, the Housing Department, or the City.

PETITIONS FOR INDIVIDUAL RENT ADJUSTMENT--BASES

- B. A Landlord or a Tenant may file a Petition with the Housing Department seeking adjustment, either upward or downward, of the Rent for any given tenancy in accordance with the standards set forth in this Section. A Petition shall be on a form provided by the Housing Department and, if made by the Landlord, shall include a declaration by the Landlord that the Rental Unit complies with all requirements of this Article.
- C. Petition for Upward Adjustment—Fair Rate of Return: To effectuate the purposes of this Article and the requirements of law, a Landlord may file a Petition for an upward adjustment of the Rent to ensure a fair and reasonable rate of return. The Housing

Department shall promulgate regulations to further govern Petitions filed pursuant to this Subsection in accordance with law and the purposes of this Article.

- 1) Prerequisites. No upward adjustment of Rent shall be authorized by a Hearing Officer or the Housing Department under this Subsection if the Landlord:
 - a. Has continued to fail to comply, after order of the Housing Department, Code Enforcement, or other authority, with any provisions of this Article or orders or regulations issued thereunder; or
 - b. Has failed to maintain the Rental Unit in compliance with Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10.
- 2) Fair Rate of Return – Factors. In making any upward adjustment to the Rent based upon a Landlord’s Petition to ensure a fair rate of return, the Hearing Officer or Housing Department shall consider relevant factors, including but not limited to, the following:
 - a. Increases or decreases in property taxes;
 - b. Unavoidable increases or any decreases in maintenance and operating expenses;
 - c. The cost of planned or completed capital improvements to the Rental Unit (as distinguished from ordinary repair, replacement, and maintenance), but only where such capital improvements are necessary to bring the Property into compliance or maintain compliance with applicable local codes affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvements;
 - d. Increases or decreases in the number of tenants occupying the Rental Unit, living space, furniture, furnishings, equipment, or other Housing Services provided, or occupancy rules;
 - e. Substantial deterioration of the Rental Unit other than as a result of normal wear and tear;
 - f. Failure on the part of the Landlord to provide adequate Housing Services, or to comply substantially with applicable state rental housing laws, local housing codes, health and safety codes, or the Rental Housing Agreement; and
 - g. The pattern of recent Rent increases or decreases in the Rental Unit during the occupancy of the current Tenant.
- 3) Fair Rate of Return – Factors Excluded. In making any upward adjustment to the Rent based upon a Landlord’s Petition to ensure a fair rate of return, the Hearing Officer or Housing Department shall not consider the following factors as justifying an upward adjustment:

- a. Costs of debt servicing (including but not limited to principal, interest, and fees) for any debt obtained after September 16, 2016, other than debt incurred to finance the cost of improvements;
 - b. Any penalties, fees, or interest assessed or awarded for violation of this or any other law with respect to the Rental Unit;
 - c. The costs of capital improvements that are not necessary to bring the property into compliance or maintain compliance with applicable local codes affecting health and safety;
 - d. Cost increases, capital improvements, banked Annual General Adjustments, or other circumstances that arose before the current tenancy began; and
 - e. Income taxes.
- D. **Effective Date of Individual Rent Adjustment.** Rent increases authorized pursuant to this Subsection shall become effective only after the Landlord provides the Tenant written notice of such Rent increase pursuant to state law.
- E. **Petition for Downward Adjustment—** A Tenant may file a Petition with the Housing Department to Adjust the Rent Downward for the following provisions:
 - 1) **Failure to Maintain Habitable Premises:** Failure to maintain a Rental Unit in compliance with governing health and safety and building codes, including but not limited to Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10, constitutes an increase in Rent. A Tenant may file a Petition with the Housing Department to adjust the Rent downward based on a loss in rental value attributable to the Landlord's failure to maintain the Rental Unit in habitable condition.
 - a. A Tenant Petition filed pursuant to this Subsection must specify the conditions alleged to constitute the failure to maintain the Rental Unit in habitable condition and demonstrate that the Landlord was provided with reasonable notice and opportunity to correct the conditions that form the basis for the Petition.
 - 2) **Petition for Downward Adjustment—Decrease in Housing Services or Maintenance.** A decrease in Housing Services or maintenance, or deterioration of the Rental Unit beyond ordinary wear and tear, without a corresponding reduction in Rent, is considered an increase in Rent. A Tenant may file a Petition to adjust the Rent downward based on a loss in rental value attributable to a decrease in Housing Services or maintenance or deterioration of the Rental Unit. The Petition must specify the circumstances alleged to constitute a decrease in Housing Services or maintenance, and demonstrate that the Landlord was provided with reasonable notice and an opportunity to correct.

- 3) **Petition for Downward Adjustment—Unlawful Rent:** If a Landlord demands or retains Rent in excess of the lawful Rent pursuant to this Article, a Tenant may file a Petition to adjust the Rent to its lawful level.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Staff Report on Tenant Protection Task Force and Provide Direction
Category:	Community Development
Meeting Date:	4/2/2019
Staff Contact:	Sharon Goei, 408-586-3260; Robert Musallam, 408-586-3275
Recommendation:	1. Receive staff report on Tenant Protection Task Force. 2. Direct the City Manager to increase the Project Sentinel contract by \$10,000 for more outreach and engagement, with a focus on pre-eviction services, and to return to City Council with budget proposals to enhance tenant protection services and improved data analytics. 3. Provide feedback on any Task Force issues or core values that staff should further analyze.

Executive Summary

The city currently contracts with Project Sentinel, a non-profit organization providing housing assistance programs regarding rental issues, fair housing/discrimination, and tenant-landlord dispute resolution. Tenant protection calls for service and case load have been relatively light with an average of 55 annual calls for information and an average of 33 cases opened annually regarding Landlord-Tenant disputes. Of the 33 cases opened annually, approximately 2 to 3 cases are three day notices, 15 cases are 30/60/90 day notices, 9 to 10 cases are evictions, and 6 cases are rent increases.

In 2018, the City entered into a five-year agreement to extend the Department of Housing and Urban Development (HUD) contract with the ownership group of the Sunnyhills apartments. As a result of the most vulnerable Milpitas residents being at risk of eviction, action was taken by the City Council in February 2018 to establish a Tenant Protection Task Force representing members of the tenant and landlord communities. Since then the Task Force developed value statements and tenant protection measures (attached) and provided staff with example cities to review for possible tenant protection application in Milpitas. Staff added nearby representative cities similar to Milpitas. Staff analysis for each city includes initial comments regarding applicability, fiscal impact and staffing resource needs as applied to the City of Milpitas.

The Task Force tenant representatives and landlord representatives generally agree on both landlord and tenants needing education but do not agree on the level of enforcement needed to ensure tenant protections. In this report, staff reviewed the programs and ordinances of the various cities, and provided comment including fiscal/resource feasibility as might apply to Milpitas. Overall, programs and ordinances vary from city to city with the more robust programs occurring in the larger cities of San Francisco, San Jose, and Santa Monica. These programs are also the most staff intensive and costly to implement, and do not compare to a community of the size, demographic, and tenant service demand experienced in Milpitas. Peer cities such as Santa Clara, Palo Alto, and Sunnyvale either have no tenant protection program or ordinance or for those that do, portions from Santa Cruz, Los Gatos, Hayward and Fremont could be viable options; however, additional research and analysis would be required to determine staffing and fiscal impact.

From discussion with the Task Force, Project Sentinel, and analysis contained within this staff report, staff is recommending increasing Project Sentinel services for ongoing Landlord-Tenant education and adding new funding for Landlord-Tenant Mediation programs for tenant protection cases that require such support. In addition, staff recom

further developing a budget proposal to enhance tenant protection service and improve data analytics for a more accurate understanding of service demand. Lastly, the wide range of tenant protection by various cities leads staff to request feedback and possible direction of the City Council on any of the Task Force issues or values that should be further analyzed.

Background:

On February 20, 2018, the City Council approved the formation of the Tenant Protection Task Force consisting of tenant and landlord representatives to develop recommendations that would address tenant challenges experienced in Sunnyhills and within similar communities to Milpitas. Representatives of the tenant community serving on the Task Force included Project Sentinel, Law Foundation of Silicon Valley, the President of the Sunnyhills Apartment Tenants Association, and Silicon Valley Independent Living Center. Representatives of the landlord community serving on the Task Force included California Apartment Association, an apartment property manager, a landlord representative, and Santa Clara Association of Realtors.

The Task Force meetings spanned from September 2018 through February 2019. The representatives met one another and shared a vision centered on recognizing that Milpitas is a just and compassionate community that takes care of its people, while acknowledging that more affordable housing is needed to meet the community's needs.

The landlord and tenant groups met separate from each other in October, November, and December. During this time, the tenant representatives independently drafted two ordinances: (1) a rent control ordinance that includes just cause eviction requirements; and (2) source of income discrimination ordinance. The landlord representatives did not agree with the draft ordinance. Subsequent meetings in January and February were joint meetings held to identify any commonalities the groups shared including any core values. The meetings did not address the ordinances drafted by the tenant's group. The various elements of tenant protection and core values are discussed in the analysis section of the staff report.

The following terms were discussed by the Task Force and described for clarity, as follows:

- **Rent Control:** A form of price control that limits the amount a property owner can raise the rent of a tenant in a specified amount of time.
- **Just Cause Eviction:** A legally sufficient reason to evict someone. For example, a tenant not paying rent would be in clear violation of the lease agreement. However, in areas where just cause eviction is in effect, giving someone a 60-day notice to vacate because you want to raise the rent to market rate is not considered legally sufficient.
- **Housing Choice Voucher:** Commonly referred to as a Section 8 voucher, is a Department of Housing and Urban Development (HUD) subsidy program allowing those with a voucher the opportunity to rent any private market unit. In Santa Clara County, the Section 8 program is administered through the Santa Clara County Housing Authority. For reference, the residents of Sunnyhills each have a Project Based Voucher, which offers an identical form of HUD subsidy, except the subsidy only applies to a particular unit or set of units in a large complex. With Project Based Vouchers, the tenant would not directly have the option to find a new unit.
- **Source of Income Discrimination:** California law prohibits discrimination based on source of income. However, Housing Choice Voucher income is not considered tenant income under California law. Therefore, currently a landlord can legally refuse to accept a Housing Choice Voucher applicant.
- **Costa Hawkins Rental Housing Act:** In 1995, the State of California passed the Costa-Hawkins Rental Housing Act (Costa-Hawkins) to place limits on municipal rent control ordinances. Costa-Hawkins provided that cities can not enact rent control on (1) housing occupied after February 1, 1995, and (2) units that are separately alienable from the title of any other dwelling (e.g. houses, condominiums and townhouses). It also states that a landlord has the right to raise the rent after a tenant moves out.
- **Project Sentinel:** A non-profit organization providing housing assistance programs regarding rental issues, fair housing/discrimination, tenant-landlord dispute resolution, and homebuyer education. They also provide counseling on the rights and responsibilities of tenants and landlords. Both tenants and landlords receive f

neutral counseling on subjects such as rent increases, repairs and maintenance, and eviction. Additionally, Project Sentinel provides counseling, conciliation, investigation, and legal referrals to persons alleging housing discrimination and also provides fair housing education and counseling to housing providers seeking assistance. Every city in Santa Clara County except the Town of Los Altos Hills, all of the cities in San Mateo County, and the City of Fremont contract with Project Sentinel for affordable housing and tenant protection services.

Analysis:

Project Sentinel Data Analysis

Since October 1, 2016, Project Sentinel reported receiving 211 calls, (an average of 55 annual calls for information and an average of 33 cases opened annually) most of which were requests for general information. The calls that led to direct cases were reported to the City in the following four groups:

- 1) Three Day Notices: Defined as a tenant being given a three day notice to cure a lease violation. Most commonly this refers to non-payment of rent but in some cases it could be a clear violation of the lease agreement, such as an unapproved occupant. Project Sentinel reported working on six (6) three day notice cases.
- 2) 30/60/90 Day Notices: Defined as a notice to vacate the unit with the corresponding day attached referring to the amount of days an occupant has to vacate. Project Sentinel reported working on thirty-six (36) such cases.
- 3) Eviction: Defined as the legal process by which a landlord can remove a tenant from a unit. Project Sentinel reported working on twenty-three (23) such cases.
- 4) Rent Increase: Defined as a notice to a tenant that the monthly rent will be increasing effective the date listed on the notice. Project Sentinel reported working on fourteen (14) such cases.

It should be noted that while these numbers are minimal when compared to the total rental units in the City, the reported numbers are for those tenants who chose to come forward and report their case. It does not account for un-reported issues of the same kind from occupants who either complied or relocated rather than seek assistance or were not aware of Project Sentinel assistance.

Tenant Protection Task Force Issues and Core Values

The Tenant Protection Task Force was assembled to bring tenants and landlord representatives together to discuss the issues that the most vulnerable renter populations of Milpitas experience due to the growing housing crisis and centered on deficient production of housing units, deed-restricted affordable units, rapid increase in rents, and lack of standardized eviction notice/assistance. Over the six months of meetings, the Task Force acknowledged the above-stated issues and their core values, but expressed different positions, as follows:

Tenant Representatives: The tenant representatives identified the need for more tenant protections that provides a balanced structure between landlords and tenants. For example, landlords have the ability to raise a tenant's rent to an unaffordable amount with very little notice to tenants. Similarly, if that tenant is unable to afford the new rent amount, landlords can evict tenants for non-payment. In addition to rapid rent increases and evictions, the tenant representatives recommend protections for tenants who receive a subsidy, such as a Housing Choice Voucher (commonly referred to as a Section 8 voucher).

Tenant Core Values are summarized as meaningful protections for Milpitas tenants. A complete description of the core values submitted by the tenant representatives is included in the attachments.

Landlord Representatives: The landlord representatives oppose rent control and just cause eviction as a form of tenant protection. They believe that education should be the key component of tenant protection and be focused on educating renters on the rights under state law and on available local resources, such as Project Sentinel and the Law Foundation of Silicon Valley. Further, they believe educating landlords to educate them on property operations and maintenance, fair housing, crime prevention and compliance with local laws. Additional core values are non-binding mediation, right to lease or minimum lease term, and incentive-based housing programs, where landlords are provided incentives to participate in the Housing Choice Voucher program.

Landlord Core Values are summarized as both landlord and tenant engagement and education as a means of tenant protection. A complete description of the core values submitted by the landlord representatives is included in the attachments.

Peer Agencies

The Task Force discussed how other government agencies established and administered tenant protection programs for their residents. Below are the jurisdictions cited by the Task Force. In addition, staff has identified local jurisdictions that Milpitas typically cites as benchmark communities based on similar population, demographics, proximity, and staff resources. Each jurisdiction is followed by staff comments as to the applicability and fiscal/resource feasibility of such programs for the City of Milpitas.

Suggested Peer Cities (by Task Force):

- **City of San Jose** – In November 2017, the City of San Jose approved Phase II of their proposed staffing and fee level implementation program, increasing the rent control operations staff from 8 dedicated full-time employees to 14. Currently, this staff manages approximately 46,000 units with an operating budget of \$1,746,290. In their proposal, the City outlines Phase III to be considered in the future, which would add another 8 or 9 positions. To fund Phase II, the City Council also approved the Affordable Rent Ordinance supplemental fees for 2017-2018 for an additional \$25.50 per unit, making the fee per unit \$55.80. According to the Department of Code Enforcement, 97% of the fees were collected as of October 19, 2018.

The ordinance allows landlords to increase a tenant's rent a maximum of 5% per year and at most can increase the rent once in a 12-month period. The ordinance only applies to residential units in buildings with 3 or more units. Affordable rental units, guesthouse rooms or units legally rented to transient guests for a period of less than 30 days are exempt. The ordinance also outlines that new market rental rates may be set if the tenant voluntarily vacates their unit or if the landlord legally terminated the prior tenancy as for-cause termination. Additionally, San Jose has recently implemented a landlord registry to assist in their efforts to effectively manage the rent controlled units.

Staff Comment: Milpitas currently has 1722 units that would apply to San Jose's rent control model. This model fits with the core values eschewed by the tenant representatives as they desire to have both rent control and just cause eviction protections. A landlord registry may be an effective tool to mitigate the costs associated with imposing a rent control ordinance.

Fiscal/Resource Feasibility: If applied to Milpitas, the Apartment Rent Ordinance and rent registry may be feasible but not practical. Fiscally, the City does not have the additional staffing resource capability that a large City like San Jose has to implement and manage an ordinance of this nature. The City of Milpitas would have to hire new staff and generate or allocate new funds to ensure its compliance. Partnering with a local area resource, such as Project Sentinel, to enforce an Ordinance may be feasible but also would require additional City resources to fund such a venture.

- **City and County of San Francisco** – For fiscal year 2018, the San Francisco rent board had a staff of approximately 38 full-time employees and an operating budget of over \$8,000,000 per year to enforce rent control on approximately 173,000 units. Per the rent board, they fund the rent board using no money from the general fund. Instead, all funds are collected via a rental unit fee of \$45 per apartment unit and \$22.50 per residential hotel room.

The City of San Francisco's rent control is determined by using a variety of factors: (1) On March 1 of each year, the San Francisco Rent Board publishes the increase in the Consumer Price Index (CPI) for the preceding 12 months; (2) a landlord may impose an annual rent increase that does not exceed a tenant's base rent by more than 60% of the published CPI increase; and (3) at no time shall the annual increase be greater than 7%.

Single family homes, condominiums, and subsidized rental units are among the notable exemptions to the ordinance. However, these units do still fall under just cause protection.

Staff Comment: San Francisco's model is staff intensive, costly, and not a good model for the City of Milpitas. The administrative burden alone would be difficult to keep up with given the amount of staff required to implement and enforce such an ordinance. Additionally, adding staff would direct funds away from the housing fund, which is used primarily to fund affordable housing assistance and projects.

Fiscal/Resource Feasibility: Staff would need to further research the staffing requirements and budget needed to establish and administer a similar program. However, it appears the resources and costs far exceed the City of Milpitas' annual budget and staff levels. It should be noted that San Francisco has approximately 173,000 units that are paying the fee. Milpitas only has approximately 1,700 units, which would require either a higher fee or City subsidy.

- **City of Santa Cruz** - On February 13, 2018, the City Council adopted two separate emergency ordinances: (1) a *Rent Freeze Ordinance* limiting the amount a landlord could increase their rents for applicable rental unit types; and (2) a *Just-Cause Eviction Ordinance* detailing the justification upon which a landlord can evict a tenant. This issue, which was placed on the November 6, 2018 ballot as Measure M, was rejected by 61% of Santa Cruz voters. As a result, the Rent Freeze Ordinance was subsequently terminated.

On November 27, 2018, the City Council introduced an ordinance establishing the right for residential tenants who are forced to relocate due to a rent increase. Under the ordinance, those tenants who are forced to relocate due to a "Large Rent Increase," defined as a one-year increase of more than 5% or cumulatively more than 7% over a two-year period, would be entitled to landlord-paid relocation assistance. Relocation assistance would equal two (2) months of the tenant's actual rent, or other arrangements of equal benefits which are agreeable by the tenant. On December 11, 2018, the City Council directed staff to return to Council at the January 8, 2019 meeting with an extension of the Just-Cause Eviction Ordinance.

On January 8, 2019, the City Council extended the Just Cause Eviction Ordinance for three months. At that time, the Council directed staff to create a 9-11 person Task Force, with adequate representation amongst all stakeholders, to discuss possible solutions that benefit both landlords and tenants. The Task Force was subsequently approved at the February 12, 2019 City Council meeting. Additionally, the City Council passed an Ordinance amending its municipal code pertaining to relocation assistance for tenants displaced due to a large rent increase. As discussed above, the amendment amended the definition of relocation assistance to include those displaced by a large rent increase.

Staff Comment: Santa Cruz is very similar to Milpitas from an overall City size (M: 13.62mi²; SC: 15.83mi²), population (M: 75,498; SC: 65,021), and per capita income (M: \$39,291; SC: \$33,776). Per capita income is a census measurement that computes the mean income for every man, woman, and child in a particular group including those living in group quarters. It is derived by dividing the aggregate income of a particular group by the total population in that group (Census.gov).

Santa Cruz provides a valuable example of approaching rent control. For a long period of time, the City Council and its constituents debated whether there was a need for rent control, and in the end, the Council directed staff to put it to a citizen vote. As noted above, Measure M was subsequently voted against. However, doing so would be costly to the City.

Additionally, if no rent control ordinance is adopted in Milpitas, staff believes the "Large Rent Increase" provision could work favorably for both landlords and tenants. As described earlier, if a tenant is forced to relocate due to a large rent increase, defined as above 5% in one year or more than 7% over two years, the tenant would be entitled to landlord-paid relocation assistance. This could deter landlords from raising the rent above these thresholds or they would be subject to the large rent increase provision and have to pay for a tenant's relocation expenses.

Included in this provision is that code enforcement officers are responsible for the enforcement. The City's website lists two code enforcement employees.

Fiscal/Resource Feasibility: If applied to Milpitas, the Large Rent Increase provision may be feasible and be enforced via our current code enforcement function. Fiscally, it would require additional staffing and tra

resources to ensure proper enforcement. And as noted above, the cost of putting the topic of rent control on the ballot would be costly to the City.

- **City of Berkeley** – The City of Berkeley’s rent control board is comprised of 9 elected commissioners. As of November 2017, the Rent Board has a staff of 20 full-time employees to enforce rent control on approximately 19,000 units. Further discussions have been had to increase full-time staff to 23 employees with a budget of \$5,500,000. However, at the moment the proposed budget for fiscal year 2019 is \$5,100,000.

Each January 1, landlords are allowed to increase the rent in accordance with the annual general adjustment, which since 2005 has been 65% of the CPI. In order to be approved for this increase, landlords must be in good standing with the rent stabilization board. Additional provisions include a good cause for eviction section and a requirement that all landlords register their rental units, with penalties created to ensure compliance.

Staff Comment: Berkeley’s model is similar to San Francisco in that it is staff intensive, costly, and not a good model for the City of Milpitas. While Berkeley’s community is just 11% (19,000 units) the size compared to San Francisco (173,000), Berkeley’s budget is operating at approximately 60% of what it costs to operate the San Francisco rent board.

Fiscal/Resource Feasibility: Staff would need to further research the staffing requirements and budget needed to establish and administer a similar program. However, it appears the resources and costs far exceed the City of Milpitas’ annual budget and staff levels.

- **City of Fremont** – In October 2018, Fremont established the Rent Review Ordinance, which took effect on January 1, 2018. Fremont added one new full-time staff member to manage the time-intensive administrative load of enforcing the ordinance. Additionally, the City Council adopted an ordinance creating the rent review board whose members are appointed by the City Council. The board is comprised of five members and one alternate and is made up of two landlord representatives who own rental property in Fremont, two tenant representatives who reside in Fremont, one neutral third party who is neither a landlord or tenant but does live in Fremont, and one alternate who is neither a landlord or tenant but does live in Fremont.

Per the ordinance, a landlord is encouraged to provide at least a 90-day notice of any rent increase in order to allow for the rent review procedures to occur. Any notices seeking an increase exceeding 5% shall also include a statement identifying the reason for the rent increase. Any notices in violation of the ordinance are considered void. The ordinance applies to all residential rental units in the city, including single family homes, condos, and townhomes, but does not apply to properties where the tenant is receiving subsidy.

The rent review steps are as follows: (1) within 15 days of the date of the increase notice, a landlord or tenant may request a rent review; (2) the City then verifies that the rent increase is valid; (3) the City schedules a consultation phone call and/or in person non-binding mediation; (4) if no resolution is determined in step three, and the increase is over 5%, a rent review board hearing may be requested.

Every year, the Fremont City Council receives a report on the Rent Review Ordinance. Here is a brief summary of the calendar year 2018 report. In 2018, the City received a total of 71 requests for services, however, 24 were for issues that were exempt from the ordinance. Of the 47 remaining cases, 21 were resolved prior to the consultation phone call, 18 were resolved after the consultation phone call, and the final 7 were resolved with in-person mediation. Only one case was to be heard by the rent review board but was not heard because both parties reached an agreement just prior.

Staff Comment: Fremont presents an option for Milpitas. It would require justification for rent increases. And while the sample size is minimal, it does indicate that (1) bringing units to market value is important to landlords; (2) similarly, if no rent control is in place, a higher increase will be requested; (3) the rent review program brought landlords and tenants together and a reduction in rent increase value was observed; and (4) there is high demand for affordable housing.

The tenants were mixed in their review of the program. When asked how the rent review program can be improved, two of the top responses were to (1) make the decision binding and (2) require a more descriptive

reason for the rent increase above 5%. As noted in the report, 71% of the rent increase notices received by the City cited the desire to bring the units up to market rent as the reason the landlord was asking for an increase above 5%.

Per Fremont's annual report, 45% of cases were resolved with a lowered rent increase. The average rent increase after the rent review was 8.7%, down from 11.5%. However, it should be noted that in the 24 cases cited earlier that did not apply to the ordinance, the average rent increase was 19.6%. If you were to isolate the 12 cases that were exempt due to the tenant living in subsidized or Below Market Rate housing, the average increase was 28.9%. While the increase would not fall completely on the tenant, tenants are still at risk of displacement if the increase surpassed what the subsidizing body can afford to pay.

Finally, it should be noted that if Milpitas were to pass an ordinance similar to the City of Fremont's Rent Review Ordinance, that there would have been zero protections for the residents of Sunnyhills. This ordinance does not contain a just cause eviction provision.

Fiscal/Resource Feasibility: If applied to Milpitas, the Rent Review Ordinance may be feasible and practical, however, staff would need to further research the staffing requirements and budget needed to establish and administer a similar program. Partnering with a local area resource, such as Project Sentinel, to enforce an Ordinance may be feasible but also would require additional City resources to fund such a venture.

- **City of Santa Monica** – The City of Santa Monica rent board is comprised of 5 elected commissioners and has a staff of 25 full-time employees to enforce rent control on approximately 26,000 units. For fiscal year 2019, they have an operating budget of \$5,716,252.

Every September 1, the City of Santa Monica allows landlords to raise rents by 75% of the percent change in the CPI. Increases can range from 0-6% and the elected Rent Control Board Commissioners have the authority to impose a dollar-amount maximum after holding a public hearing. For reference, in June 2018, the Rent Board approved a resolution announcing an adjustment of 2.9% and imposing a maximum increase of \$60. Santa Monica also has dedicated day-to-day staff to handle their administrative workload.

Staff Comment: Demographically, Santa Monica has a much higher population and per capita income than Milpitas. Santa Monica's model is staff intensive, costly, and not a good model for the City of Milpitas.

Fiscal/Resource Feasibility: Staff would need to further research the staffing requirements and budget needed to establish and administer a similar program. However, it appears the resources and costs far exceed the City of Milpitas' annual budget and staff levels.

Common Peer Cities (by staff)

The cities identified below are commonly used as peer cities to Milpitas when analyzing city programs. They are based primarily on geographic location, population, and demographics.

- **City of Mountain View** – The City of Mountain View administers their rent control program through the Neighborhoods and Housing Division. Per the adopted 2018-2019 budget, they have an operating budget of approximately \$2,300,000.

Mountain View's rent control ordinance limits rent increases to a minimum of 2% and a maximum of 5% per year and includes a just cause eviction provision. Additionally, landlords are required to pay an annual rental housing fee of \$124 per unit.

Staff Comment: While the City of Mountain View does have a rent control ordinance, the data from the Census Bureau indicates that the City is still having issues maintaining its affordability. According to our research, the median gross rent in Mountain View increased by 36% from 2012 to 2017.

Fiscal/Resource Feasibility: If applied to Milpitas, the Ordinance may be feasible and practical, however, Staff would need to further research the staffing requirements and budget needed to establish and administer a similar program. Partnering with a local area resource, such as Project Sentinel, to enforce an Ordinance may be feasible but also would require additional City resources to fund such a venture.

- **City of Fremont** – See above.
- **City of Palo Alto** – There is currently no rent control ordinance in Palo Alto. However, on August 27, 2018, Palo Alto adopted an emergency law that requires relocation assistance be given to low-income tenants facing eviction. The assistance requires a relocation payment of \$7,000-\$17,000 per household, and would only apply to tenants living in apartment units of 50 units or greater and to those that earn below Santa Clara County's area median income.

Staff Comment: This emergency ordinance was enacted as a result of the eviction notices given to tenants at the Hotel President apartment building in downtown Palo Alto. Its intention is not to provide meaningful, long-term protections for residents as it only applies to properties in complexes that have 50 or more units.

Fiscal/Resource Feasibility: Palo Alto's emergency ordinance is not a good model for the City of Milpitas.

- **City of Sunnyvale** - No rent control ordinance.

Staff Comment: While the City of Sunnyvale does not currently have a rent control ordinance, the City Council is beginning to discuss rent control and affordability. According to our research, the median gross rent in Sunnyvale increased by 40% from 2012 to 2017.

Fiscal/Resource Feasibility: N/A

- **Town of Los Gatos** – The Town of Los Gatos does have a rent control ordinance in effect for properties with 3 or more units. Any increases at or below 5% is presumed valid. Any increase above 5% must be justified.

Currently, Los Gatos contracts with Project Sentinel to administer their Rental Dispute Resolution Program. These services include conciliation, mediation, and arbitration services for tenants and landlords in Los Gatos when conflicts arise regarding rent, housing services, or proposed evictions.

Fiscal/Resource Feasibility: If applied to Milpitas, the Ordinance may be feasible and practical, however, Staff would need to further research the staffing requirements and budget needed to establish and administer a similar program. Partnering with a local area resource, such as Project Sentinel, to enforce an Ordinance may be feasible but also would require additional City resources to fund such a venture.

- **City of Santa Clara** - No rent control ordinance.

Staff Comment: Staff is not aware of Rent Control being discussed during the City Council meetings. The topic has not been mentioned by any of the local newspapers.

Fiscal/Resource Feasibility: N/A

Additional Research

- **City of Hayward** – On July 26, 2016, the City of Hayward passed the *Residential Rent Stabilization Ordinance* (Ordinance No.16-19). Currently, Hayward contracts with Project Sentinel to administer their Residential Rent Stabilization Ordinance for approximately 15,000 units.

The Ordinance allows landlords to increase a tenant's rent a maximum of 5% per year and at most can increase the rent once in a 12-month period. If a landlord does not raise the rent within a 12-month period, they are allowed to "bank" the increase (saving the allowable 5% until the next year) at which point they may impose an increase of 10%. A landlord can only bank their increase one time, meaning the most they can increase the rent in any given year is 10%. Additionally, the Ordinance contains an "Eviction for Cause" section providing guidance to a landlord who wishes to recover possession of their property.

The ordinance is applicable to residential units in buildings with 5 or more units. Affordable rental units, guesthouse rooms, or units legally rented to transient guests for a period of less than 30 days are exempt. The ordinance also outlines limitations on initial rent a landlord can charge. Specifically, any unit where a tenant voluntarily vacates is exempt from an initial rental limitation. However, if a tenant's vacancy is non-voluntary, including termination due to a just cause eviction, the initial re-rental limitation is subject to a maximum allowable increase of 5% of the previously rented rate.

Staff Comment: Hayward presents some options for Milpitas. If we applied their rent ordinance to Milpitas, it would affect approximately 1100 units. Additionally, by capping the rent increase at 10% over two years, a diligent landlord would still be able to get a fair return on their investment over a period of time if a tenant lived there long term..

Fiscal/Resource Feasibility: If applied to Milpitas, the Ordinance may be feasible and practical, however, Staff would need to further research the staffing requirements and budget needed to establish and administer a similar program. Partnering with a local area resource, such as Project Sentinel, to enforce an Ordinance may be feasible but also would require additional City resources to fund such a venture.

- **State of Oregon** - On February 12, 2019, the State of Oregon became the first state to pass a statewide rent control and just cause eviction. The Bill would limit increases to 7% per year, plus the CPI for that year on all units more than 15 years old. In addition to exempting new construction units for 15 years, subsidized units are also exempt. While just cause is also required to evict a tenant, landlord-based cause has been written into the Bill. An example of landlord-based cause is if a landlord wishes to move in to their unit or wishes to conduct major renovation on a particular unit, they must provide 90 days' notice and pay one month's rent as a relocation expense. This portion of landlord-based cause only applies to apartment buildings with 5 or more units.

Staff Comment: Although not discussed at the Task Force meetings, staff felt it necessary to at least mention Oregon in our report. Overall, the rent increases are very landlord friendly at 7% plus CPI. All new construction is exempt for 15 years which wouldn't immediately deter new construction and there are landlord-based cause provisions that give landlords some authority over their property.

The Oregon rent control model has portions that could be applicable to Milpitas as it doesn't completely eliminate a landlord's authority over their unit. For example, the higher allowable increase limit and landlord-based cause are an indication of balancing the power structure between landlords and tenants. Finding this balance is the type of win-win the Task Force was originally envisioned to provide.

Fiscal/Resource Feasibility: If applied to Milpitas, the Rent Review Ordinance may be feasible, however, staff would need to further research the staffing requirements and budget needed to establish and administer a similar program.

Public Comments

At each Task Force meeting, the public who attended were given the opportunity to speak about items on that evening's agenda. For comments made by members of the community, staff has added research to provide clarity. Below is a summary of concerns presented by Milpitas residents during public comment.

- **Inhibition of New Construction** - By limiting what a landlord can charge, rent control reduces the profitability of an investment property. This leads to investors to direct their capital away from rent control markets and, as a result, construction declines. However, many cities that enact rent control provisions make these new construction units exempt from rent control for a period of time or simply altogether to not spurn development.

- Deterioration of Existing Housing - By limiting the return on investment, an investor may be unwilling to spend as much money on maintaining the quality of the unit. This could lead to a lower overall quality of rental units. While many cities have allowed for repair costs to pass through onto the tenant, oftentimes the amounts allowed aren't enough to justify the repair costs.
- Substantial Administrative Costs - The administrative costs of operating and maintaining a rent board may be significant. Often, with the creation of a rent board, comes rules and regulations that must be adhered to and enforced. Per the City of San Jose, the City of Santa Monica's rent control budget was more than \$5.5 million per year to control rents on 26,000 apartments.
- Reduced Consumer Mobility - Once someone has found a rent-controlled unit, they are often willing to forego moving as often due to their already low rent payment. This increases duration of residence and also limits opportunities for when they eventually do need to move. As a result, consumers entering the market pay exorbitant costs.
- Consumer Entry Costs - As previously stated, the cost of finding a new market rate apartment often deters people from moving in the first place and thus makes it more expensive for those who are searching for housing. Due to the limited amount of available units, the cost of market rate housing is often incredibly high. While a few benefit from rent control, the majority subsidize the cost of the rental market by paying exorbitant rates.
- Market Value - As noted by a landlord Task Force member, the market should be the deciding factor for rental value. As the market has slowed in recent months, and if it were to continue to slow or sharply decline, rental values will come down with the market. And since there is no protection for a landlord when rents decline, they should be allowed to fully participate as the market goes up to protect their investment.
- California State Rent Control - Proposition 10 was a state initiative that would have repealed Costa-Hawkins. On November 6, 2018, Proposition 10 failed to pass with 59% of the voters rejecting the initiative. As of October 22 2018, the City of Milpitas had 29,931 registered voters. Of those who voted for Proposition 10, 36% (10,148) of registered voters voted against the proposition, while 31% (8,732) voted for it. Comparatively, no other city in Santa Clara County had a majority of voters vote in favor of Proposition 10.
- Subsidized Housing - Part of the tenant representative core values was the inclusion of a source of income discrimination ordinance. This is in part referring to the difficulties Housing Choice Voucher (Section 8) residents have in obtaining housing. Often, Section 8 tenants are met with the words 'NO Section 8' on an advertisement for a rental unit. This deters them from applying because they know they will not be considered. This means the lack of possible access to a better unit in a better area. After many discussions, the landlords made it very clear that they do not oppose the Section 8 tenants, but the program administration itself.

Both sides agreed that more education for Housing Choice Voucher tenants and landlords is needed but, specifically, more assistance in dealing with the programmatic delays from the Santa Clara County Housing Authority is needed. The landlord representatives say financial assistance in dealing with missed payments or excessive delays will help them decide to rent to Section 8 tenants. It becomes problematic for them when they must wait in excess of 30 days for someone to come to inspect the unit and all the while no one is occupying (and paying) for their unit to be vacant.

Staff Recommendations

Based on the above report, there are many paths that Council could take to implement tenant protections. As noted throughout this report, the tenant representatives would like to see meaningful protections for tenants in the form of a rent control ordinance that includes just cause eviction requirements and a source of income discrimination ordinance. They believe the landlord proposal for non-binding mediation lacks the enforcement required to ensure tenants are reasonably protected. The landlord representatives view tenant protections from an education, mediation and a more resource-based standpoint. Protecting tenants involves educating tenants on their rights as tenants and educating landlords on, among many other topics, fair housing, discrimination, and proper management practices.

Thus, staff have developed the following possible recommendations for City Council consideration. Each of these recommendations would increase tenant protection in Milpitas.

1. Receive staff report on Tenant Protection Task Force.
2. Direct the City Manager to increase the Project Sentinel contract by \$10,000, there is sufficient budget from the Contingency Reserve Funds, for more outreach and engagement, with a focus on pre-eviction services, and to return to City Council with budget proposals to enhance tenant protection services and improved data analytics.
3. Provide feedback on any Task Force issues or core values that staff should further analyze.

Fiscal Impact:

1. Recommendation No. 1 has no fiscal impact to the City.
2. Recommendation No. 2 would require an increased allocation of \$10,000 from the Contingency Reserve Funds to be budgeted to Project Sentinel.
3. Recommendation No. 3 has no immediate fiscal impact but could require additional resources depending on Council feedback.

California Environmental Quality Act:

The above recommendations have no potential for causing a significant effect on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because they involve administrative activities to research and study possible residential rental regulations.

Recommendation:

1. Receive staff report on Tenant Protection Task Force.
2. Direct the City Manager to increase the Project Sentinel contract by \$10,000, there is sufficient budget from the Contingency Reserve Funds, for more outreach and engagement, with a focus on pre-eviction services, and to return to City Council with budget proposals to enhance tenant protection services and improved data analytics.
3. Provide feedback on any Task Force issues or core values that staff should further analyze.

Attachments:

1. Tenant Representatives Core Values
2. Landlord Representatives Core Values

Milpitas Tenant Protection Task Force

Tenant Representatives Values Statement

Introduction

As the four members of the Task Force representing Milpitas tenants, with collectively more than 56 years of experience counseling and serving the needs of local tenants, we wish to thank the City Council for recognizing the need for tenant protections. We encourage the City of Milpitas to adopt strong renter protections with a sense of urgency because they are so essential to mitigate displacement in the midst of our housing crisis. The following statement lays out why protections are needed, what protections are most needed, and how to effectively deliver those protections.

Throughout the process of this task force, we have come in good faith, attempting to craft policy solutions that would meaningfully protect Milpitas tenants. We have been greatly disappointed by the landlord representatives' outright refusal to consider low-cost, proven, and immediate methods of protecting tenants. We wish we could find any agreement with the landlord representatives, but we could not find common ground as their attempts to maintain the status quo contrasted with our goal of preventing displacement and expanding opportunity for tenants.

A Region-Wide Crisis

The City of Milpitas has a unique position within Silicon Valley, as a welcoming community that provides economic, social, and cultural opportunity for a diverse population. Milpitas has a significant history of providing opportunity for all as an intentionally racially-integrated community, where Sunnyhills tract homes were built in the 1950's to accommodate the growing workforce as jobs moved to the South Bay. Later, one of the few Housing and Urban Development projects in the area was built in Sunnyhills to accommodate low-income tenants. However, the economic opportunity of the region is now limited for those members of the community who are unstable in their housing due to rapidly increasing housing costs combined with a lack of alternatives. Skyrocketing rents are making Milpitas a place that is no longer affordable for many families. As shown below, this challenge is felt as a region-wide housing crisis, reaching across Santa Clara County and Silicon Valley broadly:

- Median home prices in Santa Clara County are 10.6 times the median income vs. 3.7 nationally ([Zillow, 2017](#)).
- In Santa Clara County, a minimum wage worker would need to work *35 hours a day* in order to afford an average, typical 2-bedroom apartment ([National Low Income Housing Coalition, 2018](#)).
- Over the five years ending in 2016, the cost of rental housing has jumped by an average of roughly 9 percent annually in Santa Clara, San Mateo, and San Francisco Counties, while wages have risen by an average of 2.8 percent a year ([SJ Mercury-News; Silicon Valley Institute](#)).
- Despite leading the nation in per capita economic growth, nearly 9 in 10 jobs in the Silicon Valley region pay lower wages today, adjusted for inflation, than they did 20 years ago. Lower wages and high housing cost burdens leave many households vulnerable. ([Working Partnerships, 2018](#))
- Wages for all but the highest-paying workers in the Silicon Valley have fallen by 14% since 1997. Lower wages force many households to have to choose between longer commutes or relocating all together to more affordable areas. ([Working Partnerships, 2018](#))

- While common thought is that Silicon Valley tech workers all make six figure salaries, blue collar contract workers make an average annual income of \$19,000 and white-collar contract workers make an average annual income of \$53,200. These workers can afford rents of \$475 and \$1,330 respectively, far below the median rent of \$2,850 ([Working Partnerships USA, 2016](#)).
- For every new engineer or high-paid worker hired, demand is created for five lower-wage jobs ([Bay Area Council](#)).
- Renters who are women of color face the steepest burden of housing costs, with 59% of this demographic paying more than 30% of their income on housing ([PolicyLink](#)).
- Only 11.6% of homes in San Jose-Sunnyvale-Santa Clara Metropolitan Statistical Area are affordable for the median family income of \$125,200 ([NAHB, 2018](#)).
- The median-priced home in Santa Clara County, as of August 2018, was \$1,110,000, up almost 28% year over year ([NAHB, 2018](#)).
- More than 7,400 people are homeless on any given night in Santa Clara County ([2017 PIT Count, Santa Clara County](#)).

Milpitas families have felt this crisis acutely, with nearly *half* (about 48%) of all renters in the city paying more than 30 percent of their incomes toward rent in 2017 ([American Community 5-Year Estimate, 2017](#)). The most immediate impact on tenants paying too much for rent is having insufficient money for other necessities (food, utilities, clothing, medications, transportation) as well as other important uses, like saving for emergencies or repaying debts. Rent-burdened tenants are likely to have poor credit and be susceptible to predatory “pay day” lenders. Rent-burdened tenants typically adapt by reducing their spending on other necessities; or by resorting to inappropriate, unhealthy, or unsafe living situations, like overcrowded housing (e.g., 2 families, 6-8 people sharing 1-bedroom unit), illegal housing (e.g., converted garages, backyard sheds, etc.), and substandard housing (no heater, water leaks, mold, bad plumbing, bed bugs, cockroaches, etc.). These displacement pressures have serious and lasting impacts on physical and mental health ([BARHII Displacement Brief, 2017](#)).

When rents are increased to levels no longer affordable, tenants have only a few possible remedies now:

1. Try to negotiate directly with the landlord, however, with low vacancy rates locally, a landlord may have no incentive to reduce the rent increase. In fact, landlords know that by doing a few renovations, they can charge much more for a unit when their current tenant moves out.
2. Try to find another local property with a lower rent, but that is often impossible.
3. Move out of the Bay Area, which not only disconnects a tenant from their community, but is often impractical when a tenant's job, family, and friends are here.

Why protections are needed

Although housing is often described as a “free market,” in this overheated *rental* housing market with low vacancy rates, landlords have a captive market because everyone needs housing. On an immediate level, tenant protections are needed because the bargaining position of tenants is inferior to that of landlords. When a tenant receives a 30- or 60-day notice of “termination of tenancy,” usually with no reason stated, the landlord's termination notice is not negotiable. The tenant must move out or face an eviction proceeding in Superior Court, where they are unlikely to be represented by an attorney. When a tenant receives a notice of rent increase, which can be any amount the landlord chooses, the tenant may have no practical choice but to pay the increase, even when the new rent is unaffordable. Moving is always difficult or impossible when a tenant's income has not kept pace with market rents. A tenant whose income does not equal

3 times the rent of comparable properties may have to remain in an increasingly unaffordable unit, accepting a rent increase that requires her to pay more than 50% of her income on rent.

Protection requires rent control and just cause eviction protections

Currently, under state law, there is no limit as to how much or how often a landlord can increase rents as long as sufficient notice is provided. The foremost protection tenants need is rent stability, defined as a limit on the amount and frequency of rent increases. A rent control ordinance, like those in effect in other Bay Area cities, would limit rent increases to a specified amount each year.

In combination, an ordinance requiring just cause for eviction is necessary to prevent tenants from facing displacement. As noted above, landlords may issue month-to-month tenants a 30- or 60-day notice of “termination of tenancy” for no reason at all. Where a landlord must have a reasonable rationale for forcing a family to leave their home, that household faces increased stability. Importantly, they are empowered to advocate for healthy and sustainable housing solutions without fear of landlord retribution.

We propose an ordinance that requires a landlord to enumerate any one of a number of potential reasons to evict a household (e.g., failure to pay rent, breach of lease, nuisance, or owner move-in). The ordinance we propose would also require landlords removing their units from the rental market pursuant to the Ellis Act to comply with certain notice requirements and payment of relocation benefits to displaced households.

In conjunction with requiring just cause for eviction, we propose an ordinance that generally limits rent increases to the increase in the regional Consumer Price Index once per year, while ensuring that landlords have a process to collect a fair rate of return on their investment. Such a limit on rent increases should be supported by a city-controlled rent registry that tracks covered units to ensure compliance while protecting tenant information. It is important to understand that rent control would not apply to single-family houses, condos, or multi-family units constructed after 1995, and therefore rent control would not affect most “mom and pop” landlords, nor would rent control discourage the construction of new housing.

Adoption of an ordinance requiring rent control and just cause for eviction is an extremely low-cost way of preventing displacement and keeping people in their homes because they do not rely on city subsidies. A tenant protection ordinance will (1) prohibit illegal evictions through the use of fraudulent and/or misleading representations, intimidating conduct, and coercive conduct; and (2) stabilize rents for tenants, especially those who are low income, older (retired) or persons with disabilities.

Renter protections are needed now to prevent further displacement

Rent prices are near record-high levels. Nearly half of tenants in Milpitas are rent burdened, and as noted above, they are suffering the consequences of paying too much of their income for housing. We believe this is an unacceptable situation that did not need to happen. If rent control had been enacted five years ago, the number of rent burdened tenants would certainly be much lower today. In other words, the damage has already been done. But the problem will grow worse if rent control is not enacted now. Rent control would at least stabilize the number of rent burdened tenants at current levels and prevent those tenants from becoming even more burdened.

In choosing a course of action, we ask the City Council to consider and evaluate the unavoidably competitive interests of rental property owners and renters. Owners tend to set

their rents at the highest level the market will bear in order to maximize their profits, which inevitably causes an increase in the number of low- and middle-income renters who become rent burdened. In weighing the interests of owners to maximize profits versus the interests of low- and middle-income renters to have an affordable place to live, which group needs protection? If you believe that having a place to live is an absolute necessity, then we hope you agree that maximizing profits at the expense of housing affordability is not only unnecessary, but immoral.

Rent control alternatives are not effective

In other cities across our region, we have seen first-hand the pitfalls of alternatives to rent control and just cause. The overarching reason for this is that there remains an imbalance of power in the Landlord-Tenant relationship. Landlords have the power to raise rents, they have the power to deny or ignore repair requests, and they have the power to evict. For families already feeling the financial pressure of living in one of the most expensive metropolitan areas in the country, such significant housing challenges are simply not worth the risk of pushing back, of potentially angering a landlord who can so readily replace a tenant household.

We strongly disagree with the landlord representatives' proposal of creation of a Landlord-Tenant mediation program. Such programs do not provide rent stability because there is no limit on the amount of rent increases. Landlords are free to increase rents to any level they wish, and tenants have the burden of requesting mediation- if they care to bother or if they dare. Most tenants do not request mediation because they know the process is not binding on landlords and is unlikely to be effective, or they fear retaliation. In Fremont, of the 22,500 rental units covered by the City's Rent Review Ordinance (RRO), only 47 tenants (about two-tenths of one percent) requested mediation/rent review in 2018 ([Fremont Rent Review Ordinance Report](#)). According to the RRO report, of the 47 cases opened, "23% of the cases ended because the tenants indicated that they feared retaliation." Representatives of the rental housing industry have claimed that the extremely low rate of participation is an indication that landlords have moderated their rent increases and that's why tenants are not requesting mediation. But they cite no evidence to support that claim.

We additionally disagree with the landlord representatives' proposal of a one-year lease requirement. While a one-year lease may enable a household to avoid displacement for a longer period compared to a few months, requiring a landlord to offer a one-year lease means nothing if there is no limit on the amount of rent that can be charged in subsequent leases.

Source of Income Discrimination Protections

An additional challenge faced by people in Milpitas is particular to Housing Choice Voucher holders. The Housing Choice Voucher Program, commonly referred to as Section 8, provides rental subsidies to low-income residents so they can rent housing on the private market. Program participants must pay a portion of their income in rent, and the Santa Clara County Housing Authority pays the rest of the rental amount directly to the landlord each month. Voucher holders in Santa Clara County are disproportionately disabled, female heads of households, formerly homeless, or people of color.

The challenge they face is finding a landlord who will accept their voucher within the allotted time. It is not illegal under state or federal law to discriminate against voucher holders. The Housing Department of nearby San José conducted a survey of available rental units, and some 66 percent of available listings indicated they would not accept housing vouchers ([San Jose Housing Dept. SOI Memo, 2018](#)). Thousands of housing vouchers remain unused in Santa Clara County because tenants cannot find places to use them.

Adoption of a Source of Income Discrimination ordinance could prevent landlords from shutting out voucher holders completely by preventing them from using it as a reason to deny an applicant. This would not require landlords to lease to voucher holders; rather, it would enable these tenants a fighting chance to secure housing by allowing them in an applicant pool from which they are currently excluded.

Our Values

In sum, as tenant representatives on the Tenant Protection Task Force, we encourage the City Council to adopt meaningful tenant protections. We believe that Milpitas is a wonderfully diverse community where the opportunities of Silicon Valley can be enjoyed by all. We believe that landlords and tenants can work more collaboratively when the risk of a landlord's abuse of their discretion is reduced—where a landlord cannot quickly and unfairly increase rents or force a household to leave. It is for this reason that we encourage the City Council to adopt the proposed Milpitas Tenant Protection Ordinance (Attachment A). Moreover, the landlords of Milpitas are free to discriminate against the city's most vulnerable residents, those reliant on rental assistance. It is for this reason that we encourage the City Council to adopt the proposed Milpitas Source of Income Discrimination Ordinance (Attachment B).

These are the items we have discussed at length over our past many months together. We are disappointed that the landlord representatives in our task force were unwilling to address them more seriously to find any agreed upon common ground.

Lastly, we strongly encourage the City Council to adopt an urgency ordinance either (1) adopting the recommended rent control and just cause provisions included in Attachment A, or (2) declaring a moratorium on all evictions or rent increases while the Council considers these matters further because of the significant risk that Milpitas tenants face in being pre-emptively displaced by landlords wishing to avoid these protections.

2/26/19

Robert Musallam
Housing Authority Administrator
City of Milpitas
455 E Calaveras Blvd,
Milpitas, CA 95035

Mr. Musallam

Below is a summation of the proposals that representatives of the landlord community have proposed as part of it's participation in the Milpitas Tenant Protection Task Force. On behalf of that group, I would like to thank City Staff for their work in bringing all interested parties to the table. We look forward to the continued discussion of the examples of effective tenant protections that we have proposed below.

Education

Local renters are often unaware of their rights and responsibilities. Through better education and outreach, Milpitas can ensure that renters understand the resources available to them. Local governments can develop programs to provide information to renters on local laws, their rights, and available resources to help residents resolve their housing issues, available funding sources for housing assistance, and prevent and defend evictions. Here are a few examples of what Milpitas can do to further that education:

- **Renter Rights, Roles & Responsibilities:** Local governments can educate renters on the protections they have under state law.
- **Local Renter Resources:** Local governments can partner with local agencies to educate renters on the resources available to them.
- **Outreach:** Local governments can develop a multi-lingual, multi-media education program for renters and an outreach strategy for information distribution.

Additionally, local governments can host workshops for rental property owners to educate them on property operations and maintenance, fair housing, crime prevention, and compliance with local laws.

- **Partnering with Trade Associations:** Partnering with the Apartment Association can offer a variety of educational on-demand webinars on topics such as new laws, property management, fair housing, etc.
- **Local Workshops & Training:** Local governments can host a series of workshops educating rental owners on their rights, roles, and responsibilities.
- **Partnerships with Fair Housing:** Local governments can work with local agencies to educate rental owners on fair housing laws and common local cases.

Mediation

Mediation provides a communication forum for renters and rental owners by establishing a neutral setting for both parties and can be a helpful tool to address disputes and misunderstandings.

- **Voluntary Mediation:** A neutral communication setting can be established through a non-binding mediation program and operated in-house or conducted by independent professional mediators. Examples of this type of program can be found in Palo Alto, Mountain View, Fremont, and Campbell.
- **Peer-to-Peer Enforcement:** Local governments can request a “peer” intervention from the apartment association and its local members when an issue with a specific local rental owner arises. The City could connect with the rental owner to understand their position and communicate a mutually agreeable solution. Examples of this program can be found in Alameda, Napa, Solano, and Contra Costa Counties.

Right to Lease

A Right to Lease, or minimum lease terms, would require the property owner to offer a lease with a set time period, such as 6 months or 12 months. Should the tenant desire a month to month, that is at their discretion. By offering a fixed lease as the default option, the tenant is receiving a contract in which the terms cannot change for that duration which can provide stability to the tenant.

Incentive-based Housing Programs

Local governments can identify incentives to property owners that entice property owners to seek out Section 8 Participants.

- **Section 8 Education for Property Owners:** Local Housing Authorities should work to educate rental owners on the Section 8 program by developing “frequently asked questions” and other educational materials to provide local housing providers with knowledge of the program.
- **Partnerships with Housing Authority:** Partnering with local Housing Authorities and non-profits to produce workshops on the Section 8 program, with an educational speaker and program participant testimonials.
- **Risk Mitigation Pool:** In order to provide coverage for potential financial risks that may be associated with the Section 8 program, local governments could cover a range of potential costs, including sign-on bonuses, increased or double security deposits, a loss mitigation pool for potential damage beyond or non-payment that exceed security deposit, and vacancy loss coverage that would provide a month’s rent payment during vacancy. Examples of this program can be found in San Mateo and Marin Counties.

Sincerely,

California Apartment Association – Tri-County: Anil Babbar, Vice President

Santa Clara Association of Realtors: Greg Haas

Property Manager: Killian Bryne, Vice President of Vasona Management

MEMORANDUM



City Clerk's Office

DATE: May 1, 2019

TO: Mayor and Council

THROUGH: City Manager Julie Edmonds-Mares

FROM: City Clerk Mary Lavelle

SUBJECT: History of Urgency Ordinances related to Tenant Protection

This Information Memorandum is in response to inquiries from the Council regarding previously adopted Ordinances related to Tenant Protection.

At a May 22, 2017 Council Study Session on housing issues, the then Planning Director and Deputy City Attorney presented information on affordable housing policies, legislation, Housing Authority budget, and some policy options for Council consideration. In response to concerns raised by several residents, specifically from the Sunnyhills Apartments complex, many of whom were recipients of Section 8 HUD vouchers and had been served a notice from their landlord early in 2017 that the company would cease its contract with the federal government, Council directed staff to bring back recommendations to address the preservation of affordable housing.

In summer 2017, staff brought forward two ordinances for Council discussion and direction – an Urgency Ordinance that imposed a moratorium on the issuance of demolition permits, as well as a Just Cause Eviction Ordinance.

Urgency Ordinance

On June 20, 2017, following public testimony from approximately 45 members of the public and Council discussion, the Council unanimously adopted Urgency Ordinance No. 294, effective immediately for 45 days.

Urgency Ordinance No. 294 did the following:

1. Imposed a moratorium on the issuance of demolition permits for structures that provided affordable housing units in order to preserve existing affordable housing stock while the City evaluated and took action on comprehensive affordable housing preservation and production mechanisms.
2. Applied to affordable housing units, which (for purposes of the ordinance) were defined as residential dwellings with rental rates either (1) restricted by a recorded document to levels affordable to extremely low, very low, lower, or moderate income households, or (2) subsidized by the state or federal government. It provided that no structure containing such units would be permitted to be demolished during the term of the urgency ordinance, with a few exceptions.
3. Offered the potential for relief from the moratorium in four circumstances: where (1) projects were approved prior to the adoption of the ordinance, (2) structures were found to be unsafe or a public nuisance, (3) projects could demonstrate that the issuance of a demolition permit would not result in the loss of affordable housing units (through, for example, the planned replacement of such units by a new development on the site of the existing affordable housing site), or (4) through the use of a petition process, an applicant demonstrated that the application of the ordinance to the applicant's project would be unlawful.

In anticipation of the expiration of the moratorium, on August 1, 2017, staff brought Urgency Ordinance No. 294.1 to extend the demolition moratorium for another 10 months and fifteen days. Council unanimously adopted Urgency Ordinance No. 294.1 (Barbadillo absent), effective immediately, with an expiration date of June 2018.

Just Cause Ordinance

Also at the June 20, 2017 Council meeting, the City Attorney had brought forward a draft Just Cause Eviction Ordinance for Council consideration. However, following public testimony, the Council expressed a desire for more community involvement and no formal action was taken at the meeting.

At Council direction, a Tenant Protection Task Force comprised of local community representatives of the private, public and nonprofit sectors with members from the tenant and landlord/property owner communities. The purpose of the task force was to bring community and landlord representatives together to discuss solutions to housing affordability directly related to tenant protection in Milpitas and make recommendations to the City Council for consideration.

Item Attachment Documents:

- 22. Receive Preview List of Next Regular City Council Meeting Agenda for May 21, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)**

PREVIEW CITY COUNCIL AGENDA MILPITAS CITY COUNCIL REGULAR MEETING

MAY 21, 2019

PRESENTATION

- Certificates to recent Fire Dept. CERT graduates (Toni Charlop)

CONSENT CALENDAR

- 1) Accept City Council calendars for May and June 2019
- 2) Approve City Council meeting minutes of April 30 and May 7, 2019
- 3) Renew third party administrator contract with York Insurance (Liz Brown)
- 4) Assignment and Assumption of Hudson Campus Center Development Agreement to Embarcadero Capital Partners and Bridge (Alex Andrade)
- 5) Authorize City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for Hudson Campus Center at 15 N McCarthy Blvd (Kan Xu)

PUBLIC HEARINGS

- 6) Adopt Resolution Confirming Assessment and Ordering Levy for LLMD No. 95-1, McCarthy Ranch for FY 2019-20 (Steve Erickson)
- 7) Adopt Resolution Confirming Assessment and Ordering Levy for LLMD No. 98-1, Sinclair Horizon for FY 2019-20 (Steve Erickson)

PREVIEW NEXT AGENDA

- 8) Preview list of items for June 4, 2019 (Mary Lavelle)

STUDY SESSION – Council and Staff will move to Senior Center Denny Weisgerber Room

- 9) General Plan update, report from staff, review of maps and more (Ned Thomas)