



## REGULAR MEETING OF THE MILPITAS CITY COUNCIL

### AGENDA

**TUESDAY, SEPTEMBER 5, 2023**

**CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA**

**6:00 PM (CLOSED SESSION)**

**7:00 PM (PUBLIC BUSINESS)**

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-2400

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3072

The City Council meeting is held in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas and via teleconference/Zoom webinar.

You may watch the Council meeting without providing public comment by accessing it via links here.

### **Meeting shall be livestreamed - Go to:**

Facebook: <https://www.facebook.com/CityofMilpitas/>

YouTube: <https://www.milpitas.gov/youtube>

Web Streaming: <https://www.milpitas.gov/webstreaming>

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### **PUBLIC COMMENT INSTRUCTIONS**

Oral public comments may be provided live during the City Council meeting in person or by registering for the zoom meeting in advance. To register you will need to provide an email address (not disclosed) and a name. To minimize technical difficulties, please make sure that you have the latest version of the Zoom Application. Below is the link to register for this meeting only:

[https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN\\_M3dMcTb\\_RU6pU6bdSAM5TQ](https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_M3dMcTb_RU6pU6bdSAM5TQ)

After you register a link will be sent to you to join the City Council meeting in order to give your comments. All Zoom meeting attendees who wish to speak must click on the "raise hand" icon when the Mayor calls for public comments. If participating via phone, dial \*9 to use the "raise hand" feature, and when called to speak, dial \*6 to unmute your phone. Your phone number will be displayed in the live meeting. The Mayor will call speakers by name to address the City Council.

All comments provided shall be limited to three minutes or less as determined by the Mayor. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items.

NOTE: If a member of the public wishes to share any presentation materials for Council consideration, they must be submitted to the Clerk's Office by email to [CityClerk@milpitas.gov](mailto:CityClerk@milpitas.gov) by 12:00 p.m. on the day of the meeting. No presentations will be accepted in person in the Council Chambers.

### **MILPITAS CITY COUNCIL CODE OF CONDUCT**

- Be respectful and courteous (words, tone, and body language).
- Model civility.
- Avoid surprises.
- Praise publicly and criticize privately.
- Focus on the issue, not the person.
- Refrain from using electronic devices while on the Council dais.
- Disclose conflicts of interest and affiliations related to agenda items.
- Separate governing from campaigning.
- The Council speaks with one voice after making policy on issues.
- Respect the line between policy and administration.
- Council will hold one another accountable to comply with this Code of Conduct.

**CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk (6:00 PM)**

**ADJOURN TO CLOSED SESSION**

**(a) CONFERENCE WITH LABOR NEGOTIATORS**

Pursuant to Government Code Section 54957.6

Agency designated representative: Nick Raisch, Human Resources Director

Bargaining unit: LIUNA, UPEC (Pro-Tech, MEA, MidCon), IAFF, MPOA

**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** (Councilmember Barbadillo)

**PRESENTATIONS** (7:05 PM)

- National Suicide Prevention Week (Proclamation)
- National Preparedness Month (Proclamation)
- Certificates for Milpitas High School Digital Map Project Participants

**PUBLIC FORUM** (7:20 PM)

Members of the public are invited to speak on any item that does not appear on today's agenda. Comments will be limited to three minutes or less at the Mayor's discretion. When called to speak, you are encouraged to state your name for the record. As an item not listed on the agenda, no action can be taken, however the City Council may instruct the City Manager to place the item on a future meeting agenda.

**ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

**READING OF THE CITY COUNCIL CODE OF CONDUCT**

**APPROVAL OF AGENDA**

**CONSENT CALENDAR** (7:25 PM)

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.

**C1.** Receive City Council Calendar of Meetings for September 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for September 2023.

**C2.** Approve City Council City Council Meeting Minutes of August 15, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Regular Meeting minutes of August 15, 2023.

**C3.** Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive the list of anticipated agenda items for the next regular City Council meeting.

**C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Recommendation: Review the list of items that have been requested by City Councilmembers and provide direction to staff as necessary. No substantive discussion about any specific item shall occur and the City Council shall hold all debate about the item until it is scheduled as a full agenda item.

**C5. Consider Recommendations from Mayor Montano for Removal from and Appointments to City Commissions, and Accept Commissioner Resignation (Contact: Mayor Montano, 408-586-3024)**

Recommendation: Receive Mayor Montano's recommendations and approve removals from the Science, Technology and Innovation Commission; Approve and confirm recommendations for appointments to City Commissions; Accept the resignation of Charles Lingle from the Energy and Environmental Sustainability Commission; and direct the City Clerk to post the notice of unscheduled vacancies.

**C6. Authorize and Approve Travel to Sacramento, CA, for Councilmember Hon Lien to Attend the League of California Cities *Annual Conference and Expo* to be Held on September 20-22, 2023, for an Estimated Total Not-to-Exceed Amount of \$2,250 Budgeted under the Individual Elected Official Allocation for Conferences/Meetings/Trainings (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)**

Recommendation: Authorize and approve travel to Sacramento, CA, for Councilmember Hon Lien to attend the Annual Conference of the League of California Cities scheduled on September 20 – 22, 2023, for an estimated total not-to-exceed amount of \$2,250 budgeted under the Individual Elected Official allocation for Conferences / Meetings / Trainings.

**C7. Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Sango Court, L.P., for the Affordable Housing Project at 355 Sango Court (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Recommendation: Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Sango Court, L.P., for the Affordable Housing Project at 355 Sango Ct.

**C8. Approve and Authorize the City Manager to Execute the Public Trail Easement and Maintenance Agreement for a Residential Development at 355 Sango Court by Sango Court, L.P. (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Recommendation: Approve and authorize the City Manager to execute the Public Trail Easement and Maintenance Agreement for a residential development at 355 Sango Court by Sango Court, L.P.

**C9. Approve and Authorize the City Manager to Execute the Encroachment and Maintenance Agreement with Sango Court, L.P., for the Installation and Maintenance of Private Landscape Improvements, within City Right-of-way, for the Sango Court Affordable Housing Project Located at 355 Sango Court (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Recommendation: Approve and authorize the City Manager to execute the Encroachment and Maintenance Agreement with Sango Court, L.P., for the installation and maintenance of private landscape improvements, within City Right-of-way, for the Sango Court Affordable Housing Project located at 355 Sango Court.

- C10.** Receive the April – June 2023 Report for Unhoused Services (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046)

Recommendation: Receive the April – June 2023 report for unhoused services.

- C11.** Accept and Approve a Budget Appropriation of \$200,000 and Authorize the Acting City Manager or Designee to execute an agreement with Housekeys for Administration of City's Below Market Rate Homeownership Program (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing and Neighborhood Services Administrator, 408-586- 3275)

Recommendation: Accept and approve a budget appropriation of \$200,000.00 from the Affordable Housing and Community Benefit Fund and authorize the Acting City Manager or Designee to execute an agreement with Housekeys for Administration of City's Below Market Rate Homeownership Program.

- C12.** Adopt a Resolution Approving a Site Development Permit to Develop a New In-Ground Swimming Pool and Legalize the Unpermitted Site Improvements at an Existing Single-Family Residence at 640 Evans Road (Staff Contact: Jay Lee, Interim Planning Director, 408-586-3077)

Recommendation: Consider the exemption in accordance with CEQA and adopt a resolution approving Site Development Permit No. SD20-0015, subject to the attached Conditions of Approval, to allow the development of a new in-ground swimming pool and legalize the unpermitted site improvements at an existing single-family residence on a 2.69 acre site at 640 Evans Road.

- C13.** Receive an Update on the Emergency Repairs to the HVAC System and Equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

Recommendation: (1) Receive an update on the emergency repairs to the HVAC system and equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

- C14.** Adopt a Resolution Approving the City Manager, Acting City Manager or Designee to apply for an up to \$3,500,000 Community Resilience Center (CRC) Grant from the State of California Strategic Growth Council and Authorizing the City Manager, Acting City Manager or Designee to Accept a CRC Grant and Execute all Related Documents as the Authorized Agent on the Grant Agreements (Staff Contact: Matt Cano, Deputy City Manager, 408-890-8065)

Recommendation: Adopt a resolution approving the City Manager, Acting City Manager or Designee to apply for an up to \$3,500,000 Community Resilience Center Grant from the State of California Strategic Growth Council and Authorizing the City Manager, Acting City Manager or Designee to accept a CRC grant and execute all related documents as the Authorized Agent on the Grant Agreements.

**PUBLIC HEARINGS** (7:30 PM)

Members of the public may be allotted up to three (3) minutes or less at the Mayor's discretion, to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of ten (10) minutes for opening statements and up to a total of five (5) minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.

- 15.** Conduct a Public Hearing and Approve the Draft FY 2022-2023 Community Development Block Grant (CDBG)'s Consolidated Annual Performance and Evaluation Report (CAPER) (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing Division Manager, 408-586-3275)



Recommendation: (1) Open the public hearing, hear testimony, then move to close the public hearing; (2) Approve the draft FY 2022-2023 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER); and (3) Authorize the Acting City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2022-2023 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements.

## **COMMUNITY DEVELOPMENT** (8:30 PM)

- 16.** Adopt a Resolution Certifying Election Results and Adding Tract No. 10592 to Community Facilities District 2008-1 (Annexation No. 25); Approve Final Tract Map No. 10592 for a Residential Project at 2001 Tarob Court; and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement. (Staff Contact: Roberto Alonzo, Principal Engineer, 408-586-3316)

Recommendation: (1) Following receipt of election results from the City Clerk, adopt a resolution certifying election results and adding Tract No. 10592 to Community Facilities District 2008-1 (Annexation No. 25); (2) Approve Final Tract Map No. 10592, including all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and (3) Approve and authorize the City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and KB Home South Bay, Inc.

- 17.** Accept an Allocation of \$1,600,000 in State Funding for the Milpitas SMART Program, Approve a Budget Appropriation into CIP Project No. 3493, and Provide Direction to Staff on Proposed Program Modifications (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Jay Lee, Interim Planning Director, 408-586-3077)

Recommendation: (1) Accept \$1,600,000 in State funding through the Budget Act of 2023 (AB 102) for the Milpitas SMART program and approve a budget appropriation of \$1,600,000 in State funding into CIP Project No. 3493 Milpitas SMART; and (2) Receive a presentation on the current Milpitas SMART pilot program and provide direction on staff recommendations for proposed program modifications.

## **ANNOUNCEMENTS AND FUTURE AGENDA ITEMS** (9:30 PM)

Members of the City Council or City Manager may make brief announcements at this time. Members of the City Council may also suggest future agenda items. For future agenda items, the City Council shall not debate the topic or engage in discussion but shall simply state a “yes” or “no” as whether to move the item forward. If a majority of the City Council agrees to move the item forward, the City Manager shall place the item on a future agenda.

## **ADJOURNMENT** (9:35 PM)

### **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 City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and 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: [mmutalipassi@milpitas.gov](mailto:mmutalipassi@milpitas.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.milpitas.gov](http://www.milpitas.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 City website. City Council agendas and related materials can be viewed online: <https://www.milpitas.gov/129/Agendas-Minutes> (select meeting date)

**APPLY TO SERVE ON A CITY COMMISSION**

Commission application forms are available online at [www.milpitas.gov](http://www.milpitas.gov) or at Milpitas City Hall. Contact the City Clerk's Office at 408-586-3001 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 [CityClerk@milpitas.gov](mailto:CityClerk@milpitas.gov) prior to the meeting. You may request a larger font agenda.*

| August 2023 |    |    |    |    |    |    |
|-------------|----|----|----|----|----|----|
| 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 | 31 |    |    |

# MILPITAS CITY COUNCIL CALENDAR

## September 2023

| October |    |    |    |    |    |    |
|---------|----|----|----|----|----|----|
| S       | M  | T  | W  | 4  | 5  | 6  |
| 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 | 31 |    |    |    |    |

Item # C1.

| Sunday | Monday                                                                                                                                       | Tuesday                                              | Wednesday                                                                                                                                                            | Thursday                                                                                                                                                                                                                                      | Friday                                                                                                                                   | Saturday |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|----------|
|        |                                                                                                                                              |                                                      |                                                                                                                                                                      |                                                                                                                                                                                                                                               | 1                                                                                                                                        | 2        |
| 3      | 4<br><b>CITY HOLIDAY</b><br><b>City Hall Closed</b><br>     | 5<br>6:00 PM-Closed Session<br>7:00 PM-City Council  | 6<br>1:00 PM-Santa Clara VTA Monthly Briefing - Northeast Group (CM) (Santa Clara)<br>5:30 PM-Veterans Commission (CM)<br>7:00 PM-Community Advisory Commission (EC) | 7<br>5:30 PM-Santa Clara VTA Board of Directors (CM)<br>5:30 PM-Milpitas Chamber of Commerce Board (GB)<br>5:30 PM-Cities Association of SCC: Legislative Action Committee (CM)<br>7:00 PM-Cities Association of SCC: Board of Directors (CM) | 8                                                                                                                                        | 9        |
| 10     | 11<br>4:30 PM-Economic Development and Trade Commission (CM)                                                                                 | 12<br>4:00 PM- Milpitas HOPE Task Force              | 13<br>4:30 PM-City Council Finance Subcommittee (CM/EC)<br>7:00 PM-Silicon Valley Clean Energy Board of Directors (EC) (Cupertino)                                   | 14<br>8:00 AM Special Council Meeting, Sonesta Event Center<br>4:00 PM-Santa Clara VTA Policy Advisory Committee (EC)<br>4:00 PM-Treatment Plant Advisory Committee (CM) (San Jose)<br>6:00 PM-Youth Advisory Commission (HL)                 | 15<br>12:00 PM Special Council Meeting, Sonesta Event Center<br>6:00-7:00 PM- Mexican Independence Day Flag Raising (Cesar Chavez Plaza) | 16       |
| 17     | 18<br>7:00 PM-Science, Technology, and Innovation Commission (GB)<br>7:00 PM-Library and Education Commission (EC) (Milpitas Public Library) | 19<br>6:00 PM-Closed Session<br>7:00 PM-City Council | 20                                                                                                                                                                   | 21                                                                                                                                                                                                                                            | 22                                                                                                                                       | 23       |
|        |                                                                                                                                              |                                                      | League of CA Cities Annual Conference and Expo, Sacramento (CM. EC, NT)                                                                                              |                                                                                                                                                                                                                                               |                                                                                                                                          |          |
|        |                                                                                                                                              |                                                      | 6:00 PM-Energy and Environmental Sustainability Commission (EC)                                                                                                      | 6:30 PM-Bay Area Water Supply Conserv Agency (CM) (Oak Room - San Mateo Main Library)<br>7:00 PM-Public Safety and Emergency Preparedness Commission (HL)                                                                                     |                                                                                                                                          |          |
| 24     | 25<br>7:00 PM-Arts Commission (EC)                                                                                                           | 26                                                   | 27<br>7:00 PM-Planning Commission                                                                                                                                    | 28                                                                                                                                                                                                                                            | 29<br>6:00 -9:00 PM- Lantern Festival (Civic Center Plaza)                                                                               | 30       |

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*Item # C1.*



## REGULAR MEETING OF THE MILPITAS CITY COUNCIL

**MINUTES**  
**TUESDAY, AUGUST 15, 2023**

The City Council of the City of Milpitas convened on August 15, 2023, in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/ Zoom webinar.

### **CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk**

Mayor Montano called the Regular City Council meeting to order 6:00 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmembers Lien and Phan.  
ABSENT: Councilmember Barbadillo.

City Attorney Mutalipassi announced the closed session items. The City Council adjourned to Closed Session at 6:02 PM.

### **ADJOURN TO CLOSED SESSION**

(a) **PUBLIC EMPLOYEE APPOINTMENT/HIRING**

Title: City Manager Recruitment Update

(b) **CONFERENCE WITH LEGAL COUNSEL – Anticipated Litigation**

Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2)  
Facts and circumstances related to Claim against the City.

(c) **CONFERENCE WITH LEGAL COUNSEL--Existing Litigation:**

Pursuant to Government Code Section 54956.9(d)(1)  
*County Sanitation District 2-3, et al. v. City of San Jose, et al.*, Santa Clara Superior Court Case number 18CV325480, City as a Plaintiff.

The City Council reconvened in open session at 7:45 PM.

### **CLOSED SESSION ANNOUNCEMENT:**

Mayor Montano and City Attorney Mutalipassi reported that there was no action taken on Closed Session items (a) and (c). Adam Lindgren reported that the City Council received an update on Item (b).

### **PLEDGE OF ALLEGIANCE**

Mayor Montano led the Pledge of Allegiance.

### **INVOCATION**

Councilmember Lien presented the invocation.

### **PRESENTATIONS**

Mayor Montano presented a proclamation in recognition of Women's Equality Day. She then presented commendations to Jayceon Carswell and Jayden Petty for USA Jr. Olympics Track & Field Events, and



presented commendations recognizing the achievements of members of the Milpitas High School AeroTech Club.

## **PUBLIC FORUM**

There were the following public speakers:

1. Greg Jones

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any personal conflicts of interest. By roll call, there were no conflicts of interest (Absent: Councilmember Barbadillo). City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any reportable campaign contributions. By roll call, there were no reportable campaign contributions (Absent: Councilmember Barbadillo).

## **READING OF THE CITY COUNCIL CODE OF CONDUCT**

Mayor Montano read the Code of Conduct.

Mayor Montano called for a recess at 8:03 PM. The City Council reconvened at 8:13 PM

## **APPROVAL OF AGENDA**

Motion: to approve the August 15, 2023 Regular Meeting Agenda, considering Item 18 before 17.

Motion/Second: Vice Mayor Chua / Councilmember Phan

Motion carried by the following:

AYES: Councilmembers Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

ABSENT: Councilmember Barbadillo

## **CONSENT CALENDAR**

Motion: to approve the Consent Calendar

Motion/Second: Councilmember Lien / Councilmember Phan

Motion carried by the following:

AYES: Councilmembers Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

ABSENT: Councilmember Barbadillo

There were no public speakers.

### **C1. Receive City Council Calendar of Meetings for August and September 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Received City Council Calendar of Meetings for August and September 2023.

### **C2. Approve City Council City Council Meeting Minutes of August 8, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Approved City Council Special Meeting minutes of August 8, 2023.

**C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Received the list of anticipated agenda items for the next regular City Council meeting.

**C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Reviewed the list of items that have been requested by City Councilmembers and provided direction to staff as necessary.

**C5. Consider the Recommendation from Mayor Montano for Appointments to City Commissions and Declare an Unscheduled Vacancy (Contact: Mayor Montano, 408-586-3024)**

(1) Received the recommendation from Mayor Montano and approved appointments to City Commissions; and (2) Declared an unscheduled vacancy on the Community Advisory Commission and directed the City Clerk to post the notice of unscheduled vacancy.

**Arts Commission**

1. Appoint America Yulissa Chiuapilli Irineo as a non-voting student member (CHHS) with a term ending October 2026

**Library and Education Advisory Commission**

1. Reappoint Hellie Mateo to a term ending June 2026
2. Reappoint Ann Anderson to a term ending June 2026

**Parks, Recreation and Cultural Resources Commission**

1. Appoint Raghu Reddy to a term ending June 2026

**Public Safety and Emergency Preparedness Commission**

1. Reappoint Rosana Cacao as Alternate No. 2 with a term ending June 2026
2. Appoint Vienna Sun as a non-voting student member with a term ending June 2026

**Veterans Commission**

1. Appoint Connor Long as a non-voting student member with a term ending February 2025

**C6. Approve Report of Actions Taken by the City Manager During the City Council Summer Recess from June 20 through August 8, 2023 (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3056)**

Approved report of actions taken by the City Manager during the City Council Summer Recess from June 20 through August 8, 2023.

**C7. Authorize and Approve Travel to Sacramento, CA, for Mayor Carmen Montano, Vice Mayor Evelyn Chua, and Acting City Manager Ned Thomas to Attend the League of California Cities Annual Conference and Expo to be Held on September 20-22, 2023, for a Combined Estimated Total Not-to-Exceed Amount of \$6,750.00 and Appoint Mayor Carmen Montano as the City's Voting Delegate and Vice Mayor Evelyn Chua as the City's Alternate Voting Delegate (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)**

(1) Authorized and approved travel to Sacramento, CA, for Mayor Carmen Montano and Vice Mayor Evelyn Chua to attend the Annual Conference of the League of California Cities scheduled on September 20 – 22, 2023, for a combined estimated total not-to-exceed amount of \$4,500.00 budgeted under the Individual Elected Official allocation for Conferences / Meetings / Trainings; (2) Authorized

and approved travel to Sacramento, CA, for Acting City Manager Ned Thomas to attend the Annual Conference of the League of California Cities scheduled on September 20 – 22, 2023, for a total estimated amount of \$2,250.00 budgeted under the City Manager's Office for Conferences / Meetings / Membership; and (3) Appointed Mayor Carmen Montano as the City's voting delegate and Vice Mayor Evelyn Chua as the alternate voting delegate for the 2023 Annual Conference.

- C8. Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Alps Lodging 2, Inc. for the Springhill Suites Hotel Project at 1201 Cadillac Ct. (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Approved and authorized the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Alps Lodging 2, Inc. for the Springhill Suites Hotel Project at 1201 Cadillac Ct.

- C9. Authorize the City Manager to Negotiate and Execute Amendment No. 1 to Master Agreement with Santa Clara Valley Water District for Flood Protection Improvements within Lower Calera Creek, Lower Penitencia Creek, and Lower Berryessa Creek for up to \$650,000.00; Authorize Reimbursement to the Santa Clara Valley Water District for City Improvements Completed as part of the Flood Protection Work, Project No. 3452; and Approve Budget Appropriation of \$145,692 from the Sewer Infrastructure Replacement Fund, and \$505,170.00 from the Water Fund Project No. 7100 Aging Water System/Seismic Improvement into Project No. 3452 (Staff Contact: Matt Cano, Deputy City Manager/Interim City Engineer, 408-586-3012)**

(1) Authorized the City Manager to negotiate and execute Amendment No. 1 to Master Agreement with Santa Clara Valley Water District for Flood Protection Improvements within Lower Calera Creek, Lower Penitencia Creek, and Lower Berryessa Creek for up to \$650,000.00; (2) Authorized reimbursement to the Santa Clara Valley Water District for City improvements completed as part of the Flood Protection Work, Project No. 3452; and (3) Approved budget appropriation of \$145,692.00 of the Sewer Infrastructure Replacement Fund, and \$505,170.00 from the Water Fund Project No. 7100 Aging Water System/Seismic Improvement into Project No. 3452.

- C10. Authorize the Acting City Manager to Execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 308 Sango Court Project by Milpitas Pacific Associates, L.P.; and Approve Budget Appropriation in the Amount of \$153,000.00 to the Non-Departmental Operating Budget in the TASP Fund (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

(1) Authorized the City Manager to execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 308 Sango Court Project by Milpitas Pacific Associates, L.P.; and (2) Approve budget appropriation in the amount of \$153,000.00 to the non-departmental operating budget in the TASP fund.

- C11. Receive and Review the FY 2022-23 Annual Report of Sole Source Contracts (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

Received and reviewed the FY 2022-23 Annual Report of Sole Source Contracts.

- C12. Adopt a Resolution Approving the City of Milpitas Investment Policy for Fiscal Year 2023-24 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

Adopted **Resolution No. 9267** of the City of Milpitas approving the Investment Policy for FY 2023-24.

**C13. City of Milpitas Mutual Aid Assistance Agreement with City of Fremont (Staff Contact: Jason Schoonover, Fire Chief, 408-586-2811)**

Adopted **Resolution No. 9268** authorizing the City Manager to execute the Mutual Aid Assistance Agreement with the City of Fremont for Emergency Response Services.

**C14. Adopt a Resolution Authorizing the City Manager to Execute Blanket Purchase Orders and Purchase Agreements with National Auto Fleet Group and Mission Valley Ford San Jose for a Combined Amount Not-to-Exceed \$1,200,000.00 and Approve Sole Source with Mission Valley Ford San Jose (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

Adopted **Resolution No. 9269** authorizing the City Manager to execute blanket purchase orders and purchase agreements with National Auto Fleet Group and Mission Valley Ford San Jose for a combined amount not-to-exceed \$1,200,000.00 and execute purchase agreements and approve sole source with Mission Valley Ford San Jose.

**C15. Receive an Update on the Emergency Repairs to the HVAC System and Equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

(1) Received an update on the emergency repairs to the HVAC system and equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings; and (2) Determined by a four-fifths vote that the condition continues to constitute an emergency.

**C16. Approve Three Youth Advisory Commission 2023 Scholarship Recipients (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Approved three Youth Advisory Commission Community Service Scholarships of \$600.00 each for a total amount of \$1,800.00.

## **COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE**

**18. Receive Report from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Community Task Force (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Acting City Manager Thomas introduced the item. Recreation and Community Services Deputy Director McLane, joined by Task Force Members Zakia Afrin and Giuliana Brahim, presented the report, and responded to questions from City Council.

Mayor Montano provided background on the Task Force and observed that future actions depended on obtaining grant funding.

Vice Mayor Chua commended members of the Task Force, thanked them for their work, and made a motion: to receive the report and the recommendation from the Task Force, and, in the future, revive the Task Force to look at the recommendations.

There were no public speakers.

Motion/Second: Vice Mayor Chua / Mayor Montano

Motion carried by the following:

AYES: Councilmembers Lien and Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

ABSENT: Councilmember Barbadillo

**COMMUNITY DEVELOPMENT****17. Receive Staff Report and Presentation; Provide Direction on the Options Related to the Development and/or Disposition of the Parcels Located at 1432–1488 South Main Street (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)**

Assistant City Manager Kantak introduced the item and presented the report.

There were no public speakers.

Vice Mayor Chua spoke in favor of returning with a Closed Session discussion on pricing and terms for the purchase of Parcel 1, deferring discussion on taking action related to Parcels 2 and 3, deferring discussion on declaring Parcels 2 and 3 as surplus land until a decision is made regarding Parcel 1 and continuing with prior council direction for tenant assistance. Councilmember Lien supported the direction. Councilmember Phan also supported the recommendation and added a suggestion to consider temporarily using the location for storage of the public safety fleet. Mayor Montano also spoke in favor of the direction.

Vice Mayor Chua reiterated the direction adding the suggestion from Councilmember Phan to use the parcels for storage. Assistant City Manager Kantak noted that it may not be feasible to use Parcel 3 for storage due to the estimate cost of \$1.4 million for needed repairs.

**ANNOUNCEMENTS AND FUTURE AGENDA ITEMS**

Vice Mayor Chua asked for staff to provide the City Council with an informational memorandum on lessons learned from the recent fire on Maui and how the City can update its emergency plan. There was unanimous support to move forward with the request.

Mayor Montano announced the India Independence Day celebration and referred staff to review the City's weed abatement policy.

**ADJOURNMENT**

Mayor Montano adjourned the meeting at 8:59 PM

*Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta*

## TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # C3.

as of 8/31/2023

**September 19, 2023 – Regular Meeting**

### **CLOSED SESSION**

- Labor Relations

### **INVOCATION** (Councilmember Barbadillo)

### **CONSENT CALENDAR**

1. Receive City Council calendar for September and October 2023 (City Clerk)
2. Approve City Council Meeting minutes of August 29, 2023 and September 5, 2023 (City Clerk)
3. Preview list of items for October 3, 2023 (City Clerk)
4. Councilmember Request List (City Clerk)
5. Commission Workplans and Accomplishments (City Manager)
6. Legislative Update on 2023 Bill Positions and Earmark Request (City Manager)
7. 2001 Tarob Court Reimbursement Agreement (Engineering)
8. 554 S. Main Street Improvement Agreement (Engineering)
9. 260 S. Milpitas Blvd O&M Agreement (Engineering)
10. Q4 Fiscal Status Report (Finance)
11. HDL Agreement (Finance)
12. Extension of agreement with NEOGOV for Applicant Tracking, Employee Onboarding, and Performance Management Software (Human Resources)
13. Liebert Cassidy and Whitmore Labor Relations Services Agreement (Human Resources)
14. Agreement with Asquare Inc. for Temporary Staffing Services (Human Resources)
15. Report on Emergency HVAC Repairs (Public Works)

### **COMMUNITY SERVICES**

16. Bike Lane Project Scope Confirmation (Engineering)
17. Park Historic Marker Project (Recreation)

### **LEADERSHIP & SUPPORT SERVICES**

18. Council Quarterly Prioritization (City Manager)

### **REPORTS**

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| <b>OPEN ITEMS</b>  |                                                                                                                                                          |                      |                       |                                                                                                                                                                      |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Request No.</b> | <b>Topic</b>                                                                                                                                             | <b>Submitted by:</b> | <b>Date Requested</b> | <b>STATUS and/or DATE scheduled on City Council meeting agenda:</b>                                                                                                  |
| 1                  | Review the City's weed abatement policy                                                                                                                  | Montano              | 8/15/2023             |                                                                                                                                                                      |
| 2                  | Provide the City Council with an informational memorandum on lessons learned from the recent fire on Maui and how the City can update its emergency plan | Chua                 | 8/15/2023             |                                                                                                                                                                      |
| 3                  | Look into what would be needed to convert the unused Teen Center space at the Sports Center to an indoor pickleball court.                               | Chua                 | 8/8/2023              | This item will be preliminarily reviewed by the City Manager's Office in August 2023. Any potential next steps will be determined following this preliminary review. |
| 4                  | Consider a Safe Parking Program to find businesses and churches that would allow the unhoused to sleep in their cars and vans                            | Montano              | 6/20/2023             | This item will be discussed at the next Council prioritization meeting.                                                                                              |

| <b>ACTIVE ITEMS</b> |                                                                                                                                                          |                      |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Request No.</b>  | <b>Topic</b>                                                                                                                                             | <b>Submitted by:</b> | <b>Date Requested</b> | <b>STATUS and/or DATE scheduled on City Council meeting agenda:</b>                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 5                   | Human Resources Director to conduct a job fair specific to the job openings at City Hall                                                                 | Chua                 | 5/2/2023              | June 2023 update: Staff is evaluating synergies with existing Economic Development activities and endeavors to which recruiting efforts can be incorporated and creates space for multiple events throughout the year increasing overall exposure to local talent                                                                                                                                                                                                                                |
| 6                   | Satellite Consulate Office                                                                                                                               | Montano              | 2/28/2023             | Approved to move forward at the June 2023 Quarterly City Council Workplan Items Prioritization Session on 6/20/23.                                                                                                                                                                                                                                                                                                                                                                               |
| 7                   | Have the City look into the possibility of a Citywide Senior Discount                                                                                    | Barbadillo           | 2/7/2023              | Approved to move forward at the June 2023 Quarterly City Council Workplan Items Prioritization Session on 6/20/23.                                                                                                                                                                                                                                                                                                                                                                               |
| 8                   | City Manager to look into defining either a standalone teen center or updating information to indicate the Senior Center also functions as a Teen Center | Chua                 | 9/20/2022             | June 2023 update: A Teen Center Survey has been released and is currently gathering responses. It is anticipated that data on the use of the center and/or its programs relative to it's proximity to home and/or school, and the type of programming desired will provide the input needed for the resolution to this request. Discussed at February 2023 Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Prioritization Discussion on 2/7/23. |



**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| <b>ACTIVE ITEMS</b> |                                                                                                                     |                      |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------|---------------------------------------------------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Request No.</b>  | <b>Topic</b>                                                                                                        | <b>Submitted by:</b> | <b>Date Requested</b> | <b>STATUS and/or DATE scheduled on City Council meeting agenda:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 9                   | Discuss converting vacant lot that was a basketball court into a community garden at Vasona and Adobe               | Montano              | 8/16/2022             | Staff conducted a survey of residents within an 800 foot radius from Adobe Ave., asking for feedback on potential recreational improvements to the area. Notification was sent via postcard to individual homes, NextDoor, Facebook, and Instagram. The survey was out for 3 weeks and 43 responses were received. Of those received, 16 identified themselves as living in the Adobe Ave/Vasona St. Neighborhood. The majority of residents currently use Adobe Ave to walk to school (Curtner Elementary) and as a pedestrian trail for fitness. Survey takers responded most favorably to turning the area into a parklet with some benches and greenery, followed by interest in a community garden. Residents indicated some concern over new uses of the area creating a noise and loitering issue in the neighborhood. Staff will present consolidate responses to the Mayor and City Council to receive further direction at the September 2023 priority setting meeting. |
| 10                  | City Manager look into implementing a workshop for small businesses on the bidding process for projects in the city | Chua                 | 8/9/2022              | June 2023 update: Staff was scheduled to provide a report to the Economic Development and Trade Commission on June 12, 2023 however that meeting with postponed due to lack of quorum. Staff will present to the Commission in August 2023. Further analysis on options and alternatives to connect more local and local small City of Milpitas businesses to our procurement processes will continue through 2023. Discussed at February 2023 Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Prioritization Discussion on 2/7/23                                                                                                                                                                                                                                                                                                                                                                                               |
| 11                  | Quarterly or Monthly crime statistics on Homekey Project                                                            | Chua                 | 6/7/2022              | Quarterly reports to City Council are ongoing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 12                  | Memorial Plaque in honor of youth skateboarder that passed away                                                     | Montano              | 6/7/2022              | This request was approved as part of the FY23-24 Budget. Staff will begin working with the family in Fall 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 13                  | Funding to hire a consultant for the Sunnyhills Historical Designation on a state level                             | Tran                 | 6/7/2022              | Based on staff research, the best way to try for a Historical District Designation is at the National Level. This can be wrapped into the approved CIP for the Historical Resources Plan update or through grant consultant California Consulting. Request will be included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| <b>ACTIVE ITEMS</b> |                                                                                                                                               |                      |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Request No.</b>  | <b>Topic</b>                                                                                                                                  | <b>Submitted by:</b> | <b>Date Requested</b> | <b>STATUS and/or DATE scheduled on City Council meeting agenda:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 14                  | Explore the policy for locking mechanisms on shopping carts for large commercial businesses                                                   | Tran                 | 4/19/2022             | June 2023 update: No change in status. Prior updates: MMC V-13-140 Mandatory Plan to Prevent Cart Removal includes requirement for physical measures to prevent cart removal however V-13-120 provides an exemption for cart owner that agrees to enter into a contract with a City-designated retrieval service. Staff suggestion to Council is to review this exemption and repeal it which would require all cart owners to have physical measures to prevent cart removal. Business outreach was conducted to grocery store operators in Q2 of 2022 to inquire about shopping cart removal and theft. Grocery stores contacted were Ocean Supermarket, Seafood City Supermarket, Chung Chou City, Milpitas Grocery Outlet, and 99 Ranch Market. |
| 15                  | Explore an ordinance or policy to reduce thefts and increase security in the commercial retail parking areas                                  | Chua                 | 4/5/2022              | June 2023 update: Security measures can be mandated for new or renovating development projects but cannot be mandated for existing businesses. The Police Department has taken action to partner with existing businesses, including McCarthy Ranch and the shopping center at Barber Lane with regard to education and deterrence, including placement of signage and cameras.                                                                                                                                                                                                                                                                                                                                                                     |
| 16                  | Request for Crossing Guards at McCandless and Montague Expressway and review wages for Crossing Guards                                        | Montano              | 4/5/2022              | Info Memos were sent to the City Council on 6/13/2022 and 1/27/2023. At the January 31st budget study session, Council voted to move to a contract model; Staff is in the middle of a citywide traffic study, which includes school aged pedestrian counts around schools in the City including the McCandless and Montague Expressway intersection.                                                                                                                                                                                                                                                                                                                                                                                                |
| 17                  | Evaluate reopening the childcare center with a non-profit organization running the center                                                     | Montano              | 2/1/2022              | No additional funds required to complete the internal review. Internal review can be done by late 2023. Approved during Spring Quarterly City Council Workplan Items Prioritization Discussion on 5/03/2022.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 18                  | Requested an appropriation in an amount not to exceed \$250,000 to procure a contract to address the streetlights that are pending fieldwork. | Tran                 | 2/1/2022              | At this time, staff has sufficient Council approved resources to address the remaining streetlight outages; however, will bring relevant actions for Council consideration, if needed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 19                  | Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars                                                        | Montano              | 11/16/2021            | Staff has identified a potential location on Great Mall Parkway and is solidifying the workplan for installation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| <b>ACTIVE ITEMS</b> |                                                                                                                                      |                      |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Request No.</b>  | <b>Topic</b>                                                                                                                         | <b>Submitted by:</b> | <b>Date Requested</b> | <b>STATUS and/or DATE scheduled on City Council meeting agenda:</b>                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>20</b>           | Request for the City to make the temporary third-party food deliver fee caps permanent and add additional provisions for enforcement | Phan                 | 11/16/2021            | June 2023 update: The City Attorney's Office has prepared a confidential memorandum regarding potential legal issues and implementation of a food delivery cap. As stated in that memorandum, should the Council wish to move forward with a cap, the next step will be to authorize the retention of a consultant to determine if a factual basis exists to support the need for a further food delivery cap.                                                              |
| <b>21</b>           | Have a picture of Albert Vogel Sr. put up in the Senior Center                                                                       | Montano              | 10/19/2021            | June 2023 update: The approved CC request included to add Maria Lemery and Albert Vogel to the Mural at the Senior Center. Staff has spoken to the artist and confirmed that additional images would not fit with the existing piece. However, due to the location of the current mural, additional mural panels featuring additional people could be added to the senior center entry way. Staff received interest from Mayor Montano to add Joanne Sousa to this request. |
| <b>22</b>           | Include a bust of Maria Lemire on the Mural in front of the Senior Center                                                            | Montano              | 8/17/2021             | June 2023 update: The approved CC request included to add Maria Lemery and Albert Vogel to the Mural at the Senior Center. Staff has spoken to the artist and confirmed that additional images would not fit with the existing piece. However, due to the location of the current mural, additional mural panels featuring additional people could be added to the senior center entry way. Staff received interest from Mayor Montano to add Joanne Sousa to this request. |
| <b>23</b>           | Staff to create a plan on how to increase the number of local businesses doing business with the City                                | Chua                 | 4/6/2021              | Staff is tracking this local business participation item as part of Council Priority Item 3 in Group 1 on this list; At 8/9/2021 Council meeting, Council voted that this item may have to come back for additional discussion because there may be some legal considerations.                                                                                                                                                                                              |
| <b>24</b>           | Staff to provide information on a landmark policy for the City of Milpitas                                                           | Tran                 | 3/16/2021             | June 2023 update: Request is being included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.                                                                                                                                                                                                                                                                                                                  |

**MILPITAS CITY COUNCIL  
AGENDA ITEM REQUESTS**

Item # C4.

| <b>ACTIVE ITEMS</b> |                                                                                                                        |                      |                       |                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------|------------------------------------------------------------------------------------------------------------------------|----------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Request No.</b>  | <b>Topic</b>                                                                                                           | <b>Submitted by:</b> | <b>Date Requested</b> | <b>STATUS and/or DATE scheduled on City Council meeting agenda:</b>                                                                                                                                                                                                                                                                                                                                            |
| <b>25</b>           | Amendment to the existing ordinance for third-party food delivery vendor services to prohibit regulatory response fees | Phan                 | 2/16/2021             | June 2023 update: The City Attorney's Office has prepared a confidential memorandum regarding potential legal issues and implementation of a food delivery cap. As stated in that memorandum, should the Council wish to move forward with a cap, the next step will be to authorize the retention of a consultant to determine if a factual basis exists to support the need for a further food delivery cap. |
| <b>26</b>           | Consider Community Museum and Park on Main St.                                                                         | Phan                 | 8/20/2019             | to Rules Subcommittee 8/23/2019. Moved to Specific Plan Community Conversation events.                                                                                                                                                                                                                                                                                                                         |



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Consider Recommendations from Mayor Montano for Removal from and Appointments to City Commissions, and Accept Commissioner Resignation (Contact: Mayor Montano, 408-586-3024)</b>                                                                                                                                                                                                               |
| <b>Category:</b>     | Consent Calendar-Leadership and Support Services                                                                                                                                                                                                                                                                                                                                                   |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                                                                                                                                                                                                                                                                           |
|                      | <u>Recommendation:</u> Receive Mayor Montano's recommendations and approve removals from the Science, Technology and Innovation Commission; Approve and confirm recommendations for appointments to City Commissions; Accept the resignation of Charles Lingle from the Energy and Environmental Sustainability Commission; and direct the City Clerk to post the notice of unscheduled vacancies. |

### **Background:**

The City of Milpitas has 13 Commissions (including the Measure F Oversight Committee), with members appointed by the Mayor and confirmed by the City Council. The Commissions advise the Milpitas elected officials on a variety of community interest and policy areas. Commissioner appointments and removals are governed by various sections of the California Government Code, Milpitas Municipal Code, and the adopted Milpitas Commissioner Handbook and By-Laws.

Any resident interested in serving on a City Commission must complete a Commission Application and submit the form to the City Clerk. Copies of the applications are provided to the Mayor for her consideration. Per Government Code 40605, in a general law city where the office of Mayor is an elective office, the Mayor with the approval of the City Council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute.

Certain commission seats have specific requirements to be filled including recommendation for appointment by outside organizations. One seat on the Economic Development and Trade Commission is designated as a Chamber of Commerce representative seat. One seat on the Public Safety and Emergency Preparedness Commission is designated as a Milpitas Unified School District representative seat. The Milpitas Chamber of Commerce and Milpitas Unified School District appoint representatives and those appointments are confirmed by the Milpitas City Council.

The Milpitas Commissioner Handbook states that all Commissioners are expected to attend all regular meetings. Commissioners absent from three or more meetings in a year may be subject to removal from the Commission.

In accordance with the City of Milpitas Commission By-Laws, any member or alternate member of a Commission who is no longer available to serve must submit a resignation in writing by sending a written communication to the Mayor and the City Clerk, per adopted City Council Resolution No. 7702. The written resignation must then be accepted and confirmed by City Council via action on the consent calendar at a regularly scheduled City Council meeting.

### **Analysis:**

Appointments and removals are as follows:

#### **Community Advisory Commission:**

1. Appoint Suraj Viswanathan to a full voting seat with an unexpired term ending January 2026

#### **Economic Development and Trade Commission:**

2. Confirm appointment of Victor San Vicente to the Chamber of Commerce representative seat with a term ending April 2024

**Public Safety and Emergency Preparedness Commission:**

1. Confirm appointment of Kelly Yip Chuan to the MUSD representative seat with a term ending June 2026

**Science, Technology and Innovation Commission:**

1. Remove Pulak Mehta from a full voting seat with an unexpired term ending January 2026
2. Remove Nasir Lalani from a full voting seat with an unexpired term ending January 2024

Pulak Mehta was appointed as a full voting commissioner on the Science, Technology and Innovation Commission on March 7, 2023 and prior to that served as an alternate commissioner. During this calendar year, Commissioner Mehta missed all scheduled meetings.

Nasir Lalani was appointed as a full voting commissioner on the Science, Technology and Innovation Commission on June 21, 2021. During this calendar year, Commissioner Lalani has missed three meetings on February 27, 2023, May 15, 2023, and August 21, 2023. In 2022, Commissioner Lalani missed four meetings on January 24, 2022, August 15, 2022, October 17, 2022, and December 19, 2022.

Commissioner Charles Lingle submitted his resignation from the Energy and Environmental Sustainability Commission.

All recommended Commissioner appointments have been reviewed and confirmed by the City Clerk's office.

By state law, a Notice of an Unscheduled Vacancy must be posted by the City Clerk to advertise the vacant Commission seats. Final appointment to the board, commission, or committee for the Unscheduled Vacancy shall not be made by the legislative body for at least ten working days after the posting of the notice in the Clerk's office. The notice of the unscheduled vacancy for the Energy and Environmental Sustainability and the Science, Technology and Innovation Commissions will be posted Wednesday, September 6, 2023.

**Fiscal Impact:**

There is no fiscal impact associated with this item.

**Recommendation:**

Receive Mayor Montano's recommendations and approve removals from the Science, Technology and Innovation Commission; Approve and confirm recommendations for appointments to City Commissions; Accept the resignation of Charles Lingle from the Energy and Environmental Sustainability Commission; and direct the City Clerk to post the notice of unscheduled vacancies.

**Attachments:**

1. Chamber and MUSD Appointments
2. Science, Technology and Innovation Commission Attendance Record 2022
3. Science, Technology and Innovation Commission Attendance Record 2023
4. Energy and Environmental Sustainability Commissioner Charles Lingle Resignation

**Suzanne Guzzetta**

---

**From:** Alex Andrade  
**Sent:** Monday, August 14, 2023 9:04 AM  
**To:** Kelly Yip-C; Daniel Degu; Suzanne Guzzetta  
**Cc:** Victor San Vicente; Jennifer Cullenbine  
**Subject:** RE: EDTC- Chamber Victor San Vicente

Thank you, Kelly. Receiving the Chamber's meeting agendas are helpful, but receiving a reoccurring meeting invitation is more important (please include meeting link, if possible). It would be helpful to include Daniel on the meeting invitation, too.

I am adding Daniel Degu (Economic Development Coordinator) and Suzanne Guzzetta (City Clerk) onto the email thread so that they are both informed and can assist as I have a feeling that Victor's selection may still require City Council consideration.

Good morning Suzanne - the Milpitas Chamber of Commerce selected Victor San Vicente as their representative for the Economic Development and Trade Commission. Does Victor need to be appointed formally through City Council consideration?

Please see Kelly's email for more background.

Thank you all,  
 Alex

Alex Andrade, MPA  
 Economic Development Director  
 Phone: (408) 586-3046 Email: aandrade@milpitas.gov  
 455 E. Calaveras Blvd., Milpitas CA 95035 www.milpitas.gov

-----Original Message-----

From: Kelly Yip-C [REDACTED]  
 Sent: Sunday, August 13, 2023 9:25 PM  
 To: Alex Andrade <aandrade@milpitas.gov>  
 Cc: Victor San Vicente [REDACTED]; Jennifer Cullenbine <[REDACTED]>  
 Subject: EDTC- Chamber Victor San Vicente

CAUTION: EXTERNAL SENDER

This email originated from outside the organization. Do NOT click links or open attachments unless you recognize the sender and know the content is safe. Report suspicious messages to the IT Helpdesk.

Hello Alex,

Hope all is well with you. As you may have heard, the Chamber had an election in July. Victor San Vicente is the person selected to represent at EDTC. I ran into Mayor Montano on 8/5 at the K On The Go Ribbon Cutting and asked her about the process for getting approved by council. She said it's whoever the organization chooses to represent at the meeting. In this case, our Chamber selected Victor. She said it does not need to go through the council for approval and that the

individual just shows up to represent. I'm in a similar situation for MUSD. I was selected to represent MUSD at Safety Commission. Carmen says for me to just show up and represent. Not sure if there's anything else needs to be done for Victor to have a vote on EDTC to represent the Chamber. Please let us know. Victor is ready to attend EDTC meetings. He's also copied on the email.

Btw...below is our new executive board.

President- Jennifer Cullenbine  
VP - John Agg & Kelly Yip-Chuan  
Treasurer- Anu Nakka  
Corp Sec- Armando Gomez

If you have any question, please feel free to contact me. I have copied Jennifer on the email. I know there was a confusion at our last chamber board meeting on EDTC presenting.

Jennifer- please send Alex a copy of our agenda for all regular meetings before our meetings. Alex and/or his staff attends the mtg to give us updates. If you like them to present, please coordinate and give extra time. I am here to help. 😊

Regards,  
Kelly Yip-Chuan



Science, Technology & Innovation Commission  
Attendance Record 2022

|                                | Jan       | Feb       | Mar       | Apr       | CANCELLED<br>May | Jun       | Jul | Aug       | Sep | Oct        | Nov | Dec        |
|--------------------------------|-----------|-----------|-----------|-----------|------------------|-----------|-----|-----------|-----|------------|-----|------------|
| Meeting Dates                  | 1/24/2022 | 2/28/2022 | 3/21/2022 | 4/18/2022 | 5/16/2022        | 6/20/2022 |     | 8/15/2023 |     | 10/17/2022 |     | 12/19/2022 |
| Albert Alcorn                  | A         |           |           |           |                  | P         |     | P         |     | P          |     | P          |
| Anh Bao                        | P         |           |           |           |                  | P         |     | P         |     | P          |     | P          |
| Amrita Mukherjee               | NA        | NA        | NA        | NA        | NA               | NA        |     | A         |     | P          |     | P          |
| Guy Haas                       | A         |           |           |           |                  | P         |     | A         |     | P          |     |            |
| Kevin Le                       | P         |           |           |           |                  | A         |     | P         |     | A          |     | P          |
| Nasir Lalani                   | A         |           |           |           |                  | P         |     | A         |     | A          |     | A          |
| Ratan Choudhury                | P         |           |           |           |                  | P         |     | P         |     | P          |     | P          |
| Jason Wong                     | A         |           |           |           |                  | A         |     |           |     |            |     |            |
|                                |           |           |           |           |                  |           |     |           |     |            |     |            |
|                                |           |           |           |           |                  |           |     |           |     |            |     |            |
|                                |           |           |           |           |                  |           |     |           |     |            |     |            |
| Alt1. Abhijit Pandey           | P         |           |           |           |                  | A         |     |           |     | P          |     |            |
| Alt2. Pulak Mehta              | A         |           |           |           |                  | A         |     | A         |     | A          |     | A          |
|                                |           |           |           |           |                  |           |     |           |     |            |     |            |
| Councilmember Garry Barbadillo |           |           |           |           |                  |           |     |           |     |            |     |            |
| Daniel Nam                     |           |           |           |           |                  |           |     |           |     |            |     |            |
| Vikram Chand                   |           |           |           |           |                  |           |     |           |     |            |     |            |
|                                |           |           |           |           |                  |           |     |           |     |            |     |            |
|                                |           |           |           |           |                  |           |     |           |     |            |     |            |

**Science, Technology & Innovation Commission**  
**Attendance Record 2023**

|                               | Jan | Feb              | Mar | Apr              | May              | Jun              | Jul | Aug              | Sep              | Oct | Nov | Dec |
|-------------------------------|-----|------------------|-----|------------------|------------------|------------------|-----|------------------|------------------|-----|-----|-----|
| <b>Meeting Dates</b>          |     | <b>2/27/2023</b> |     | <b>4/17/2023</b> | <b>5/15/2023</b> | <b>6/19/2023</b> |     | <b>8/21/2023</b> | <b>9/18/2023</b> |     |     |     |
| Albert Alcorn (2/2/21)        |     | P                |     | P                | P                | P                |     | P                |                  |     |     |     |
| Anh Bao                       |     | P                |     | P                | P                | A                |     | P                |                  |     |     |     |
| Amrita Mukherjee (8/9/22)     |     | P                |     | P                | P                | P                |     | P                |                  |     |     |     |
| Kevin Le (6/21/21)            |     | P                |     | P                | P                | P                |     | A                |                  |     |     |     |
| Nasir Lalani (6/21/21)        |     | A                |     | P                | A                | P                |     | A                |                  |     |     |     |
| Ratan Choudhury               |     | P                |     | P                | P                | A                |     | A                |                  |     |     |     |
| Pulak Mehta (3/7/23)          |     | A                |     | A                | A                | A                |     | A                |                  |     |     |     |
| Jason Wong                    |     | A                |     | NA               | NA               | NA               | NA  | NA               | NA               | NA  | NA  | NA  |
|                               |     |                  |     |                  |                  |                  |     |                  |                  |     |     |     |
| <b>Voting Members Present</b> |     | <b>5</b>         |     | <b>6</b>         | <b>5</b>         | <b>4</b>         |     | <b>3</b>         |                  |     |     |     |
|                               |     |                  |     |                  |                  |                  |     |                  |                  |     |     |     |
| Alt.1 VACANT                  |     |                  |     |                  |                  |                  |     |                  |                  |     |     |     |
| Alt.2 Suresh Sinha (3/7/23)   |     | NA               |     | P                | A                | P                |     | A                |                  |     |     |     |
| Std. Aahan Shah (11/1/22)     |     | NA               |     | P                | P                | A                |     | P                |                  |     |     |     |
|                               |     |                  |     |                  |                  |                  |     |                  |                  |     |     |     |

|                                |  |  |  |   |   |  |  |  |  |  |  |  |
|--------------------------------|--|--|--|---|---|--|--|--|--|--|--|--|
| Councilmember Garry Barbadillo |  |  |  | P | A |  |  |  |  |  |  |  |
| Ashwini Katak                  |  |  |  |   |   |  |  |  |  |  |  |  |
| Daniel Nam                     |  |  |  |   |   |  |  |  |  |  |  |  |
| Vikram Chand                   |  |  |  |   |   |  |  |  |  |  |  |  |
| Jason Pham                     |  |  |  |   |   |  |  |  |  |  |  |  |
|                                |  |  |  |   |   |  |  |  |  |  |  |  |

**Suzanne Guzzetta**

---

**From:** sguzzetta@milpitas.gov  
**Subject:** FW: Another Commission Resignation

**From:** Chuck Lingle [REDACTED]  
**Sent:** Tuesday, August 15, 2023 12:44 PM  
**To:** Elaine Marshall <[emarshall@milpitas.gov](mailto:emarshall@milpitas.gov)>  
**Subject:** Fwd: April 19th Energy and Environmental Sustainability Commission Meeting

**CAUTION: EXTERNAL SENDER**

This email originated from outside the organization. Do NOT click links or open attachments unless you recognize the sender and know the content is safe. Report suspicious messages to the IT Helpdesk.

Hi Elaine,  
 I'm not sure if you saw this email from back in April so I'm forwarding it again.

Back then, I made the hard decision to resign my position as commissioner and need to stick to it.

Please pass along my apologies to the rest of the team. If there is anything I need to do to make my resignation official please let me know.

Sincerely,  
 Chuck

----- Forwarded message -----

**From:** Chuck Lingle [REDACTED]  
**Date:** Sun, Apr 16, 2023 at 7:31 PM  
**Subject:** Re: April 19th Energy and Environmental Sustainability Commission Meeting  
**To:** Elaine Marshall <[emarshall@milpitas.gov](mailto:emarshall@milpitas.gov)>

Hi Elaine,  
 Over the last few months, I've become encumbered with work and other matters which have challenged the time I have available to spend with my family. I've therefore made the hard decision to resign my position as commissioner.

Please pass along my sincerest regards to the rest of the committee - I hope this doesn't challenge their ability to reach a quorum to advocate for more Milpitas sustainability measures.

I apologize for such short notice and any disruption this may cause.

Sincerely,  
 Chuck Lingle

On Fri, Apr 14, 2023 at 8:49 AM Elaine Marshall <[emarshall@milpitas.gov](mailto:emarshall@milpitas.gov)> wrote:

Hello Commissioners

Please find attached the agenda for next week's Commission Meeting. Please confirm your attendance with me by end of day Monday, so that we can ensure we have quorum for the meeting.

Have a great weekend!

Elaine



**Elaine Marshall**

**Deputy Public Works Director**

**Phone** (408) 586-2603

**Email** [emarshall@milpitas.gov](mailto:emarshall@milpitas.gov)

1265 N. Milpitas Blvd., Milpitas CA 95035

[www.milpitas.gov](http://www.milpitas.gov)





## CITY OF MILPITAS AGENDA REPORT (AR)

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>     | <b>Authorize and Approve Travel to Sacramento, CA, for Councilmember Hon Lien to Attend the League of California Cities <i>Annual Conference and Expo</i> to be Held on September 20-22, 2023, for an Estimated Total Not-to-Exceed Amount of \$2,250 Budgeted under the Individual Elected Official Allocation for Conferences/Meetings/Trainings (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)</b> |
| <b>Category:</b>       | Consent Calendar-Leadership and Support Services                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Meeting Date:</b>   | 9/5/2023                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Recommendation:</b> | Authorize and approve travel to Sacramento, CA, for Councilmember Hon Lien to attend the Annual Conference of the League of California Cities scheduled on September 20 – 22, 2023, for an estimated total not-to-exceed amount of \$2,250 budgeted under the Individual Elected Official allocation for Conferences / Meetings / Trainings.                                                                                 |

### **BACKGROUND:**

The League of California Cities holds its Annual Conference and Expo each September in Sacramento, California. This highly attended annual conference is scheduled for September 20 – 22, 2023. The Councilmember's attendance at the League of CA Cities Annual Conference and Expo will allow her to engage with other elected and city officials. During this conference, attendees will have a chance to attend state-mandated training. They will learn about a wide range of topics, such as housing, infrastructure, emergency preparedness, council-city manager relations, communications, mental health issues, civic engagement, and current and trending issues in the legislature. The preliminary agenda is attached to this report.

### **ANALYSIS:**

The City of Milpitas Travel and Expense Policy requires all travel for the elected officials and City Manager to be approved by the City Council. Council approval of this request will allow Councilmember Hon Lien to garner additional knowledge from other city's elected officials to share with their colleagues. Continued participation and attendance in league conferences also ensure that the Milpitas community is fully represented at the regional and state levels.

### **POLICY ALTERNATIVE(S):**

Not Applicable

### **FISCAL IMPACT:**

The estimated expense for the Sacramento League of California Cities Annual Conference and Expo, including the registration fee, is \$2,250 for each attendee. To date, Councilmember Hon Lien has not utilized her Individual Elected Official allocation of \$10,000 for Conferences/Meetings/Memberships.

### **California Environmental Quality Act (CEQA):**

The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

### **RECOMMENDATION:**

- 1) Authorize and approve travel to Sacramento, CA, for Councilmember Hon Lien to attend the Annual Conference of the League of California Cities scheduled on September 20 – 22, 2023, for an estimated

not-to-exceed amount of \$2,250 budgeted under the Individual Elected Official allocation for Conferences / Meetings / Trainings

**Attachment(s):**

1. Draft conference agenda
2. Council budget tracking

## Schedule at a Glance

ATTACHMENT

**Schedule is subject to change.**

**[Click here to view the schedule of educational sessions.](#)**

**Wednesday, Sept. 20**

**Registration Open/Voting Delegates Booth Open**

8:00 a.m.–6:00 p.m.

**City Clerks Workshop**

(additional registration required)

8:30 a.m.-1:00 p.m.

**AB 1234 Ethics Training**

10:00 a.m.-noon

**Regional Division Lunches\*\***

11:30 a.m.-1:15 p.m.

**First Time Attendee Orientation**

12:45-1:15 p.m.

**Opening General Session\***

1:30-3:30 p.m.

**Concurrent Sessions**

3:45-5:00 p.m.

**Grand Opening Expo Hall and Host City Reception\***

5:00-7:00 p.m.

**CitiPAC Leadership Reception**

7:00-10:00 p.m.

**Thursday, Sept. 21****Registration Open/Voting Delegates Booth Open**

8:00 a.m.-4:00 p.m.

**Concurrent Sessions**

8:30-9:45 a.m.

**Petition Resolutions Due**

8:30 a.m.

**Expo Hall Open**

9:00 a.m.-3:00 p.m.

**General Session\***

10:00-11:30 a.m.

**Attendee Lunch in Expo Hall**

11:30 a.m.-1:00 p.m.

**Resolutions Committee**

1:00-2:30 p.m.

**Concurrent Sessions**

1:00-5:15 p.m.

**Regional Division\*\* and Caucus Events**

Evening

**Friday, Sept. 22****Registration Open**

7:30 a.m.-12:30 p.m.

**Regional Division Breakfasts\*\***

7:30-9:00 a.m.

**Concurrent Sessions**



8:00-10:45 a.m.

**General Assembly (note new time!)**

8:30-10:30 a.m.

**AB 1661 Sexual Harassment Prevention Training**

8:45-10:45 a.m.

**Closing General Session\***

11:00 a.m.-12:30 p.m.

**\*No competing events may be scheduled during this time.**

**\*\*Check with your regional public affairs manager for specific day/time.**





*Schedule subject to change.*

*Speaker names will be added as they are confirmed.*

*MCLE sessions are noted on pages 14-15.*

## **Wednesday, Sept. 20**

### **8:30 a.m.-1:00 p.m. City Clerks Workshop (additional registration required)**

#### **2024 Elections: Trends, Legislation, and Practical Advice**

The 2024 elections are right around the corner. This session will focus on trends for the upcoming local and statewide elections, related legislation and case law, and practical tips for preparing for the worst while hoping for the best in our elections.

**Speakers:** Randi Johl, Legislative Director / City Clerk, Temecula

Paul Mitchell, Owner, Redistricting Partners

Holly Whatley, Shareholder, Colantuono, Highsmith & Whatley, PC

### **3:45-5:00 p.m. Concurrent Sessions**

#### **Building a Culture of Accountability in Your Police Department**

It is more important than ever before to reinforce trust between law enforcement agencies and citizens. Law enforcement must build, bolster, and demonstrate transparency and accountability within their departments. Hear from law enforcement leaders from throughout California about their strategies for building a culture of accountability through community conversations, transparent policies, technology deployment, and public auditing.

**Moderator:** Holly Beilin, Director, Communications, Flock Safety

**Speakers:** Angela S. Averiet, Chief of Police, City of Los Altos

Danny Renfrow, Chief of Police, Truckee Police Department

#### **Building Mobile Crisis Response Teams**

BeWell OC and the West Hollywood Care Team have a successful track record of providing compassionate care to vulnerable community members, including the LGBTQ+ community. In this session, gain valuable insight into how you can bring similar programs to your own city. This includes understanding how to provide compassionate care, build effective mobile crisis response teams, secure funding for innovative programs, and replicate successful models in your own communities. *Planned with the Cal Cities LGBTQ Caucus.*

**Moderator:** Tyler Windell Williamson, Mayor, City of Monterey

**Speakers:** Karen W. Linkins, Principal, Desert Vista Consulting  
 Corri Planck, Human Services Manager, City of West Hollywood  
 Sepi Shyne, Mayor, City of West Hollywood

### **California Cannabis: Seven Years After Legalization**

It's been almost seven years since voters approved Prop. 64 to regulate and authorize cannabis for adult use. Now the question is: How are we doing? Join top regulatory, industry, and local representatives for a coffee table-style conversation on the state of the industry, emerging issues, and how to effectively regulate cannabis in your community.

**Moderator:** Barigye McCoy, Chief of Communications, Culture Cannabis Club

**Speakers:** Angela Hill, Deputy Director of Governmental Affairs, Department of Cannabis Control

Scott Matas, Mayor, City of Desert Hot Springs

Amy O'Gorman Jenkins, President, Precision Advocacy

### **Fees! You Got 'Em. How Do They Work Today?**

Every city has fees, and the state has plenty of laws governing them. Receive an update on the full range of municipal fees, including general, regulatory, development impact, and property-related fees, as well as recent legal developments. Panelists will discuss the impact of a case allowing property-related fees for parts of the mandate viewed as "trash fees" on stormwater fees, changes to franchise fees under the Zolly Case, and how the proposed California Business Roundtable measure would severely restrict municipal fees and other revenue tools.

**Moderator:** Timothy William Seufert, Managing Director, NBS

**Speakers:** Michael G. Colantuono, Managing Shareholder, Colantuono, Highsmith & Whatley, PC

Christina Judith Turner, City Manager, Morgan Hill

### **Homelessness to Housed: How Cities Create and Leverage Strong Partnerships**

City leaders in every part of California struggle with homelessness. A 2023 Public Policy Institute of California Statewide survey found that seven out of every 10 Californians view homelessness as a big problem in their area. While federal and state resources are essential, it is local leadership and political will where strong collaborative partnerships are formed and sustainable solutions are created. This panel brings together federal, county, city, and nonprofit leaders for a discussion on best practices in effective street outreach engagement, public/private shelter and housing partnerships, and how to leverage funding to its maximum impact.

**Moderator:** Helene Schneider, Senior Regional Advisor, U.S. Interagency Council on Homelessness

**Speakers:** Elizabeth Funk, CEO and Cofounder, DignityMoves

Mike LeBarre, Mayor, King City

Terri Maus-Nisich, Assistant County Executive Officer – Retired, County of Santa Barbara

### **Minority Leaders Reshaping Local Government**

California has become increasingly diverse and so too are the faces of local government. This panel will discuss all the challenges that minority leaders face in local government and ways to manage these challenges, including how to create real diversity, equity, inclusion, and belonging. The panel will explore how each of these leaders has faced their own challenges in the communities they've served and the ways they've turned these challenges into opportunities for learning, growth, and management.

**Moderator:** Domenica Megerdichian, Deputy City Manager, South Pasadena

**Speakers:** Arminé Chaparyan, City Manager, South Pasadena

Ingrid Hardy, Assistant City Manager, Thousand Oaks

Carmen Nichols, Assistant City Manager, Camarillo

## **Thursday, Sept. 21**

### **8:30-9:45 a.m. Concurrent Sessions**

#### **A Tale of Two Cities: The Mental Health Crisis**

The nation's mental health crisis, exacerbated by pandemic isolation, has prompted a new wave of advocacy for de-stigmatization, equitable access, and open dialogue. It is critical that we find new ways of delivering care. Mental health is often linked to homelessness and crime, with hospitals and jails serving as default, cyclical destinations. Data shows that this is a tale of two cities, with the most vulnerable populations facing the most difficulties. In this fireside chat, speakers will explore the mental health data from more than 300 California communities and propose new frameworks for addressing the needs of the community.

**Speakers:** Chad Castruita, CEO, Care Solace

Gilbert Livas, Retired City Manager, Downey

#### **Building in Economically Challenging Times**

Against the backdrop of less state funding, more state regulations, and a slowing economy, many cities are struggling to meet their housing goals, secure state financing for their civic projects, and attract private developers to stimulate economic growth. A growing number of cities have endorsed public-private partnerships for libraries, city halls, convention centers, emergency services, housing, and other buildings. What can we learn from these developments? *Planned with the Cal Cities Latino Caucus.*

**Moderator:** Grace Ruiz Stepter, Director, City of Anaheim Housing and Community Development

**Speakers:** Korin Crawford, Executive Vice President, Griffin Swinerton

Yvonne Martinez Beltran, Council Member, City of Morgan Hill

Joy Silver, Chief Strategy Officer, Community Housing Opportunities Corporation  
Ernesto M. Vasquez, Founder and CEO, SVA Architects, Inc.

### **Case Study: Response to Homelessness in the City of Rialto**

Recognizing deep-rooted issues beyond the normal parameters of policing, the Rialto Police Department teamed up with Social Work Action Group to enhance the city's response to homelessness. The nonprofit, which focuses on helping individuals and families achieve sustainable independence through community support, provided the city with outreach expertise and new resources. The drastic improvements in quality of life issues and homeless-related activities are now highlighted in academia as a model for public administration.

**Moderator:** Rafael Trujillo, Council Member, City of Rialto

**Speaker:** Aaron Anthony Petroff, Vice President, Social Work Action Group

### **Navigating the New State Housing Laws**

California has passed more than 100 new state housing laws affecting cities since 2016. Many cities around the state have limited planning and housing capacity and are overwhelmed by the task of understanding and implementing these laws. In this panel from the Turner Center for Housing Innovation at the University of California, Berkeley, learn how to understand these new state housing laws, the "tricks of the trade" developers are learning about using in cities, and how cities can effectively implement these laws with limited capacity.

**Moderator:** David Garcia, Policy Director, UC Berkeley Turner Center for Housing Innovation

**Speakers:** Barbara Ehrlich Kautz, Partner, Goldfarb Lipman LLP

Megan Kirkeby, Deputy Director, Housing Policy Development, California Department of Housing and Community Development (HCD)

David T. Loya, Community Development Director, City of Arcata

### **The Mayor Said What?! Staying Ahead of the News**

News and information are often sourced from not only local media outlets but also social media. To ensure that your agency's message is relevant, and its reputation is sterling, you must tune into the world of media relations and social listening. Navigating of-the-moment buzz includes monitoring news and social sources, cultivating relationships with reporters and influencers, and analyzing data from diverse channels. Learn how public agencies can pair proactive listening with data analysis to get a leg up on their local scuttlebutt.

**Moderator:** Katherine Juhl Griffiths, Principal, Tripepi Smith

**Speakers:** Sharon Gonsalves, Director of Government Affairs, Renne Public Law Group, LLP DBA Renne Public Policy Group

Peter Pirnejad, City Manager, Los Altos Hills

## **11:45 a.m.-12:05 p.m. Speed Session**

### **Centralized Customer Relations**

Beverly Hills has created a centralized customer relations program to provide concierge-level access to information and non-emergency assistance to residents, businesses, and visitors. Get a speedy look at how Beverly Hills developed a high-performing centralized customer service program, some of the lessons learned, and the benefits to date.

**Speaker:** Michael V. Hensley, Deputy Director of Public Works, City of Beverly Hills

### **12:15-12:35 p.m. Speed Session**

#### **Introduction to the California Fire and Rescue Mutual Aid System**

The California Fire and Rescue Mutual Aid System provides firefighters and fire engines to local communities during all-hazard disasters. The concept of mutual aid is based on neighbor helping neighbor. This session will give leaders an understanding of how their community benefits from the system and how their fire department participates.

**Speaker:** Brian S. Marshall, Fire and Rescue Chief, California Governor's Office of Emergency Services

### **1:00-2:15 p.m. Concurrent Sessions**

#### **"What the Bleep!" Limits of Public Comment**

What are the limitations of public comment? What is protected speech and when can public comment be limited? In this panel discussion, hear stories and examples of how and when public comments can be terminated. The panel will also review the newly enacted SB 1100 (Cortese, 2022), which allows a presiding officer to remove a person from a public meeting.

**Speakers:** Henry Castillo, Associate, Best, Best and Krieger  
Lauren Langer, City Attorney- West Hollywood, Best Best & Krieger  
Christopher Lopez, City Manager, Livingston

#### **Adapting Main Street for a Changing Retail Landscape**

The state of retail has changed. New research from the National League of Cities shows that retail is rebounding, but downtowns are still affected by the growth in flexible, work-from-home schedules. The session will begin with a brief presentation about important retail trends for cities, followed by a moderated conversation with three city leaders about lessons learned and creative strategies that promote downtown and main street vitality in a post-pandemic world.

**Moderator:** Lena Geraghty, Director, Sustainability and Innovation, National League of Cities

**Speakers:** Amanda Elliott, Senior Program Officer and Director of Cal Programs, National Main Street Center  
David M. Sander, Vice Mayor, City of Rancho Cordova  
Sepi Shyne, Mayor, City of West Hollywood

#### **Assets and Opportunities: Surplus Land Act 101**



Cities across the state are examining their land assets and considering possibilities for the future. But they're not the only ones. The state has revamped the Surplus Land Act and its implementing regulations. Drawing from the speakers' experience as city planners, city attorneys, and planning and development consultants, attendees will learn the ins and outs of the Surplus Land Act. Despite surface concerns, the law can be a valuable tool for cities' housing, economic development, and community improvement plans.

**Speakers:** Genesis Crank, Planning & Community Development Administrator, City of Barstow

Matthew Summers, City Attorney, Barstow, Calabasas, Ojai, Colantuono, Highsmith & Whatley, PC

### **Black Health and Wellness: Healthcare Services within Communities of Color**

African Americans seek and access health care services like any other ethnic group. But in most cases, they are provided subpar or negligent care. In light of the 2020 conversation about racism as a health crisis, this panel will explore and provide insight into how communities of color can seek adequate health care services and self-advocate for top-tier health care services that address mental, reproductive, and maternal health, as well as the overall healthcare needs of millions of African Americans in California. *Planned with the Cal Cities African American Caucus.*

**Speakers:** Lehman E Black III, Pediatrician, Retired

Rhonda M. Smith, Executive Director, California Black Health Network

### **Enhancing Emergency Preparedness Through Whole Community Collaboration and Partnerships**

Collaboration between cities, counties, and other stakeholders is crucial to disaster preparation, response, recovery, and mitigation. Hear from community leaders about effective strategies, lessons learned, and resources that can enhance local emergency management and disaster response. Speakers will also discuss how promoting authentic community engagement can strengthen community resilience and trust while reducing risks (and costs) in the face of disasters.

**Moderator:** Robert Madrid, Senior Associate, Operations Support (Planning), Team Rubicon

**Speakers:** Nancy A. Brown, PhD, Community Preparedness Program Manager, Sonoma County Department of Emergency Management

Patrice Chamberlain, Health Program Specialist, California Department of Public Health

Jason Roberts, Council Member, City of Vacaville

### **One City, One Team: Establishing Effective City Manager-Council Relations**

Running cities is complex and challenging, even when things are going well. The key to a thriving city is establishing productive relationships between the city council and the city manager. This means that choosing the right person as city



manager and providing them with proper support and guidance is the most crucial responsibility of the city council. In this session geared for city managers and city councils, learn how you can navigate issues — both common and difficult — to create significant results for your community.

**Moderator:** Reva Feldman, Strategic Advisor, Avenu Insights and Analytics

**Speakers:** Aaron Adams, City Manager, Temecula

Rachelle Arizmendi, Former Mayor, City of Sierra Madre and Government Industry Advisor, Avenu Insights and Analytics

Patricia Lock Dawson, Mayor, City of Riverside

### **Stop Hate: How Local Elected Officials Can Combat Rising Hate Crimes and Hate Speech**

Whether it's community members being targeted based on their appearance or hate speech in our council chambers, it is key that local elected officials directly speak to rising hate and help lead the city's response. Panelists will share their experiences with hate crimes and hate speech at the local level, lessons learned, and tips on how local elected officials can support their constituencies in this time of rising polarization.

**Moderator:** Tessa Rudnick, Mayor Pro Tem, City of El Cerrito

**Speakers:** Letecia "Holly" Tillman, Council Member, City of Clayton

Kevin Wilk, Council Member, City of Walnut Creek

Cesar Zepeda, Council Member, City of Richmond

### **12:45-1:05 p.m. Speed Session**

#### **Opt In: Why Cities Should Care About Digital Rights**

Digital technology is increasingly embedded into how our cities work. We deploy and operate cameras, sensors, and other technologies that collect data to help advance transportation, public safety, and climate goals. How can we help our constituents understand how that data is used to manage city operations?

Drawing on examples from Long Beach and a growing coalition of California cities, this session will discuss the importance of being transparent and engaging with residents about the use of smart technologies in the public realm, as well as the intersections with data privacy and the emerging concept of digital rights.

**Speaker:** Ryan Kurtzman, Smart Cities Program Manager, Long Beach

### **1:15-1:35 p.m. Speed Session**

#### **Building America's Greenest City Hall**

In 2023, Sunnyvale will complete the nation's first net zero energy city hall. The project will also achieve a LEED Platinum rating for sustainability. This session will describe the development of the project — from initial community outreach to planning, financing, design, and construction — with an emphasis on its sustainable features, such as the solar energy system and microgrid.

**Speaker:** Kent Steffens, City Manager, Sunnyvale

### **1:45-2:05 p.m. Speed Session**

### **From Idea to Action: Budgeting for Strategic Impact**

To create meaningful outcomes, city leaders need to identify strategic priorities, resources, and opportunities early in the budget process. No matter how you budget or measure performance, you can make small and meaningful changes that increase your budget framework maturity, better align your processes with your strategic plan, track your progress, and drive community outcomes. In this session, dive into best-in-class examples of budget planning and performance frameworks that led to exceptional progress.

### **2:15-2:35 p.m. Speed Session**

#### **AI in Governance: Opportunities and Ethical Considerations**

Machine learning has the potential to reshape governance and create a sustainable future for communities — for good or ill. It can enhance public safety, refine transportation, and promote environmental sustainability. Explore the challenges faced by governing bodies and how artificial intelligence (AI) can empower decision-makers with data-driven insights, with an emphasis on unbiased data, algorithmic fairness, transparency, and accountability. Attendees will leave the session with an appreciation for AI's transformative impact on policy, its applications, and crucial ethical challenges for responsible, equitable use.

**Speaker:** Scott Larson, CFO, Inquisio.AI Inc

### **2:30-3:45 p.m. Concurrent Sessions**

#### **A Local Agency's Guide to HCD's Housing Accountability Unit**

Get practical, hands-on tips to help your agency better comply with state housing law. Panelists will provide an overview of the state's Housing Accountability Unit, examples of common accountability cases, and recommendations for documenting state housing law compliance. This session is tailored both for local agency staff processing residential development projects and those working on land use changes in the general plan or zoning code.

**Speakers:** Brian Heaton, Senior Housing Accountability Manager, California Department of Housing and Community Development (HCD)  
David Zisser, Assistant Deputy Director, CA Department of Housing and Community Development

#### **Connecting and Engaging to Make a Difference: Mentoring, Not Managing**

Connecting with team members is crucial to achieving organizational goals and creating high-functioning, passionate, and effective teams. In this session, focus on simple tactics for connecting and engaging with your team in a way that strengthens their skills, fosters open communication, gives work a sense of meaning, and unlocks your organization's full potential. The discussion will cover active listening and ways to empower team members, promote ownership and growth, and encourage togetherness. *Planned with the Cal Cities Women's Caucus.*

**Moderator:** Priya Bhat-Patel, Mayor Pro Tem, City of Carlsbad

**Speaker:** Sonya Harris, Founder and CEO, Sage Strategies

### **How To Solve Big City Problems in Small Towns**

Anyone that has worked in a small town or city understands the challenges and opportunities that exist in smaller communities. This interactive session will bring together elected officials and city managers to discuss the trials, tribulations, and triumphs of working through complex problems in a small town. The panel of experts will share their perspective from the council dais and the staff desk on how to work through local government challenges that affect all cities, regardless of size, when the role of administrator, volunteers, elected, resident, and tenant cross the traditional lanes established in a council-manager form of government.

**Moderator:** Peter Pirnejad, City Manager, Los Altos Hills

**Speakers:** Laurel Prevetti, Town Manager, Los Gatos

Marico Sayoc, Former Mayor, Town of Los Gatos

Frank V. Zerunyan, Council Member, Rolling Hills Estates and Professor, USC

### **Increasing Collaboration Between Local Governments and Utilities on Installing Infrastructure**

Installing infrastructure is an expensive process, especially when you factor in the cost to resurface streets after a project is complete. Increasing the communications between local governments, utilities, and other stakeholders can reduce costs for everyone, minimize traffic interruptions, and optimize projects so that multiple projects can be completed at once. Learn about potential technological solutions and how city leaders can better track projects that have the potential for collaboration between multiple entities.

**Moderator:** Justin Skarb, VP, Government & Community Affairs, California Water Service

**Speakers:** Reed A. Reisner, Division Manager, SCE

Kenneth Rosenfield, ASCE Region 9 Director, ASCE Region 9

### **Reducing Wildfire Risk to Wildland-Urban Interface Communities**

Wildfires are hotter, more common, and frequently, popping up in new places. In this panel, learn how to understand and quantify the wildfire risk your community faces and prioritize key mitigations. The panel will also explore opportunities and gaps in the current policy framework through a review of relevant codes and statutes. Speakers will share best practices and model ordinances from throughout the San Francisco Bay Area to show how regional cooperation can create fire-adapted communities that comply with the often-contradictory requirements of local housing elements.

**Moderator:** Jonathan V. Holtzman, Founding Partner, Renne Public Law Group

**Speakers:** Keith May, Deputy Chief, Berkeley Fire Department

Dave Winnacker, Fire Chief, Moraga-Orinda Fire District

**4:00-5:00 p.m.****The Joint Powers Act and Its Utilization in California**

California has more joint powers authorities (JPAs) than any other state by a considerable margin. Learn how and why JPAs are formed and more specifically, the how and why of investment pooling within the JPA legal and administrative framework. After this session, attendees will understand the rationale for forming a JPA investment pool, the benefits of diversifying a city's investment program with JPA investment pools, and how JPA investment pools are managed for the benefit of participating public agencies.

**Speakers:** Jenna Magan, Partner, Orrick, Herrington & Sutcliffe LLP  
Thomas N Tight II, Managing Director, Public Trust Advisors

**4:00-5:15 p.m. Concurrent Sessions****After the Storm: Lessons Learned from the California Storms**

The last two years brought a string of storms that battered California's Central Coast. Cities along the coast experienced an unprecedented amount of rainfall that wreaked havoc, caused mudslides and evacuations, and taxed city infrastructure. Quickly and collaboratively managing the minute-by-minute impacts and recovering from the effects of a major disaster is a crucial component of a public agency's resilience. Join the California JPIA and Central Coast cities to learn how they managed and recovered from disasters.

**Moderator:** Tim Karcz, Senior Risk Manager, California Joint Powers Insurance Authority

**Speakers:** James Blattler, Emergency Manager, San Luis Obispo City Fire Department

Jorge Garcia, Interim City Manager, Pismo Beach

Gregory Kwolek, Public Works Director, City of Morro Bay

**Building Relationships Between Police Departments and the Community**

It is critical to build and maintain strong relationships between police departments and the communities they serve. The community must have trust and confidence in the police department that protects them. In this panel discussion, three seasoned police chiefs will share their experiences building and maintaining positive community relationships. Attendees will learn strategies to build and strengthen relationships with their communities.

**Moderator:** Jeb Brown, Senior Counsel, LCW

**Speakers:** Larry V. Gonzalez, Chief of Police, City of Riverside

Jeremiah Hart, Chief of Police, Torrance Police Department

**DEI Recruitment at All Levels of Your Organization**

Cities deliver services to communities that are becoming more diverse every day, which means their teams need to become more diverse. Building a strong team with different cultural backgrounds requires an environment that fosters respect for others and makes your organization a welcoming place for all. It also

requires the right recruitment process, starting with the hiring of the city manager and continuing through intentional staff development and investment in retention. Join this exciting and interactive discussion to learn about the executive recruitment process, strategies for diverse recruitment and retention, and city manager perspectives on leading courageous conversations on diversity and organizational change.

**Moderator:** Tony Winney, Assistant City Manager, Coronado

**Speakers:** Teri Black, President, Teri Black & Co., LLC

Maxine Gullo, Assistant City Administrator, Carmel-by-the-Sea

Reina J. Schwartz, Retired City Manager, Clayton

### **Hiring Future Local Leaders: How to Attract Top Talent**

In an epidemic of high turnover, building a sustainable, all-star team of staff is a top priority for many municipal agencies. This session centers on exploring the most effective recruitment strategies that cities can use to attract and retain top talent.

**Moderator:** Karen Pinkos, City Manager, El Cerrito

**Speaker:** Cathy R. Thompson, Executive Recruiter, TS Talent Solutions

### **Righting Wrongs: Addressing Discrimination Against AAPIs**

Over 11,000 acts of hate against Asian Americans and Pacific Islanders (AAPI) have been reported to the nationwide Stop AAPI Hate coalition since the start of the COVID-19 pandemic. That is likely an undercount since many incidents go unreported. These acts are not just hate crimes but harassment and discrimination. Delve into the results of a landmark survey by Stop AAPI Hate and NORC at the University of Chicago to understand the discrimination faced by Asian Americans and Pacific Islanders and hear recommendations for governments to address these challenges. *Planned with the Cal Cities Asian Pacific Islander Caucus.*

**Moderator:** Juslyn Manalo, Vice Mayor, City of Daly City and President, Cal Cities API Caucus

**Speakers:** Candice Cho, Managing Director of Policy and Counsel, AAPI Equity Alliance

Annie Lee, Managing Director of Policy, Stop AAPI Hate

## **Friday, Sept. 22**

**8:45-10:45 a.m.**

### **Managing Difficult Conversations with Constituents**

Getting stopped at the post office or grocery store by a constituent is part of daily life as an elected official. Learn how you can show people you disagree with that they have been heard, find areas of commonality or agreement, and share your views in a way that is likely to be heard. This lively and interactive

session will combine clear explanations and guided practice around common scenarios that elected officials encounter every day, with a focus on one-to-one conversations rather than large public meetings.

**Facilitator:** Elizabeth Doll, Director of Braver Politics, Braver Angels

### 9:30-10:45 a.m. Concurrent Sessions

#### **California Economic Forecast: A Look Ahead**

The University of California, Los Angeles (UCLA) and Avenu Insights & Analytics are joining forces for a report on the Golden State's economic future. For 60 years, UCLA Anderson Forecast has provided forecasts for economies across the country; its projections are recognized as one of the most accurate, widely followed, and frequently cited in California. Avenu has provided regional/local forecasts and trends in California for 40 years. Together, their reports provide a comprehensive macro and micro forecast for cities. The session will include a detailed explanation of the numbers and a Q&A session.

**Moderator:** Reva Feldman, Strategic Advisor, Avenu Insights and Analytics

**Speakers:** Francesco Mancina, Vice President of National Government Relations, Avenu Insights and Analytics

Jerry Nickelsburg, PhD, Professor, UCLA

#### **CalPERS Funding Levels, Projections, and Strategic Update**

Join CalPERS leaders for a discussion on the status of the state pension fund, strategies for managing market volatility, and what it means for cities and employees. Attendees will learn about the challenges facing pension funding today and gain valuable insights into the steps CalPERS is taking to mitigate them. Panelists will also explore the implications of these strategies for employer contribution rates and provide a roadmap for the upcoming year.

**Speaker:** Michael Cohen, Interim Chief Investment Operating Officer, California Public Employees' Retirement System (CalPERS)

#### **Connecting With Your Community Through Human-Centered Communication**

Cities have greatly expanded their communication capacity, with the number of related positions more than doubling in the last 10 years. At the same time, digital outreach — from social media to email to app-based service delivery — has become the norm, accelerated even more by the COVID-19 pandemic. Using several case studies, this presentation will cover how to retain the human touch in today's highly digital communication environment while increasing trust and transparency with the public.

**Moderator:** Tom Mallory, Staff Writer, City of Carlsbad

**Speakers:** Scott Chadwick, City Manager, Carlsbad

Kristina Ray, Communication & Engagement Director, City of Carlsbad

#### **Cybersecurity Checklist**

With ransomware attacks attacking municipalities more than any other industry—even more than schools or healthcare organizations—a perfect storm exists as municipalities are also often the least-equipped to handle a

cyberattack. Many municipalities do not even have the "basic basics" in place such as multi-factor authentication (MFA), endpoint detection and response (EDR), and data backup. We will answer the question, "Where do I begin with cybersecurity?" and present a checklist that distills tips, best practices, and recommendations that cities and towns can use to score themselves, find cybersecurity gaps, and create an action plan.



## MCLE Sessions

### Wednesday, Sept. 20

**3:30-5:00 p.m.**

**Legal Issues: Artificial Intelligence and the Practice of Law, General Municipal Litigation Update**

This session will include a presentation on AI tools and a discussion of legal issues related to AI including threats to privacy, bias in automated decision making, misinformation and IP infringement. The session will also provide a city-focused update on general municipal litigation. *MCLE credit is available.*

### Thursday, September 21

**8:30-9:45 a.m.**

**City Attorneys Department Business Meeting and Legal Issues: Meeting Disruptions, Workplace Violence Restraining Orders, and the Bane Act**

In addition to the Business Meeting, this session will include a discussion regarding single and organized public meeting disruptions, a presentation on workplace violence restraining orders, and a presentation on the Bane Act. *MCLE credit is available.*

**1:00-2:30 p.m.**

**Legal Issues: Land Use and CEQA Litigation**

This session will provide a city-focused update on land use and California Environmental Quality Act litigation. *MCLE credit is available.*

**Legal Issues: Affirmatively Furthering Fair Housing – State and Federal Law**

This session will provide an overview of best practices for taking meaningful actions and combating discrimination to foster inclusive communities free from barriers that restrict access to housing opportunities. *MCLE credit is available.*

**2:45-4:15 p.m.**

**Legal Issues: Case Study: A Capital City's Approach to the Unsheltered Community**

This session will provide an overview on homelessness issues in California and strategies to handle them. *MCLE credit is available.*

**4:30-6:00 p.m.**

**Legal Issues: Labor and Employment Litigation**

This session will provide a city-focused update on labor and employment litigation. *MCLE credit is available.*



**Legal Issues: CalPERS Legal Update, Emerging Issues and Common Compliance Problems**

This session will discuss important issues for local agencies and the financial and legal consequences to employers pertaining to compliance with CalPERS statutes and regulations. *MCLE credit is available.*

**Friday, September 22****8:30-10:00 a.m.****Legal Issues: Municipal Tort and Civil Rights Litigation**

This session will provide a city-focused update on municipal tort and civil rights litigation. *MCLE credit is available.*

**Legal Issues: Pay to Play No More? Levine Act (SB 1439)**

This session will provide an overview of the new regulations implementing SB 1439 which extended restrictions to local elected officials. *MCLE credit is available.*

**10:15-11:30 a.m.****Legal Issues: Practicing Ethics**

This session will provide an overview of updates to the Rules of Professional Conduct and updates to the Cal Cities publication Practicing Ethics: A Handbook for Municipal Lawyers. *MCLE credit is available. Includes 1 hour of Legal Ethics sub-field MCLE credit.*



# Travel and Training FY 23-24 Budget Tracking for Council

Item # C6.

| Mayor Montano |                                                            |                                      |                      |                                  |
|---------------|------------------------------------------------------------|--------------------------------------|----------------------|----------------------------------|
|               | Training/Travel Event                                      | FY22-23 Amount<br>Expended/Estimated | Total<br>\$ 2,250.00 | Remaining Balance<br>\$ 7,750.00 |
| 1             | Sacramento Annual Conf/Expo: Sept 20 - 22 (estimates only) | \$ 2,250.00                          |                      |                                  |

| Vice Mayor Chua |                                                            |                                      |                      |                                  |
|-----------------|------------------------------------------------------------|--------------------------------------|----------------------|----------------------------------|
|                 | Training/Travel Event                                      | FY22-23 Amount<br>Expended/Estimated | Total<br>\$ 2,250.00 | Remaining Balance<br>\$ 7,750.00 |
| 1               | Sacramento Annual Conf/Expo: Sept 20 - 22 (estimates only) | \$ 2,250.00                          |                      |                                  |

| Councilmember Phan |                       |                                      |               |                                   |
|--------------------|-----------------------|--------------------------------------|---------------|-----------------------------------|
|                    | Training/Travel Event | FY22-23 Amount<br>Expended/Estimated | Total<br>\$ - | Remaining Balance<br>\$ 10,000.00 |
| 1                  |                       |                                      |               |                                   |

| Councilmember Lien |                       |                                      |               |                                   |
|--------------------|-----------------------|--------------------------------------|---------------|-----------------------------------|
|                    | Training/Travel Event | FY22-23 Amount<br>Expended/Estimated | Total<br>\$ - | Remaining Balance<br>\$ 10,000.00 |
| 1                  |                       |                                      |               |                                   |

| Councilmember Barbadillo |                       |                                      |               |                                   |
|--------------------------|-----------------------|--------------------------------------|---------------|-----------------------------------|
|                          | Training/Travel Event | FY22-23 Amount<br>Expended/Estimated | Total<br>\$ - | Remaining Balance<br>\$ 10,000.00 |
| 1                        |                       |                                      |               |                                   |



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                    |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Sango Court, L.P., for the Affordable Housing Project at 355 Sango Court. (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)</b> |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                                                                             |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                                                                                                                                                                                           |
|                      | <u>Recommendation:</u> Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Sango Court, L.P., for the Affordable Housing Project at 355 Sango Ct.                                                            |

### **BACKGROUND:**

On May 23, 2018, the Milpitas Planning Commission approved Developer's application for a Site Development Permit (SD17-0017), Density Bonus (DB17-0001), and Environmental Assessment (EA18-0001) to allow the construction of a 102-unit multifamily apartment building and associated site improvements. The Project is located on an existing 1.26-acre site at 355 Sango Court., Milpitas, CA 95035.

The development uses Best Management Practices (BMP), Low Impact Development (LID) and Integrated Management Practices (IMP). As part of this agreement the Developer shall be responsible for maintenance and operation of all the developments bio-treatment areas.

### **ANALYSIS:**

In accordance with State Law and the City's Municipal Regional Stormwater NPDES Permit ("MRP") issued by the Regional Water Quality Control Board ("RWQCB"), new development and redevelopment projects that create and/or replace 10,000 square feet or more of impervious surface are required to incorporate Low Impact Development ("LID") post construction stormwater control measures into the project. LID control measures include, for example, bioretention areas, flow-through planters, permeable pavement, infiltration trenches and tree well filters.

MRP section C.3.h.ii.(1)(a) and Milpitas Municipal Code Title XI Chapter 16 require development project property owners meeting the 10,000 square foot threshold to execute and record a Stormwater Management Facilities Operation and Maintenance Agreement ("Agreement") with the City for the perpetual operation, maintenance and annual inspection of LID stormwater treatment facilities.

The Sango Court L.P. (Developer) constructed storm water bio-retention treatment areas to meet the low impact development and post construction treatment requirements for stormwater. The Developer, Sango Court L.P. and property owner will be responsible for the perpetual maintenance and operation of the privately owned stormwater treatment facilities within their private property and not maintained by the City. The stormwater treatment built on public right of way for the treatment of public stormwater will be owned and maintained by the City once the public improvements have been accepted by the City.

Sango Court L.P. has executed the required Stormwater Management Operations and Maintenance Agreement for this Project. The Agreement requires the developer to operate and maintain the installed stormwater treatment facilities in accordance with the Municipal Regional Stormwater NPDES Permit and the developer will compensate the City to complete the required annual system inspections.

Staff recommends the City Council approved the attached Stormwater Management Agreement (**Attached**) which has been reviewed by the City Attorney and approved as to form and by the Acting City Engineer as to content.

**POLICY ALTERNATIVE(S):****Alternative 1:**

Not approve the Agreement with the City for operation, maintenance and annual inspection of stormwater treatment facilities.

Pros: None

Cons: Not approving the Agreement would cause the project to be not in compliance with the conditions of development and the City's Municipal Code and would be prohibitive by federal and state law.

Reason not recommended: To be in compliance with federal and state law, including the MRP, and to allow for the on-going maintenance and annual City Inspection of the installed stormwater treatment devices and areas, staff recommends approval of the Agreement.

**FISCAL IMPACT:**

As required by the Stormwater Management Facilities Operation and Maintenance Agreement, the project developer/property owner will pay the City for the required annual maintenance and inspection of the installed stormwater Bio-treatment facilities.

**California Environmental Quality Act (CEQA):**

The Planning Division conducted an initial environmental assessment (PEA18-0001) of the project in accordance with the California Environmental Quality Act (CEQA). The Addendum fully addressed all potential impacts associated with this project, and no material changes have been made to the project that would alter the conclusions of the Addendum. The analysis contained in the Environmental Checklist confirms that the modified project is within the scope of the TASP FEIR and will have no new or more severe significant effects and no new mitigation measures are required.

Additionally, the TASP EIR included a program of activities including construction of up to 7,109 residential units within the TASP area. The 100-102 residential units proposed as a part of the Site Development Permit for the 355 Sango Court site fall within this scope of development activity, as the TASP area has not reached its full build out.

Pursuant to Sections 15162 and 15163 of the California Environmental Quality Act, the project is exempt from further environmental analysis. Project design features required of projects covered under the TASP EIR are included as Conditions of Approval, attached hereto as Exhibit I. Based on the foregoing, the project will not have additional environmental impacts beyond those identified in the TASP EIR, no additional environmental review is required, and no new or additional mitigation measures are required.

As a separate and independent basis, the project is also exempt from further CEQA review pursuant to Sections 15183, 15182, and 15169 of the California Environmental Quality Act, as the project is generally consistent with the development density established by existing zoning, specific plan, and general plan and is within the scope of the TASP FEIR. Therefore, no further environmental review is required.

**RECOMMENDATION:**

Approve and authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Sango Court L.P. for the Affordable Housing Project at 355 Sango Court.

**Attachment(s):**

1. Stormwater Management Facilities Operation and Maintenance Agreement

Control No. 2023- \_\_\_\_\_  
 Recording Requested by  
 and when Recorded, return to:

CITY OF MILPITAS  
 455 E. CALAVERAS BOULEVARD  
 MILPITAS, CA 95035-5479

Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Document Transfer Tax is \$ 0

( ) Computed on full value of property conveyed

( ) Computed on full value less value of liens and encumbrances remaining

City transfer tax is \$ 0

APN: 086-36-013

### STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AGREEMENT

This Stormwater Management Facilities Operation and Maintenance Agreement ("AGREEMENT") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023 ("Effective Date"), by and between Sango Court, L.P. ("Permittee") and the City of Milpitas, a municipal corporation of the State of California ("City").

### RECITALS

This AGREEMENT is made and entered into with reference to the following facts:

- A. **WHEREAS**, the Permittee is the Lessee of real property more particularly depicted and described on the attached as **Exhibit A** ("Property") and fully incorporated herein by reference; and
  - B. **WHEREAS**, the Permittee received entitlements from the City allowing the development of the Property as a common interest development, including the construction of a Multifamily apartment building comprising up to 100-102 units with, emergency vehicle access, utilities, and associated offsite and onsite improvements landscaping, irrigation, recycled water main, Sango Court Roadway extension and stormwater treatment measures on a 1.26 acre site located at 355 Sango Court in Milpitas and more commonly known as Sango Court Apartments, Project No. PJ5052, (the "Project") on the Property; and subject to conditions set forth in the following (collectively "City Approvals"):
1. Resolution No. 8796 approving Site Development Permit No. SD17-0017,
  2. Resolution No. 8796 approving Environmental Assessment No. EA18-0001-, and

3. Resolution No. 8796 approving Density Bonus No. DB17-0001;

- C. **WHEREAS**, discharges to the City's municipal separate storm sewer system ("MS4") are regulated under state and federal law pursuant to Waste Discharge Requirements and National Pollutant Discharge Elimination System permit ("MS4 Permit") issued by the Regional Water Quality Control Board, San Francisco Region ("Regional Board").
- D. **WHEREAS**, pursuant to the requirements of the MS4 Permit and the City's Stormwater and Urban Runoff Pollution Control Ordinance as codified in Milpitas Municipal Code Chapter 16 ("Ordinance"), the City Approvals require the Permittee to install, operate and maintain, at no cost or expense to the City and as part of the common area as defined by the Davis-Stirling Common Interest Development Act, the Permanent Stormwater Pollution Prevention Measures ("BMPs") more particularly described in the City-approved Stormwater Control Operation and Maintenance Plan (sometimes referred to herein as "Plan") for the Project attached hereto as **Exhibit B** and fully incorporated herein by reference; and
- E. **WHEREAS**, the Stormwater Control Operation and Maintenance Plan may be subsequently modified from time to time with City's written approval and such changes shall be fully incorporated as part of this Agreement by this reference; and
- F. **WHEREAS**, the Stormwater Control Operation and Maintenance Plan includes provisions for the BMP Operation and Maintenance and an annual inspection checklist for the BMPs constructed on the Property, and
- G. **WHEREAS**, this Agreement memorializes the Permittee's obligations, either directly or through a permittees association, for maintenance, operations, and inspection under the City's Ordinance and the approved Stormwater Control Operation and Maintenance Plan.

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

**SECTION 1. Responsibility for Operation and Maintenance:**

The Permittee, at its sole cost and expense, shall construct and install the BMPs shown in Exhibit B in accordance with the plans approved by and on file with the City. Permittee shall diligently maintain in perpetuity the BMPs in a manner assuring peak performance at all times, shall make such changes or modifications to the BMPs, subject to City's prior approval as may be reasonably necessary for the BMPs to continue to operate as designed and approved and to accomplish its intended purpose and in good repair, and in compliance with all applicable Federal, State, County and local laws and regulations, including but not limited to the Ordinance, as the same may be amended, revised, and/or replaced from time to time. The Permittee shall be responsible for the costs incurred in operating, maintaining, repairing and replacing the BMPs. Permittee shall not destroy or remove the BMPs or modify any measure in any manner that would lessen its effectiveness. Permittee shall make available copies of the approved Stormwater Control Operation and Maintenance Plan at the site with the facility or property manager.

## **SECTION 2: Inspection by Permittee:**

The Permittee, at its sole cost and expense, shall conduct annual inspections of all permanent installed BMPs per the Plan. The annual inspection report shall include completion of the checklist described in the approved Stormwater Control Operation and Maintenance Plan. The BMPs must be inspected by a qualified independent inspector who is acceptable to the City. The Permittee shall submit the Inspection Report on these BMPs to the City Engineer no later than July 15<sup>th</sup> of each year.

## **SECTION 3. Facility Inspection by the City:**

- (a) Right of Entry. The Permittee, on its behalf and on behalf of its successors and assigns, grants permission to the City, the inspectors of the Regional Board, and local mosquito and vector control agency, and their authorized agents and employees, to enter the Property, and to inspect the BMPs whenever the City deems necessary to enforce provisions of the Ordinance, this Agreement, or any other local or state requirements. The City may enter the premises at any reasonable time during normal business hours and upon at least 48 hours prior written notice (except that prior written notice is not required in case of emergency) to inspect the premises related to BMPs and BMP operation and maintenance, to inspect and copy records related to storm water compliance, and to collect samples and take measurements related to BMPs. The Permittee shall deposit and maintain a Private Job Account with the City a minimum balance of Four Thousand Dollars (\$4,000) for inspection by City Staff pursuant to this Section 3. The deposit of Four Thousand Dollars (\$4,000.00) shall be made simultaneously with the execution of this Agreement.
- (b) Security. The City may require the Permittee, its successors and assigns, from time to time, to post security in a form, amount, and for a time period satisfactory to City to guarantee performance of the obligations stated herein. Should the Permittee, its successors and assigns, fail to perform the obligations under this Agreement, the City may, in the case of a cash bond, act for the Permittee, its successors and assigns, using the proceeds from such cash bond, or in the case of a surety bond, require the surety to perform the obligations of this Agreement.

## **SECTION 4. Failure to Perform Required Facility Repairs or Maintenance by the Permittee:**

- (a) Enforcement Action. If the Permittee or its successors fail to operate and maintain the BMPs in good working order and in accordance with the approved Plan and the City's Ordinance, the City may, but is not required to, pursue any enforcement action available at law or in equity to cause the completion of all maintenance and may charge the costs of such enforcement action against the Permittee in any manner authorized by law or in equity.
- (b) City Maintenance. In the event of Permittee's failure to operate and maintain BMPs in accordance with the Plan and the City's Ordinance, the City may also, with prior written notice, enter the Property to return the BMPs to good working order; provided however that the Permittee shall have 30 days after any such notice, or such other time provided by law, to cure the relevant failure and provided further that the Permittee shall have such additional time after the initial 30 days to complete a cure so long as Permittee commences the cure within the initial 30 days and diligently prosecutes the cure to completion. Notwithstanding the foregoing, City may in its sole discretion enter the Property to return the BMPs to good working in an emergency and take any other necessary action to mitigate an emergency without any notice to Permittee. The City is under no obligation to maintain or repair the BMPs, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this Section 4 takes any action to return the BMPs to good working order, the Permittee shall reimburse the City for all the reasonable costs



and expenses incurred by the City. The City will provide the Permittee with an itemized invoice of the City's costs and expenses and the Permittee shall make full payments to the City within thirty (30) days of the date of the invoice. If the Permittees fails to pay the invoice within thirty (30) days, the City shall be entitled to cause a lien for any such unpaid maintenance expense bill to be recorded against the Property. In addition, the City shall be entitled to have the unpaid amount of the invoice placed as a special assessment on the next regular tax bill levied against the Property, after which such assessment shall be collected in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and same procedures under foreclosure and sale in the case of delinquency as provided for ordinary municipal taxes. The actions described in this section are in addition to and not in lieu of other legal remedies provided by law. Notwithstanding the above, it is understood that City is under no obligation to repair or maintain the BMPs, and in no event shall this Agreement be construed to impose any such obligation on City.

- (c) Specific Performance. The provisions of this Agreement are expressly declared to be for the benefit of the City. The City may bring an action to obtain specific performance of this Agreement and may recover its costs, including attorney fees, incurred in bringing such action.

#### **SECTION 5: Successors and Assigns:**

Permittee hereby declares that the Property shall be held, transferred, encumbered, used, conveyed, leased and occupied subject to the covenants, conditions, restrictions, easements and rights set forth herein for the use and benefit of each of the Lots. All of the limitations, easements, uses, obligations, covenants, restrictions and conditions stated herein shall run with the Property and shall be binding upon Permittee, its successors and assigns, any and all parties having or acquiring any right, title or interest in or to the Property or any part thereof or interest therein and shall inure to the benefit of and be binding upon each successor-in-interest thereto.

Upon transfer of the property, the Permittee shall provide the new permittee with the current Plan and a copy of this Agreement and shall, in any event, be released from all obligations under this Agreement as of the effective date of the transfer of the Property.

#### **SECTION 6. Indemnity:**

The Permittee, on Permittee's behalf and on behalf of all successors in interest pursuant to Section 5 of this Agreement, shall indemnify, release, hold harmless, and defend the City and its authorized agents and employees from and against any and all demands, suits, liabilities, fines, losses, damages, accidents, casualties, occurrences or claims, including reasonable attorneys' fees, against the City which may in anyway arise or relate to the construction, operation, presence, existence or maintenance of the BMPs, or from any personal injury or property damage that may arise or relate from the City entering the property under Section 4. If a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Permittee and the Permittee shall defend the claim and any resulting litigation at its sole cost and expense, with counsel approved by City. If any judgment is entered against the City, or its authorized agents or employees, the Permittee must pay all costs and expenses to satisfy the judgment.

#### **SECTION 7. Severability:**

Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions, and all other provisions shall remain in full force and effect.

#### **SECTION 8. Non-Discrimination:**

The Permittee shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

#### **SECTION 9. Governing Law:**

City and Permittee agree that the law governing this Agreement shall be that of the State of California and that Permittee shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

#### **SECTION 10. Recordation:**

Permittee shall, within 10 days after the effective date of this Agreement, record or cause the Agreement to be recorded in the Office of the Recorder, Santa Clara County, California, at the expense of the Permittee, which recording shall constitute notice of the obligations herein set forth and a covenant running with the land and shall be binding upon all of the successors and assigns in title to the Property. In the event Permittee fails to timely record this Agreement, City shall be authorized but not required to record the Agreement.

#### **SECTION 11. Books and Records:**

- A. The Permittee shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements or in anyway relating to the performance of this Agreement for a minimum period of three (3) years, or for any longer period required by law.
- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at reasonable any time during regular business hours, upon at least 48 hours' prior written request by the City Attorney, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the Permittee's address indicated for receipt of notices in this Agreement.

#### **SECTION 12. Notices:**

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

City of Milpitas  
Attn: City Engineer  
455 East Calaveras Blvd.  
Milpitas, CA 95035

To PERMITTEE:

Sango Court, L.P.  
2220 Oxford Street,  
Berkley, CA 94904  
Attn: Daniel Sawislak, Executive Director

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

**SECTION 13 . Venue:**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

**SECTION 14 . Interpretation, Prior Agreements:**

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this Agreement, the terms specified in the body of this Agreement shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.

**[Signatures on Next Page]**

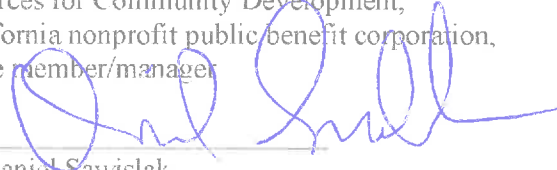
IN WITNESS WHEREOF, the Parties execute this Stormwater Management Facilities Operation and Maintenance Agreement as of the last date set forth below:

**PERMITTEE:**

Sango Court, L.P.,  
a California limited partnership

By: RCD GP III LLC,  
a California limited liability company,  
its general partner

By: Resources for Community Development,  
a California nonprofit public benefit corporation,  
its sole member/manager

By:   
Daniel Sawislak,  
Executive Director

**CITY:**

**CITY OF MILPITAS,  
A MUNICIPAL CORPORATION**

By: \_\_\_\_\_  
Ned Thomas, Acting City Manager

Approved as to form:

By: \_\_\_\_\_  
Michael Mutalipassi, City Attorney

Approved:

By: \_\_\_\_\_  
Lauren Lai, CPA, MPA  
Finance Director/Risk Manager

Recommended for approval:

By: \_\_\_\_\_  
Matt Cano, P.E.  
Deputy City Manager / Acting City Engineer

**Please note that this is a placeholder for the acknowledgement. So use the most current version of the acknowledgement**

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 Alameda )  
County of \_\_\_\_\_ )

On 8/2/2023, before me, Arlene Harriet Skjerly, a Notary Public, personally appeared Daniel Sawislak

☒ personally known to me;  
or \_\_\_\_\_, 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 \_\_\_\_\_



**CAPACITY CLAIMED BY SIGNER:**

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

\_\_\_\_ Individual(s)  
\_\_\_\_ Corporate Officer(s) Titles \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_ Partner(s) \_\_\_\_\_ Limited \_\_\_\_\_ General  
\_\_\_\_ Attorney-in-Fact  
\_\_\_\_ Trustee(s)  
\_\_\_\_ Guardian/Conservator  
\_\_\_\_ Other : \_\_\_\_\_

Signer is representing: \_\_\_\_\_

**ATTENTION NOTARY:** Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document \_\_\_\_\_

Number of pages: \_\_\_\_\_ Date of document: \_\_\_\_\_

Signer(s) other than named above: \_\_\_\_\_

**THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE**

## EXHIBIT A

### LEGAL DESCRIPTION

Real Property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS 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, AT PAGE(S) 42.

APN: 086-36-013

**EXHIBIT B**  
**Operation and Maintenance Plan**

# **OPERATION & MAINTENANCE PLAN**

**355 Sango Court**

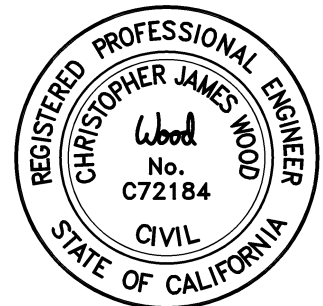
**Milpitas, CA**

**Prepared By:**

**Luk and Associates  
738 Alfred Nobel Drive  
Hercules, CA 94547  
(510)724-3388**

**Preparer: Chris Wood, P.E. C72184**

**Dated: June 28, 2023**





|              |                                                                                                                |          |
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## Checklists

Routine Inspection and Maintenance

Annual Inspection and Maintenance

Inspection and Maintenance Following Storms

## I. Stormwater BMP Inspection and Maintenance Logs

|               |          |
|---------------|----------|
| Facility Name |          |
| Address       |          |
| Begin Date    | End Date |

| Date | BMP ID# | BMP Description | Inspected by: | Cause for Inspection | Exceptions Noted | Comments and Actions Taken |
|------|---------|-----------------|---------------|----------------------|------------------|----------------------------|
|      |         |                 |               |                      |                  |                            |
|      |         |                 |               |                      |                  |                            |
|      |         |                 |               |                      |                  |                            |
|      |         |                 |               |                      |                  |                            |
|      |         |                 |               |                      |                  |                            |
|      |         |                 |               |                      |                  |                            |

**Instructions:** Make copies of this blank form. Record all inspections and maintenance for all treatment BMPs on this form. Use additional log sheets and/or attach extended comments or documentation as necessary. Submit a copy of the completed log with the annual independent inspectors' report to the City of Antioch, and then start a new log.

- BMP ID# - Always use the ID# from the Operation and Maintenance Manual.
- Inspected by - Note all inspections and maintenance on this form, including the required independent annual inspection.
- Cause for inspection – Note if the inspection is routine, pre-rainy-season, post storm, annual, or in response to a noted problem or complaint
- Exceptions noted – Note any condition that requires correction or indicates a need for maintenance
- Comments and Actions Taken – Describe any maintenance done and need for follow-

## II. Designation of Individuals Responsible for Stormwater Treatment BMP Operation and Maintenance

| Designation for Individuals Responsible for<br>Stormwater Treatment BMP Operation and Maintenance |                      |
|---------------------------------------------------------------------------------------------------|----------------------|
| Date Completed                                                                                    |                      |
| Facility Name                                                                                     |                      |
| Facility Address                                                                                  |                      |
| <b>Designated Contact for Operation and Maintenance</b>                                           |                      |
| Name:                                                                                             | Title or Position:   |
| Telephone:                                                                                        | Alternate Telephone: |
| Email:                                                                                            |                      |
| <b>Off-Hours or Emergency Contact</b>                                                             |                      |
| Name:                                                                                             | Title or Position:   |
| Telephone:                                                                                        | Alternate Telephone: |
| Email:                                                                                            |                      |
| <b>Corporate Officer (authorized to execute contracts with the City, Town, or County)</b>         |                      |
| Name:                                                                                             | Title or Position:   |
| Address:                                                                                          |                      |
| Telephone:                                                                                        | Alternate Telephone: |
| Email:                                                                                            |                      |

### **III. Updates, Revisions and Errata**

## IV. Introduction

### IV.A. Site Description

The project is a commercial-development of 3 retail spaces in 1 new building, surrounded by outdoor patios and a drive-thru aisle along the building's south and east side. Parking will be located along the building's north and west sides. Landscaping will be located within landscaping islands around the new building. Vehicular and pedestrian access will be from the south side of the site off Landess Avenue.

### IV.B. Existing Site Conditions

The project site is approximately 0.75 acres and is located in the Parktown Plaza Shopping Center, which is at the northeast corner of Landess Avenue and South Park Victoria Drive in Milpitas, California. The site itself is adjacent to and north of Landess Avenue, west along South Park Victoria Drive. Currently, the project site is a moderately sloped, existing parking lot in the Parktown Plaza. The site is bounded by an existing Rite-Aid to the north, Landess Avenue to the south, South Park Victoria Drive to the west, and an existing Wells Fargo Bank to the east.

### IV.C. Self Treating Areas

There are no designated self-treating areas on the project site.

### IV.D. Summary of Stormwater Treatment Facilities

Impervious areas on the site, including all roofs, parking areas, and driveways have been divided into distinct drainage areas as shown on the Storm Water Control Plan. Runoffs from each of these areas are managed by routing storm water to bio-retention areas to treat runoff from these areas located around the site perimeter. All storm water will be drained into the storm inlet through the bio-retention areas prior to capture into the underground system.

Specific drainage areas and planter locations are shown on Stormwater Control Plan (C-3 Exhibit)

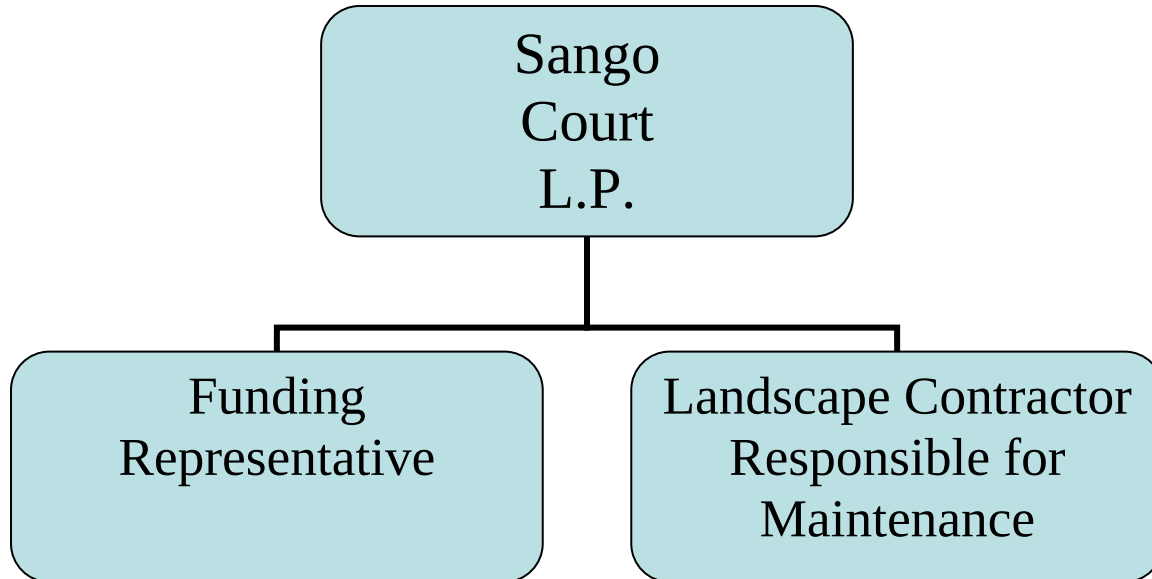
Offsite impervious surface is not being treated by IMP as improvements are limited to replacement of existing frontage concrete sidewalk and curb, and does not fall under the C-3 requirements for onsite improvements.

## V. Responsibility for Maintenance

**Sango Court L.P.** will be responsible for the operation and maintenance of the Stormwater Treatment BMPs conveying and treating stormwater within their property. There shall be a

separate agreement and operation and maintenance plan for any other property owner within this property.

The following organization chart shows the organization of the maintenance function and the location within the overall organization.



#### V.A. Contact Information for Responsible Individuals

**Sango Court L.P.**'s primary contact will be (\_\_\_\_\_). Please see attachment for contact information. A new form shall be completed and added to section II whenever any of this information changes or is updated. When this occurs, a copy of the new table must be provided to the C3 representative at the City of Milpitas.

An Operation and Maintenance Agreement between the City of Milpitas and **Sango Court L.P.** was entered into on (\_\_\_\_\_). See the Operation and Maintenance Agreement.

#### V.B. Funding for Operation and Maintenance

The Operation and Maintenance Agreement sets forth that **Sango Court L.P.** shall fund the operation and maintenance of the BMPs outlined in the project C3 Report. There is no apparent mechanism for funding at this time.

## V.C. Staff Training Program

The landscape contractors retained by **Sango Court L.P.** will familiarize themselves with the purposes, features, and mode of operation of the stormwater vegetated swale, flow through planter strips, and storm sump pump system as described in this O&M manual.

As will be reflected in contracts for landscape maintenance and other maintenance services, landscape maintenance supervisors and employees will be informed of the following specific maintenance requirements for the above mentioned BMPs.

- Maintain the design elevation of the soil surface
- Avoid and remove any soil or debris blocking planter inlets and outlets
- Use only equivalent soil to amend or condition soils as indicated on the landscape plan
- Minimize applications of fertilizers
- Application of pesticides are to be conducted only by a licensed pest control operator trained in the use of Integrated Pest Management

## VI. Summary of Drainage Areas and BMPs

Drainage areas and locations of the treatment BMPs are shown on the Stormwater Control Plan (C-3 Exhibit). Discussions of each drainage area are as follows:

### VI.A. Specific Descriptions of Each Drainage Area and Treatment Facility

Area “DMA-1” – The roof tops on the west side of the building are collected and conveyed towards the bioretention planters located on the west side of the podium deck. Storm water will drain via roof-drains and into the bio-retention planters.

Area “DMA-2” – The roof tops on the east side of the building are collected and conveyed towards the bioretention planters located on the east side of the podium deck. Storm water will drain via roof-drains and into the bio-retention planters.

Area “DMA-3” – The podium deck at the center of the building is collected and conveyed towards the bioretention planter located on the north end of the building. Storm water will drain via roof-drain and into the bio-retention planter.

Area “DMA-4” – The entry courtyard at the south end of the building and a portion of the west roof is collected and conveyed towards the bioretention planter located on the south end of the building. Storm water will drain via roof-drain and via overland, discharging into the bio-retention planter.

Area “DMA-5” – This area is all landscaping and is self-treating.

Area “DMA-6” – The exterior sidewalk and transformer pad at the south end of the building is collected and conveyed towards the bioretention planter located on the south end of the building. Storm water will drain via overland, discharging into the bio-retention planter.

Area “DMA-7” – The exterior vehicular drive lane at the east side of the building drains into the self-retaining permeable pavement. Storm water will drain via a subdrain system, discharging into the underground storm system.

Area “DMA-8” – The exterior vehicular drive lane at the west side of the building drains into the self-retaining permeable pavement. Storm water will drain via a subdrain system, discharging into the underground storm system.

Area “DMA-9” – The exterior vehicular drive lane at the north side of the building drains into the self-retaining permeable pavement. Storm water will drain via a subdrain system, discharging into the underground storm system.

Area “DMA-10” – The exterior entry stair-case at the south side of the building drains into the self-retaining permeable pavement. Storm water will drain via a subdrain system, discharging into the underground storm system.

Area “DMA-11” – The exterior entry ramp at the south side of the building drains into the self-retaining permeable pavement. Storm water will drain via a subdrain system, discharging into the underground storm system.

Area “DMA-12” – The north side of Sango Court is collected and conveyed towards the bioretention planter located on the north-west end of the Sango Court. Storm water will drain via overland, discharging into the bio-retention planter.

Area “DMA-13” – The south side of Sango Court is collected and conveyed towards the bioretention planter located on the south-west end of the Sango Court. Storm water will drain via overland, discharging into the bio-retention planter.

Area “DMA-14” – The exterior egress stair-case at the south side of the building drains into the self-retaining permeable pavement. Storm water will drain via a subdrain system, discharging into the underground storm system.

## VI.B. Features of all Bio-Retention Planters

Relevant design criteria applicable to all bio-retention planters:

- Minimum 6” deep reservoir (from top of pavement to top of soil)
- 18” deep sandy loam with minimum infiltration rate of 5”/hour.
- 12” Permeable base rock with subdrain below sandy loam layer.
- Irrigation shall be required to maintain plant viability.



- Perforated pipe underdrain and connection to storm drain or discharge point if swale located in type “D” soils (clay).
- Provide liner (water isolation) where groundwater is less than 10’ deep or where within 10’ of building.
- Native soils compacted per soils report.
- All other pertinent requirements set forth by the city of Milpitas C3 requirements.

The bio-retention planters operate by filtering the design storm flow through a layer of sandy loam top soil. They provide detention time to allow pollutants to settle out or be trapped by vegetation. Pollutants adhere to soil particles as runoff filters vertically through the soil and collects in the gravel layer below. After collecting in this layer, the treated runoff is collected into storm drain system and is conveyed to the City of Milpitas storm drain system by an onsite storm drainage system. A portion of runoff is expected to infiltrate into the underlying native soil.

## **VII. Documentation of BMP Construction [to be completed and updated]**

### **VII.A. Details of Construction**

Construction plans and details are attached to the report showing the locations of all treatment apparatus.

### **VII.B. Planting Plan**

The selected plants vary for the site. Please refer to the planting plan for plant selection specifications.

### **VII.C. Irrigation System**

Please refer to the irrigation plan for said system specifications.

## **VIII. BMP Maintenance Schedule**

Inspection and Maintenance are consistent for the entire site. Routine inspection and maintenance will be conducted approximately monthly throughout the entire year. In addition, the stormwater treatment BMPs will also be inspected following each significant storm.

Site drainage and treatment BMPs will be **thoroughly** inspected at least once a year prior to the start of the rainy season.

The following checklists are also reproduced as stand-alone sheets to facilitate their use in the field.

### VIII.A. Whenever Landscaping within Bio-Retention is maintained

- Maintain the design elevation of the soil surface, which should be 6 inches below the top of pavement for the treatment facility. See the construction drawings for details.
- Remove any soil or debris blocking planter inlets or overflows
- Use only soil that is equivalent to the specified sandy loam top soil. Amendments to planter soils must not reduce the infiltration rate.
- Minimize application of fertilizer.
- Pesticides may be applied only by a licensed pest control operator trained in the use of Integrated Pest Management.
- Confirm that the irrigation is adequate but not excessive. If underdrains flow during dry weather or flow on the surface, reduce irrigation.

### VIII.B. Routine Inspection and Maintenance of Drainage System and Planters

- Examine each area drain and clean if necessary.
- Confirm there is no blockage in the connecting pick-up drain lines
- Check inlets and pipes; repair, replace, or replenish as necessary.
- Remove any accumulations of sediment, litter, and debris in the planter.
- Examine the overflow. Remove any debris. Fix any damaged or disconnected piping.
- Check that the soil surface is level and is maintained at the height indicated on the construction documents.
- Note the condition of the vegetation.
- Replace any dead plants.
- Prune or remove any overgrown plants or shrubs that may interfere with the operation of the planter.
- Remove any nuisance or invasive vegetation.
- Clean up fallen leaves or debris and replenish soil.
- Confirm that irrigation is adequate and not excessive.

### VIII.C. Inspection Following Storms

- Confirm any standing water drains from the surface of the planters within 3-4 hours.
- Remove any debris from curb cuts at planters.
- Remove any accumulations of litter and debris in the planter.
- Check that the soil surface is level and is maintained at the height indicated on the construction documents.

### VIII.D. Comprehensive Annual Inspection Prior to Rainy Season (system-wide)

- Examine treatment facilities and compare to as-built photographs and drawings. Confirm that drainage has not been altered.
- Examine paving and confirm flow to all treatment facilities is unimpeded.
- Remove any debris from curb cuts at planters.
- Remove any accumulations of litter and debris in the planter.
- Check that the soil surface is level and is maintained at the height indicated on the construction documents.
- Examine the overflow. Remove any debris. Note any damaged or disconnected piping.
- Check cleanouts and confirm underdrain piping is intact and unobstructed.
- Observe the structure of the planters and fix any holes, cracks, or failure.
- Note condition of vegetation. Replace any dead plants. Remove any nuisance or invasive vegetation.
- Clean up fallen leaves or debris and replenish cobbles or soil if needed.
- Prune or remove any overgrown plants or shrubs that may interfere with operation of the planter.
- Confirm that the irrigation is adequate and not excessive.

### Checklist for Routine Inspection and Maintenance

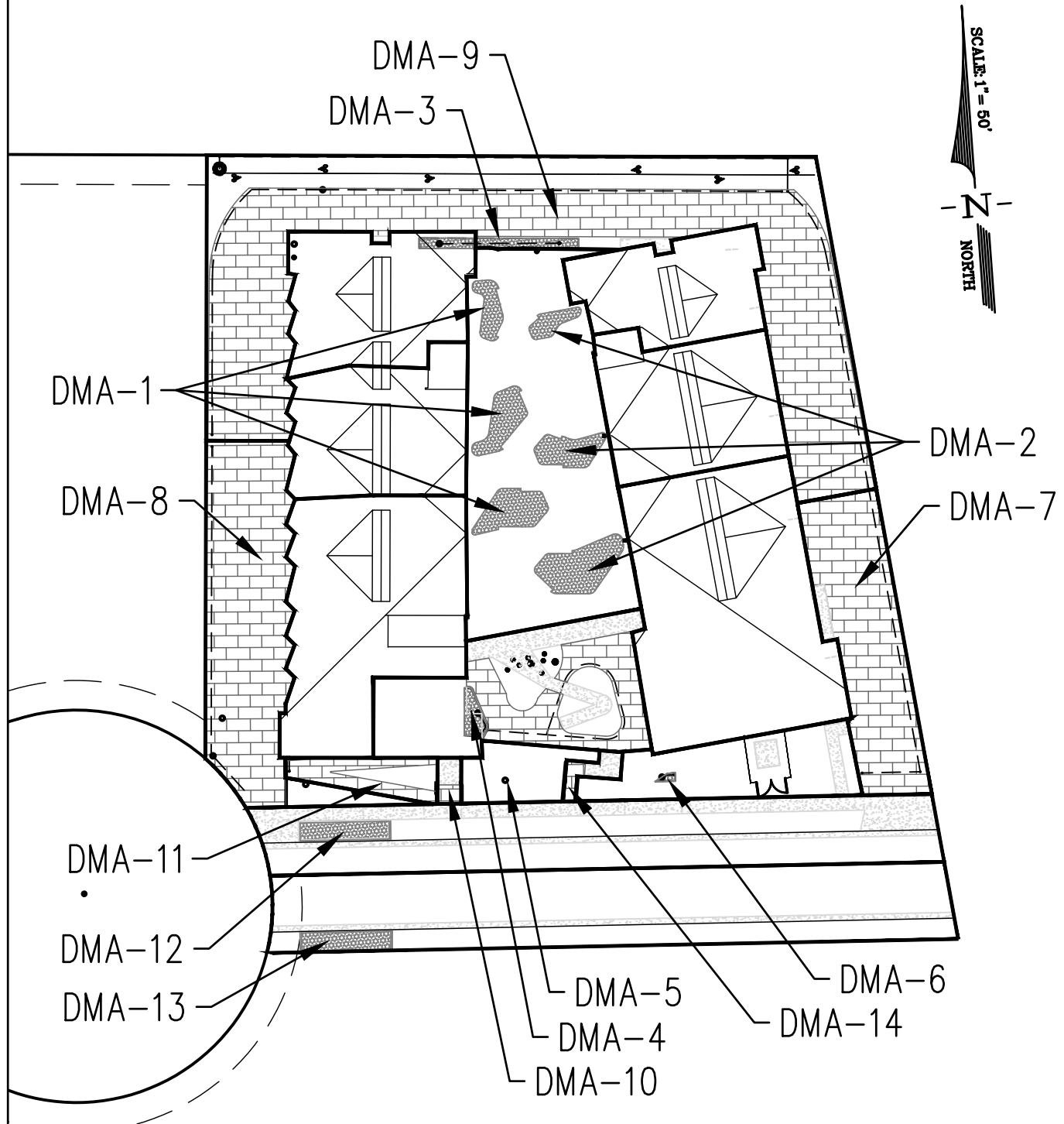
- ☐ Examine each area drain and clean if necessary.
- ☐ Confirm there is no blockage in the connecting pick-up drain line leading to the Infiltration Planter if applicable.
- ☐ Remove any accumulations of sediment, litter, and debris in the planter.
- ☐ Examine the overflow. Remove any debris. Fix any damaged or disconnected piping.
- ☐ Observe the structure of the planters and fix and holes, cracks, or failure.
- ☐ Check that the soil surface is level and is maintained at the height indicated on the construction documents.
- ☐ Note the condition of the vegetation.
- ☐ Replace any dead plants.
- ☐ Prune or remove any overgrown plants or shrubs that may interfere with the operation of the planter.
- ☐ Remove any nuisance or invasive vegetation.
- ☐ Clean up fallen leaves or debris and replenish soil.
- ☐ Confirm that irrigation is adequate and not excessive.

**Checklist for Annual Inspection and Maintenance  
(Prior to Rainy Season – System Wide)**

- ☐ Examine perimeter swales and compare to as-built photographs and drawings. Confirm that drainage has not been altered.
- ☐ Examine paving and confirm flow to all infiltration planters is unimpeded.
- ☐ Remove any debris from curb cuts at swales.
- ☐ Remove any accumulations of litter and debris in the planter.
- ☐ Check that the soil surface is level and is maintained at the height indicated on the construction documents.
- ☐ Examine the overflow. Remove any debris. Note any damaged or disconnected piping.
- ☐ Check cleanouts and confirm underdrain piping is intact and unobstructed.
- ☐ Observe the structure of the planters and fix any holes, cracks, or failure.
- ☐ Note condition of vegetation
- ☐ Replace any dead plants.
- ☐ Prune or remove any overgrown plants or shrubs that may interfere with operation of the planter.
- ☐ Remove any nuisance or invasive vegetation.
- ☐ Clean up fallen leaves or debris and replenish cobbles or soil if needed.
- ☐ Confirm that the irrigation is adequate and not excessive.

### Checklist for Inspection and Maintenance Following Storms

- ☐ Confirm any standing water drains from the surface of the planters within 3-4 hours.
- ☐ Remove any debris from curb cuts at swales.
- ☐ Remove any accumulations of litter and debris in the planter.
- ☐ Check that the soil surface is level and is maintained at the height indicated on the construction documents.



## EXHIBIT "B.1"

### BMP SITE PLAN

CITY OF MILPITAS - SANTA CLARA COUNTY - CALIFORNIA

Prepared By

**Luk and Associates**

Civil Engineers - Land Planners - Land Surveyors

738 Alfred Nobel Drive  
Hercules, California 94547

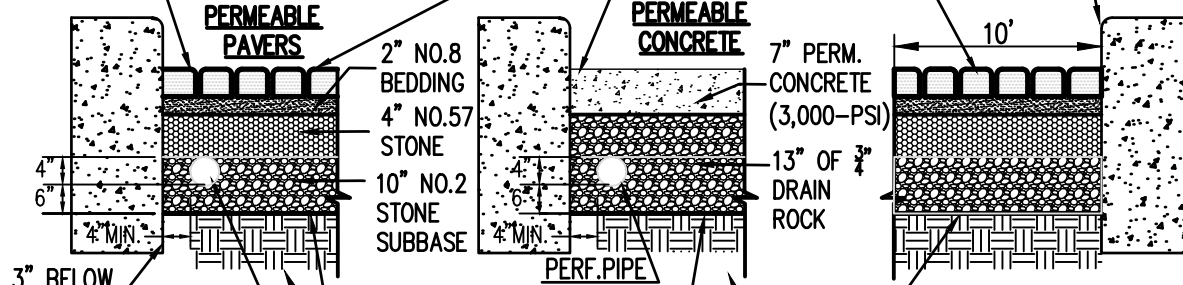
JUNE 28, 2023

SCALE: 1"=50'

PERVIOUS PAVERS, TURF BLOCK PAVING, OR PERMEABLE ASPHALT (3-1/8" TYP.)

PAVEMENT TO SUPPORT 75,000-LB VEHICLE LOAD

EDGE OF BLDG.



3" BELOW AGGREGATE BASE MIN. (TYPICAL)

**REQUIRED: GEOGRID TEXTILE (PERMEABLE) ON BOTTOM OF PAVER SECTION. [TENSAR-TX160, OR EQ.]**

GROUNDWATER IS 7 TO 8 FEET BELOW EXISTING GRADE, SO WILL BE 7 TO 9 FEET BELOW PROPOSED PERMEABLE PAVER AREAS

**REQUIRED: IMPERMEABLE LINER ON BOTTOM OF PAVER SECTION WHERE WITHIN 10' OF BUILDING, PER GEOTECHNICAL RECOMMENDATIONS. [40-MIL HPDE, OR EQ.]**

PERFORATED PIPE (SLOPE AT 0.50% MIN.) AT TOP OF ROCK LAYER, WITH PERFORATIONS FACE DOWN. SEE PLAN FOR LENGTH AND LOCATION.

**NOTES:**

1. FOR SLOPES GREATER THAN 3%, CHECK DAMNS SHALL BE INSTALLED TO PROMOTE RETENTION/INFILTRATION.
2. PERMEABLE PAVEMENT IS SELF-RETAINING AND CAN STORE 1.2" OF RAINFALL (MIN) IN GRAVEL SECTION UNDER PERFORATED PIPE.
3. FINISH SURFACE DETAILS WILL BE CONFIRMED BY PAVING TYPE IN CONSTRUCTION DOCUMENTS, SUBSTRUCTURE GRAVEL/SUBBASE WILL REMAIN SIMILAR THROUGHOUT DIFFERENT TYPES OF PAVING.

**GEOTECH NOTES:**

1. PERMEABLE PAVEMENT SECTION DESIGN IS CONSISTENT WITH TRAFFIC INDEX (TI) OF 5.0

NOT TO SCALE

57

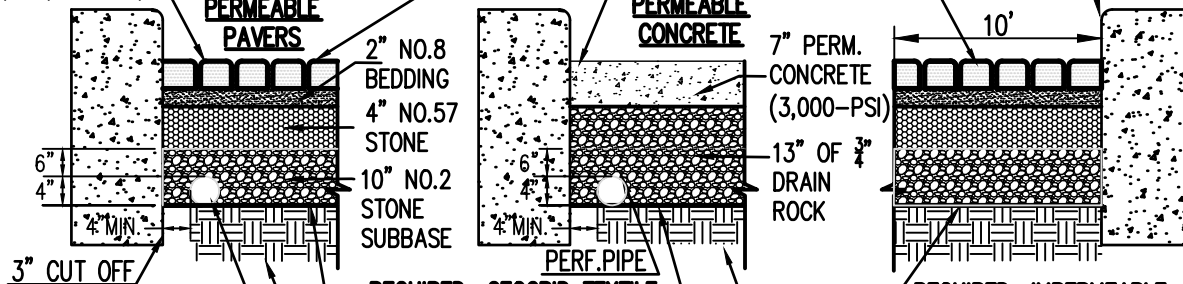
42

## 1 SELF-RETAINING PERMEABLE PAVEMENT

PERVIOUS PAVERS, TURF BLOCK PAVING, OR PERMEABLE ASPHALT (3-1/8" TYP.)

PAVEMENT TO SUPPORT 75,000-LB VEHICLE LOAD

EDGE OF BLDG.



3" CUT OFF

PERFORATED PIPE (SLOPE AT 0.50% MIN.) AT TOP OF ROCK LAYER, WITH PERFORATIONS FACE DOWN. SEE PLAN.

**REQUIRED: GEOGRID TEXTILE (PERMEABLE) ON BOTTOM OF PAVER SECTION. [TENSAR-TX160, OR EQ.]**  
GROUNDWATER IS 7 TO 8 FEET BELOW EXISTING GRADE, SO WILL BE 7 TO 9 FEET BELOW PROPOSED PERMEABLE PAVER AREAS

**REQUIRED: IMPERMEABLE LINER ON BOTTOM OF PAVER SECTION WHERE WITHIN 10' OF BUILDING, PER GEOTECHNICAL RECOMMENDATIONS. [40-MIL HPDE, OR EQ.]**

**NOTES:**

1. FOR SLOPES GREATER THAN 3%, CHECK DAMNS SHALL BE INSTALLED TO PROMOTE RETENTION/INFILTRATION.
2. PERMEABLE PAVEMENT IS SELF-RETAINING AND CAN STORE 1.2" OF RAINFALL (MIN) IN GRAVEL SECTION UNDER PERFORATED PIPE.
3. FINISH SURFACE DETAILS WILL BE CONFIRMED BY PAVING TYPE IN CONSTRUCTION DOCUMENTS, SUBSTRUCTURE GRAVEL/SUBBASE WILL REMAIN SIMILAR THROUGHOUT DIFFERENT TYPES OF PAVING.

**GEOTECH NOTES:**

1. PERMEABLE PAVEMENT SECTION DESIGN IS CONSISTENT WITH TRAFFIC INDEX (TI) OF 5.0

NOT TO SCALE

58

50

## 10 SELF-TREATING PERMEABLE PAVERS

EXHIBIT "B.2"

BMP DETAILS

CITY OF MILPITAS - SANTA CLARA COUNTY - CALIFORNIA  
Prepared By

Luk and Associates







## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                            |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Approve and Authorize the City Manager to Execute the Public Trail Easement and Maintenance Agreement for a Residential Development at 355 Sango Court by Sango Court, L.P. (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)</b> |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                     |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                                                                                                                                   |
|                      | <u>Recommendation:</u> Approve and authorize the City Manager to execute the Public Trail Easement and Maintenance Agreement for a residential development at 355 Sango Court by Sango Court, L.P.                                                         |

### **BACKGROUND:**

On May 23, 2018, the Milpitas Planning Commission approved Developer's application for a Site Development Permit (SD17-0017), Density Bonus (DB17-0001), and Environmental Assessment (EA18-0001) to allow the construction of a 102-unit multifamily apartment building and associated site improvements. The Project is located on an existing 1.26-acre site at 355 Sango Court., Milpitas, CA 95035.

As part of the approved project, a Public Sidewalk and Pedestrian Access Easement was conveyed by separate instrument (Document 25229220) to the City of Milpitas. Project conditions of approval require the Sango Court, L.P. (the "Developer") to construct a public trail and the property owner to maintain the public trail within the easement. The Developer has finished construction of the public trail and the Developer has executed an Easement and Maintenance Agreement (the "Agreement") for perpetual maintenance of public trail improvements.

### **ANALYSIS:**

The Developer constructed public trail improvements to meet the Project Conditions of Approval. The Developer and property owner will be responsible for the perpetual maintenance and operation of the public trail facilities within their private property and inside the Public Sidewalk and Pedestrian Access Easement.

The Developer has executed the required Agreement for this Project. The Agreement requires the developer to operate and maintain the installed public trail facilities in accordance with the Project Conditions of Approval.

Staff recommends the City Council approve the attached Agreement which has been reviewed by the City Attorney.

### **POLICY ALTERNATIVE(S):**

#### **Alternative 1:**

Not approve the Agreement with the Developer for operation and maintenance of public trail facilities.

Pros: None

Cons: Not approving the Agreement would cause the project to be not in compliance with the conditions of development and jeopardize the upkeep of public trail facilities on the site.

Reason not recommended: To be in compliance with project conditions of approval and secure the perpetual maintenance of public trail facilities at 355 Sango Court, staff recommends approval of the Agreement.

**FISCAL IMPACT:**

None.

**California Environmental Quality Act (CEQA):**

The Planning Division conducted an initial environmental assessment (PEA18-0001) of the project in accordance with the California Environmental Quality Act (CEQA). The Addendum fully addressed all potential impacts associated with this project, and no material changes have been made to the project that would alter the conclusions of the Addendum. The analysis contained in the Environmental Checklist confirms that the modified project is within the scope of the TASP FEIR and will have no new or more severe significant effects and no new mitigation measures are required.

Additionally, the TASP EIR included a program of activities including construction of up to 7,109 residential units within the TASP area. The 100-102 residential units proposed as a part of the Site Development Permit for the 355 Sango Court site fall within this scope of development activity, as the TASP area has not reached its full build out.

Pursuant to Sections 15162 and 15163 of the California Environmental Quality Act, the project is exempt from further environmental analysis. Project design features required of projects covered under the TASP EIR are included as Conditions of Approval, attached hereto as Exhibit I. Based on the foregoing, the project will not have additional environmental impacts beyond those identified in the TASP EIR, no additional environmental review is required, and no new or additional mitigation measures are required.

As a separate and independent basis, the project is also exempt from further CEQA review pursuant to Sections 15183, 15182, and 15169 of the California Environmental Quality Act, as the project is generally consistent with the development density established by existing zoning, specific plan, and general plan and is within the scope of the TASP FEIR. Therefore, no further environmental review is required.

**RECOMMENDATION:**

Approve and authorize the City Manager to execute a Public Trail Easement and Maintenance Agreement between the City of Milpitas and Sango Court L.P. for the public trail improvements in the Affordable Housing Project at 355 Sango Court.

**Attachment(s):**

1. Public Trail Easement and Maintenance Agreement

**Recording Requested By and  
When Recorded Mail To:**

City of Milpitas  
Attn: City Clerk  
455 East Calaveras Blvd.  
Milpitas, CA 95035

**EASEMENT AND MAINTENANCE AGREEMENT**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2023, in Milpitas, California, by and between Sango Court L.P., a California Limited Partnership, (“Grantor”), and the CITY OF MILPITAS, a municipal corporation (“City”).

**WITNESSETH**

**Whereas**, Grantor is the Permittee of certain real property in the County of Santa Clara, State of California, located commonly known as Assessor’s Parcel No. 086-36-013, consisting of 1.26 acres and referred to herein as “Grantor’s Property”;

**Whereas**, City desires an easement across certain of the Grantor property for a recreational trail; and

**Whereas**, Grantor is willing to grant a recreational trail easement to City on the terms and conditions set forth below,

**NOW, THEREFORE, it is agreed as follows:**

1. Background. The purpose of this Agreement is to set forth the various duties, responsibilities and commitments of the parties with regard to ownership, repair, replacement, administration and maintenance of a recreational trail.

2. Grant of Easement. Grantor hereby grants to City a permanent, ten-foot (10’) wide

**EASEMENT AND MAINTENANCE AGREEMENT**

easement for the recreational trail as shall be constructed across Grantor's Property by Grantor, to be used only for walking, jogging, biking, strollers, wheelchairs, rollerblading, skate-boarders and other non-motorized uses by the public (hereinafter referred to as "Recreation Trail Easement"), which shall become effective upon recordation of a Notice of Completion of the Project by City. The Recreation Trail Easement is described in "Exhibit A" and depicted in "Exhibit B," each attached hereto and incorporated herein by this reference.

Grantor retains the right to enter onto the real property covered by the Recreation Trail Easement for any purpose incidental to the maintenance or improvement of the Grantor's Property, and to conduct repairs, maintenance and/or replacement on or about the Recreation Trail Easement pursuant to Section 3, below, so long as such maintenance or improvement does not materially interfere with the Recreation Trail Easement or City's interests hereunder.

3. Grantor's Responsibility for Recreation Trail Easement. Upon the effective date of the Recreation Trail Easement, Grantor, at its sole expense, shall repair, maintain, administer, and replace said easement and improvements to the easement in accordance with applicable laws, rules and regulations, and acceptable standards, at no cost to City. Such standards shall include but not be limited to regular trash pick-up, litter prevention and control, general cleanliness, general maintenance and appearance, erosion control, and safe access for users. Grantor must maintain the trail in a manner that allows for public access of the trail.

4. Bond. Grantor may furnish a bond in an amount sufficient to secure its obligations under this Agreement. The bond, if any, may be delivered to a neutral escrow deposit ("Escrow Holder") acceptable to City along with an executed copy of this Agreement and instructions to Escrow Holder signed by Grantor and City

5. Remedies on Default. In the event that Grantor, its officers, employees,

#### EASEMENT AND MAINTENANCE AGREEMENT

independent contractors, agents, volunteers or invitees shall fail to perform any of its obligations or duties specified herein, City shall give Grantor written notice, specifying wherein Grantor is in default. Grantor shall have 30 days from the date of said notice to cure any alleged default before City may pursue any remedy provided by law. Grantor agrees that monetary damages may not be a sufficient remedy for breach of this Agreement, and that City shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such default.

6. Agreement to Run with the Land. This Agreement shall be binding on successive owners of the Grantor Property and shall run with the Land.

7. Miscellaneous Provisions. This Agreement is governed by the laws of the State of California and any questions arising under this Agreement shall be construed or determined according to such law. Time is of the essence of this Agreement. All provisions, whether covenants or conditions, on the part of Grantor and City shall be deemed both covenants and conditions.

10. Indemnification and Hold Harmless. Grantor shall protect, indemnify, hold harmless and defend City, its directors, officials, officers, employees and agents, from and against any and all suits, actions, judgments, legal or administrative proceedings, arbitrations, claims, demands, causes of action, damages, liabilities, interest, attorney's fees, fines, penalties, losses, costs and expenses of whatsoever kind or nature, whether directly or indirectly caused or contributed to in whole or in part or claimed to be caused or contributed to in whole or in part by reason of any negligent act, omission or fault or willful misconduct whether active or passive of Grantor, its employees, agents or independent contractors arising out of, in connection with or incidental to the performance of their duties, activities or operations under this Agreement (hereinafter referred to as "Claim" or "Claims"). Grantor's aforesaid indemnity, defense and hold

harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, of the party indemnified to the fullest extent permitted by law but in no event shall they apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

Termination of this Agreement shall not release Grantor from its obligations under this paragraph, as to any Claim, so long as the event upon which such Claim is predicated shall have occurred prior to the effective date of any such termination and arose out of or was in any way connected with the duties, operations or activities by Grantor, its employees, agents or independent contractors under this Agreement.

Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in this Agreement does not relieve Grantor from liability under this paragraph. The obligations of this paragraph shall apply whether or not such insurance policies shall have been determined to be applicable to the Claim.

In any and all claims against City, or its directors, officers, officials, employees, volunteers or agents, by any employee of Grantor, any independent contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantor or any of its independent contractors under Worker's Compensation acts, disability benefit acts or other employee benefit acts.

11. Attorneys' Fees. In the event that any arbitration, litigation or other action or proceeding of any nature between Grantor and City becomes necessary to enforce or interpret all or any portion of this Agreement or because of an alleged breach by either party of any of the terms

hereof, it is mutually agreed that the losing or defaulting party shall pay the prevailing party's reasonable attorney's fees, costs, and expenses incurred in connection with the prosecution or defense of such action or proceeding.

12. Entire Agreement. This writing constitutes the entire agreement between the parties relative to the matters specified herein, and no modifications hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties, or promises with respect to the subject matter of this Agreement except those contained in or referred to in this writing.

13. Severability. If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

14. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

15. Remedies not Exclusive. The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

16. Notices. All notices, statements, reports, approvals, or requests or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States post office



for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses shown below:

If to City:

City of Milpitas  
Attn: City Clerk  
455 East Calaveras Blvd.  
Milpitas, CA 95035

If to Grantor:

Resources for Community Development  
Daniel Sawislak, Executive Director  
Re: Sango Court, L.P.  
2220 Oxford Street  
Berkley, CA 94704

17. Interpretation of this Agreement. The parties acknowledge that each party has reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

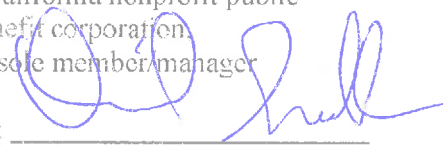
**IN WITNESS WHEREOF**, Grantor and City have caused this Agreement to be executed  
the day and year first above written as follows:

**GRANTOR**

Sango Court, L.P.,  
a California limited partnership

By: RCD GP III LLC,  
a California limited liability company,  
its general partner

By: Resources for Community  
Development,  
a California nonprofit public  
benefit corporation,  
its sole member manager

By:   
Daniel Sawislak,  
Executive Director

Attest:

**CITY OF MILPITAS**, a municipal  
corporation

By: \_\_\_\_\_  
**Ned Thomas**  
Acting City Manager

Attest:

By: \_\_\_\_\_  
Suzanne Guzzetta  
City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Michael Mutalipassi  
City Attorney

**EASEMENT AND MAINTENANCE AGREEMENT**

Page 7 of 11

38077.01000-33109810.1

# 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 Alameda  
County of \_\_\_\_\_

On 8/2/2023 before me, Arlene Harriet Skjerly-NOTARY  
(insert name and title of the officer)

personally appeared Daniel Swishuk  
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 Arlene Harriet Skjerly (Seal)

**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, \_\_\_\_\_  
(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 A  
RECREATION TRAIL EASEMENT

3  
Doma Title of California, Inc.,  
and Simplifile  
File No. 54606-22-01211

\*\*This document was electronically submitted  
to Santa Clara County for recording\*\*

**25229220**

Item # C8.

**Regina Alcomendras**

Santa Clara County - Clerk-Recorder  
01/28/2022 02:25 PM

RECORDED AT REQUEST OF AND  
WHEN RECORDED, MAIL TO:

City of Milpitas  
455 E. Calaveras Boulevard  
Milpitas, CA 95035-5479  
Attn: City Clerk

Titles: 1    Pages: 11

Fees: \$0.00

Tax: \$0.00

Total: \$0.00

APN: 086-36-013

No recording fee pursuant to Government Code Section 27383 and 6103  
No Documentary Transfer Tax, pursuant to Revenue & Taxation Code Section 11922

**GRANT OF EASEMENT  
PUBLIC SIDEWALK AND PEDESTRIAN ACCESS EASEMENT  
(355 SANGO COURT)**

SANGO COURT, L.P., a California limited partnership company ("**Grantor**") hereby grants to the CITY OF MILPITAS, a municipal corporation ("**Grantee**") an perpetual, non-exclusive easement for public sidewalk and pedestrian access purposes on, over and across the following described real property situated in the City of Milpitas, County of Santa Clara, State of California, as more particularly described on Exhibit A and depicted on Exhibit B, attached hereto and incorporated by reference herein (the "**Public Sidewalk and Pedestrian Access Easement**"). Grantee, its officers, agents and employees, and persons under contract with it shall have the right whenever and wherever to enter upon the described property with personnel and equipment to construct, reconstruct, remove, replace, repair, maintain, inspect, and operate the public utility and appurtenances, and to remove all trees, vegetation and structures thereon that interfere with the purpose for which the easement herein is granted.

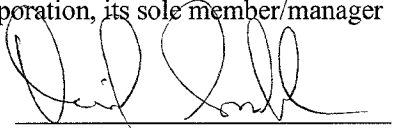
Dated: 1/27, 2022

**GRANTOR:**

SANGO COURT, L.P.,  
a California limited partnership

By: RCD GP III LLC,  
a California limited liability company,  
its general partner

By: Resources for Community Development,  
A California nonprofit public benefit  
corporation, its sole member/manager

By:   
Name: Daniel Sawislak  
Its: Executive Director

**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 Alameda  
County of \_\_\_\_\_ )

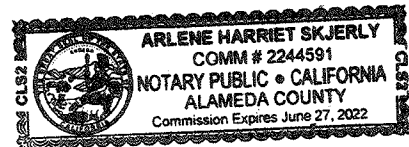
On 1/26/2022 before me, Arlene Harriet Skjerly - NOTARY  
(insert name and title of the officer)

personally appeared Daniel Samstat,  
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 Arlene Harriet Skjerly (Seal)





**I certify under penalty of perjury and the laws of the State of California that the illegible portion of this document to which this statement is attached reads as follows:**

**STATE OF:** CALIFORNIA  
**COUNTY OF:** ALAMEDA

**DATE:** 1-26-2022

**ARLENE HARRIET SKJERLY, NOTARY PUBLIC**

**PERSONALLY APPEARED:** DANIEL SAWISLAK

**PLACE OF EXECUTION:**

Doma, 6612 Owens Drive, Ste. 100, Pleasanton, CA 94588

**PHONE:** 925-847-9570

**DATE:** JANUARY 28, 2022

Signature   
T. WEBB

**ILLEGIBLE NOTARY SEAL DECLARATION****(GOVERNMENT CODE 27361.7)**

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

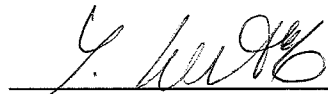
Name of Notary: ARLENE HARRIET SKJERLY

Commission No.: 2244591

Date Commission Expires: JUNE 27, 2022

Notary Public State and County: CALIFORNIA / ALAMEDA COUNTY

Date: JANUARY 28, 2022



Declarant

T. WEBB

Print name of Declarant

Doma, 6612 Owens Drive, Suite 100

Pleasanton, CA 94588

Place of execution of this declaration

Phone: 925-847-9570

**CITY OF MILPITAS CERTIFICATE OF ACCEPTANCE**  
**(Pursuant to Government Code 27281)**

This is to certify that the interest in real property conveyed by the Grant of Easement – Public Sidewalk and Pedestrian Access Easement dated January 28, 2022 from **Grantor** to the CITY OF MILPITAS, a municipal corporation (“**Grantee**”), is hereby accepted upon completion and acceptance of improvements stated herein, by the undersigned officer or agent on behalf of the City Council of the City of Milpitas pursuant to authority conferred by Milpitas Municipal Code Section I-4-2.02, and the Grantee consents to recordation thereof by its duly authorized officer.

**GRANTEE:**

City of Milpitas, a municipal corporation

Dated: 1/28, 2022

By: 

Name: Steven McHarris

Its: City Manager .

**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.

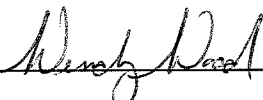
State of California  
County of Santa Clara

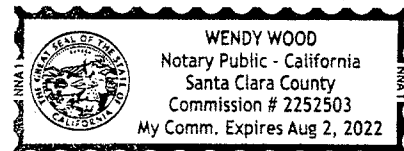
On January 28, 2022 before me, Wendy Wood, Notary Public  
(insert name and title of the officer)

personally appeared Steven McHarris,  
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 A**

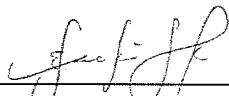
DESCRIPTION OF EASEMENT AREA

**EXHIBIT "A"**  
**PUBLIC ACCESS EASEMENT**  
**LEGAL DESCRIPTION**

All that real property situated in the City of Milpitas, County of Santa Clara, State of California, being the Northerly 10.00 feet of Parcel 5 as shown on that certain Parcel Map, filed April 22, 1974, in Book 338 of Maps, at Page 42, in the Office of the County Recorder of Santa Clara County, State of California.

CONTAINING 2,060 square feet, more or less.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

  
\_\_\_\_\_  
Jacqueline Luk, PLS 8934

Date: 7/30/2020



EXHIBIT B  
DEPICTION OF RECREATION TRAIL EASEMENT







## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Approve and Authorize the City Manager to Execute the Encroachment and Maintenance Agreement with Sango Court, L.P., for the Installation and Maintenance of Private Landscape Improvements, within City Right-of-way, for the Sango Court Affordable Housing Project Located at 355 Sango Court (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)</b> |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                                                                                                                                          |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                                                                                                                                                                                                                                                        |
|                      | <u>Recommendation:</u> Approve and authorize the City Manager to execute the Encroachment and Maintenance Agreement with Sango Court, L.P., for the installation and maintenance of private landscape improvements, within City Right-of-way, for the Sango Court Affordable Housing Project located at 355 Sango Court.                                                        |

### **BACKGROUND:**

On May 23, 2018, the Milpitas Planning Commission approved Developer's application for a Site Development Permit (SD17-0017), Density Bonus (DB17-0001), and Environmental Assessment (EA18-0001) to allow the construction of 102-unit multifamily apartment building and associated site improvements. The Project is located on an existing 1.26-acre site at 355 Sango Court., Milpitas, CA 95035.

Offsite improvements to be constructed include the installation of new privately maintained landscape and irrigation improvements along the newly constructed Sango Court extension's frontage at the RCD Housing Project.

### **ANALYSIS:**

The Developer has agreed to enter into an Encroachment and Maintenance Agreement (Attached) with the City for the construction of off-site private landscape improvements for the project which are the installation of landscape, and irrigation system and accompanying service boxes, pipes, fixtures, meters, controllers, signage and other miscellaneous appurtenances related to landscape and irrigation system. The landscape improvements will be completed with the on-site work and be maintained by the property owner after completion, reducing the need for City maintenance of landscaping in this area. The maintenance obligation shall run with the land.

### **POLICY ALTERNATIVE(S):**

#### **Alternative 1:**

Do not approve granting authorization to the City Manager to approve the Encroachment and Maintenance Agreement Amendment.

Pros: None

Cons: If the Encroachment and Maintenance Agreement is not authorized the City would have to allocate City resources to maintain the landscape improvements. Staff has determined that there will be greater efficiency if the Developer constructs and maintains the landscape improvements.

Reason for Not Recommending: Granting approval of landscape maintenance would free up City Resources and would ensure the City is not liable for landscape maintenance within the terms of the agreement.

### **FISCAL IMPACT:**

There is no fiscal impact to the City for granting the developer encroachment and maintenance responsibilities other than to free up City resources for other maintenance areas within the City.

**California Environmental Quality Act (CEQA):**

The Planning Division conducted an initial environmental assessment (PEA18-0001) of the project in accordance with the California Environmental Quality Act (CEQA). The Addendum fully addressed all potential impacts associated with this project, and no material changes have been made to the project that would alter the conclusions of the Addendum. The analysis contained in the Environmental Checklist confirms that the modified project is within the scope of the TASP FEIR and will have no new or more severe significant effects and no new mitigation measures are required.

Additionally, the TASP EIR included a program of activities including construction of up to 7,109 residential units within the TASP area. The 100-102 residential units proposed as a part of the Site Development Permit for the 355 Sango Court site fall within this scope of development activity, as the TASP area has not reached its full build out.

Pursuant to Sections 15162 and 15163 of the California Environmental Quality Act, the project is exempt from further environmental analysis. Project design features required of projects covered under the TASP EIR are included as Conditions of Approval, attached hereto as Exhibit I. Based on the foregoing, the project will not have additional environmental impacts beyond those identified in the TASP EIR, no additional environmental review is required, and no new or additional mitigation measures are required.

As a separate and independent basis, the project is also exempt from further CEQA review pursuant to Sections 15183, 15182, and 15169 of the California Environmental Quality Act, as the project is generally consistent with the development density established by existing zoning, specific plan, and general plan and is within the scope of the TASP FEIR. Therefore, no further environmental review is required.

**RECOMMENDATION:**

Approve and Authorize the City Manager to Execute the Encroachment and Maintenance Agreement with Sango Court, L.P., for the installation and maintenance of private landscape improvements, within City Right-of-way, for the Sango Court Affordable Housing Project located at 355 Sango Court.

**Attachment(s):**

1. Encroachment and Maintenance Agreement

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

**CITY OF MILPITAS  
455 E. CALAVERAS BOULEVARD  
MILPITAS, CA 95035-5479  
Attn: City Clerk**

Exempt from Recording Fee per  
Government Code § 6103

(Space above for Recorder's Use)

**ENCROACHMENT AND MAINTENANCE AGREEMENT**

THIS ENCROACHMENT AND MAINTENANCE AGREEMENT ("AGREEMENT") is issued by the CITY OF MILPITAS, a California municipal corporation and general law city ("CITY"), to SANGO COURT, L.P. a California limited partnership ("PERMITTEE"). CITY and PERMITTEE are sometimes hereinafter referred to individually as "Party" and collectively as the "Parties."

**RECITALS**

**A.** PERMITTEE has applied for an encroachment and maintenance agreement from CITY in connection with PERMITTEE's project located on certain real property in the County of Santa Clara, State of California, commonly referred to as Sango Court Apartments, located at 355 Sango Court, Milpitas, California, and legally described in Exhibit A, attached hereto and incorporated herein by this reference ("REAL PROPERTY").

**B.** CITY owns an easement or fee simple right of way ("RIGHT OF WAY") over, across, under, within and along a certain portion of the REAL PROPERTY legally described in Exhibit B, attached hereto and incorporated herein by this reference ("RIGHT OF WAY AREA").

**C.** PERMITTEE has requested CITY to enter into this encroachment and maintenance agreement, whereby PERMITTEE would be authorized to install and maintain certain improvements on, over, and across certain portions of the RIGHT OF WAY AREA.

**D.** CITY agrees to provide to PERMITTEE the right to encroach upon the RIGHT OF WAY for the installation and maintenance of certain improvements on, over and across certain portions of the RIGHT OF WAY AREA, subject to the terms and conditions contained herein.

**CITY HEREBY ISSUES AN ENCROACHMENT PERMIT PURSUANT TO THE  
TERMS OF THIS ENCROACHMENT AGREEMENT TO PERMITTEE AS FOLLOWS:**

**1. Encroachment Permission.** CITY hereby provides to PERMITTEE permission to encroach upon the RIGHT OF WAY PROPERTY, for the purpose of installing, reinstalling (in the event that CITY's use of or operations in the RIGHT OF WAY AREA cause the removal, relocation, destruction, or modification of any of the IMPROVEMENTS), and maintaining the

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675.069/547131

IMPROVEMENTS (defined below), subject to the limitations set forth herein and PERMITTEE's fulfillment and ongoing compliance with the terms and conditions set forth herein. The installation and maintenance of, and any use of, the IMPROVEMENTS (defined below) shall be subordinate to any use and operations which CITY may conduct during the effective period of this AGREEMENT, and PERMITTEE shall not cause any unreasonable delay or interference with CITY'S access to the RIGHT OF WAY AREA. PERMITTEE shall not interfere with the operations of CITY in the RIGHT OF WAY AREA, whether or not such interference is considered material.

**2. Authorized Improvements.** The improvements authorized to be installed pursuant to this AGREEMENT are the installation of landscape, and irrigation system and accompanying service boxes, pipes, fixtures, meters, controllers, signage and other miscellaneous appurtenances related to landscape and irrigation system. Record drawings of installed landscape and irrigation shall be provided to the City's Engineering Department; ("IMPROVEMENTS"). The right of PERMITTEE to install, maintain, and use the IMPROVEMENTS are subject to the following limitations, and conditioned upon PERMITTEE implementing the following protective measures and physical construction standards in connection with the IMPROVEMENTS:

**a.** Detailed design drawings prepared by a registered engineer depicting the IMPROVEMENTS within the RIGHT OF WAY AREA shall be provided to, reviewed by, and approved by CITY. The design drawings shall include an accurate depiction of the horizontal and vertical position of the proposed improvements relative to the RIGHT OF WAY AREA. The IMPROVEMENTS shall be designed to ensure that the installation and use of the IMPROVEMENTS does not create any additional structural or geotechnical load on the RIGHT OF WAY AREA. The design of the IMPROVEMENTS must allow for immediate access to the RIGHT OF WAY AREA for purposes of inspecting, cleaning, maintaining, repairing, and replacing CITY's existing improvements located within the RIGHT OF WAY AREA and/or installing additional improvements and appurtenances.

**b.** CITY reserves the right, and PERMITTEE hereby acknowledges, that CITY may reject without liability the design drawings for any proposed IMPROVEMENTS and/or require any changes thereto if CITY determines, in its sole and absolute discretion, that such action is necessary to ensure CITY can adequately inspect, clean, maintain, repair, and replace CITY's existing improvements located within the RIGHT OF WAY AREA and/or installing additional improvements and appurtenances within the RIGHT OF WAY AREA.

**c.** Upon CITY's approval of the final design drawings for the IMPROVEMENTS, such design drawings shall be attached hereto as Exhibit "B" and incorporated herein by this reference and considered a material part of this AGREEMENT. PERMITTEE shall install and maintain the IMPROVEMENTS in strict compliance with the approved final design drawings, and no changes or deviations therefrom shall be permitted without PERMITTEE first obtaining the prior written consent of CITY, which may be granted or denied in the CITY's sole reasonable discretion. The issuance of building and encroachment permits by the CITY for any changes and modifications shall be presumed to constitute consent of such changes and modifications under this AGREEMENT.

d. A schedule of construction activities within the easement will be provided to and approved by CITY prior to the commencement of any construction work within the RIGHT OF WAY AREA. No heavy equipment shall be operated within or traverse the RIGHT OF WAY AREA, when there is less than 24 inches of soil over any existing public improvements. No vibratory compaction will be allowed within the RIGHT OF WAY AREA unless approved in writing by CITY. All IMPROVEMENTS shall be open and subject to inspection by CITY, and PERMITTEE shall give notice and allow CITY to inspect any underground improvements prior to backfilling. PERMITTEE shall provide CITY with "as-built" record drawings of the IMPROVEMENTS within thirty (30) days of completion of the construction activities.

e. PERMITTEE shall reimburse CITY for any and all expenses incurred by CITY for work to support or protect the RIGHT OF WAY AREA within thirty (30) days after receiving written demand and a statement from CITY detailing such costs. In the event PERMITTEE fails to perform work to support or protect the RIGHT OF WAY AREA within thirty (30) days after receiving written notice from CITY of such failure, or if CITY must immediately perform such work in the event of an emergency or to perform legally mandated duties, CITY may proceed with such work at the expense of PERMITTEE. PERMITTEE shall reimburse CITY within thirty (30) days after receiving written demand and a statement from CITY detailing the costs incurred by CITY.

f. PERMITTEE shall be required to obtain all other necessary and required licenses, permits and authorizations from any governmental agency with jurisdiction over the IMPROVEMENTS and to pay all fees and charges associated therewith prior to commencing any work on the IMPROVEMENTS. This AGREEMENT does not constitute, nor grant, permission to use or occupy property not belonging to, or under the control of CITY, and permission to use or occupy such property must be obtained from the owner or controller of such property, separate from and in addition to this AGREEMENT.

g. PERMITTEE shall not alter, replace, or otherwise change the IMPROVEMENTS without complying with the terms of this Section 2.

**3. Repair of Damage.** Any damage caused directly or indirectly by PERMITTEE to the RIGHT OF WAY AREA or to CITY's improvements therein and other property shall be repaired by CITY, at PERMITTEE's sole cost and expense, or if authorized by CITY may be repaired by PERMITTEE at its sole cost and expense. If CITY elects to perform the repair work itself, PERMITTEE shall reimburse CITY for the full costs of the repair work within thirty (30) days after receiving written demand and a statement from CITY detailing such costs.

**4. Termination.** The term of this AGREEMENT shall commence on the last date of execution and shall run until City elects to terminate the AGREEMENT. Upon the termination of this AGREEMENT, PERMITTEE shall have ninety (90) days to remove all IMPROVEMENTS placed on, constructed or maintained by PERMITTEE within the RIGHT OF WAY AREA. If PERMITTEE fails to abide by the removal order of CITY within the time prescribed, CITY shall have the right to remove the IMPROVEMENTS without reimbursement to PERMITTEE and the reasonable cost of such removal shall be paid by PERMITTEE to CITY, and shall constitute a debt owed to CITY which shall be paid within thirty (30) days after PERMITTEE receives written demand and a statement from CITY detailing such costs. In the event payment is not made within

said thirty (30) day period, the payment shall include interest at a rate of ten percent (10%) per annum from the end of the thirty (30) day period until paid. CITY is hereby authorized to record a Notice of Termination of Encroachment Permit after the termination of the 90-day period referenced above.

**5. Waiver and Release.** PERMITTEE, in perpetuity, expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies PERMITTEE may now or hereafter have against CITY, and its officials, officers, employees, and agents, whether known or unknown, with respect to liability for any damage to or loss, upon, above, beneath, or across the RIGHT OF WAY AREA pursuant to this AGREEMENT unless such damage or loss is caused by the sole active negligence or willful misconduct of CITY. As a material part of CITY's decision to issue this AGREEMENT, PERMITTEE hereby assumes all risk of damage to the IMPROVEMENTS in, upon, or about the RIGHT OF WAY AREA arising, from any cause attributable to CITY's exercising its rights hereunder or under the RIGHT OF WAY, and PERMITTEE hereby waives all claims in respect thereto against CITY, except if caused by the sole active negligence or willful misconduct of CITY.

PERMITTEE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW, PERMITTEE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

\_\_\_\_\_  
PERMITTEE's Initials

The waivers and releases by PERMITTEE contained herein shall survive the term of this AGREEMENT and shall be binding upon the assignees, transferees, and successors in interest of PERMITTEE.

**6. Access, Restricted Use, and Temporary Removal of Improvements.** PERMITTEE acknowledges that the RIGHT OF WAY AREA contains certain public improvements, collectively and hereinafter referred to as PUBLIC IMPROVEMENTS. In order for CITY to exercise its rights with respect to the PUBLIC IMPROVEMENTS, CITY shall exercise reasonable efforts to notify PERMITTEE either in writing or by telephone, of the need to gain access to, temporarily restrict the use of, and if necessary temporarily remove, the IMPROVEMENTS. PERMITTEE hereby agrees that upon written or telephonic notice from CITY, PERMITTEE shall at its own cost and expense do one or more of the following as requested by CITY in the notice: (1) within twenty-four (24) hours after receiving notice, provide CITY

access to the IMPROVEMENTS (or the appropriate portion thereof); (2) within twenty-four (24) hours after receiving notice, temporarily restrict use of the IMPROVEMENTS for the reasonable period requested by CITY as may be necessary to allow CITY continuous access to the IMPROVEMENTS and unrestricted use of the RIGHT OF WAY AREA; and (3) within a reasonable time period after receiving the notice as requested by CITY, temporarily remove the IMPROVEMENTS (or the appropriate portion thereof) as may be necessary to allow CITY to make any repairs, replacement, or improvements to the PUBLIC IMPROVEMENTS, and when notified restore the IMPROVEMENTS to their working condition. If PERMITTEE fails to remove the IMPROVEMENTS (or the appropriate portion thereof) within said time period, for whatever reason, then CITY shall have the right to remove the IMPROVEMENTS (or the appropriate portion thereof) without reimbursement to PERMITTEE and without any obligation to restore, replace, or repair the removed IMPROVEMENTS. In the case of an emergency, CITY shall have immediate access to the IMPROVEMENTS (or the appropriate portion thereof) without written or telephonic notice to PERMITTEE or reimbursement to PERMITTEE. CITY shall provide notice of the emergency to PERMITTEE as soon as possible, and upon receipt of such notice PERMITTEE shall immediately cease all further use of the IMPROVEMENTS until the emergency has been mitigated. The term "emergency" shall be defined in accordance with California law and in general, shall be considered as an unforeseen circumstance which calls for immediate action.

**7. Recovery of Costs for Enforcement of Permit.** The terms of this AGREEMENT may be enforced by CITY or its successors or assigns. In the event of any controversy, claim or dispute relating to this AGREEMENT, or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' fees and costs.

**8. Damage to PUBLIC IMPROVEMENTS.** PERMITTEE shall pay to CITY, within thirty (30) days of written notice from CITY and a statement detailing such costs and expenses, all reasonable costs and expenses which result from any damage to PUBLIC IMPROVEMENTS, where such damage is caused by the location, construction, maintenance, reconstruction, repair, use, or removal of the IMPROVEMENTS. In the event payment is not made within said thirty (30) day period, said payment shall include interest at a rate of ten percent (10%) per annum from the end of said thirty (30) day period until paid.

**9. Revocation of Permit.** Notwithstanding any other term or provision of this AGREEMENT, CITY shall have the right to revoke this AGREEMENT for any of the following reasons: (a) a breach by PERMITTEE of any covenant or term of this AGREEMENT, (b) a default by PERMITTEE of any term or provision of this AGREEMENT, or (c) abandonment by PERMITTEE of the use of the IMPROVEMENTS, or any part thereof, for a continuous period of six (6) months. Notification of such revocation shall be in writing. Any waiver by CITY of any breach by PERMITTEE shall not constitute a waiver of the right to revoke this AGREEMENT for any subsequent breach which may occur, or to enforce any other provision of this AGREEMENT. Upon revocation, PERMITTEE shall remove all IMPROVEMENTS and restore the RIGHT OF WAY AREA as herein provided.

**10. Restoration of Right of Way Area.** Upon revocation or termination of this AGREEMENT in any manner provided in this AGREEMENT, PERMITTEE, upon demand of CITY and at PERMITTEE's own cost and expense, shall abandon the use of the

IMPROVEMENTS and complete its installation in such a way that the CITY can independently own and operate the IMPROVEMENTS within the RIGHT OF WAY, which may, at the sole discretion of the City, require a new CITY approved design for irrigation and landscaping. In no event shall PERMITTEE have any claim against the CITY for any of the costs of constructing, maintaining or removing the IMPROVEMENTS. In case PERMITTEE shall fail to complete the IMPROVEMENTS in the RIGHT OF WAY AREA as provided herein within a reasonable time, which in no event shall be fewer than six (6) months after the effective date of revocation, CITY may proceed with such work at the expense of PERMITTEE or may assume title and ownership of the IMPROVEMENTS and any other property of PERMITTEE located on or within the RIGHT OF WAY AREA. No revocation hereof shall release PERMITTEE from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the IMPROVEMENTS are removed, and the RIGHT OF WAY AREA is restored as provided above.

#### **11. Hazardous Materials Use.**

a. PERMITTEE covenants that it will not handle or transport Hazardous Materials on the IMPROVEMENTS or the RIGHT OF WAY AREA. As used in this AGREEMENT, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

In the event the IMPROVEMENTS are now or in the future used in the handling or transporting of Hazardous Materials, PERMITTEE agrees fully to comply with all applicable federal, state, and local laws, rules, regulations, orders, decisions and ordinances (hereinafter referred to as "Hazardous Materials Standards") concerning Hazardous Materials. PERMITTEE further agrees



that at CITY's request it will furnish CITY with proof, satisfactory to CITY, that PERMITTEE is in compliance with all such laws, rules, regulations, orders, decisions and ordinances.

**b.** Notwithstanding anything else contained in this AGREEMENT and to the fullest extent permitted by law, in case of a breach of the obligations contained in this Section, PERMITTEE agrees to assume liability for and to save, indemnify, defend and hold harmless CITY from and against any and all injuries to any person, including wrongful death, and damage to property, including without limitation, property of CITY and PERMITTEE, and all related expenses, including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and mitigation costs resulting in whole or in part from PERMITTEE's failure to comply with any applicable Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials. PERMITTEE, at its cost, shall assume the defense of all claims, in accordance with Section 15 hereof. PERMITTEE agrees to reimburse CITY for all reasonable costs of any kind incurred as a result of the PERMITTEE's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and reasonable legal costs incurred as a result of PERMITTEE's handling, transporting, or disposing of Hazardous Materials on, over, or across the IMPROVEMENTS and RIGHT OF WAY AREA.

**12. Standards.** PERMITTEE shall comply with all applicable statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as "Standards") issued by any federal, state or local governmental body or agency established thereby relating to PERMITTEE's use of the IMPROVEMENTS and RIGHT OF WAY AREA hereunder. In its use of the IMPROVEMENTS and RIGHT OF WAY AREA, PERMITTEE shall at all times be in full compliance with all Standards, present or future, including, but not limited to, Standards concerning air quality, water quality, noise, and Hazardous Materials. In the event PERMITTEE fails to be in full compliance with Standards, CITY may, but shall not be obligated to, after giving notice of the failure to PERMITTEE, and if PERMITTEE, within fifteen (15) days of such notice, fails to correct such non-compliance, take whatever action it determines in its sole discretion to be necessary to protect the PUBLIC IMPROVEMENTS, RIGHT OF WAY AREA, and other adjacent property. PERMITTEE shall reimburse CITY for all reasonable costs (including but not limited to, consulting, engineering, clean-up and disposal, and reasonable legal costs) incurred by CITY as a result of PERMITTEE's failure to comply with such Standards, and also such reasonable costs incurred by CITY in abating a violation of such Standards, protecting against a threatened violation of such Standards, defending any claim of violation of such Standards in any proceeding before any agency or court, and paying any fines or penalties imposed for such violations. PERMITTEE shall, to the extent permitted by law, assume liability for and shall save and hold harmless CITY from any claim of a violation of the Standards regardless of the nature thereof or the agency or person asserting such claim, which results from PERMITTEE's use of the IMPROVEMENTS and RIGHT OF WAY AREA; provided, however, that the foregoing shall not apply to the extent of CITY's negligence or willful misconduct. PERMITTEE, at its cost, shall assume the defense of all such claims.

**13. Tests and Inspections.** CITY shall have the right at any time to inspect the IMPROVEMENTS, RIGHT OF WAY AREA, and PUBLIC IMPROVEMENTS so as to monitor compliance with this AGREEMENT. If, in CITY's sole judgment, any installation, use, or condition of the IMPROVEMENTS may have an adverse effect on the PUBLIC

IMPROVEMENTS, RIGHT OF WAY AREA, or CITY's operations, CITY shall be permitted to, at its sole cost and expense, conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the RIGHT OF WAY AREA and PUBLIC IMPROVEMENTS, as it determines to be necessary or useful to evaluate the condition of the RIGHT OF WAY AREA and PUBLIC IMPROVEMENTS. PERMITTEE shall cooperate with CITY in any tests or inspections deemed necessary by CITY. PERMITTEE shall pay or reimburse CITY, as appropriate, for all reasonable costs and expenses incurred due to any necessary corrective work and inspections thereafter within thirty (30) days of a request for payment and a statement detailing such costs and expenses.

#### 14. Insurance.

a. Types; Amounts. PERMITTEE shall obtain, and shall require any subcontractor to obtain, insurance in the amounts described below unless specifically altered or waived by CITY ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this License or be no less than two times the specified occurrence limit.

- (i) *General Liability Insurance.* PERMITTEE shall maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. The general liability insurance policy must include coverage for the following:
  - (1) Bodily Injury and Property Damage
  - (2) Personal Injury/Advertising Injury
  - (3) Premises/Operations Liability
  - (4) Products/Completed Operations Liability
  - (5) Explosion, Collapse and Underground (UCX) exclusion deleted
  - (6) Contractual Liability with respect to this AGREEMENT
  - (7) Broad Form Property Damage
  - (8) Independent Contractor Coverage
- (ii) *Business Automobile Liability Insurance.* PERMITTEE shall maintain business automobile liability insurance with an each accident limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, which shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

- (iii) *“All Risk” Property Insurance.* PERMITTEE shall maintain a policy of property insurance for perils usual to a standard “all risk” insurance policy on all its improvements or alterations in, on, or about the RIGHT OF WAY AREA, with limits equal to the value of all such improvements or alterations.

**b. General Provisions.** The general liability insurance policy and the business automobile liability insurance policy shall (1) name CITY, its officials, officers, employees and agents as additional insureds; (2) be endorsed to waive subrogation against CITY, its officials, officers, employees and agents as additional insureds; and (3) be primary and non-contributory. All Required Insurance herein shall contain standard separation of insureds provisions and shall contain no special limitations on the scope of protection provided to CITY, its officials, officers, employees and agents.

**c. Certificates; Insurer Rating; Cancellation Notice.** Prior to conducting any work in RIGHT OF WAY AREA, PERMITTEE shall furnish to CITY properly executed certificates of insurance which evidence all Required Insurance. PERMITTEE shall maintain the Required Insurance at all times while this AGREEMENT is in effect, and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days prior written notice to CITY. Unless approved in writing by CITY, PERMITTEE shall place the Required Insurance with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A-:VII.

**d. Waiver of Subrogation.** PERMITTEE releases CITY, its officials, officers, employees and agents from any claims for damage or harm to any person, the REAL PROPERTY, the RIGHT OF WAY AREA, or the IMPROVEMENTS, caused by, or which result from, risks insured under any insurance policy carried by PERMITTEE at the time of such damage or harm. PERMITTEE shall cause each insurance policy required herein to provide a waiver of subrogation in favor of CITY, its officials, officers, employees and agents.

## **15. Indemnity.**

PERMITTEE hereby agrees to defend, indemnify and hold CITY and its officials, officers, agents and employees free and harmless from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages or injuries of any kind in law or equity, to persons or property, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of PERMITTEE, its partners, affiliates, agents officials, officers or employees in performance of this AGREEMENT, use of the REAL PROPERTY or RIGHT OF WAY AREA, or the construction, use, or operation of the IMPROVEMENTS. PERMITTEE shall further defend, indemnify and hold harmless the CITY and its officials, officers, agents and employees from all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings (brought against the CITY or its departments, commissions, agents, officers, officials, or employees to challenge, attack seek to modify, set aside, void or annul any City decision made in connection with this AGREEMENT or PERMITTEE’s use of the RIGHT OF WAY AREA. PERMITTEE shall defend, with counsel of CITY’s choosing and at PERMITTEE’s sole expense, any and all aforesaid suits, actions or

proceedings, legal or affirmative, that may be brought or instituted against CITY, its officials, officers, agents or employees. PERMITTEE shall pay and satisfy any judgment, award or decree that may be rendered against CITY, its officials, officers, agents or employees. PERMITTEE shall reimburse such parties for any and all legal expenses and costs incurred by one or all of them in connection with this AGREEMENT or the indemnity herein provided. PERMITTEE's obligation shall survive termination or expiration of this AGREEMENT, and shall not be restricted to insurance proceeds, if any, received by CITY or its officials, officers, agents or employees.

**16. Covenant Running With Land.** This AGREEMENT shall be deemed a covenant running with the REAL PROPERTY. All of the covenants, obligations, and provisions of this AGREEMENT shall be binding upon and inure to the benefit of successors, legal representatives and assigns of the Parties. Every person who now or hereafter owns or acquires any right, title, or interest in and to any portion of the REAL PROPERTY shall be conclusively deemed to have notice of this AGREEMENT, whether or not reference to this AGREEMENT is contained in the instrument by which such person acquires an interest in the REAL PROPERTY. Therefore, each and every contract, deed or other instrument hereinafter executed, covering or conveying the REAL PROPERTY shall conclusively be deemed to have been executed, delivered and accepted subject to this AGREEMENT.

**17. Miscellaneous.**

a. Amendments. The provisions of this AGREEMENT may be amended by mutual written consent of both parties.

b. Notices. All notices permitted or required under this AGREEMENT shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

PERMITTEE: Sango Court, L.P.  
2220 Oxford Street  
Berkeley, CA 94704  
Attn: Daniel Sawislak  
Executive Director

CITY: City of Milpitas  
Engineering Department  
455 E. Calaveras Blvd.  
Milpitas, CA 95035-5411  
Attn: Matt Cano  
Deputy City Manager

Such notice shall be deemed made when personally delivered or forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

c. Entire Understanding. This AGREEMENT constitutes the entire understanding between the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein.

d. Invalidity. If any provision of this AGREEMENT is invalid or unenforceable with respect to any Party, the remainder of this AGREEMENT or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.

e. Successors and Assigns. This AGREEMENT shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

f. Consent to Jurisdiction and Venue. This AGREEMENT shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this AGREEMENT, or which in any way arises out of the Parties' activities undertaken pursuant to this AGREEMENT, shall be filed and prosecuted in the appropriate California State Court in the County of Santa Clara, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, PERMITTEE expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

g. Exhibits. All exhibits attached hereto form material parts of this AGREEMENT.

**18. Possessory Interest.** In accordance with Revenue and Taxation Code Section 107.6, this AGREEMENT may create a possessory interest subject to personal property taxation for which PERMITTEE shall be responsible.

**19. Effective Date.** The Parties hereby agree that the effective date of this AGREEMENT, and the effective date for all obligations of the Parties hereunder, shall be the date on which this AGREEMENT has been fully executed by both Parties.

**SIGNATURES ON FOLLOWING PAGE**

**SIGNATURE PAGE TO  
ENCROACHMENT AGREEMENT  
BETWEEN  
CITY OF MILPITAS  
AND MILPITAS – DISTRICT 4 OWNER, LLC.**

**IN WITNESS WHEREOF**, this AGREEMENT and the Encroachment Permit granted hereby has been duly issued by CITY on the date of execution by CITY below.

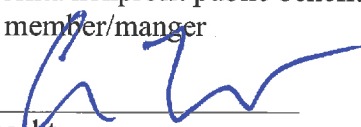
**ACCEPTANCE OF TERMS  
AND CONDITIONS OF AGREEMENT:**

**PERMITTEE**

Sango Court, L.P.  
a California Limited Partnership

By: RCD GP III, LLC,  
A California limited liability company  
Its general partner

By: Resources for Community Development,  
A California nonprofit public benefit corporation,  
Its sole member/manger

By:   
Eric Knecht,  
Chief Financial Officer

## 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 Alameda  
County of \_\_\_\_\_)

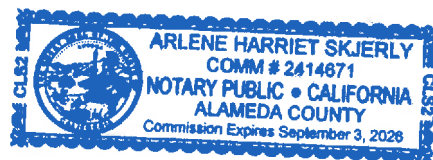
On 8/22/23 before me, Arlene Harriet Skjerly - Notary  
(insert name and title of the officer)

personally appeared Eni Kreche,  
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 Arlene Harriet Skjerly (Seal)



**CITY:**

**CITY OF MILPITAS,  
A MUNICIPAL CORPORATION**

By: \_\_\_\_\_  
Ned Thomas  
Acting City Manager

Approved as to form:

By: \_\_\_\_\_  
Michael Mutalipassi  
City Attorney

Approved:

By: \_\_\_\_\_  
Lauren Lai, CPA, MPA  
Finance Director/Risk Manager

Recommended for approval:

By: \_\_\_\_\_  
Matt Cano, PE  
Deputy City Manager/Acting City Engineer



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF REAL PROPERTY**

### LEGAL DESCRIPTION

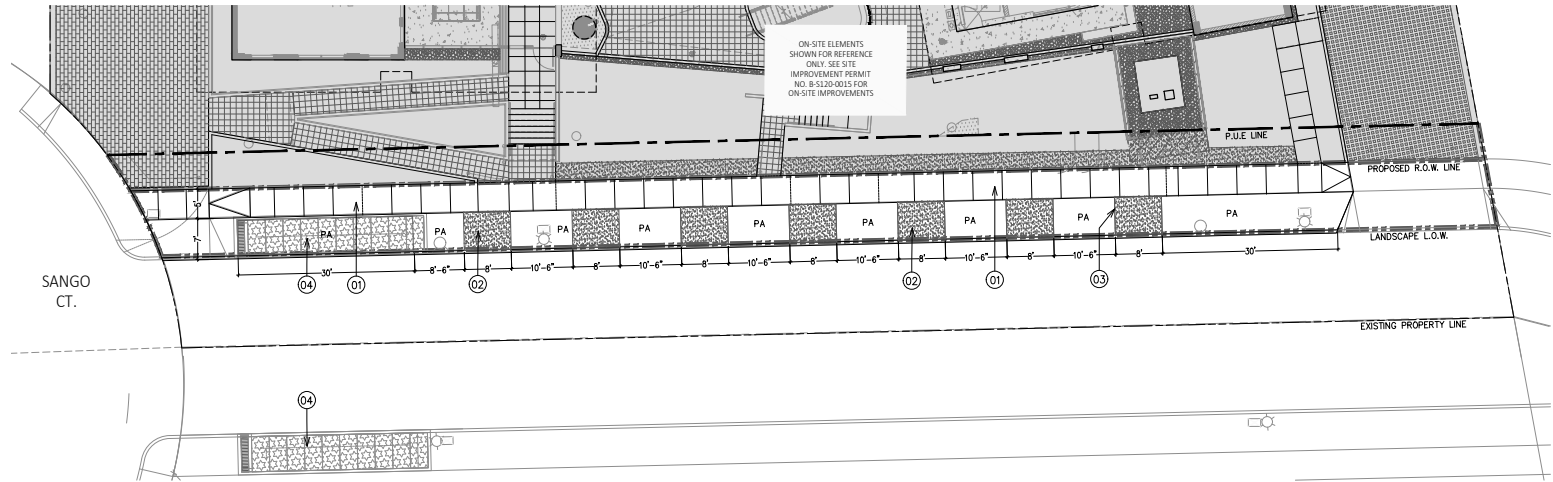
Real Property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS 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, AT PAGE(S) 42.

APN: 086-36-013

**EXHIBIT "B"**

**RIGHT OF WAY AREA AND FINAL DESIGN DRAWINGS FOR IMPROVEMENTS  
APPROVED BY CITY**



A LANDSCAPE CONSTRUCTION PLAN  
1"=10'-0"

PROJECT NORTH

| CONSTRUCTION ELEMENT LEGEND                                                                                         | DETAIL     |
|---------------------------------------------------------------------------------------------------------------------|------------|
| 01 CONCRETE CITY SIDEWALK. SEE CIVIL IMPROVEMENT PLANS.                                                             | --         |
| 02 INSTALL STABILIZED DECOMPOSED GRANITE PAVING: "SPANISH BLUFF" BY DECORATIVE STONE SOLUTIONS (OR APPROVED EQUAL). | C/SHEET 22 |
| 03 INSTALL METAL EDGING BY PERMA-LOC.                                                                               | D/SHEET 22 |
| 04 PARKWAY TREATMENT PLANTER. SEE CIVIL PLANS.                                                                      | --         |

form/work  
2585 UNIVERSITY AVE.  
SAN DIEGO, CA 92104  
T: 619.269.4423  
LANDSCAPE ARCHITECTURE

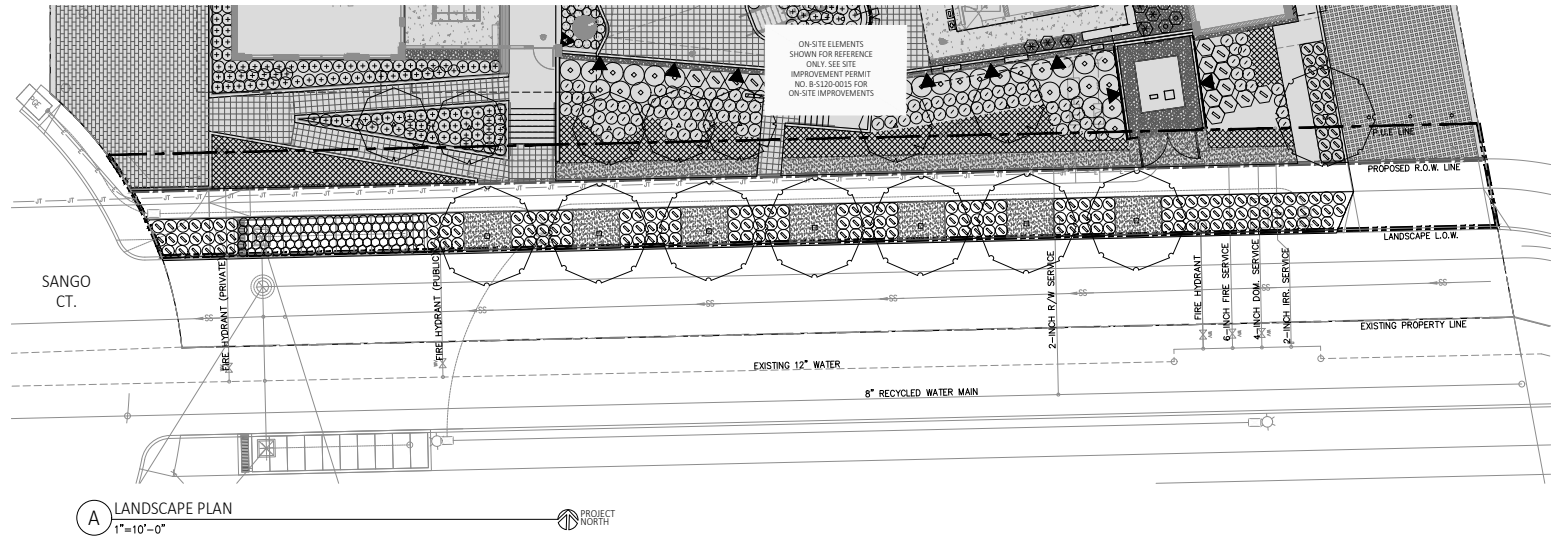


| Titleblock For Landscaping When Recycled Water Is Used                       |      |                                                                                                                                                                                                                                                                                                                                                                                                              |             | Titleblock For Public Landscaping                                                                    |              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |      |      |    |             |            |              |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| <b>Record Drawings</b><br>To be completed with submission of Record Drawings |      | <b>CITY OF MILPITAS- ENGINEERING DIVISION</b><br>Approved: _____<br>City of Milpitas, Land Development Engineer                                                                                                                                                                                                                                                                                              |             | <b>Record Drawings</b><br>To be completed prior to acceptance of work by the City                    |              | <b>Revisions</b><br><table border="1"> <thead> <tr> <th>Num.</th> <th>Date</th> <th>By</th> <th>Description</th> <th>City Engr.</th> <th>Apprv'd Date</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> |  | Num. | Date | By | Description | City Engr. | Apprv'd Date |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Num.                                                                         | Date | By                                                                                                                                                                                                                                                                                                                                                                                                           | Description | City Engr.                                                                                           | Apprv'd Date |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |      |      |    |             |            |              |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| Signature _____ Date _____<br>(Landscape Architect/Contractor)               |      | Landscape Package No. _____<br>Customer No. _____                                                                                                                                                                                                                                                                                                                                                            |             | Signature + Seal _____ Date _____<br>PE No. _____ Exp. _____                                         |              | <b>CITY OF MILPITAS ENGINEERING DIVISION</b><br>Approved: <i>Steven Erickson</i> Date _____<br>City Engineer<br>Any changes to public improvements shall be approved by the City engineer.<br>Fire Dept. <i>JAG</i> Date <i>2/9/22</i><br>Engineering <i>JAG</i> Date _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |      |      |    |             |            |              |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| License No. _____ Exp. _____                                                 |      | Review and approval of these plans by the City of Milpitas is limited to compliance with the recycled water requirements and subject to State Department of Health Services (DHHS) review and approval. The applicant is responsible for compliance with any additional or modifications required as the result of field conditions or DHHS review.<br>Recommended for approved Engineering _____ Date _____ |             | Public Works Inspection _____<br>Public Improvements Initially Accepted by the City Council on _____ |              | Project #: 2-1386<br>File #: _____<br>Sheet Title: LANDSCAPE CONSTRUCTION PLAN<br>E.F.P. No. E-EN20-0223<br>Sheet 20 of 30<br>PLOTDATE: 2022-01-07                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |      |      |    |             |            |              |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

ISSUED FOR PERMIT: 01-07-2022

## PLANTING NOTES

1. REFER TO PLANTING SPECS & DETAILS FOR SOIL PREP, FERTILIZATION, MULCHING & OTHER PLANTING INFO.
2. NOTIFY OWNER'S AUTHORIZED REPRESENTATIVE 48 HOURS PRIOR TO COMMENCEMENT OF WORK TO COORDINATE PROJECT INSPECTION SCHEDULES.
3. VERIFY ALL EXISTING CONDITIONS, DIMENSIONS & ELEVATIONS BEFORE PROCEEDING WITH THE WORK. REPORT DISCREPANCIES IN THE DRAWINGS OR BETWEEN THE DRAWINGS & ACTUAL FIELD CONDITIONS TO THE LANDSCAPE ARCHITECT. CORRECTED DRAWINGS OR INSTRUCTIONS SHALL BE ISSUED PRIOR TO THE CONTINUATION OF THIS WORK. ASSUME FULL RESPONSIBILITY FOR ALL NECESSARY CORRECTIONS DUE TO FAILURE TO REPORT KNOWN DISCREPANCIES.
4. LOCATE ALL EXISTING UTILITIES WHETHER SHOWN HEREON OR NOT & PROTECT THEM FROM DAMAGE. NOTIFY OWNER'S REPRESENTATIVE IMMEDIATELY & ASSUME FULL RESPONSIBILITY FOR EXPENSE OF REPAIR OR REPLACEMENT IN CONJUNCTION WITH DAMAGED UTILITIES.
5. LOCATION OF N.L.C. CONSTRUCTION ELEMENTS SUCH AS LIGHTS, SIGNS, HYDRANTS, TRANSFORMERS, ETC., ARE APPROXIMATE. NOTIFY THE LANDSCAPE ARCHITECT IMMEDIATELY SHOULD THE LOCATION OF THESE ITEMS INTERFERE WITH THE PROPER EXECUTION OF WORK.
6. WORK TO BE PERFORMED BY LICENSED (C27) CONTRACTORS AND EXPERIENCED WORKERS.
7. CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATION WITH SUBCONTRACTORS AS REQUIRED TO ACCOMPLISH PLANTING OPERATIONS.
8. OBTAIN ALL SOIL FOR LANDSCAPE PLANTING AREAS OR BERMS FROM ON-SITE EXCAVATIONS. SHOULD IMPORT SOIL BE NECESSARY, SUBMIT IMPORT SOIL TESTING RESULTS FOR APPROVAL PRIOR TO IMPORTATION. SOIL SHALL BE SANDY LOAM CONTAINING NO GROWTH.
9. AFTER ROUGH GRADES HAVE BEEN ESTABLISHED IN PLANTING AREAS, HAVE SOIL SAMPLES TAKEN AT THE LOCATIONS INDICATED BY DESIGNATION (e.g., 2, ETC.) HAVE SAMPLES TESTED BY BUTLER MILL (619) 263-6181, FOR SOIL FERTILITY, AGRICULTURAL SUITABILITY TEST & SOIL PREPARATION RECOMMENDATIONS. TAKE (2) SAMPLES AT EACH LOCATION: (1) GROUND-LEVEL TO 10" DEEP, (1) 24" TO 36" DEEP. EACH SAMPLE SHALL CONTAIN APPROX. 1 QT. OF SOIL TO BE LABELED PER LOCATION & DEPTH. INSTALL SOIL PREP AND BACKFILL MIX TO CONFORM TO THESE RECOMMENDATIONS ONLY UPON RECEIPT OF WRITTEN APPROVAL FROM OWNER. SUBMIT SOIL REPORT TO LANDSCAPE ARCHITECT PRIOR TO PLANTING. IF LOCATIONS FOR SOILS TEST ARE NOT FOUND ON PLANS IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO CONTACT THE LANDSCAPE ARCHITECT FOR LOCATIONS PRIOR TO BEGINNING ANY WORK.
10. KILL & REMOVE ALL EXISTING WEEDS FROM SITE AREAS PER SPECS.
11. ASSURE POSITIVE DRAINAGE IN ALL PLANTING AREAS, 2% MIN.
12. PLANT MATERIALS SHALL MATCH SPECS PER SPECIES & SHALL COMPLY WITH ANSI Z60.1 "STANDARDS FOR NURSERY STOCK".
13. UPON AWARD OF BID, CONTRACTOR SHALL SECURE PLANT MATERIAL, AS SPECIFIED FROM AVAILABLE SOURCES. IN THE EVENT THAT PLANT MATERIALS ARE NOT AVAILABLE, CONTACT LANDSCAPE ARCHITECT FOR APPROVED SUBSTITUTIONS. NO SUBSTITUTIONS FOR PLANT MATERIALS WILL BE ALLOWED WITHOUT PRIOR WRITTEN APPROVAL BY THE LANDSCAPE ARCHITECT.
14. ALL PLANT MATERIAL SHALL BE IN CONFORMANCE WITH PLANTING PLAN DESCRIPTIONS & SPECS. ALL PLANT MATERIAL IS SUBJECT TO REVIEW & APPROVAL BY LANDSCAPE ARCHITECT PRIOR TO INSTALLATION. PROVIDE PHOTOS OF REPRESENTATIVE EXAMPLES OF EACH TAGGED BLOCK TO LANDSCAPE ARCHITECT MIN. 21 DAYS BEFORE ANTICIPATED DELIVERY. PHOTOS SHALL INCLUDE A PERSON FOR SCALE PURPOSES. LANDSCAPE ARCHITECT MAY OPT TO REVIEW MATERIAL AT GROWING NURSERY. MATERIALS DELIVERED TO THE SITE MAY BE REJECTED BASED ON UNHEALTHFUL APPEARANCE OR NON CONFORMANCE WITH SPECS EVEN IF PREVIOUSLY REVIEWED BY THE LANDSCAPE ARCHITECT/OWNER.
15. ALL TREES WITHIN A SPECIES SHALL HAVE MATCHING FORM, UNLESS OTHERWISE NOTED ON PLANS.
16. FINAL LOCATION OF ALL PLANT MATERIALS SHALL BE SUBJECT TO THE APPROVAL OF THE OWNER'S AUTHORIZED REPRESENTATIVE.
17. PLANTING QUANTITIES ARE GIVEN FOR CONVENIENCE ONLY. PLANT SYMBOLS & SPECIFIED SPACING SHALL TAKE PRECEDENCE.
18. AT EDGES OF PLANTING AREAS, THE CENTERLINE OF THE LAST ROW OF SHRUBS AND/OR GROUND COVER SHALL BE LOCATED NO FARTHER FROM THE EDGE THAN ONE-HALF THE SPECIFIED ON-CENTER SPACING.
19. INSTALL GROUND COVER AND/OR SHRUB MASSES WITH TRIANGULAR SPACING UNLESS OTHERWISE INDICATED.
20. PROVIDE FERTILIZER TABLETS FOR EACH CONTAINER-GROWN PLANT 1 GAL. & LARGER PER SPECS.
21. FOR ALL TREES WITHIN 5'-0" OF PAVING, INSTALL ROOT BARRIER ALONG PAVING EDGE BY DEEP ROOT CORPORATION (800) 458-7668. ROOT BARRIER SHALL EXTEND 6 FEET ON EACH SIDE OF EACH TREE. ROOT BARRIER SHALL NOT BE WRAPPED DIRECTLY AROUND ROOTBALL.
22. CONTRACTOR SHALL ALIGN PLANT MATERIALS TO BE TRUE TO DRAWINGS INTENT. ALL TREES & SHRUBS ARE NOT DIMENSIONED BUT MAY BE INDICATED TO BE IN ROWS, EVENLY SPACED, ALIGNED OR CENTERED ON VARIOUS ELEMENTS. CONTRACTOR SHALL MAKE HIMSELF FAMILIAR WITH THE INTENT OF PLANTING LAYOUTS & COORDINATE THEIR RELATION TO BUILDING FACADES, WINDOW PLACEMENTS, WALLS & COLUMNS. VERIFY PLACEMENT WITH LANDSCAPE ARCHITECT PRIOR TO PLANTING.
23. ALL CURVE TO CURVE & CURVE TO TANGENT LINES SHALL BE NEAT, TRIM, SMOOTH & UNIFORM.
24. TREE LOCATIONS SHALL BE ADJUSTED IN THE FIELD TO SUIT SPECIFIC SITE REQUIREMENTS AS DIRECTED BY LANDSCAPE ARCHITECT. STAKE ALL TREE PLANTING LOCATIONS PRIOR TO PLANTING FOR APPROVAL BY PLANNING DIVISION, IF SO REQUIRED BY AGENCY.
25. REMOVE ALL NURSERY STAKES & ESPALIER RACKS IMMEDIATELY AFTER INSTALLATION UPON PROVIDING SUPPORT PER PLAN.
26. LIST ON THE PLANT MATERIAL GUARANTEE ALL EXISTING TREES THAT HAVE HAD WORK PERFORMED WITHIN 6" OF TRUNK.
27. DURING THE LENGTH OF THE GUARANTEE PERIOD BE RESPONSIBLE FOR PROPER STAKING AND/OR GUYING OF TREES TO ENSURE STABILITY.
28. MULCH ALL LANDSCAPE AREAS HAVING LESS THAN A 2:1 SLOPE WITH A 3" DEEP LAYER OF MEDIUM GRIND MULCH AT THE CONCLUSION OF PLANTING OPERATIONS. SAMPLE SHALL BE APPROVED BY LANDSCAPE ARCHITECT PRIOR TO INSTALLATION.



## PLANTING LEGEND

| SYMBOL | BOTANICAL & COMMON NAMES                            | SIZE    | WUCOLS | COMMENTS      |
|--------|-----------------------------------------------------|---------|--------|---------------|
|        | T-1 JACARANDA MIMOSFOLIA (JACARANDA)                | 48" BOX | MOD    | STANDARD FORM |
| SYMBOL | BOTANICAL & COMMON NAMES                            | SIZE    | WUCOLS | COMMENTS      |
|        | S-2 JUNCUS P. 'ELK BLUE' (ELK BLUE CALIFORNIA RUSH) | 1-GAL   | LOW    | ---           |
|        | S-8 CAREX BUCHANANII (LEATHER LEAF SEDGE)           | 5-GAL   | MOD    | ---           |

## Titleblock For Landscaping When Recycled Water Is Used

## Record Drawings

To be completed with submission of Record Drawings

Signature \_\_\_\_\_ Date \_\_\_\_\_  
(Landscape Architect/Contractor)

License No. \_\_\_\_\_ Exp. \_\_\_\_\_

## CITY OF MILPITAS - ENGINEERING DIVISION

Approved \_\_\_\_\_  
City of Milpitas, Land Development Engineer

Review and approval of these plans by the City of Milpitas is limited to compliance with the recycled water requirements and subject to State Department of Health Services (DHHS) review and approval. The applicant is responsible for compliance with any additional or modifications required as the result of field conditions or DHHS review.

Recommended for approved Engineering \_\_\_\_\_ Date \_\_\_\_\_

Landscape Package No. \_\_\_\_\_

Customer No. \_\_\_\_\_

## Titleblock For Public Landscaping

## Record Drawings

To be completed prior to acceptance of work by the City

Signature + Seal \_\_\_\_\_ Date \_\_\_\_\_  
PE No. \_\_\_\_\_ Exp. \_\_\_\_\_

Public Works Inspection \_\_\_\_\_

Public Improvements Initially Accepted by \_\_\_\_\_  
the City Council on \_\_\_\_\_

## Revisions

Num. Date By Description City Engr. Apprv. Date

CITY OF MILPITAS  
ENGINEERING DIVISION

Approved: \_\_\_\_\_  
City Engineer \_\_\_\_\_ Date \_\_\_\_\_  
Any change to public improvements shall be approved by the City Engineer.

Fire Dept. \_\_\_\_\_ Date: 4/6/22  
Engineering \_\_\_\_\_ Date: 4/8/22

Project #: 2-1386  
File #: \_\_\_\_\_  
Sheet Title: PLANTING PLAN  
E.P. No. E-EN20-0223  
Sheet 21 of 30  
PLOTDATE: 2022-01-07

ISSUED FOR PERMIT: 01-07-2022



RECYCLED WATER SON LOCATION TYP.

PROPERTY LINE

FW

SD

BOSWALE

HW 2.2 8R  
100 30 1"

HW 1.7 8R  
249 30 1"

HW 1.9 8R  
181 30 1"

HW 1.9 8R  
10 30 1"

POST

RW

PH 34

POTABLE LATERAL CONNECTIONS TO LEVEL 2 PLANTERS

LOW 3.3 44  
75 30 1"

MSD 2.9 45  
100 30 1"

INSTALL AIR-VALVES IN CONCRETE BOXES, FLUSH WITH PAVEMENT

IRRIGATION LINES SHOWN IN BLDG FOOTPRINT FOR DWG CLARITY ONLY

DOMESTIC WATER LATERAL, TYP.

ELEVATED COURTYARD

NOTE: NO RECYCLED WATER INSIDE FENCED COURTYARD

FIRE LINE FDC

TRANSFORMER

LOW 1.6 8R 83  
2171 30 1"

LOW 1.5 8R 82  
173 30 1"

LOW 2.0 8R 81  
194 30 1"

HW 1.8 8R 80  
200 30 1"

HW 1.7 8R 80  
632 30 1"

PAVE LINE

IRR

SS

FW

BOSWALE

RW LATERAL, TYP.

LANDSCAPE I.O.W. ENCROACHMENT PERMIT

8" R/W CROSSING, PROVIDE COUNTERWEIGHT CALLED FOR BY SEWER STANDARDS NOTE 11 ON SHEET L292

R/W METER (SERVICE ID CMP 80476)

2-INCH R/W SERVICE

8-INCH FIRE SERVICE

12-INCH WATER MAIN

8-INCH R/W MAIN

DOMESTIC WATER BFP TURN 475-57 8888P

1" 825-1A SERIES 10" RIR JACOBYLOW

DOMESTIC WATER METER

2-INCH IRRIGATION WATER SERVICE

4-INCH DOMESTIC WATER SERVICE

PROPERTY LINE

HYDROZONE AREA (L.F.)

OPERATING PRESSURE

VALVE SIZE

PIPE SIZING KEY

| HYDROZONE AREA (L.F.) | OPERATING PRESSURE | VALVE SIZE |
|-----------------------|--------------------|------------|
| 1                     | 1"                 | 1"         |
| 2                     | 1"                 | 1"         |
| 3                     | 1"                 | 1"         |
| 4                     | 1"                 | 1"         |
| 5                     | 1"                 | 1"         |
| 6                     | 1"                 | 1"         |
| 7                     | 1"                 | 1"         |
| 8                     | 1"                 | 1"         |
| 9                     | 1"                 | 1"         |
| 10                    | 1"                 | 1"         |
| 11                    | 1"                 | 1"         |
| 12                    | 1"                 | 1"         |
| 13                    | 1"                 | 1"         |
| 14                    | 1"                 | 1"         |
| 15                    | 1"                 | 1"         |
| 16                    | 1"                 | 1"         |
| 17                    | 1"                 | 1"         |
| 18                    | 1"                 | 1"         |
| 19                    | 1"                 | 1"         |
| 20                    | 1"                 | 1"         |
| 21                    | 1"                 | 1"         |
| 22                    | 1"                 | 1"         |
| 23                    | 1"                 | 1"         |
| 24                    | 1"                 | 1"         |
| 25                    | 1"                 | 1"         |
| 26                    | 1"                 | 1"         |
| 27                    | 1"                 | 1"         |
| 28                    | 1"                 | 1"         |
| 29                    | 1"                 | 1"         |
| 30                    | 1"                 | 1"         |
| 31                    | 1"                 | 1"         |
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| 34                    | 1"                 | 1"         |
| 35                    | 1"                 | 1"         |
| 36                    | 1"                 | 1"         |
| 37                    | 1"                 | 1"         |
| 38                    | 1"                 | 1"         |
| 39                    | 1"                 | 1"         |
| 40                    | 1"                 | 1"         |
| 41                    | 1"                 | 1"         |
| 42                    | 1"                 | 1"         |
| 43                    | 1"                 | 1"         |
| 44                    | 1"                 | 1"         |
| 45                    | 1"                 | 1"         |
| 46                    | 1"                 | 1"         |
| 47                    | 1"                 | 1"         |
| 48                    | 1"                 | 1"         |
| 49                    | 1"                 | 1"         |
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| 55                    | 1"                 | 1"         |
| 56                    | 1"                 | 1"         |
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| 58                    | 1"                 | 1"         |
| 59                    | 1"                 | 1"         |
| 60                    | 1"                 | 1"         |
| 61                    | 1"                 | 1"         |
| 62                    | 1"                 | 1"         |
| 63                    | 1"                 | 1"         |
| 64                    | 1"                 | 1"         |
| 65                    | 1"                 | 1"         |
| 66                    | 1"                 | 1"         |
| 67                    | 1"                 | 1"         |
| 68                    | 1"                 | 1"         |
| 69                    | 1"                 | 1"         |
| 70                    | 1"                 | 1"         |
| 71                    | 1"                 | 1"         |
| 72                    | 1"                 | 1"         |
| 73                    | 1"                 | 1"         |
| 74                    | 1"                 | 1"         |
| 75                    | 1"                 | 1"         |
| 76                    | 1"                 | 1"         |
| 77                    | 1"                 | 1"         |
| 78                    | 1"                 | 1"         |
| 79                    | 1"                 | 1"         |
| 80                    | 1"                 | 1"         |
| 81                    | 1"                 | 1"         |
| 82                    | 1"                 | 1"         |
| 83                    | 1"                 | 1"         |
| 84                    | 1"                 | 1"         |
| 85                    | 1"                 | 1"         |
| 86                    | 1"                 | 1"         |
| 87                    | 1"                 | 1"         |
| 88                    | 1"                 | 1"         |
| 89                    | 1"                 | 1"         |
| 90                    | 1"                 | 1"         |
| 91                    | 1"                 | 1"         |
| 92                    | 1"                 | 1"         |
| 93                    | 1"                 | 1"         |
| 94                    | 1"                 | 1"         |
| 95                    | 1"                 | 1"         |
| 96                    | 1"                 | 1"         |
| 97                    | 1"                 | 1"         |
| 98                    | 1"                 | 1"         |
| 99                    | 1"                 | 1"         |
| 100                   | 1"                 | 1"         |

IRRIGATION SLEEVE SCHEDULE

| PVC PIPE SIZE | SCH. 40 SLEEVE SIZE |
|---------------|---------------------|
| 1/2"          | 2"                  |
| 3/4"          | 2"                  |
| 1"            | 2-1/2"              |
| 1-1/4"        | 3"                  |
| 1-1/2"        |                     |

| PVC PIPE SIZE | SCH. 40 SLEEVE SIZE |
|---------------|---------------------|
| 1/2"          | 2"                  |
| 3/4"          | 2"                  |
| 1"            | 2-1/2"              |
| 1-1/4"        | 3"                  |
| 1-1/2"        | 3"                  |
| 2"            | 4"                  |
| 2-1/2"        | 5"                  |
| 3"            | 6"                  |
| 4"            | 6"                  |

| SCH. 40 SLEEVE SIZE |
|---------------------|
| 9                   |
| 17                  |
| 23                  |
| 38                  |
| 54                  |

[illegible]

GENERAL SITE INFORMATION FOR RECYCLED WATER USE  
SBRW SERVICE ID#: CMP90474  
LANDSCAPED RECYCLED WATER IRRIGATION USE AREA: 2.259SF/0.08 acre  
PUBLIC ACCESS TO SITE GROUNDS: MODERATELY RESTRICTED  
OWNER: RESOURCES FOR COMMUNITY DEVELOPMENT (RCD)  
PROPERTY MANAGEMENT CONTACT: (202-841-4410)  
TENANTS: MULTI-FAMILY, NOT APPLICABLE  
ON-SITE WELL LOCATION:  
WELLS ON ADJACENT SITES LOCATED WITHIN 50FT. OF RECYCLED WATER  
APPROVED USE AREA OR WITHIN 10FT. OF ANY RECYCLED WATER IMPOUNDMENT  
NONE  
OUTDOOR DRINKING FOUNTAINS IN/NEAR THE RECYCLED WATER APPROVED USE  
AREA: NONE  
OUTDOOR EATING AREAS IN/NEAR THE RECYCLED WATER APPROVED USE AREA:  
NONE  
OUTDOOR EATING AREAS IN/NEAR THE RECYCLED WATER APPROVED USE AREA:  
WATER FEATURES ON-SITE: NONE

|         |           |
|---------|-----------|
| Date    | 5.10.2023 |
| Project | 21702     |

**A** IRRIGATION PLAN - LEVEL 1  
1/8"=1'-0"





## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                              |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Receive the April – June 2023 Report for Unhoused Services (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046)</b> |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                       |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                     |
|                      | <u>Recommendation:</u> Receive the April – June 2023 report for unhoused services.                                                           |

### **BACKGROUND:**

On November 10, 2020, City Council approved and authorized staff to enter into an agreement for homeless outreach and assessment services with Santa Clara County Office of Supportive Housing. The County's Homeless Engagement and Access Team (HEAT), via Abode Services, began conducting outreach in March 2021 to engage and provide resources to the city's unhoused residents. On March 15, 2022, City Council approved using American Rescue Plan Act (ARPA) to continue funding HEAT through December 2023.

On December 1, 2020, City Council directed staff to implement a six-month pilot mobile shower and laundry program. The nonprofit service provider, WeHOPE's Dignity on Wheel program, began providing mobile shower and laundry services every Sunday starting March 21, 2021, on Winsor Street, immediately south of the Milpitas Library. On September 7, 2021, the City Council directed staff to continue the mobile shower and laundry program for an additional 12 months. On September 6, 2022, the City Council approved a continuation of services, and on April 4, 2022, City Council approved gap funding to cover services through June 30, 2023. In July 2023, the City executed a second contract with WeHOPE for a not-to-exceed amount of \$150,000 to continue the mobile shower and laundry program until June 30, 2026.

This report reflects the April - June 2023 progress for unhoused services.

### **ANALYSIS:**

From April - June 2023, the HEAT Team continued to collaborate with City staff and the County Office of Supportive Housing to conduct outreach throughout the city of Milpitas to engage and provide resources to the city's unhoused residents. The HEAT Team provided basic needs items and transportation resources. The HEAT Team continued to foster rapport with unhoused residents to provide housing and employment resources, as well as to coordinate care with the Office of Supportive Housing. During the months of April, May, and June, the HEAT Team enrolled 9 clients and completed 12 assessments. Adding to 231 clients enrolled and 253 clients assessed since services began in March 2021, this makes a total of 240 clients enrolled and 265 clients assessed. Since the HEAT Team has been conducting proactive outreach throughout Milpitas, they have been able to locate and connect with unhoused residents both at known and new locations. For the unhoused individuals that did not provide identifying information for the HEAT Team to enroll or assess, they provided basic needs items and community resources. See Attachments 2-4 for the HEAT Team April – June 2023 reports.

From April – June 2023, WeHOPE provided 13 sessions to the unhoused community, providing a total of 209 showers and 103 loads of laundry, serving 167 unduplicated individuals. See Attachment 5 for the WeHOPE Dignity on Wheels April – June 2023 reports.

In addition to working closely with the above service providers, City departments continued to collaborate in providing assistance to the unhoused residents. Referrals to the HEAT Team continue to be provided through the City's referral process. This process has reduced internal messaging and maximized the HEAT Team's ability to quickly respond to requests for assessments and to provide updates to City staff. For a summary of the various activities and services for Milpitas unhoused residents as described above, refer to Attachment 1 for the April – June 2023 report for unhoused services.

**FISCAL IMPACT:**

There is no fiscal impact on the City budget other than staff time related to this item.

**California Environmental Quality Act (CEQA):**

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).

**RECOMMENDATION:**

Receive the April – June 2023 report for unhoused services.

**Attachment(s):**

1. April - June 2023 report for unhoused services
2. April 2023 HEAT Team report
3. May 2023 HEAT Team report
4. June 2023 HEAT Team report
5. April – June WeHOPE Dignity on Wheels



| ATTACHMENT 1 APRIL - JUNE 2023 REPORT FOR UNHOUSED SERVICES |                                                                      |                                                   |                                                       |                  |                                                  |               |                  |                                     |                  |                                                  |                |             |                                  |
|-------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------------|------------------|--------------------------------------------------|---------------|------------------|-------------------------------------|------------------|--------------------------------------------------|----------------|-------------|----------------------------------|
| Outreach Location                                           |                                                                      | Type                                              | Jurisdiction                                          | Unhoused Count   | Date Counted                                     | Date Referred | Clients Enrolled | Date Enrolled                       | Clients Assessed | Date Assessed                                    | Clients Housed | Date Housed | Notes                            |
| 1                                                           | Hillview Bridge                                                      | Encampment                                        | Valley Water                                          |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 2                                                           | Topaz Street 1                                                       | Encampment                                        | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 3                                                           | Serra Center                                                         | Encampment                                        | Private Property                                      |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 4                                                           | Ocean Supermarket                                                    | Encampment or Outreach                            | Private Property                                      |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 5                                                           | Dixon Road 1                                                         | Encampment                                        | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 6                                                           | Dixon Road 2                                                         | RV Vehicles                                       | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 7                                                           | Calaveras Blvd Overpass                                              | Encampment                                        | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 8                                                           | Dempsey Road 1                                                       | Encampment                                        | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 9                                                           | Sinclair Frontage Road                                               | Encampment or Outreach                            | Union Pacific Railroad                                | 1                | 6/15/2023                                        | N/A           | 1                | 6/15/2023                           | 1                | 6/15/2023                                        |                |             |                                  |
| 10                                                          | Yosemite Business Park                                               | Encampment                                        | Private Property                                      |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 11                                                          | Gibraltar Court                                                      | Trailers                                          | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 12                                                          | Topaz Street 2                                                       | Encampment                                        | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 13                                                          | Railroad Court                                                       | Camp/Trailers                                     | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 14                                                          | Abel Plaza                                                           | Encampment                                        | Private Property                                      |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 15                                                          | S. Main Street                                                       | Encampment                                        | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 16                                                          | S. Abbott Avenue                                                     | Encampment                                        | City (if on street) or County (if on County property) |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 17                                                          | W. Calaveras Blvd                                                    | Encampment                                        | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 18                                                          | Ethyl Court                                                          | Camp/Cars                                         | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 19                                                          | Hammond Way                                                          | Cars/Trailers or Outreach                         | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 20                                                          | Coyote Creek Trail 1                                                 | Encampment                                        | Valley Water                                          |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 21                                                          | Coyote Creek Trail 2                                                 | Encampment                                        | Valley Water                                          |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 22                                                          | Coyote Creek Trail 3                                                 | Encampment                                        | Valley Water                                          |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 23                                                          | Calaveras Plaza Shopping Center                                      | Outreach (contact made in non-encampment setting) | N/A                                                   | 1                | 4/17/2023                                        | N/A           | 1                | 4/17/2023                           | 1                | 4/17/2023                                        |                |             |                                  |
| 24                                                          | Dignity on Wheels Mobile Shower and Laundry                          | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 25                                                          | Dixon Landing Shopping Center                                        | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 26                                                          | Great Mall                                                           | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 27                                                          | Milpitas Library                                                     | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 28                                                          | Main Street                                                          | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 29                                                          | Other (Street, Panhandle, Vehicle Dweller, or Unidentified Location) | Outreach (contact made in non-encampment setting) | N/A                                                   | 1                | 6/26/2023                                        |               | 1                | 6/26/2023                           | 1                | 6/6/2023                                         |                |             |                                  |
| 30                                                          | Dempsey Road 2                                                       | Encampment                                        | Private Property                                      |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 31                                                          | Serra Center                                                         | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 32                                                          | E. Calaveras Blvd                                                    | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 33                                                          | Dempsey Road 3                                                       | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 34                                                          | Galaxy Court                                                         | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 35                                                          | Ranch Drive                                                          | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 36                                                          | Jacklin Rd                                                           | Vehicle                                           | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 37                                                          | Folsom Ct                                                            | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 38                                                          | Other (near Extended Stay)                                           | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 39                                                          | S. Park Victoria                                                     | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 40                                                          | O'Toole Elms Park                                                    | Outreach (contact made in non-encampment setting) | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 41                                                          | America's Best Value Inn                                             | Outreach (contact made in non-encampment setting) | Private Property                                      | 2<br>1<br>1<br>1 | 4/18/2023<br>4/15/2023<br>5/05/2023<br>6/05/2023 | N/A           | 2<br>1<br>0<br>0 | 4/18/2023<br>4/15/2023<br>4/15/2023 | 2<br>1<br>1<br>1 | 4/18/2023<br>4/15/2023<br>5/05/2023<br>6/05/2023 |                |             | Previously enrolled participants |
| 42                                                          | Milpitas Sports Center Park                                          | Outreach (contact made in non-encampment setting) | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 43                                                          | Foothill Park                                                        | Outreach (contact made in non-encampment setting) | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 44                                                          | Washington Road                                                      | Vehicle                                           | City                                                  | 1                | 5/5/2023                                         | N/A           | 0                |                                     | 1                | 5/5/2023                                         |                |             | Previously enrolled participant  |
| 45                                                          | Burley Drive                                                         | Vehicle                                           | City                                                  |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 46                                                          | W. Calaveras Blvd                                                    | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 47                                                          | Albert Augustine Jr. Memorial Park                                   | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 48                                                          | N. Milpitas Bridge                                                   | Encampment                                        | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 49                                                          | Victorian Sqaure                                                     | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 50                                                          | Calaveras 3                                                          | Encampment                                        | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 51                                                          | Cardoza Park                                                         | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 52                                                          | Railroad Avenue                                                      | Encampment                                        | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 53                                                          | Sunnyhills Shopping Center                                           | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 54                                                          | Pioneer Park                                                         | Vehicle                                           | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 55                                                          | McCarthy Ranch                                                       | Vehicle                                           | N/A                                                   | 1                | 4/17/2023                                        | N/A           | 0                |                                     | 1                | 4/17/2023                                        |                |             | Previously enrolled participant  |
| 56                                                          | Yosemite 6                                                           | Encampment                                        | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 57                                                          | Beresford Square                                                     | Outreach (contact made in non-encampment setting) | N/A                                                   |                  |                                                  | N/A           |                  |                                     |                  |                                                  |                |             |                                  |
| 58                                                          | Escuela Parkway                                                      | Outreach (contact made in non-encampment setting) | N/A                                                   | 1                | 5/5/2023                                         | N/A           | 1                | 5/5/2023                            | 1                | 5/5/2023                                         |                |             |                                  |
|                                                             |                                                                      |                                                   | Total                                                 |                  |                                                  |               |                  |                                     |                  |                                                  |                |             |                                  |

| WeHOPE Dignity on Wheels<br>Mobile Shower and Laundry | Session Location | Service Dates                                       | Number of Sessions | Total Unduplicated Individuals Served | Showers Provided | Loads of Laundry Provided |
|-------------------------------------------------------|------------------|-----------------------------------------------------|--------------------|---------------------------------------|------------------|---------------------------|
|                                                       | Milpitas Library | 6/4/2023, 6/11/2023, 6/18/2023, 6/25/2023           | 4                  | 46                                    | 99               | 60                        |
|                                                       | Milpitas Library | 5/7/2023, 5/14/2023, 5/21/2023, 5/28/2023           | 4                  | 61                                    | 53               | 20                        |
|                                                       | Milpitas Library | 4/2/2023, 4/9/2023, 4/16/2023, 4/23/2023, 4/30/2023 | 5                  | 60                                    | 57               | 23                        |

Santa Clara County Office of Supportive Housing  
 Abode Services  
 Milpitas HEAT Team  
 April 2023 Report

In April, Abode HEAT staff responded to community concern referrals from the City of Milpitas and successfully enrolled 4 new participants for outreach services. One existing enrolled client experienced a significant life change and was re-assessed. In addition, Abode's outreach team continued to provide basic needs items and weather appropriate items to the unhoused. In addition, Abode HEAT staff educated client about the Here4You hotline in order to support clients with improving their living situation and meeting their acute needs living outdoors.

The following table reflects the number of outreach contacts, the total number of unhoused enrolled into the SCC HEAT program, as well as the number of VI-SPDAT assessments administered:

Milpitas HEAT Contact, Enrolled, Assessed Clients: April 2023

| Outreach Location                                                            | Outreach Contact | Enrolled  | Assessments |
|------------------------------------------------------------------------------|------------------|-----------|-------------|
| <b>Milpitas Outreach (Vehicle Dweller) - McCarthy Ranch</b>                  | <b>1</b>         | <b>0*</b> | <b>1</b>    |
| 4/17/2023                                                                    | 1                | 0         | 1           |
| <b>Milpitas Outreach (Vehicle Dweller) - Calaveras Plaza Shopping Center</b> | <b>1</b>         | <b>1</b>  | <b>1</b>    |
| 4/17/2023                                                                    | 1                | 1         | 1           |
| <b>Milpitas Outreach - Americas best value</b>                               | <b>3</b>         | <b>3</b>  | <b>3</b>    |
| 4/18/2023                                                                    | 2                | 2         | 2           |
| 4/15/2023                                                                    | 1                | 1         | 1           |
| <b>Grand Total</b>                                                           | <b>5</b>         | <b>4</b>  | <b>5</b>    |

*Milpitas Outreach= Contact made with client in non-encampment setting*

*Milpitas Encampment= Contact made at a location where a tent and/or other structures are used as shelter*

*\*Previously enrolled participant*

Santa Clara County Office of Supportive Housing  
 Abode Services  
 Milpitas HEAT Team  
 May 2023 Report

The Abode Outreach team administered 3 assessments throughout the month of May. Two of the three clients assessed were existing enrollments and experienced significant life change in circumstances. The team continued to provide snacks, water, and hygiene items to all Milpitas contacts during the month. In addition, the Abode team continued to maintain supportive contact with existing active Milpitas enrollments and continued to coordinate care with Office of Supportive housing for clients that have been selected for potential housing opportunities.

The following table reflects the number of outreach contacts, the total number of unhoused enrolled into the SCC HEAT program, as well as the number of VI-SPDAT assessments administered:

Milpitas HEAT Contact, Enrolled, Assessed Clients: May 2023

| Outreach Location                                          | Outreach Contact | Enrolled  | Assessments |
|------------------------------------------------------------|------------------|-----------|-------------|
| <b>Milpitas Outreach (Vehicle Dweller)- Washington Dr.</b> | <b>1</b>         | <b>0*</b> | <b>1</b>    |
| 5/05/23                                                    | 1                | 0         | 1           |
| <b>Milpitas Outreach- Escuela Pkwy</b>                     | <b>1</b>         | <b>1</b>  | <b>1</b>    |
| 5/05/2023                                                  | 1                | 1         | 1           |
| <b>Milpitas Outreach - Americas Best Value Inn</b>         | <b>1</b>         | <b>0*</b> | <b>1</b>    |
| 5/05/2023                                                  | 1                | 0         | 1           |
| <b>Grand Total</b>                                         | <b>3</b>         | <b>1</b>  | <b>3</b>    |

*Milpitas Outreach= Contact made with client in non-encampment setting*

*Milpitas Encampment= Contact made at a location where a tent and/or other structures are used as shelter*

*\*Previously enrolled participant*

**Santa Clara County Office of Supportive Housing  
Abode Services - SCC Outreach  
(Milpitas) HEAT Team  
June 2023 Report**

In the month of June, the HEAT Team received 31 referrals from the E-Referral source. The HEAT Team was also contacted by a Field Representative for Assemblyman Alex Lee regarding more specific information and support of two unhoused individuals. HEAT Program Manager maintained compliance and did not speak to him about individuals, but instead educated him on PSH and CET.

Staff transitions onto and off of the HEAT Team required many clients to learn who their new care team members are. Staff who transitioned out, thoroughly communicated new information and conducted a warm hand off of new staff to clients. New staff members worked diligently to learn the clients and understand their needs as well as learn the city of and Milpitas and systems required to execute quality outreach and engagement.

Rapport building was a strong focus as staff aimed for successful engagement with current Milpitas enrollments and with new outreaches and enrollments. Clients' needs were significant as they continued to wait for program referrals and endure the weather changes.

The HEAT Team administered **four** assessments throughout the month. Of these assessments, **zero** were existing enrollments and qualified for re-assessment. **Three** were new assessments and qualified for enrollment. **One** was a new assessment and did not qualify for HEAT enrollment.

The HEAT staff continued to maintain supportive contact and worked alongside these clients as they coordinated care and completed their pre-screening calls with the SCC Office of Supportive Housing. The team continued to provide felt-need items to Milpitas individuals who were outdoors or in their vehicles. Again, rapport building was essential as a new team continued to build connections with Milpitas individuals and coordinate support with OSH Treatment Team.

The following table reflects the number of outreach contacts, the total number of unhoused enrolled into the SCC HEAT program, as well as the number of VI-SPDAT assessments administered:

**Milpitas HEAT Contact, Enrolled, Assessed Clients:  
June 2023**

| <b>Outreach Location</b>                                                      | <b>Outreach Contact</b> | <b>Enrolled</b> | <b>Assessments</b> |
|-------------------------------------------------------------------------------|-------------------------|-----------------|--------------------|
| <b>Milpitas Outreach -Americas Best Value Inn</b>                             | <b>1</b>                | <b>0*</b>       | <b>1</b>           |
| 6/5/2023                                                                      | 1                       | 1               | 1                  |
| <b>Milpitas Outreach- Town Center</b>                                         |                         |                 |                    |
| 6/5/2023                                                                      | 1                       | 1               | 1                  |
| <b>Milpitas Encampment- Sinclair Frontage 5</b>                               |                         |                 |                    |
| 6/15/2023                                                                     | 1                       | 1               | 1                  |
| <b>Milpitas Outreach- Other (Street, Panhandle, or Unidentified Location)</b> |                         |                 |                    |

|                    |          |          |          |
|--------------------|----------|----------|----------|
| 6/26/2023          | 1        | 1        | 1        |
| <b>Grand Total</b> | <b>4</b> | <b>4</b> | <b>4</b> |

**KEY:**

- *Milpitas Outreach= Contact made with client in non- encampment setting*
- *Milpitas Encampment= Contact made at a location where a tent and/or other structures are used as shelter*
- *\*Previously enrolled participant*

**Attachment 5**  
**WeHOPE Mobile Shower and Laundry Services**  
**April – June 2023**

| Month             | Service Dates                                          | Number of Sessions | Total Unduplicated Individuals Served | Showers Provided | Loads of Laundry Provided |
|-------------------|--------------------------------------------------------|--------------------|---------------------------------------|------------------|---------------------------|
| <b>April 2023</b> | April 2<br>April 9<br>April 16<br>April 23<br>April 30 | 5                  | 60                                    | 57               | 23                        |
| <b>May 2023</b>   | May 7<br>May 14<br>May 21<br>May 28                    | 4                  | 61                                    | 53               | 20                        |
| <b>June 2023</b>  | June 4<br>June 11<br>June 18<br>June 25                | 4                  | 46                                    | 99               | 60                        |



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Accept and Approve a Budget Appropriation of \$200,000 and Authorize the Acting City Manager or Designee to execute an agreement with Housekeys for Administration of City's Below Market Rate Homeownership Program (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing and Neighborhood Services Administrator, 408-586- 3275)</b> |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                                                                                                                                                      |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                                                                                                                                                                                                                                                                    |
|                      | <u>Recommendation:</u> Accept and approve a budget appropriation of \$200,000 from the Affordable Housing and Community Benefit Fund and authorize the Acting City Manager or Designee to execute an agreement with Housekeys for Administration of City's Below Market Rate Homeownership Program.                                                                                         |

### **BACKGROUND:**

The City of Milpitas Below Market Rate (BMR) Program is designed for low-and moderate-income households in becoming homeowners. The program's portfolio is comprised of 278 homeownership units. These units became a part of the City's homeownership portfolio via the former Redevelopment Agency that provided financial assistance to developers in creating housing. As an exchange for the financial assistance, the development community allocated a percentage of the units as affordable. Historically, the City has administered the management, purchase, and sale of these units.

On June 19, 2018, the City adopted an Affordable Housing Ordinance which requires residential developments of 10 or more units to make 15% of the total units of the development project affordable. Due to the Ordinance, the City is expected to add more than 50 homeownership units to its portfolio over the next three years. The amount of time needed to sell and monitor these units required staff to look at external support. This report provides information on Housekeys, a third-party administrator who specialize in streamlining the administration of Below Market Rate programs and who do so for more than 15 cities across California. This report will delve deeper into Housekeys' scope of service and the City's anticipated saving in funds by outsourcing the BMR ownership portfolio.

### **ANALYSIS:**

Currently, Housekeys is the sole servicer in the Bay Area of BMR program administration that had the capacity to take on Milpitas' homeownership portfolio. Staff researched BMR program administrators and, due to the high specialization, and only found two other administrator options, Rise Housing and Alta Housing. Rise Housing was unable to provide a bid for services as they did not have the capacity to take on additional public agency services. Alta Housing services cities in the northern part of Santa Clara County and Milpitas is out of their service area. In staff's opinion, Housekeys has a strong infrastructure and excellent capacity to integrate and handle the City's BMR needs. Housekeys also represents other local jurisdictions. For reference, Housekeys services other cities such as Morgan Hill, Campbell, Santa Clara, Mountain View, and Gilroy.

If approved by the City Council, Housekeys will manage the existing 278 BMR homeownership units as well as all future BMR ownership units, of which at least 50 units are expected in the next three years. Housekeys will help the City create program guidelines, complete an inventory assessment, review the eligibility of all applicants and host lotteries for all BMR units being sold, develop educational resources, and conduct compliance. Housekeys also has its own online platform and will assist the City in ensuring all documentation is up to date and in electronic files.

The City's first residential development to satisfy the Affordable Housing Ordinance added four BMR units to the City's portfolio. In June 2022, City staff completed the sale of 4 units without third party assistance. These transactions required extraordinary staff resources and time to execute, while operating the Housing work program with limited resources. As previously stated, staff expects an increase in BMR units in the coming years, and outsourcing the BMR Program will allow Housing team to focus on the increasing workload related to unhoused services and other Council related Housing objectives as needed.

Currently, the Housing Division has 3 Full-time Equivalent (FTE) staff members and are currently recruiting for a Limited-Term Administrative Analyst. The Housing team consists of 1 FTE Housing Division Manager, 1 FTE for Unhoused and Supportive Services, and 1 FTE for Community Development Block Grant (CDBG). The Housing Limited-Term Administrative Analyst is partially funded through the American Rescue Plan Act (ARPA), which requires assisting with the administration of the Rent and Mortgage Relief Program. To administer a successful BMR Homeownership program that is expected to grow to 300+ units, the City would need to add a minimum of 1.5 FTE to satisfy the additional workload. Presently, the Housing division does not have the resources to administer the BMR program, while managing current and future Housing demands.

As a third-party administrator, Housekeys will create and maintain Milpitas' BMR homeownership website. This allows current and prospective BMR owners to access their docs more readily. Housekeys will be the transaction coordinator for all real estate transactions which include ensuring affordability deeds are recorded and conducting resale calculations and refinancing requests. They will help with the sale and resale of units, the selection process, collection of Agency fees, and any monitoring, compliance, resolution, or loss mitigation needed. Housekeys will work with City Staff to update and maintain program guidelines and materials. Outreach will also be done in coordination with City Staff. Housekeys will conduct webinar and pre-recorded orientations at a minimum of 6 per year. Housekeys will also conduct home buyer education and training classes which is a requirement to apply for the Milpitas BMR Program.

Housekeys online 24/7 portal allows all current and prospective BMR owners to submit documentation and requests at their convenience. Quarterly reports will be sent to City Staff and any general inquiry or loan request from the public will receive a response within 72 business hours. Housekeys state that there will be weekly status updates for any outstanding requests. They will also complete at least 2 rounds of annual certification letters to homeowners to help the owners and the City with compliance data collection.

Staff recommends the authorization to execute a single year contract with Housekeys (Attachment 1). The cost for the administration of the program will be an initial \$50,000 start-up fee as well as \$150,000 for a total of \$200,000 to administer the 278 existing units in our portfolio for this first fiscal year. The contract will include an additional four (4) one-year options to renew, for a total term length not to exceed five (5) years. Staff will return to Council annually via the budget process for approval should the options be executed. Each subsequent year will be charged based on the number of units Housekeys has to manage in our portfolio. For year 1, staff recommends allocating these funds from the Affordable Housing and Community Benefit Fund.

#### **FISCAL IMPACT:**

If the City Council approves staff's recommendation to authorize Housekeys as the City's Below Market Rate Homeownership Program administrator, the fiscal impact includes \$200,000 being utilized from the Affordable Housing and Community Benefit Fund.

#### **California Environmental Quality Act (CEQA):**

The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.



**RECOMMENDATION:**

Accept and Approve a Budget Appropriation of \$200,000 from the Affordable Housing and Community Benefit Fund and Authorize the Acting City Manager or Designee to execute an agreement with Housekeys for Administration of City's Below Market Rate Homeownership Program.

**Attachment(s):**

1. General Service Agreement

**CITY OF MILPITAS  
AGREEMENT FOR BELOW MARKET RATE  
PROGRAM ADMINISTRATION**

1. PARTIES AND DATE.

This Agreement for **Below Market Rate (BMR) Program Administration** (“Agreement”) is made and entered into as of \_\_\_\_\_ (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”) and **Housekeys Inc.**, a California corporation with its principal place of business at **385 Digital Drive, Morgan Hill, CA 95037** (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain **Below Market Rate Program Administration** required by City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **BMR Program Administration** to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such services for the administration of the City’s **BMR Home Ownership Portfolio** (“Project”) as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services and advice on various issues affecting the decisions of City regarding the Project and on other programs and matters affecting City (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term.

The initial term of this Agreement shall be from **July 1, 2023** to **June 30, 2024**, unless earlier terminated as provided herein. The term shall include four (4) one-year options to extend the contract, subject to yearly City Council budget approval. The City reserves the right to review the Contractor’s performance at the end of each year and cancel all or part of the Agreement.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and

details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee of City. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the skilled personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence and experience upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to City, or who are determined by City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by Contractor at the request of City. The key personnel for performance of this Agreement are as follows: **Thomas J. Clark.**

3.2.5 City's Representative. City hereby designates **Robert Musallam**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than City's Representative or his or her designee.

3.2.6 Contractor's Representative. Contractor hereby designates **Christopher Jue**, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, contractors and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by contractors in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from City, any services necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein, and shall be fully responsible to City for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Contractor's errors and omissions.. Any employee of Contractor or its subcontractors who is determined by City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to City, shall be promptly removed from the Project by Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance. Contractor 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, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

3.2.11 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Two Hundred**

**Thousand Dollars (\$200,000)** per year without written approval of City's City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall be paid the annual fee outlined in section 3.3.1 by City in monthly installments paid by the first Friday of each month. Contractor will be provide a monthly billing statement to City. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon. The City shall not be responsible for any payment of any portion of the annual fee incurred after termination of the Agreement.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

### 3.3.5 California Labor Code Requirements

(a) Contractor 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 \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor 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 Contractor and all subcontractors 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 Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, 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 Contractor's sole responsibility to

comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor 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 Contractor or any subcontractor.

### 3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.5 General Provisions.

#### 3.5.1 Termination of Agreement.

(a) Grounds for Termination. Notwithstanding any other provisions of this Agreement, City may terminate this Agreement at any time, with or without cause, in its sole discretion, by giving notice in writing to Contractor of such termination. In the event of termination, the Contractor shall have the right and obligation to promptly assemble the work then in progress for the purpose of completing the work and delivering all materials and documents to the City.

(b) Termination Without Cause. To ensure a seamless transition and facilitate the recovery of fees earned for services rendered, a minimum notice period of one month shall be observed for any termination without cause. The Contractor shall be entitled to receive compensation for the services rendered and fees earned up until the termination date.

(c) Termination With Cause. In the event of termination for cause, the Contractor need be compensated only to the extent required by law. Contractor is only entitled to compensation for work adequately performed prior to termination.

(d) Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

(e) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Contractor:**

HouseKeys  
 358 Digital Drive  
 Morgan Hill, CA 95037  
 Attn: Christopher Jue

**City:**

City of Milpitas  
 455 E. Calaveras Boulevard  
 Milpitas, California 95035  
 Attn: Acting City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.5.5 Indemnification. With respect to all matters, Contractor agrees to indemnify, defend (with counsel reasonably satisfactory to the City) and hold harmless the City, its officers, officials, directors, agents, representatives, volunteers, and employees to the fullest extent allowed by law from any and all claims, actions, causes of action, losses, damages, liabilities and costs of every nature, including but not limited to all claims, actions, causes of action, losses, damages, liabilities for property damage, bodily injury, or death, and all costs of defending any claim, caused by or arising out of, or alleged to have been caused by or arise out of, in whole or in part, Contractor's performance under this Agreement, except for any claims, actions, causes of action, losses, damages, costs or liabilities proximately caused by:

- (a) The sole negligence or willful misconduct of City.

City shall not be liable for acts of Contractor in performing services described herein.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be supplemented, amended or modified by a writing signed by both Parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County.

3.5.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.9 City's Right to Employ Other Contractors. City reserves the right to employ other Contractors in connection with this Project.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.15 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.17 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor 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 Contractor, 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 member, 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.

3.5.18 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. 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. Contractor shall also



comply with all relevant provisions of any minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California 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 agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.22 Employment Adverse to City. Contractor shall notify City, and shall obtain City's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against City during the term of this Agreement.

3.5.23 Conflict of Employment. Employment by Contractor of personnel currently on the payroll of City shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by Contractor of personnel who have been on City's payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and or dependent upon Contractor securing this or related Agreements with City, is prohibited.

3.5.24 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

3.5.25 Subcontracting. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

#### 3.5.26 Wage Theft Prevention

(a) Contractor, and any subcontractor 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, CONTRACTOR 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 CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY

SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(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 Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor 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. Contractor or its subcontractor(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 Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor 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 the following page]

**SIGNATURE PAGE FOR AGREEMENT  
FOR BELOW MARKET RATE PROGRAM ADMINISTRATION  
BETWEEN THE CITY OF MILPITAS  
AND HOUSEKEYS**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

**CITY OF MILPITAS**

*Approved By:*

\_\_\_\_\_  
Ned Thomas, Acting City Manager

\_\_\_\_\_  
Date

*Approved:*

\_\_\_\_\_  
Lauren Lai, CPA, MPA  
Finance Director/Risk Manager

*Approved As To Form:*

\_\_\_\_\_  
Michael Mutalipassi, City Attorney

*Approved As To Content:*

\_\_\_\_\_  
Alex Andrade, Director of Economic Development

**HOUSEKEYS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## EXHIBIT “A” SCOPE OF SERVICES

### Description of the Project:

This Scope of Services (“Scope”) details the roles and responsibilities that HouseKeys serves for its Clients. As a Third-Party Program Administrator (“Administrator”), HouseKeys is the Agency’s interface with industry practitioners and the public. This ecosystem not only includes Applicants (e.g., buyers) and Program Participants (e.g., owners) - it also includes, but is not limited to project owners, mortgage lenders, real estate agents, and escrow/title officers.

### **Service Breakdown**

1. **Documentation.** Administrator will administer the program and assure Affordability Deed Restrictions are recorded and followed by all parties as applicable for each property.
2. **Support and Education.** Administrator will provide offsite support for service requests. Orientations and workshops will be held for residents of the Agency. Note: In Response to COVID-19 restrictions, content is streamed online via webinars and pre-recorded content available on HouseKeys-hosted program websites.
  - a. Administrator shall conduct introductory Home Buyer Education/Training classes – Homebuyer Orientation Classes prior to Program application. A minimum of 6 events will be held each year and at least 30 Weeks of Weekly Frequently Asked Question (FAQ) sessions will be open to all program applicants and participants.
3. **Guidelines and Materials.** Administrator will regularly update program guidelines and program materials in conjunction with Agency staff to reflect the Administrator’s administrative process for Program Administration including, but not limited to: applications, program pamphlets, resale calculations, selection processes, sale and resale of units, refinancing requests, collection of Agency fees and other applicable fees, and default monitoring/resolution process. Administrator’s objective will be to work alongside Agency Staff to incorporate “learnings” from the team’s collective history with Affordability Programs in California.
4. **Website Presence.** Administrator will maintain an affordability program website presence that will link to the Agency’s housing website.
5. **Recordkeeping.** Administrator shall maintain the Agency’s existing records and files through a database-driven information retention and management system for the programs. All electronic records will be considered work products that are property of the Agency and will be available via data export. The Administrator shall update the Agency’s records quarterly to ensure a coordinated seamless record keeping process. The database shall include the following at a minimum:
  - a. For each ownership unit (new and existing):
    - i. The address for each ownership unit
    - ii. The level of affordability (e.g., Extremely Low, Very Low, Low, Moderate)
    - iii. The current owner of record
    - iv. The expiration date of the owner agreement

- v. The last date of recertification
  - vi. The recertification status (updated annually)
  - vii. The original sales price
  - viii. The current resale restriction price
  - ix. Dates of owner turn-over, as applicable
6. **Reporting.** Administrator shall provide a quarterly program summary report to the Agency with the following information. An abbreviated monthly report will accommodate each monthly invoice.
- a. For each owner unit (new and existing):
    - i. The address for each ownership unit
    - ii. The level of affordability (e.g., Very Low, Low, Moderate)
    - iii. The current owner of record
    - iv. The last date of recertification and current recertification status
  - b. Current list of defaults and pending defaults
  - c. Actions taken to date
  - d. Next steps, including dates
7. **Services.** Administrator will provide the following services:
- a. Making minor revisions to the Agency's existing program materials and legal documents.
  - b. Overall management and implementation of specific program policies, including required reporting.
  - c. Conducting income qualifications including review of assets, income, Verifications of Employment, and all other necessary approvals to ensure qualification for the Agency Programs (Ownership, Rental, Finance).
  - d. Underwriting program applications in accordance with program requirements.
  - e. Underwriting program compliance in accordance to restrictive covenants and project-specific program agreements
  - f. Underwriting transaction compliance (e.g. refinances, transfers) to ensure they conform with restricted covenants and project-specific program agreements
  - g. Preparing all program documents, overseeing proper execution thereof, and conducting final program approval reviews.
  - h. Ensuring timely delivery of all necessary documents into escrow, and preparing escrow demands and funding requests.
  - i. Preparation of program materials by revising the Agency's current documents.
  - j. Calculating all pay off demands and issuing any disclosures and tax forms as required by State and/or Federal Law.
  - k. Calculating the resale value of all ownership program homes as requested annually by the County.
  - l. Work with Agency Staff to ensure a seamless and coordinated development of documents as it relates to the Affordability Program.

**Note 1:** HouseKeys recommends that the Agency includes affordability requirements, the Administrator's roles, and any fees related to affordable unit commitments in the **conditions of approval** to assure transparency at the earliest possible point in the entitlement process. HouseKeys charges Developers a 3% Fee up to a set cap (see Fee Schedule). This percentage is calculated using the sales price of the unit and is charged at the close of escrow when HouseKeys has an active contract with the Agency.

8. **Transaction Coordination.** Administrator shall act as transaction coordinator for all real estate transactions and will provide the Agency with a Fee Schedule. Where there is a conflict between the Administrator's Fee Schedule and recorded Agreements ("Legacy Agreements"), Administrator will adjust fees to compensate for the difference with the understanding that newly drafted agreements will conform to the fee schedule.

**Note 1:** In real estate industry terminology, a transaction "side" is defined as either working as an agent for the buyer or an agent for the seller; if the agent worked as both buyer's agent and seller's agent it would count as two transaction sides. New Construction Sales are considered a single-sided transaction where HouseKeys only represents the buyer pool. The Developer's sales team would serve the Seller and use its State-Approved Sales contract to represent the terms and condition of sale. HouseKeys suggests that an applicant pool goal should be to have at least 7 applicants for every 1 unit for sale or rent.

**Note 2:** During the resale of an ownership unit, there are two sides of the transaction – 1) the first-time home seller and 2) the eventual buyer who is selected by Lottery or an alternate selection process. This two-sided transaction has a higher cost as reflected on the HouseKeys fee schedule. This accounts not only for the work involved (eligibility, legal timelines, property condition), but also accounts for the legal liability and risk.

**Note 3:** For an Acquisition, and Ownership Resale / Rehab Transaction Fee – this is the most complicated transaction. Not only does it involve 2 sides, but it also involves two escrows. There is an initial escrow to complete the initial purchase of the property and a second escrow to complete the sale to the new buyer. During this time, HouseKeys serves as either an Agent to the Local Government Agency or as a Buyer. For HouseKeys to serve as buyer, an Assignment of the Agency's Option document must be signed and recorded. In cases where the Agency is purchasing the Unit, the Administrator will act as the Agency's agent. The Administrator will complete the acquisition transaction and then go on to manage the resale.

**Note 4:** Transaction fees charged to homeowners for refinance transactions are charged for the time taken to ensure that proposed transaction complies with restrictive covenants. This can include a refinance with a mortgage lender or other types of transfers as referenced in the recorded document (E.g., Divorce, Estates, Inheritance, etc.)

- a. Administrator will coordinate document transmittals between buyers, borrowers, homeowners, developers, and Agency as needed. Administrator will be responsible for ensuring all documents submitted for Agency signatures are complete and accurate. Administrator will be responsible for making any necessary corrections to documents.
- b. Administrator will coordinate the timelines, meetings, inspections, and document signings that need to take place on the buyer side and seller side of these transactions. While the Asset Management team is focused on the transaction details, the Operations Team is managing the Applicant Pool, Lottery, and Selection Process. Administrator will also work with an escrow officer familiar with selling properties with a recorded deed restriction to ensure proper handling of funds and documentation.
- c. For Acquisition-Related transactions, Administrator will manage the holding period and maintain the property through to close of escrow. It is important to note that there may be situations where a legal matter arises related to the acquisition or resale. Administrator has experience working with attorneys to settle matters involving

owners that challenge the recorded agreement or who are out of compliance with program requirements. There are also cases involving foreclosure, probate, and bankruptcy where the Administrator has experience managing through the transaction timeline. There may be cases where legal fee reimbursements are involved, or special project fees are charged. These will be presented to the Agency before work begins.

- d. Administrator coordinates the timelines, meetings, inspections, and document signings that need to take place on the buyer side and seller side of these transactions. While the Asset Management team is focused on the transaction details, the Operations Team is managing the Applicant Pool, Lottery, and Selection Process.

9. **Monitoring, Compliance, and Loss Mitigation.** Administrator shall work alongside Agency Staff to conduct monitoring to annually evaluate Program Owners' ("Counterparty's") compliance with the terms and conditions of the recorded deed restrictions and program guidelines including the following:

- a. Mailing monitoring letters to all the Program units.
- b. Reviewing in conjunction with Agency Staff, Agency or County Assessor data to assist in the process (e.g., water utility bills, property records).
- c. Review Agency's preliminary monitoring list to identify follow up actions required.
- d. Meet with Agency Staff to develop guidelines for acceptable default remedies (e.g., allowing rental of Program Units for hardship cases).
- e. Administrator shall work alongside Agency Staff to investigate and identify and cure potential program-related defaults including:
  - i. Conduct follow up of those Program Owners (referred to as "Counterparties") who do not submit their compliance documentation.
  - ii. Reviewing information on calls from Program Unit neighbors and interested parties.
  - iii. Conduct reasonable follow-up investigation to assess potential defaults including unit site visits.
  - iv. Scheduled appointments with Counterparties to discuss compliance issues.
- f. For confirmed defaults, provide Counterparties with list of actions needed to remedy the default and conduct follow-up to monitoring compliance.
  - i. Maintaining log of actions taken to remedy the defaults.
- g. For those defaults in which the Counterparties choose not to remedy the situation within a reasonable amount of time, Administrator will meet with Agency Staff to determine the course of action to pursue. Agency authorization will be sought for any legal action taken.
- h. Administrator will participate in legal deliberations at all Staff Levels and Council Decisionmakers as needed.
- i. Agency will provide a list of any current program participant defaults and actions taken to date.

10. **Marketing.** HouseKeys' marketing philosophy is driven by a network effect approach. Each agency that joins the HouseKeys client base adds value to the network. This improves the feedback loop used to improve services, name recognition, program participation, and can lead to economies of scale. The HouseKeys Team wants to deliver this value in aggregate, but also must target the Agency's local residents and community members. This includes targeting the least likely to apply and working in compliance with federal laws addressing Affirmative Fair Housing Marketing, and will be done through some or all of the following actions...

- a. All Materials will include proper fair housing logo and other federal and state-mandated disclosures
- b. Initial Campaign to Introduce HouseKeys to key employers, community organizations, religious organizations, trade associations, and small businesses
- c. Mailers and other collateral that go out within a .25 to .5-mile radius of each Opportunity listing featured in the MyHouseKeys Platform
- d. Local workshops targeting the groups above
- e. Participating in local events as public health restrictions (e.g. COVID-19) allow
- f. Online and Social Media Campaigns to share available opportunities
- g. Listings on popular websites and real estate aggregators (E.g. Craigslist, etc.)
- h. When appropriate and when the budget allows, Administrator will advertise in local media (radio, print, etc.)

**11. Performance Measures.** Administrator and the Agency will agree to mutually acceptable performance measures for program administration. These measures shall be included in the quarterly program summary report.

- a. General Inquiries: Respond within 72 business hours
- b. Loan Requests: Respond within 72 business hours, Complete requests within reasonable time, with weekly status updates for outstanding requests
- c. Program Orientations/Workshops: Minimum 6 per year, with more as needed for new opportunities
- d. Annual Ownership Monitoring: Send at least 2 rounds of annual certification letters to homeowners for compliance data collection
- e. Eligibility List: Maintain a minimum buyer-to-property ratio of 5:1
- f. Application ID issuance: Available online year-round 24/7 with troubleshooting issues handled within 2 business days. Manual Application ID issuance will also take up to 2 business days.

**12. Additional Service Descriptions.** Administrator will provide the following additional services.

- a. Administrator shall build and maintain a group of qualified and eligible Program homebuyers at a minimum Buyer-to-Property ratio of 5:1. For Agencies that maintain an accruing Waitlist based on registration timestamp, HouseKeys will assign Application ID using the Timestamp and assign a “Legacy Applicant” Preference Assignment.
- b. Administrator will maintain a list of approved loan officers and lending operations eligible to provide mortgage lending for purchase and refinance transactions
- c. Administrator will maintain a list of approved real estate agents and brokers eligible to provide listing services to sellers for resale transactions\*
- d. Administrator will maintain a list of appraisers for fair market valuations\*
- e. Administrator will maintain a list of escrow officers who are familiar with program requirements and transaction compliance\*
- f. Administrator will review individual program restrictions for terms and requirements as needed including shared equity programs, down payment assistance loans and any resale restriction agreements.
- g. Administrator will assist Agency staff with reports and presentations on the housing programs that HouseKeys administers.
- h. Administrator will provide training, analysis, and suggested improvements to the Affordability Program.



- i. **Special Projects.** There will be cases where Administrator will be asked to complete a Project that is outside of the contract scope. If project scope and terms are defined in writing, Administrator will agree to complete project at a specified billing rate.

**EXHIBIT “B”**  
**SCHEDULE OF SERVICES**

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.

|                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>PROGRAM SETUP</b></p> <p>First 90 - 120 Days will involve getting the City of Milpitas Setup with the HouseKeys Templates and Operating System in prep to start fielding applicant inquiries and complete program transactions. In addition to the Program Setup, we will also use this time to confirm policies in the program manual and reporting protocols.</p> | <p><b>\$50,000</b><br/><b>One-Time Fee to Start Contract</b></p> <ul style="list-style-type: none"> <li>• <b>Includes setting City up in the MyHouseKeys.Com Program Marketplace</b></li> <li>• <b>Payment, in full, is due upon contract approval and execution (signing by both parties)</b></li> </ul> |
| <p><b>PROGRAM ADMINISTRATION</b></p> <p>While HouseKeys will provide the full-service scope of work from the date of start, the expectation will be that the City will budget for a full contract at this proposed annual fee,</p>                                                                                                                                        | <ul style="list-style-type: none"> <li>• <b>First installment is due on the 10th of the first full month following the execution of the contract, with subsequent payments due on the 10th of each month, or next business day, if the 10th is on a weekend day or holiday</b></li> </ul>                 |

**Transaction Fees**

Each City pays an all-inclusive Base Fee that is meant to create predictable billing cycles for our Agency clients. In addition to the Base Fee, Transaction Fees are charged in accordance with an annual Fee Schedule. Please note that Transaction Fees are charged to third parties at the point-of-service (e.g., New Construction Fees are charged to the Developer for delivering an eligible buyer and as part of their contribution to ongoing compliance costs, Resale Fees are charged to the homeowner or added to the Re-Sale Price of the Home). HouseKeys uses these fees to cover marketing costs and to compensate third parties for services performed, including HUD- Approved Counseling Agencies and outside Real Estate Agents.

**Onboarding**

In addition to the base cost and fee schedule, there is an Onboarding Process that can take between 30 days and 6 months. Onboarding costs and timelines depend on Agency-specific Scope of Work, the Agency’s current recordkeeping standards, and team capacity. While HouseKeys does its best to accurately price its contracts, experience has shown that it takes 12 to 18 months of working as the Agency’s Administrator to truly understand and calculate cost and scope. HouseKeys aims to work with Agencies who value standardization and who are willing to defer to HouseKeys best practices when it comes to program administration workflows, policies, and procedures. Two important check-ins during the first contract year will be the 6- month check-in and the 12-month check-in. During both exercises, the Agency and Administrator will be expected to evaluate costs and challenges to determine if a budget amendment is appropriate. The Agency will be expected to account for a possible increase in costs during the planning phase.

**EXHIBIT “C”  
COMPENSATION**

The initial term of this Agreement shall be from **July 1, 2023** to **June 30, 2024**. The term shall include four (4) one-year options that could extend the contract through June 30, 2028. Each year’s extension is subject to City Council budget approval using the most current Contractor fee schedule. The following is a breakdown of the minimum compensation over the potential five years:

|          |                                                        |
|----------|--------------------------------------------------------|
| FY 23-24 | \$50,000 start-up fee;<br>\$150,000 administration fee |
| FY 24-25 | \$200,000 administration fee                           |
| FY 25-26 | \$200,000 administration fee                           |
| FY 26-27 | \$200,000 administration fee                           |
| FY 27-28 | \$200,000 administration fee                           |

The minimum \$200,000 administration fee reflects administration of the City’s 278 BMR homeownership units. For each option year, City and Contractor agree to price any additional units added to the portfolio to the FY23-24 fee schedule, as displayed below. The addition of units will be agreed to by amendment to this agreement.

By March 31<sup>st</sup> of each year, City and Contractor will determine the subsequent year’s administrative fee based on the number of units in BMR portfolio and the fee schedule below.

| Number of Units under Management | Cost Per Unit |
|----------------------------------|---------------|
| 201-300 Units                    | \$900         |
| >301 Units                       | \$750         |

**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.

**X** 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 combined single limit 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 combined single limit 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):**

\_\_\_ 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:**

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 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.

**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. 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.

**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.

**Cyber Liability Insurance**

\_\_\_ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

### **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.

### **Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain the following provisions:

#### **X Additional Insured Status and Primary/Non-Contributory Language:**

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its elected and appointed officials, officers, attorneys, agents employees and volunteers as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

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.

#### **\_\_\_\_ Loss Payee Status – 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.

#### **\_\_\_\_ 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.



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Adopt a Resolution Approving a Site Development Permit to Develop a New In-Ground Swimming Pool and Legalize the Unpermitted Site Improvements at an Existing Single-Family Residence at 640 Evans Road (Staff Contact: Jay Lee, Interim Planning Director, 408-586-3077)</b>                                                                                                     |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                                                                                                                                               |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                                                                                                                                                                                                                                                             |
|                      | <u>Recommendation:</u> Consider the exemption in accordance with CEQA and adopt a resolution approving Site Development Permit No. SD20-0015, subject to the attached Conditions of Approval, to allow the development of a new in-ground swimming pool and legalize the unpermitted site improvements at an existing single-family residence on a 2.69 acre site at 640 Evans Road. |

### **BACKGROUND:**

On November 17, 2020, an application was submitted by Lisa Pendleton, of Artisan Home Resorts Inc. ("Applicant"), for a development proposal to allow the development of a new in-ground swimming pool, legalize the unpermitted patio, deck, and porch around the main residence comprised of pervious paver materials, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed ("Project") on a 2.96 acre site with an existing single-family residence at 640 Evans Road (APN: 029-06-009). The Project site is zoned R1-H Single-family Residential-Hillside Zoning District. Per Milpitas Municipal Code (MMC) Section XI-10-45.09-2, no building permit shall be issued for the construction or expansion of a single-family structure in the Hillside (H) Combining District until such structure has received a site and architectural review approval by the Planning Commission (PC) and City Council (CC). On August 23, 2023, the application received a recommendation by the PC to be approved by CC, as demonstrated within Resolution No. 23-015.

### **ANALYSIS:**

Planning staff recommends that the City Council review and approve a resolution to allow the development of a new in-ground swimming pool, legalize the unpermitted patio, deck, and porch around the main residence comprised of pervious paver materials, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed at an existing single-family residence. The project site is located on the northeastern edge of the City of Milpitas, adjacent to properties with the same single-family hillside zoning designation. The proposed resolution involves the City Council making specific factual findings, including that the project as presented is consistent with the Milpitas Zoning Ordinance, the Hillside Zoning Ordinance, and the General Plan. As detailed in the draft resolution, staff has determined that the project is consistent with all relevant ordinances, plans, and standards except for the impervious surface standard for Hillside development. However, the project applicant will agree to make minor amendments to the project plans to bring the project into compliance with the impervious surfaces' requirement, which will be a condition of approval for the permit.

Based on the existing location and minimal scale of the home in consideration of its maximum allowable size outlined in Table 3 of the attached staff report, developing a new in-ground pool and site improvements will not substantially interfere with views and privacy to adjacent lots. The existing residence exceeds all setback requirements, meets the maximum 17-foot, one-story height limit, and minimizes interference with views and privacy through substantial setbacks from adjacent residences to the north and south.

### **POLICY ALTERNATIVE(S):**

**Alternative 1: Direct staff to draft a resolution to deny the project for review at a subsequent meeting.**

**Pros:** The existing hillside lot is developed with a single-family residence, or a new or revised project could be proposed.

**Cons:** The applicant would need to either withdraw the application or resubmit revised plans for the development of an in-ground swimming pool at this location.

**Reason for Not Recommending:** The proposed project meets the required findings for approval and is consistent with the City's goals of supporting the development of an in-ground swimming pool in all areas of the City, including appropriate hillside locations. Both staff and the Planning Commission are recommending approval of the proposed project.

**FISCAL IMPACT:**

If the proposed project is approved, the applicant will apply for building permits and pay associated fees. The new in-ground swimming pool and legalizing the unpermitted site improvements may increase the property value and tax revenues but will also increase the demand for City services, including public safety and utilities. The project is located within an existing residential subdivision with existing services nearby.

**California Environmental Quality Act (CEQA):**

The proposed Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures), as the scope of work includes a new in-ground swimming pool, patio, fence, deck, and associated earth work in a residential zone. As a separate and independent basis, the Project is also exempt from further environmental review pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning). The proposed Project is consistent with the established Milpitas 2040 General Plan and R1-H Single-Family Residential Hillside Zoning District.

**RECOMMENDATION:**

Consider the exemption in accordance with CEQA and adopt a resolution approving Site Development Permit No. SD20-0015, subject to the attached Conditions of Approval, to allow the development of a new in-ground swimming pool and legalize the unpermitted site improvements at an existing single-family residence on a 2.69 acre site at 640 Evans Road.

**Attachments:**

1. City Council Resolution
2. Planning Commission Staff Report dated August 23, 2023
3. Planning Commission Resolution No. 23-015
4. Project Plans

**RESOLUTION NO. XXXX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
 APPROVING OF SITE DEVELOPMENT PERMIT NO. SD20-0015 TO DEVELOP A NEW IN-GROUND  
 SWIMMING POOL AND LEGALIZE THE UNPERMITTED SITE IMPROVEMENTS AT AN EXISTING  
 SINGLE-FAMILY RESIDENCE ON 2.69-ACRE SITE AT 640 EVANS ROAD (APN: 029-06-009) AND  
 MAKING CEQA FINDINGS OF EXEMPTION**

**WHEREAS**, on November 17, 2020, an application was submitted by Lisa Pendleton, of Artisan Home Resorts Inc. (“Applicant”), for a development proposal to allow the development of a new in-ground swimming pool, legalize the unpermitted patio, deck, and porch around the main residence comprised of pervious paver materials, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed (“Project”) on a 2.96 acre site with an existing single-family residence at 640 Evans Road (APN: 029-06-009). The Project site is zoned R1-H Single-family Residential-Hillside Zoning District; and

**WHEREAS**, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), which assessment determined that the Project is exempt from CEQA review pursuant to Section 15303 (New Construction and Conversion of Small Structures) of the CEQA Guidelines and, as a separate and independent basis, pursuant to Section 15183 of the CEQA Guidelines; and

**WHEREAS**, on August 23, 2023, the City of Milpitas Planning Commission held a duly-noticed public hearing on the subject application, at which time all those in attendance were given the opportunity to speak on the Project, and the Planning Commission unanimously (7-0) recommended approval of the Project to the City Council subject to Conditions of Approval per Planning Commission Resolution No. 23-015; and

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

**SECTION 1: Recitals**

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 incorporated herein by reference.

**SECTION 2: California Environmental Quality Act (CEQA) Findings**

The proposed Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures), as the scope of work includes a new in-ground swimming pool, patio, fence, deck, and associated earth work in a residential zone. As a separate and independent basis, the Project is also exempt from further environmental review pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning). The proposed Project is consistent with the established Milpitas 2040 General Plan and R1-H Single-Family Residential Hillside Zoning District.

**SECTION 3: Site Development Permit Findings (Section XI-10-57.03(F)(1))**

The City Council makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD20-0015:

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The existing home's architectural design and site planning are aesthetically compatible with the neighboring homes, emphasizing minimal changes to the natural topography and minimal visual impacts. The existing

home incorporates earth-tone colors and is sited so as not to draw attention when viewed from the floor.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

As described in Table 1 below, the proposed development of an in-ground pool and site improvements will be conditioned to conform to the R1-H Single-Family Residential Hillside Zoning District standards for setbacks, height requirements, and landscaping.

**Table 1:**  
**Summary of Development Standards**

| Standards                    | Hillside Requirements                                                                                                                                        | Proposed                                                             | Complies                                                      |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------|
| Front Setback                | 25 ft. minimum when avg. slope is <16%; otherwise, a 40 ft. minimum                                                                                          | (e) 74"                                                              | Yes                                                           |
| Side Yard Setback            | 40 ft. minimum                                                                                                                                               | (e) 43' - 2" (west side)<br>(e) 311' - 10" (east side)               | Yes                                                           |
| Rear                         | 40 ft. minimum                                                                                                                                               | (e) 58' - 6"                                                         | Yes                                                           |
| Size of Main Residence       | 6,000 sq. ft. maximum<br>(lots < 3 acres)                                                                                                                    | (e) 3,360 sq. ft.                                                    | Yes                                                           |
| Impervious Surfaces          | 8,000 sq. ft. maximum<br>(lots < 3 acres)<br>30,000 sq. ft. maximum<br>(lots > 3 acres)                                                                      | 17,680 sq. ft. (1,379 square feet over the allowed Variance No. 503) | Not as presented. This will be achieved with Condition No. 24 |
| Building Height (Max.)       | West of crestline – 17 ft.                                                                                                                                   | (e) 1-story or 14' – 10"                                             | Yes                                                           |
| Parking                      | Three spaces required                                                                                                                                        | Five spaces (two inside the garage & three on the driveway)          | Yes                                                           |
| Crestline Zone of Protection | Within three hundred (300) feet easterly of the crestline, structure heights shall be restricted so that no structure extends above the crestline site line. | (e) West of the crestline                                            | Yes                                                           |

(e) = Existing

Due to the subject property's location, the project must also comply with the development standards in the City's Hillside Combining District. Per MMC Section XI-10-45.09-7 of the Zoning Ordinance, the Planning

Commission and City Council shall consider the following guidelines in their review. Staff has determined the Project to be consistent with the Hillside Architectural Guidelines, as demonstrated in Table 2 below.

**Table 2:**  
**Hillside Zoning Ordinance Compliance**

| <b>Site and Architectural Guidelines</b><br><i>Section 45.09-7</i>                                                                                                                                                                                                                                                                  | <b>Consistency Finding</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.</i> | <b>Consistent.</b> Based on the existing location and minimal scale of the home in consideration of its maximum allowable size outlined in Table 3, developing a new in-ground pool and site improvements will not substantially interfere with views and privacy to adjacent lots. The existing residence exceeds all setback requirements, meets the maximum 17-foot, one-story height limit, and minimizes interference with views and privacy through substantial setbacks from adjacent residences to the north and south. |
| <i>(b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.</i>                                                                                                                      | <b>Consistent.</b> The project site is developed with a few shrubs on the higher-sloped southern portions of the lot and existing trees. The proposed project will not remove any existing trees. As proposed, the design of the in-ground pool is carefully sited to be built on the flattest portions of the lot, following the existing contours of the site to limit the amount of imported soil.                                                                                                                           |
| <i>(c) Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.</i>                                                                                                                        | <b>Consistent.</b> The existing one-story design is predominantly horizontal and includes a single roofline, a clear delineation of different colors and materials, and punctuation of certain front and side-facing elevations to minimize the perception of bulk within the main structure and the detached ADU. Furthermore, as described above and shown in Table 3, the scale of the proposed main residence is similar to the immediate neighbors' residences built on similar lots of less than 3.0-acres in size.       |
| <i>(d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.</i>                                                                                      | <b>Consistent.</b> The existing home will not exceed 17 feet in height as permitted for homes west of the crestline and exceeds all minimum setbacks as required by the Hillside development standards. As such, the proposed in-ground pool will not cause an                                                                                                                                                                                                                                                                  |

| Site and Architectural Guidelines<br><i>Section 45.09-7</i>                                                                | Consistency Finding                                                                                                                                                    | Item # C12. |
|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
|                                                                                                                            | impairment to the adjacent properties' access to light and air.                                                                                                        |             |
| <i>(e) Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.</i> | <b>Consistent.</b> The siting of the main dwelling on the existing lot is relatively flat; the new-inground pool is limited to the export of 170 cubic yards off-site. |             |

### ***Site & Architectural Design***

The project has an existing single-family residence with various exterior materials and finishes, a palette of earth-tone colors, and an asphalt shingled roof. The existing detached guest house, considered a limited detached ADU, was designed with the same materials to complement the main residence.

### ***Grading and Landscaping***

In an effort to limit the amount of ground to be removed, the applicant has proposed a site plan which locates the proposed in-ground pool on the flattest portion of the site, which will result in 170 cubic yards of export for the construction of the pool. No existing trees will be removed.

### ***Site Improvements without permits***

The applicant also requests to legalize the unpermitted patio, deck, and porch around the main residence, comprised of pervious paver materials, a 42-inch tall rod iron fence, artificial grass, and a 120-square-foot storage shed. See Sheet ST2 of Attachment B for more details.

The fence deviation of construction materials from an all-wooden post and supporting framework materials to rod iron requires the Planning Commission's approval of this Site Development permit. Otherwise, the fence conforms to the height limit of 54-inches and the required open work design, which results in a minimum of seventy-five percent (75%) visual transparency within every square foot area, posts excluded. See the existing fence detail on Sheet ST2 of Attachment B.

### ***Crestline Zone of Protection***

To protect the quality of views of the hills from the valley floor, development standards related to the crestline have been incorporated into the Zoning Code. Per MMC Section XI-10-45.06, the purpose of the crestline zone of protection is to preserve the natural quality of the crestline and the slopes 100 feet immediately below when viewed from the valley floor. The proposed project is located 500 feet west of the crestline and approximately 300 feet lower in elevation; the project is further restricted to a height of seventeen (17) feet and one (1) story (excluding basements) from the lowest finished grade to the highest ridgeline of the building. The project conforms to these development standards outlined in Table 1.

### ***3. The project is consistent with the Milpitas General Plan.***

The proposed project is consistent with the Milpitas General Plan, particularly with Policy CD 7-5, which states that new development in the Hillside Area should be limited to only Very Low Density Residential, open space, and park uses. The project site is a legal lot within an existing and approved single-family residence. The proposed in-ground swimming pool, the unpermitted patio, deck, and porch around the main residence comprised of pervious paver materials, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed are designed to fit in with the natural topographic features of the hillside property and reduce the visual impact as viewed from the valley floor. As outlined in Table 3 below.

**Table 3:**  
**General Plan Consistency**

| <b>Policy</b>                                                                                                                                                                                                                                     | <b>Conformance</b>                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i><b>CD 7-1</b> Maintain the visual character of hillsides, recognizing both the importance of the exposure of hillside development from off-site public views and the importance of providing panoramic public views from and of hillsides.</i> | <b>Consistent.</b> The proposed in-ground pool will not significantly impact the visual character of the hillside from the valley floor or other viewpoints, as the project site is located over 500 feet west and approximately 300 feet lower than the crestline.                                                                                                              |
| <i><b>CD 7-2</b> Minimize the alteration of existing landforms and maintain the natural topographic characteristics of the hillside areas, allowing only minimal disruption.</i>                                                                  | <b>Consistent.</b> The proposed in-ground pool will be situated at the flattest portion of the lot to limit the disruption to the existing natural topography by limiting the volume of grading only to require a net export of 170 cubic yards to be removed from the site. This is designed to accommodate the footprint of the pool and meet the required grade at the patio. |
| <i><b>CD 7-3</b> Protect the natural character of hillside areas by means of contour grading to blend graded slopes and terraces with the natural topography.</i>                                                                                 | <b>Consistent.</b> Minimal contour grading will be required to construct the in-ground pool due to its location on the flattest areas of the lot, a plateau adjacent to the residence. All new contours will be designed to blend with the natural existing site contours as demonstrated in the civil drawings in the plan set.                                                 |
| <i><b>CD 7-4</b> Avoid mass graded pads within hillside areas. Smaller steps or grade changes should be used over single, large, slope banks to the greatest extent feasible.</i>                                                                 | <b>Consistent.</b> The in-ground pool is proposed at the flattest portion of the lot and will only necessitate minimal grading requiring a net export of 170 cubic yards to be removed from the site. Grading has been substantially minimized in the Project because the work follows the site's natural contours to preserve the natural terrain quality.                      |
| <i><b>CD 7-5</b> Ensure that any change in hillside land use is accompanied by appropriate safety measures and that the environmental constraints are adequately addressed especially with respect to runoff and erosion.</i>                     | <b>Consistent.</b> No change in land use is proposed; the site will remain a developed single-family residence, with adequate fire safety measures to allow fire apparatus access. The existing deck, Astroturf, and patio are designed to be pervious to inhibit excess runoff and erosion.                                                                                     |

As described above, the Project is compatible and consistent with the surrounding uses and has been found to conform to the intent of the Milpitas 2040 General Plan designation. The in-ground pool is designed to fit in with the natural topographic features of the property and reduces the visual impact as viewed from the valley floor.



**SECTION 4: City Council Approval**

Based on the foregoing, the City Council hereby approves Site Development Permit No. SD20-0015 to allow the construction of a new single-family residence in the R1-H Single-family Residential Zoning District with an H Hillside Combining District located at 640 Evans Road, based on the above findings and subject to the Conditions of Approval attached hereto as **Exhibit 1** and incorporated herein.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Suzanne Guzzetta, Acting City Clerk

\_\_\_\_\_  
Carmen Montano, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Mutalipassi, City Attorney

**SITE DEVELOPMENT PERMIT NO. P-SD20-0015**  
**640 EVANS ROAD (APN 029-06-009)**

The City of Milpitas Planning Commission and City Council approve Site Development Permit No. SD20-0015 in accordance with Section X1-10-45.09 of the Milpitas Municipal Code, subject to and conditioned upon all applicable State and local laws and regulations and the Conditions of Approval outlined below. This permit is to allow the issuance of building permits for a new in ground swimming pool and previously constructed patio, deck, and porch, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed appurtenant to an existing single-family residence on a 2.96-acre site located in the R1-H Single-family Residential-Hillside Zoning District at 640 Evans Road (APN 029-06-009), subject to all necessary reviews, approvals, studies, and inspections for the issuance of such building permits.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

**General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. **Site Development Permit No. SD20-0015** (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office. **(P)**
2. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
3. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**
4. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
5. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

This permit shall become null and void if the work is added to, modified, or otherwise deviated from in any significant way from the approved site plan, building plan, floor plans, or other approved submittal as determined by the Planning Director or designee.

6. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
7. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P)**
8. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1). **(P)**
9. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to City. There is no vesting of any fees or charges with the adoption of this Resolution. **(P)**
10. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution. **(P)**
11. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
12. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit. **(P)**
13. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(CA)**
14. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code. **(P)**
15. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.

16. Permittee shall develop the approved project in conformance with the approved plans dated June 1, 2023, approved by the Planning Commission on August 23, 2023, in accordance with these Conditions of Approval. **(P)**
- Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, Permittee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**
17. Response to Conditions of Approval. The permittee shall provide a written response to comments upon submittal for building permit application. The responses should clearly indicate how each condition of approval has been addressed in the plans and shall note the appropriate plan sheet. **(P)**
18. Prior to the issuance of a building permit, the owner or designee shall include, within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**

## **PROJECT SPECIFIC CONDITIONS**

### **Planning Department Conditions**

19. Streets shall be designed to generally follow the contours and land form in order to minimize cut and fill. Exposed walls and facing roadways and retaining walls shall be no greater than six feet in height. Crib walls fencing roadways shall be no greater than 15 feet in height. **(P)**
20. Landscaping coverage and stabilization of graded slopes shall be selected and designed to be compatible with surrounding natural vegetation or to replace removed natural vegetation and should recognize climatic, soil, and ecologic characteristic of the region. Plan materials that require excessive water after becoming established should be avoided. **(P)**
21. Within six months, or such other period established by the Planning Commission, after the commencement of grading activities, all graded areas not covered by an impervious surface shall be stabilized in such manner as shall be approved by the Community Development Manager. **(P)**
22. Where two cut-or-fill slopes intersect, the intersection shall be horizontally rounded and blended. **(P)**
23. Where any cut-or-fill slopes intersect the natural grade, the intersection of each slope shall be vertically and/or horizontally rounded and blended. **(P)**
24. The total lot impervious surface shall not exceed 16,301 square feet as approved by Variance No. 503; at the Building Permit submittal, the site plans shall be revised to limit the total impervious surface to 16,301 square feet. **(P)**

### **Fire Department**

The plans approved by the Planning Department process are not building plans and have not been reviewed nor approved for conformance to the California Building Code (CBC), California Fire Code (CFC) and the Milpitas Municipal Code (MMC). Do not consider this set of plans as final building plans approved by the Fire Department. Building plans must be submitted for review and approval before construction is to commence. The following notes are a general list of the applicable code requirements (2016) and are provided to assist with the building permit process. Please note that these are not all inclusive. All applicable Building, Fire and Municipal Code requirements must be met in advance of any building permit approvals or related construction.

25. Electronic documents. The fire code official may require electronic base documents for all construction documents and operational permits. The fire code official shall designate the software base format for the electronic documents. CFC Section 105.4.2.2, added by MMC Section V-300-2.11, and CFC Section 102.9
26. Fire Department access. Sheets ST2 shows an acceptable Fire Dept. apparatus access. Fire apparatus access roads shall be provided for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire apparatus access as measured by an approved route around the exterior of the building. Fire apparatus access shall meet the following:
- Fire apparatus access shall extend to within 150 feet of all portions of exterior walls of the building/structure per the California Fire Code Section 503.1.
  - The proposed driveway shall be designed for fire apparatus access. Fire Access Dimensions, fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm). CFC Section 503.2.1

Exception:

Milpitas Municipal Code XI-45.11

45.11-1 Privately owned and maintained access from the public road to each single-family dwelling shall be a minimum of fourteen (14) feet in width. Turning radius shall be designed to meet the Fire Department's requirements.

45.11-2 Turnout space shall be provided on driveways over one hundred fifty (150) feet in length with a maximum spacing of one hundred fifty (150) feet if driveway is less than eighteen (18) feet wide.

45.11-3 Turnaround. All dwelling units shall provide an on-site area for vehicles to turn around if served by a driveway over one hundred fifty (150) feet in length to meet Fire Department's requirements.

45.11-4 Vertical Clearance. All privately owned and maintained roads and drives shall assure a minimum fourteen (14) foot vertical clearance.

- Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Bearing capacity for the driveway and the entry drive court shall be designed to provide a minimum of 60,000 lbs bearing capacity for the fire apparatus. CFC Section 503.2.3
- When there is a dead-end condition, means for fire apparatus turn-around shall be provided as per the CA Fire Code Section 503.2.5. The Fire Department reserves the right to request site design changes as needed to meet the requirements of the CFC, and/or make the request for additional fire protection measures in conformance with the CFC Section 102.9.
- The grade (maximum 15%) of the fire apparatus access road shall be within the limits established by the fire code official based on the fire department's apparatus. CFC Section 503.2.7
- Electric gates. Where provided, gates shall be listed in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. CA Fire Code Section 503.5

Electric gates shall also be provided with a Milpitas Fire Department approved "Knox" electronic switch in addition to the keypad. CA Fire Code Section 102.9

Premises identification. New and exiting buildings shall have approved address numbers. Address numbers shall be illuminated and located where they are clearly visible from the street. CFC Section 505.

Item # C12.

### **Building Department**

27. Compliance with California Code of Regulations. The Project shall comply with the requirements of the Building Safety and Housing Department and the California Code of Regulations Title 24 and the Milpitas Municipal Code as adopted by the City. Building permits shall be submitted to and approved by the Building Safety and Housing Department prior to start of construction. All California Code of Regulations Title 24 and Milpitas Municipal Code requirements applicable at the time of building permit application must be met in advance of any building permit approvals or related construction. Changes to the site plan and/or building plan require review and approval by the Building Safety and Housing Department **(B)**

**(P) = Planning**

**(B) = Building**

**(E) = Engineering**

**(F) = Fire Prevention**

**(CA) = City Attorney**

### **ACCEPTANCE**

*Permittee/Property Owner*

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this permit.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Relationship to Property: \_\_\_\_\_

### **NOTICE OF RIGHT TO PROTEST**

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.



## MILPITAS PLANNING COMMISSION STAFF REPORT

August 23, 2023

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**APPLICATION:** **NEW IN-GROUND SWIMMING POOL AND LEGALIZING SITE IMPROVEMENTS** - Site Development Permit No. SD20-0015: A request for a Site Development Permit to develop a new in-ground swimming pool, legalize the unpermitted patio, deck, and porch around the main residence comprised of pervious paver materials, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed at an existing single-family residence on a 2.96-acre site located in the R1-H Single-family Residential-Hillside Zoning District at 640 Evans Road.

**RECOMMENDATION:** **Staff recommends that the Planning Commission adopt Resolution No. 23-013, recommending City Council approve Site Development Permit No. SD20-0015, subject to the attached Conditions of Approval.**

**LOCATION:**  
Address/APN: 640 Evans Road (APN: 029-06-009)  
Area of City: Northeastern portion of the City of Milpitas in the hillside area

**PEOPLE:**  
Project Applicant/Owner: Joe Custer  
Project Planner: Avery Stark, Acting Senior Planner

**LAND USE:**  
General Plan Designation: Hillside Low-Density (HLD)  
Zoning District: Single-Family Residential-Hillside (R1-H)  
Site Area: 2.90 acres

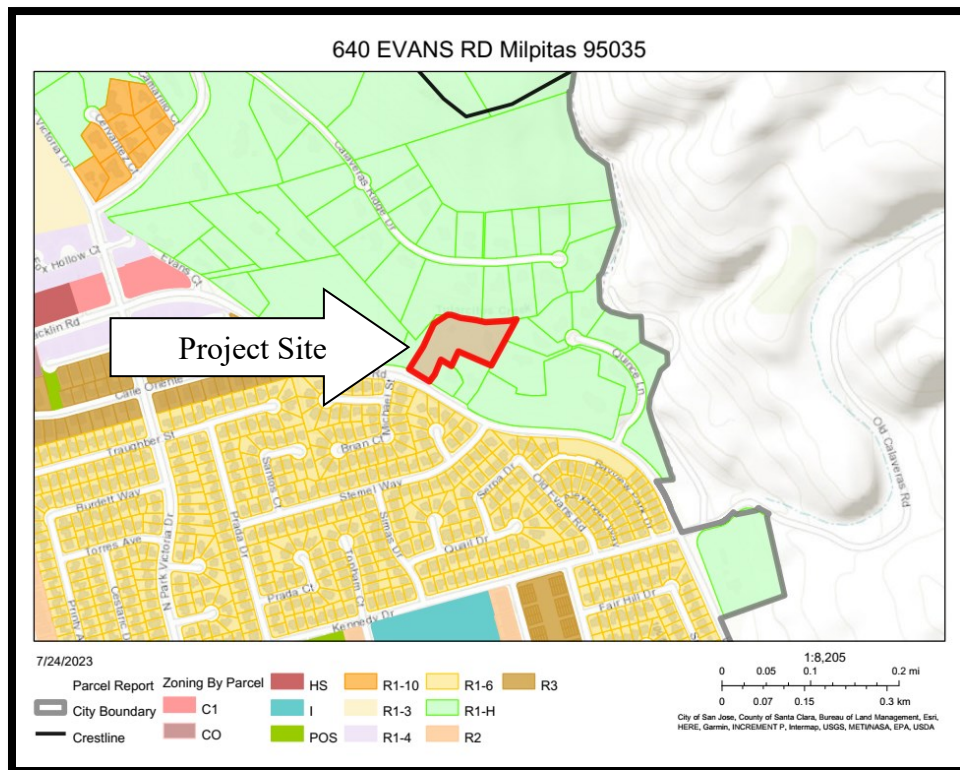
**ENVIRONMENTAL:** Categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures) and Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).



**Map 1**  
**Aerial Project Location**



**Map 2**  
**Zoning Map**





## PROJECT DESCRIPTION

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### *History*

- On April 6, 1979, the Milpitas Planning Commission approved a one-story, single-family residence.
- On June 11, 1996, the Planning Commission approved Use Permit No. 1357, Variance No. 503, and an “S” Zone Approval Amendment to allow the development of a guest house and the addition of 1,020 square feet of impervious surface on a site which already exceeded the maximum impervious surface area allowed by 2,387. Allowing a total of 16,301 square feet of impervious surface.

### *Application*

The applicant is requesting a Site Development Permit to develop a new in-ground swimming pool, legalize the unpermitted patio, deck, and porch around the main residence comprised of pervious paver materials, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed at an existing single-family residence with an attached two-car garage. Separate from this application, pursuant to Milpitas Municipal Code (MMC) Section XI-10-13.08 - Accessory Dwelling Units, the existing one-story guest house with a kitchen area, living room, bedroom, and bathroom will be converted into a limited detached ADU, subject to a streamlined review and building permit only.

### *Context and Location*

The project site is a developed 2.96-acre parcel located off Evans Road, in the northeastern portion of the City of Milpitas, in the hillside area approximately a quarter mile north of the Evans Rd/Quince Lane intersection. The project site is located on the east side of the crestline. A vicinity map of the subject site location is shown on Map 1. The site shares a portion of its access with two adjacent lots; each developed with single-family residences. The property and neighboring properties are zoned Single-Family Residential – Hillside (R1-H). Map 2 on the previous page and Table 1 on the following page summarize the Zoning and Land Uses surrounding the site.

### *Process*

In addition to satisfying the substantive and procedural requirements typically applicable to a Site Development Permit, because of the project’s location within the Hillside Combining District (“H”), the application must be considered by both the Planning Commission and the City Council (Milpitas Municipal Code (MMC) Section XI-10-45.09) for conformance with the Hillside Site and Architectural Guidelines.

**Table 1**  
**Surrounding Zoning and Land Uses**

|                     | <b>General Plan</b>        | <b>Zoning</b>                             | <b>Existing Use</b> |
|---------------------|----------------------------|-------------------------------------------|---------------------|
| <b>Subject Site</b> | Hillside Low Density (HLD) | Single-Family Residential-Hillside (R1-H) | Single-family home  |
| <b>North</b>        | Hillside Low Density (HLD) | Single-Family Residential-Hillside (R1-H) | Single-family home  |
| <b>South</b>        | Hillside Low Density (HLD) | Single-Family Residential-Hillside (R1-H) | Single-family home  |
| <b>East</b>         | Hillside Low Density (HLD) | Single-Family Residential-Hillside (R1-H) | Single-family home  |
| <b>West</b>         | Hillside Low Density (HLD) | Single-Family Residential-Hillside (R1-H) | Single-family home  |

## **PROJECT ANALYSIS**

### Milpitas General Plan 2040

The General Plan designation for the project site is Hillside Low Density (HLD). The General Plan details the City's Hillside Area's goals, objectives, and policies. It is characterized by gentle to steep slopes, grassy terrain with some chaparral and trees, wildlife, geologically unstable areas, the Ed R. Levin County Regional Park, and a feeling of remoteness from the more urban portions of the city. The Hillside Low-Density designation allows a maximum of one (1) housing unit per gross acre. The project is in conformance with the policies and standards in the City's General Plan policies, as outlined in the following table:

**Table 2**  
**General Plan Consistency**

| <b>Policy</b>                                                                                                                                                                                                                                     | <b>Conformance</b>                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i><b>CD 7-1</b> Maintain the visual character of hillsides, recognizing both the importance of the exposure of hillside development from off-site public views and the importance of providing panoramic public views from and of hillsides.</i> | <b>Consistent.</b> The proposed in-ground pool will not significantly impact the visual character of the hillside from the valley floor or other viewpoints, as the project site is located over 500 feet west and approximately 300 feet lower than the crestline.                                                                                                              |
| <i><b>CD 7-2</b> Minimize the alteration of existing landforms and maintain the natural topographic characteristics of the hillside areas, allowing only minimal disruption.</i>                                                                  | <b>Consistent.</b> The proposed in-ground pool will be situated at the flattest portion of the lot to limit the disruption to the existing natural topography by limiting the volume of grading only to require a net export of 170 cubic yards to be removed from the site. This is designed to accommodate the footprint of the pool and meet the required grade at the patio. |

| Policy                                                                                                                                                                                                                        | Conformance                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CD 7-3</b> <i>Protect the natural character of hillside areas by means of contour grading to blend graded slopes and terraces with the natural topography.</i>                                                             | <b>Consistent.</b> Minimal contour grading will be required to construct the in-ground pool due to its location on the flattest areas of the lot, a plateau adjacent to the residence. All new contours will be designed to blend with the natural existing site contours as demonstrated in the civil drawings in the plan set.                            |
| <b>CD 7-4</b> <i>Avoid mass graded pads within hillside areas. Smaller steps or grade changes should be used over single, large, slope banks to the greatest extent feasible.</i>                                             | <b>Consistent.</b> The in-ground pool is proposed at the flattest portion of the lot and will only necessitate minimal grading requiring a net export of 170 cubic yards to be removed from the site. Grading has been substantially minimized in the Project because the work follows the site's natural contours to preserve the natural terrain quality. |
| <b>CD 7-5</b> <i>Ensure that any change in hillside land use is accompanied by appropriate safety measures and that the environmental constraints are adequately addressed especially with respect to runoff and erosion.</i> | <b>Consistent.</b> No change in land use is proposed; the site will remain a developed single-family residence, with adequate fire safety measures to allow fire apparatus access. The existing deck, Astroturf, and patio are designed to be pervious to inhibit excess runoff and erosion.                                                                |

### **Development Standards**

The site is in the R1-H Single-Family Residential - “H” - Hillside Combining District. It is designed to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular constraints associated with the development of hillside areas, including, but not limited to, geologic problems, slope, safe access, and visibility.

Per MMC Section XI-10-45.17-3, the subject parcel is less than 3.0-acres, which allows for the smallest maximum size for the main residence and the least amount of impervious surface coverage compared to parcels over this acre threshold. The project applicant will conform to development standards within its maximum limitations of the approved Variance. This is accomplished by a Condition of Approval that will limit impervious surface coverage to 16,301 square feet as set by Variance No. 503. Table 3 demonstrates the Project’s consistency with the applicable development standards of the R1-H zone, with the exception of the total impervious surface coverage to be reminded by a condition of approval. Images 1 & 2 demonstrate the site plan and building configuration.

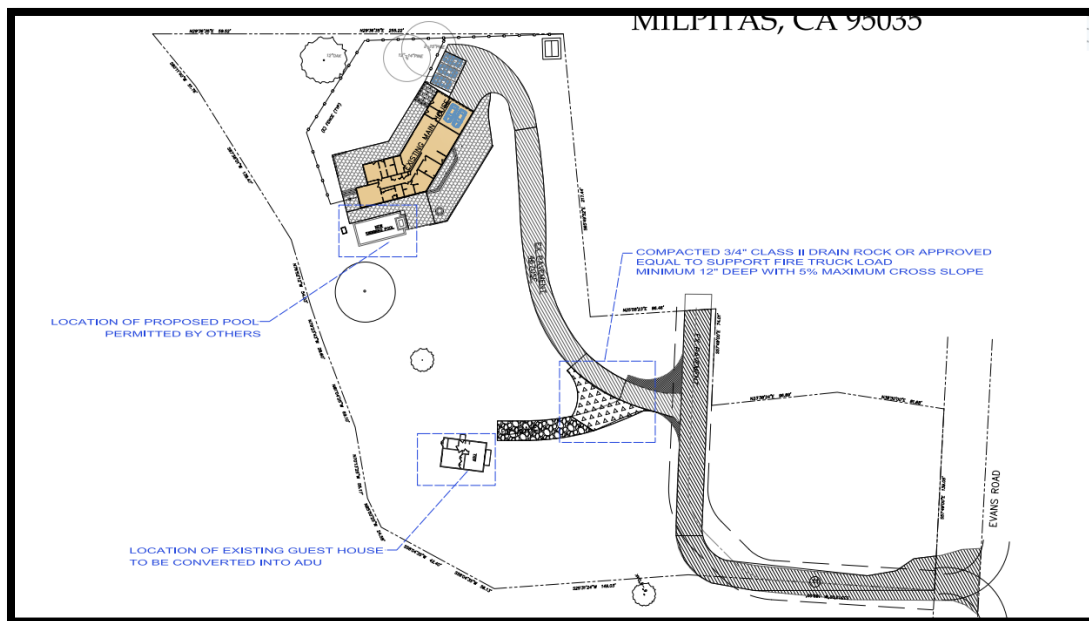
**Table 3**  
**Summary of Development Standards**

| <b>Standards</b>             | <b>Hillside Requirements</b>                                                                                                                                 | <b>Proposed</b>                                                      | <b>Complies</b>                                               |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------|
| Front Setback                | 25 ft. minimum when avg. slope is <16%; otherwise, a 40 ft. minimum                                                                                          | (e) 74"                                                              | Yes                                                           |
| Side Yard Setback            | 40 ft. minimum                                                                                                                                               | (e) 43' - 2" (west side)<br>(e) 311' - 10" (east side)               | Yes                                                           |
| Rear                         | 40 ft. minimum                                                                                                                                               | (e) 58' - 6"                                                         | Yes                                                           |
| Size of Main Residence       | 6,000 sq. ft. maximum (lots < 3 acres)                                                                                                                       | (e) 3,360 sq. ft.                                                    | Yes                                                           |
| Impervious Surfaces          | 8,000 sq. ft. maximum (lots < 3 acres)<br>30,000 sq. ft. maximum (lots > 3 acres)                                                                            | 17,680 sq. ft. (1,379 square feet over the allowed Variance No. 503) | Not as presented. This will be achieved with Condition No. 24 |
| Building Height (Max.)       | West of crestline – 17 ft.                                                                                                                                   | (e) 1-story or 14' – 10"                                             | Yes                                                           |
| Parking                      | Three spaces required                                                                                                                                        | Five spaces (two inside garage & three on the driveway)              | Yes                                                           |
| Crestline Zone of Protection | Within three hundred (300) feet easterly of the crestline, structure heights shall be restricted so that no structure extends above the crestline site line. | (e) West of the crestline                                            | Yes                                                           |

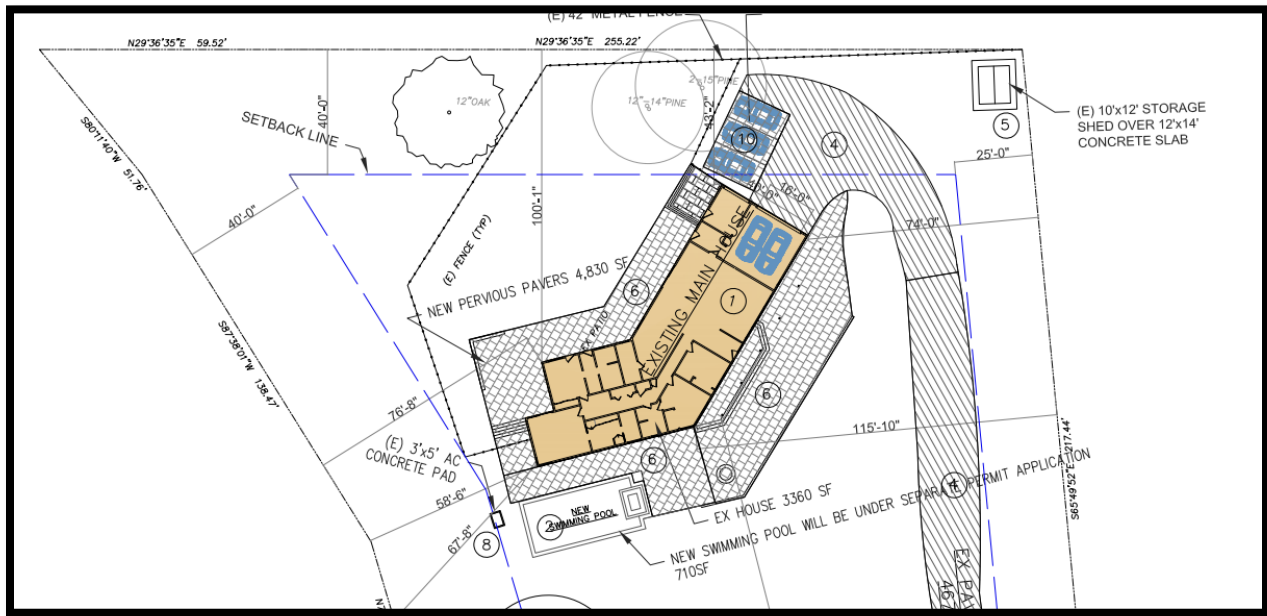
(e) = Existing

The Planning Commission approved Variance No. 503 on August 14, 1996, to increase the maximum impervious surface lot coverage to 16,301 square feet. As proposed, the application and site configuration creates an increase of 1,379 square feet of impervious coverage, comprising of the new swimming pool, existing storage shed, an existing concrete pad, and a new asphalt radius area for emergency vehicle access. This increase over the limit of the Variance will be remedied by Condition Number 24 in the proposed Site Development Permit, which will prohibit the applicant from exceeding this limit and require the applicant to submit revised site plans that limit the total impervious surface area to 16,301 square feet. This could be accomplished by converting a portion of the existing asphalt driveway into pervious paves or by other uses of pervious materials or reductions in project components that have impervious surface area.

**Image 1**  
**Site Plan**



## Image 2 Site Plan



Due to the subject property's location, the project must also comply with the development standards in the City's Hillside Combining District. Per MMC Section XI-10-45.09-7 of the Zoning Ordinance, the Planning Commission and City Council shall consider the following guidelines in their review. Staff has determined the Project to be consistent with the Hillside Architectural Guidelines, as demonstrated in Table 4 below.

**Table 4**  
**Hillside Zoning Ordinance Compliance**

| Site and Architectural Guidelines<br>Section 45.09-7                                                                                                                                                                                                                                                                                       | Consistency Finding                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.</i></p> | <p><b>Consistent.</b> Based on the existing location and minimal scale of the home in consideration of its maximum allowable size outlined in Table 3, developing a new in-ground pool and site improvements will not substantially interfere with views and privacy to adjacent lots. The existing residence exceeds all setback requirements, meets the maximum 17-foot, one-story height limit, and minimizes interference with views and privacy through substantial setbacks from adjacent residences to the north and south.</p> |

| Site and Architectural Guidelines<br><i>Section 45.09-7</i>                                                                                                                                                                                    | Consistency Finding                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>(b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.</i>                                 | <b>Consistent.</b> The project site is developed with a few shrubs on the higher-sloped southern portions of the lot and existing trees. The proposed project will not remove any existing trees. As proposed, the design of the in-ground pool is carefully sited to be built on the flattest portions of the lot, following the existing contours of the site to limit the amount of imported soil.                                                                                                                     |
| <i>(c) Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.</i>                                   | <b>Consistent.</b> The existing one-story design is predominantly horizontal and includes a single roofline, a clear delineation of different colors and materials, and punctuation of certain front and side-facing elevations to minimize the perception of bulk within the main structure and the detached ADU. Furthermore, as described above and shown in Table 3, the scale of the proposed main residence is similar to the immediate neighbors' residences built on similar lots of less than 3.0-acres in size. |
| <i>(d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.</i> | <b>Consistent.</b> The existing home will not exceed 17 feet in height as permitted for homes west of the crestline and exceeds all minimum setbacks as required by the Hillside development standards. As such, the proposed in-ground pool will not cause an impairment to the adjacent properties' access to light and air.                                                                                                                                                                                            |
| <i>(e) Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.</i>                                                                                                                     | <b>Consistent.</b> The siting of the main dwelling on the existing lot is relatively flat; the new-inground pool is limited to the export of 170 cubic yards off-site.                                                                                                                                                                                                                                                                                                                                                    |

### ***Site & Architectural Design***

The project has an existing single-family residence with various exterior materials and finishes, a palette of earth-tone colors, and an asphalt shingled roof. The existing detached guest house, considered a limited detached ADU, was designed with the same materials to complement the main residence.

### ***Grading and Landscaping***

In an effort to limit the amount of ground to be removed, the applicant has proposed a site plan which locates the proposed in-ground pool on the flattest portion of the site, which will result in 170 cubic yards of export for the construction of the pool. No existing trees will be removed.

### ***Site Improvements without permits***

The applicant also requests to legalize the unpermitted patio, deck, and porch around the main residence, comprised of pervious paver materials, a 42-inch tall rod iron fence, artificial grass, and a 120-square-foot storage shed. See Image 2 above for the locations and Sheet ST2 of Attachment B for more details.

The fence deviation of construction materials from an all-wooden post and supporting framework materials to rod iron requires the Planning Commission's approval of this Site Development permit. Otherwise, the fence conforms to the height limit of 54-inches and the required open work design, which results in a minimum of seventy-five percent (75%) visual transparency within every square foot area, posts excluded. See the existing fence detail on Sheet ST2 of Attachment B.

### ***Crestline Zone of Protection***

To protect the quality of views of the hills from the valley floor, development standards related to the crestline have been incorporated into the Zoning Code. Per MMC Section XI-10-45.06, the purpose of the crestline zone of protection is to preserve the natural quality of the crestline and the slopes 100 feet immediately below when viewed from the valley floor. The proposed project is located 500 feet west of the crestline and approximately 300 feet lower in elevation; the project is further restricted to a height of seventeen (17) feet and one (1) story (excluding basements) from the lowest finished grade to the highest ridgeline of the building. The project conforms to these development standards outlined in Table 3.

## **FINDINGS FOR APPROVAL (OR DENIAL)**

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Based on substantial evidence in the public record, Staff has found that the proposed project is consistent with the General Plan, Zoning Ordinance, and all required Findings.

### ***Site Development Permit Findings (Section XI-10-57-03-1(F))***

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The existing home's architectural design and site planning are aesthetically compatible with the neighboring homes, emphasizing minimal changes to the natural topography and minimal visual impacts. The existing home incorporates earth-tone colors and is sited so as not to draw attention when viewed from the valley floor.

2. *The project is consistent with the Milpitas Zoning Ordinance in that:*



As described within the staff report, the proposed development of an in-ground pool and site improvements will be conditioned to conform to the R1-H Single-Family Residential Hillside Zoning District standards for setbacks, height requirements, and landscaping.

*3. The project is consistent with the Milpitas General Plan in that:*

The proposed project is consistent with the Milpitas General Plan, particularly with Policy CD 7-5, which states that new development in the Hillside Area should be limited to only Very Low Density Residential, open space, and park uses. The project site is a legal lot with an approved single-family residence. The proposed home is designed to fit in with the natural topographic features of the hillside property and reduce the visual impact as viewed from the valley floor.

## **ENVIRONMENTAL REVIEW**

The proposed Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures), as the scope of work includes a new in-ground swimming pool, patio, fence, deck, and associated earth work in a residential zone. As a separate and independent basis, the Project is also exempt from further environmental review pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning). The proposed Project is consistent with the established Milpitas 2040 General Plan and R1-H Single-Family Residential Hillside Zoning District.

## **PUBLIC COMMENT/OUTREACH**

Staff provided public notice for the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on August 11, 2023. In addition, 34 notices were sent to owners and occupants within 300 feet of the project site. A public notice was also posted on the project site, on the City's Website, [www.milpitas.gov](http://www.milpitas.gov), and posted at City Hall.

## **RECOMMENDATION**

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the Public Hearing to receive comments;
2. Close the Public Hearing; and
3. Adopt Resolution No. 23-015, approving and recommending the City Council approve Site Development Permit No. SD20-015, to allow the development of a new in-ground swimming pool and legalize the unpermitted site improvements at an existing single-family residence in the R1-H Single-Family Residential Hillside Zoning District, subject to the findings and attached Conditions of Approval.

## **ATTACHMENTS**

A: Resolution 23-015

B: Project Plans

**RESOLUTION NO. 23-015****A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
APPROVING AND RECOMMENDING APPROVAL OF SITE DEVELOPMENT  
PERMIT NO. SD20-0015 TO THE MILPITAS CITY COUNCIL TO DEVELOP A NEW  
IN-GROUND SWIMMING POOL AND LEGALIZE THE UNPERMITTED SITE  
IMPROVEMENTS AT AN EXISTING SINGLE-FAMILY RESIDENCE ON 2.69-ACRE  
SITE AT 640 EVANS ROAD (APN: 029-06-009)**

**WHEREAS**, on November 17, 2020, an application was submitted by Lisa Pendleton, of Artisan Home Resorts Inc. (“Applicant”), for a development proposal to allow the development of a new in-ground swimming pool, legalize the unpermitted patio, deck, and porch around the main residence comprised of pervious paver materials, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed (“Project”) on a 2.96 acre site with an existing single-family residence at 640 Evans Road (APN: 029-06-009). The Project site is zoned R1-H Single-family Residential-Hillside Zoning District; and

**WHEREAS**, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), which assessment determined that the Project is exempt from CEQA review pursuant to Section 15303 (New Construction and Conversion of Small Structures) of the CEQA Guidelines and, as a separate and independent basis, pursuant to Section 15183 of the CEQA Guidelines; and

**WHEREAS**, on August 23, 2023 the Planning Commission held a duly noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on Project; and

**WHEREAS**, the Planning Commission has considered all of the written and oral testimony presented at the public hearing in making its decision; and

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**SECTION 1: Recitals.**

The Planning Commission 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 incorporated herein by reference.

**SECTION 2: Record**

The location and custodian of the documents or other material which constitute the record of proceedings upon which this decision is based is within the Planning Department, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035

**SECTION 3: CEQA Finding**

The proposed Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures), as the scope of work includes a new in-ground swimming pool, patio, fence, deck, and associated earth work in a residential zone. As

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a separate and independent basis, the Project is also exempt from further environmental review pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning). The proposed Project is consistent with the established Milpitas 2040 General Plan and R1-H Single-Family Residential Hillside Zoning District.

**SECTION 4: Site Development Permit (Section XI-10-57.03(F)(1))**

The Planning Commission makes the following findings based on the evidence in the public record in approving Site Development Permit No. SD21-00105:

- The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The existing home's architectural design and site planning are aesthetically compatible with the neighboring homes, emphasizing minimal changes to the natural topography and minimal visual impacts. The existing home incorporates earth-tone colors and is sited so as not to draw attention when viewed from the valley floor.

- The project is consistent with the Milpitas Zoning Ordinance.*

As described in Table 1 below, the proposed development of an in-ground pool and site improvements will be conditioned to conform to the R1-H Single-Family Residential Hillside Zoning District standards for setbacks, height requirements, and landscaping.

**Table 1:**  
**Summary of Development Standards**

| <b>Standards</b>       | <b>Hillside Requirements</b>                                                            | <b>Proposed</b>                                                        | <b>Complies</b>                                 |
|------------------------|-----------------------------------------------------------------------------------------|------------------------------------------------------------------------|-------------------------------------------------|
| Front Setback          | 25 ft. minimum when avg. slope is <16%; otherwise, a 40 ft. minimum                     | (e) 74"                                                                | Yes                                             |
| Side Yard Setback      | 40 ft. minimum                                                                          | (e) 43' - 2" (west side)<br>(e) 311' - 10" (east side)                 | Yes                                             |
| Rear                   | 40 ft. minimum                                                                          | (e) 58' - 6"                                                           | Yes                                             |
| Size of Main Residence | 6,000 sq. ft. maximum<br>(lots < 3 acres)                                               | (e) 3,360 sq. ft.                                                      | Yes                                             |
| Impervious Surfaces    | 8,000 sq. ft. maximum<br>(lots < 3 acres)<br>30,000 sq. ft. maximum<br>(lots > 3 acres) | 17,680 sq. ft. (1,379 square feet over the allowed<br>Variance No. 503 | Not as presented.<br>This will be achieved with |

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| Standards                    | Hillside Requirements                                                                                                                                        | Proposed                                                    | Complies         |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|------------------|
|                              |                                                                                                                                                              |                                                             | Condition No. 24 |
| Building Height (Max.)       | West of crestline – 17 ft.                                                                                                                                   | (e) 1-story or 14' – 10"                                    | Yes              |
| Parking                      | Three spaces required                                                                                                                                        | Five spaces (two inside the garage & three on the driveway) | Yes              |
| Crestline Zone of Protection | Within three hundred (300) feet easterly of the crestline, structure heights shall be restricted so that no structure extends above the crestline site line. | (e) West of the crestline                                   | Yes              |

(e) = Existing

Due to the subject property's location, the project must also comply with the development standards in the City's Hillside Combining District. Per MMC Section XI-10-45.09-7 of the Zoning Ordinance, the Planning Commission and City Council shall consider the following guidelines in their review. Staff has determined the Project to be consistent with the Hillside Architectural Guidelines, as demonstrated in Table 2 below.

**Table 2:**  
**Hillside Zoning Ordinance Compliance**

| Site and Architectural Guidelines<br><i>Section 45.09-7</i>                                                                                                                                                                                                                                                                         | Consistency Finding                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.</i> | <b>Consistent.</b> Based on the existing location and minimal scale of the home in consideration of its maximum allowable size outlined in Table 3, developing a new in-ground pool and site improvements will not substantially interfere with views and privacy to adjacent lots. The existing residence exceeds all setback requirements, meets the maximum 17-foot, one-story height limit, and minimizes interference with views and privacy through substantial setbacks from adjacent residences to the north and south. |
| <i>(b) Preserve Natural Landscape. The natural landscape will be preserved insofar</i>                                                                                                                                                                                                                                              | <b>Consistent.</b> The project site is developed with a few shrubs on the higher-sloped                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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| <b>Site and Architectural Guidelines</b><br><i>Section 45.09-7</i>                                                                                                                                                                             | <b>Consistency Finding</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.</i>                                                                                                                 | southern portions of the lot and existing trees. The proposed project will not remove any existing trees. As proposed, the design of the in-ground pool is carefully sited to be built on the flattest portions of the lot, following the existing contours of the site to limit the amount of imported soil.                                                                                                                                                                                                             |
| <i>(c) Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.</i>                                   | <b>Consistent.</b> The existing one-story design is predominantly horizontal and includes a single roofline, a clear delineation of different colors and materials, and punctuation of certain front and side-facing elevations to minimize the perception of bulk within the main structure and the detached ADU. Furthermore, as described above and shown in Table 3, the scale of the proposed main residence is similar to the immediate neighbors' residences built on similar lots of less than 3.0-acres in size. |
| <i>(d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.</i> | <b>Consistent.</b> The existing home will not exceed 17 feet in height as permitted for homes west of the crestline and exceeds all minimum setbacks as required by the Hillside development standards. As such, the proposed in-ground pool will not cause an impairment to the adjacent properties' access to light and air.                                                                                                                                                                                            |
| <i>(e) Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.</i>                                                                                                                     | <b>Consistent.</b> The siting of the main dwelling on the existing lot is relatively flat; the new-inground pool is limited to the export of 170 cubic yards off-site.                                                                                                                                                                                                                                                                                                                                                    |

**Site & Architectural Design**

The project has an existing single-family residence with various exterior materials and finishes, a palette of earth-tone colors, and an asphalt shingled roof. The existing detached guest house, considered a limited detached ADU, was designed with the same materials to complement the main residence.

***Grading and Landscaping***

In an effort to limit the amount of ground to be removed, the applicant has proposed a site plan which locates the proposed in-ground pool on the flattest portion of the site, which will result in 170 cubic yards of export for the construction of the pool. No existing trees will be removed.

***Site Improvements without permits***

The applicant also requests to legalize the unpermitted patio, deck, and porch around the main residence, comprised of pervious paver materials, a 42-inch tall rod iron fence, artificial grass, and a 120-square-foot storage shed. See Sheet ST2 of Attachment B for more details.

The fence deviation of construction materials from an all-wooden post and supporting framework materials to rod iron requires the Planning Commission's approval of this Site Development permit. Otherwise, the fence conforms to the height limit of 54-inches and the required open work design, which results in a minimum of seventy-five percent (75%) visual transparency within every square foot area, posts excluded. See the existing fence detail on Sheet ST2 of Attachment B.

***Crestline Zone of Protection***

To protect the quality of views of the hills from the valley floor, development standards related to the crestline have been incorporated into the Zoning Code. Per MMC Section XI-10-45.06, the purpose of the crestline zone of protection is to preserve the natural quality of the crestline and the slopes 100 feet immediately below when viewed from the valley floor. The proposed project is located 500 feet west of the crestline and approximately 300 feet lower in elevation; the project is further restricted to a height of seventeen (17) feet and one (1) story (excluding basements) from the lowest finished grade to the highest ridgeline of the building. The project conforms to these development standards outlined in Table 1.

***3. The project is consistent with the Milpitas General Plan.***

The proposed project is consistent with the Milpitas General Plan, particularly with Policy CD 7-5, which states that new development in the Hillside Area should be limited to only Very Low Density Residential, open space, and park uses. The project site is a legal lot within an existing and approved single-family residence. The proposed in-ground swimming pool, the unpermitted patio, deck, and porch around the main residence comprised of pervious paver materials, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed are designed to fit in with the natural topographic features of the hillside property and reduce the visual impact as viewed from the valley floor. As outlined in Table 3 below.

**Table 3:**  
**General Plan Consistency**

| <b>Policy</b>                                                                                                                                                                                                                                     | <b>Conformance</b>                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i><b>CD 7-1</b> Maintain the visual character of hillsides, recognizing both the importance of the exposure of hillside development from off-site public views and the importance of providing panoramic public views from and of hillsides.</i> | <b>Consistent.</b> The proposed in-ground pool will not significantly impact the visual character of the hillside from the valley floor or other viewpoints, as the project site is located over 500 feet west and approximately 300 feet lower than the crestline.                                                                                                              |
| <i><b>CD 7-2</b> Minimize the alteration of existing landforms and maintain the natural topographic characteristics of the hillside areas, allowing only minimal disruption.</i>                                                                  | <b>Consistent.</b> The proposed in-ground pool will be situated at the flattest portion of the lot to limit the disruption to the existing natural topography by limiting the volume of grading only to require a net export of 170 cubic yards to be removed from the site. This is designed to accommodate the footprint of the pool and meet the required grade at the patio. |
| <i><b>CD 7-3</b> Protect the natural character of hillside areas by means of contour grading to blend graded slopes and terraces with the natural topography.</i>                                                                                 | <b>Consistent.</b> Minimal contour grading will be required to construct the in-ground pool due to its location on the flattest areas of the lot, a plateau adjacent to the residence. All new contours will be designed to blend with the natural existing site contours as demonstrated in the civil drawings in the plan set.                                                 |
| <i><b>CD 7-4</b> Avoid mass graded pads within hillside areas. Smaller steps or grade changes should be used over single, large, slope banks to the greatest extent feasible.</i>                                                                 | <b>Consistent.</b> The in-ground pool is proposed at the flattest portion of the lot and will only necessitate minimal grading requiring a net export of 170 cubic yards to be removed from the site. Grading has been substantially minimized in the Project because the work follows the site's natural contours to preserve the natural terrain quality.                      |
| <i><b>CD 7-5</b> Ensure that any change in hillside land use is accompanied by appropriate safety measures and that the environmental constraints are adequately addressed especially with respect to runoff and erosion.</i>                     | <b>Consistent.</b> No change in land use is proposed; the site will remain a developed single-family residence, with adequate fire safety measures to allow fire apparatus access. The existing deck, Astroturf, and patio are designed to be pervious to inhibit excess runoff and erosion.                                                                                     |

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As described above, the Project is compatible and consistent with the surrounding uses and has been found to conform to the intent of the Milpitas 2040 General Plan designation. The in-ground pool is designed to fit in with the natural topographic features of the property and reduces the visual impact as viewed from the valley floor.

**SECTION 5:** The Planning Commission of the City of Milpitas hereby approves and recommends the City Council approve Site Development Permit No. SD20-0015 and adopt a resolution to allow the development of a new in-ground swimming pool and legalize the unpermitted site improvements at an existing single-family residence in the R1-H Single-Family Residential Hillside Zoning District, based on the above findings and subject to the Conditions of Approval in the proposed Site Development Permit No. SD20-0015 attached hereto as **Exhibit 1** incorporated herein.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on August 23, 2023.

DocuSigned by:  
  
 16D88AF9F201461...  
 Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on August 23, 2023, and carried by the following roll call vote:

| COMMISSIONER       | AYES | NOES | ABSENT | ABSTAIN |
|--------------------|------|------|--------|---------|
| Bill Chuan         | X    |      |        |         |
| Larry Ciardella    | X    |      |        |         |
| Mercedes Albana    | X    |      |        |         |
| Alexander Galang   | X    |      |        |         |
| Dipak Awasthi      | X    |      |        |         |
| Zeya Mohsin        | X    |      |        |         |
| Sonia Medina-Ashby | X    |      |        |         |



**EXHIBIT 1**

**SITE DEVELOPMENT PERMIT NO. P-SD20-0015  
640 EVANS ROAD (APN 029-06-009)**

The City of Milpitas Planning Commission and City Council approve Site Development Permit No. SD20-0015 in accordance with Section X1-10-45.09 of the Milpitas Municipal Code, subject to and conditioned upon all applicable State and local laws and regulations and the Conditions of Approval outlined below. This permit is to allow the issuance of building permits for a new in ground swimming pool and previously constructed patio, deck, and porch, 42-inch tall rod iron fence, artificial grass, and 120-square foot storage shed appurtenant to an existing single-family residence on a 2.96-acre site located in the R1-H Single-family Residential-Hillside Zoning District at 640 Evans Road (APN 029-06-009), subject to all necessary reviews, approvals, studies, and inspections for the issuance of such building permits.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

**General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. **Site Development Permit No. SD20-0015** ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office. **(P)**
2. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
3. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**
4. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
5. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the

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Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:

- a. Completes a foundation associated with the project; or
- b. Dedicates any land or easement as required from the zoning action; or
- c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

This permit shall become null and void if the work is added to, modified, or otherwise deviated from in any significant way from the approved site plan, building plan, floor plans, or other approved submittal as determined by the Planning Director or designee.

6. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
7. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P)**
8. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1). **(P)**
9. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to City. There is no vesting of any fees or charges with the adoption of this Resolution. **(P)**
10. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution. **(P)**
11. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
12. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit. **(P)**

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13. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(CA)**
14. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code. **(P)**
15. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
16. Permittee shall develop the approved project in conformance with the approved plans dated June 8, 2023 approved by the Planning Commission on August 23, 2023, in accordance with these Conditions of Approval. **(P)**
- Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, Permittee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**
17. Response to Conditions of Approval. The permittee shall provide a written response to comments upon submittal for building permit application. The responses should clearly indicate how each condition of approval has been addressed in the plans and shall note the appropriate plan sheet. **(P)**
18. Prior to the issuance of a building permit, the owner or designee shall include, within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**

**PROJECT SPECIFIC CONDITIONS****Planning Department Conditions**

19. Streets shall be designed to generally follow the contours and land form in order to minimize cut and fill. Exposed walls and facing roadways and retaining walls shall be no greater than six feet in height. Crib walls fencing roadways shall be no greater than 15 feet in height. **(P)**
20. Landscaping coverage and stabilization of graded slopes shall be selected and designed to be compatible with surrounding natural vegetation or to replace removed natural vegetation and should recognize climatic, soil, and ecologic characteristic of the region. Plan materials that require excessive water after becoming established should be avoided. **(P)**
21. Within six months, or such other period established by the Planning Commission, after the commencement of grading activities, all graded areas not covered by an impervious surface shall be stabilized in such manner as shall be approved by the Community Development Manager. **(P)**
22. Where two cut-or-fill slopes intersect, the intersection shall be horizontally rounded and blended. **(P)**
23. Where any cut-or-fill slopes intersect the natural grade, the intersection of each slope shall be vertically and/or horizontally rounded and blended. **(P)**
24. The total lot impervious surface shall not exceed 16,301 square feet as approved by Variance No. 503; at the Building Permit submittal, the site plans shall be revised to limit the total impervious surface to 16,301 square feet. **(P)**

**Fire Department**

The plans approved by the Planning Department process are not building plans and have not been reviewed nor approved for conformance to the California Building Code (CBC), California Fire Code (CFC) and the Milpitas Municipal Code (MMC). Do not consider this set of plans as final building plans approved by the Fire Department. Building plans must be submitted for review and approval before construction is to commence. The following notes are a general list of the applicable code requirements (2016) and are provided to assist with the building permit process. Please note that these are not all inclusive. All applicable Building, Fire and Municipal Code requirements must be met in advance of any building permit approvals or related construction.

25. Electronic documents. The fire code official may require electronic base documents for all construction documents and operational permits. The fire code official shall designate the software base format for the electronic documents. CFC Section 105.4.2.2, added by MMC Section V-300-2.11, and CFC Section 102.9
26. Fire Department access. Sheets ST2 shows an acceptable Fire Dept. apparatus access. Fire apparatus access roads shall be provided for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire apparatus access as measured by an approved route around the exterior of the building. Fire apparatus access shall meet the following:

**RESO NO. 23-015**

Item # C12.

- a. Fire apparatus access shall extend to within 150 feet of all portions of exterior walls of the building/structure per the California Fire Code Section 503.1.
- b. The proposed driveway shall be designed for fire apparatus access. Fire Access Dimensions, fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm). CFC Section 503.2.1

**Exception:****Milpitas Municipal Code XI-45.11**

45.11-1 Privately owned and maintained access from the public road to each single-family dwelling shall be a minimum of fourteen (14) feet in width. Turning radius shall be designed to meet the Fire Department's requirements.

45.11-2 Turnout space shall be provided on driveways over one hundred fifty (150) feet in length with a maximum spacing of one hundred fifty (150) feet if driveway is less than eighteen (18) feet wide.

45.11-3 Turnaround. All dwelling units shall provide an on-site area for vehicles to turn around if served by a driveway over one hundred fifty (150) feet in length to meet Fire Department's requirements.

45.11-4 Vertical Clearance. All privately owned and maintained roads and drives shall assure a minimum fourteen (14) foot vertical clearance.

- c. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Bearing capacity for the driveway and the entry drive court shall be designed to provide a minimum of 60,000 lbs bearing capacity for the fire apparatus. CFC Section 503.2.3
- d. When there is a dead-end condition, means for fire apparatus turn-around shall be provided as per the CA Fire Code Section 503.2.5. The Fire Department reserves the right to request site design changes as needed to meet the requirements of the CFC, and/or make the request for additional fire protection measures in conformance with the CFC Section 102.9.
- e. The grade (maximum 15%) of the fire apparatus access road shall be within the limits established by the fire code official based on the fire department's apparatus. CFC Section 503.2.7
- f. Electric gates. Where provided, gates shall be listed in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. CA Fire Code Section 503.5

Electric gates shall also be provided with a Milpitas Fire Department approved "Knox" electronic switch in addition to the keypad. CA Fire Code Section 102.9

**RESO NO. 23-015**

Item # C12.

Premises identification. New and exiting buildings shall have approved address numbers. Address numbers shall be illuminated and located where they are clearly visible from the street. CFC Section 505.

**Building Department**

27. Compliance with California Code of Regulations. The Project shall comply with the requirements of the Building Safety and Housing Department and the California Code of Regulations Title 24 and the Milpitas Municipal Code as adopted by the City. Building permits shall be submitted to and approved by the Building Safety and Housing Department prior to start of construction. All California Code of Regulations Title 24 and Milpitas Municipal Code requirements applicable at the time of building permit application must be met in advance of any building permit approvals or related construction. Changes to the site plan and/or building plan require review and approval by the Building Safety and Housing Department **(B)**

**(P) = Planning**

**(B) = Building**

**(E) = Engineering**

**(F) = Fire Prevention**

**(CA) = City Attorney**

**ACCEPTANCE**

*Permittee/Property Owner*

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this permit.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Relationship to Property: \_\_\_\_\_

**NOTICE OF RIGHT TO PROTEST**

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

Certificate Of Completion

|                                                                                  |                        |
|----------------------------------------------------------------------------------|------------------------|
| Envelope Id: 2D4D2F3C55304A12AAED4CD8C893FB63                                    | Status: Completed      |
| Subject: Complete with DocuSign: Attachment A Resolution 23-009 for DocuSign.pdf |                        |
| Source Envelope:                                                                 |                        |
| Document Pages: 13                                                               | Signatures: 1          |
| Certificate Pages: 5                                                             | Initials: 0            |
| AutoNav: Enabled                                                                 | Envelope Originator:   |
| Envelopeld Stamping: Enabled                                                     | Liz Medina             |
| Time Zone: (UTC-08:00) Pacific Time (US & Canada)                                | 455 E Calaveras Blvd   |
|                                                                                  | Milpitas, CA 95035     |
|                                                                                  | emedina@milpitas.gov   |
|                                                                                  | IP Address: 50.59.22.2 |

Record Tracking

|                                      |                        |                    |
|--------------------------------------|------------------------|--------------------|
| Status: Original                     | Holder: Liz Medina     | Location: DocuSign |
| August 24, 2023   18:25              | emedina@milpitas.gov   |                    |
| Security Appliance Status: Connected | Pool: StateLocal       |                    |
| Storage Appliance Status: Connected  | Pool: City of Milpitas | Location: DocuSign |

| Signer Events                                        | Signature                                                                              | Timestamp                       |
|------------------------------------------------------|----------------------------------------------------------------------------------------|---------------------------------|
| Chair Bill Chuan                                     | <div>DocuSigned by:</div> <div>Chair Bill Chuan BC</div> <div>1CD00AF9F201461...</div> | Sent: August 24, 2023   18:27   |
| bill_chuan@yahoo.com                                 |                                                                                        | Viewed: August 25, 2023   00:20 |
| Security Level: Email, Account Authentication (None) |                                                                                        | Signed: August 25, 2023   00:20 |
|                                                      | Signature Adoption: Drawn on Device                                                    |                                 |
|                                                      | Using IP Address: 67.188.2.13                                                          |                                 |

Electronic Record and Signature Disclosure:

Accepted: August 25, 2023 | 00:20

ID: b230d55a-f348-452f-a466-be7d2af2793f

| In Person Signer Events                              | Signature         | Timestamp                       |
|------------------------------------------------------|-------------------|---------------------------------|
|                                                      |                   |                                 |
| Editor Delivery Events                               | Status            | Timestamp                       |
|                                                      |                   |                                 |
| Agent Delivery Events                                | Status            | Timestamp                       |
|                                                      |                   |                                 |
| Intermediary Delivery Events                         | Status            | Timestamp                       |
|                                                      |                   |                                 |
| Certified Delivery Events                            | Status            | Timestamp                       |
|                                                      |                   |                                 |
| Carbon Copy Events                                   | Status            | Timestamp                       |
| Avery Stark                                          | <div>COPIED</div> | Sent: August 25, 2023   00:20   |
| astark@milpitas.gov                                  |                   | Viewed: August 25, 2023   07:27 |
| Security Level: Email, Account Authentication (None) |                   |                                 |
| Electronic Record and Signature Disclosure:          |                   |                                 |
| Accepted: September 7, 2022   11:04                  |                   |                                 |
| ID: 0f1be86d-7131-481c-bc22-4ab9e5f4e036             |                   |                                 |
| Witness Events                                       | Signature         | Timestamp                       |
|                                                      |                   |                                 |
| Notary Events                                        | Signature         | Timestamp                       |
|                                                      |                   |                                 |
| Envelope Summary Events                              | Status            | Timestamps                      |
| Envelope Sent                                        | Hashed/Encrypted  | August 24, 2023   18:27         |
| Certified Delivered                                  | Security Checked  | August 25, 2023   00:20         |
| Signing Complete                                     | Security Checked  | August 25, 2023   00:20         |

| Envelope Summary Events                    |  | Status           | Timestamps              | Item # C12. |
|--------------------------------------------|--|------------------|-------------------------|-------------|
| Completed                                  |  | Security Checked | August 25, 2023   00:20 |             |
| Payment Events                             |  | Status           | Timestamps              |             |
| Electronic Record and Signature Disclosure |  |                  |                         |             |



## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Carahsoft OBO City of Milpitas (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### **How to contact Carahsoft OBO City of Milpitas:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [mluu@ci.milpitas.ca.gov](mailto:mluu@ci.milpitas.ca.gov)

### **To advise Carahsoft OBO City of Milpitas of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [mluu@ci.milpitas.ca.gov](mailto:mluu@ci.milpitas.ca.gov) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### **To request paper copies from Carahsoft OBO City of Milpitas**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [mluu@ci.milpitas.ca.gov](mailto:mluu@ci.milpitas.ca.gov) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### **To withdraw your consent with Carahsoft OBO City of Milpitas**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to [mluu@ci.milpitas.ca.gov](mailto:mluu@ci.milpitas.ca.gov) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

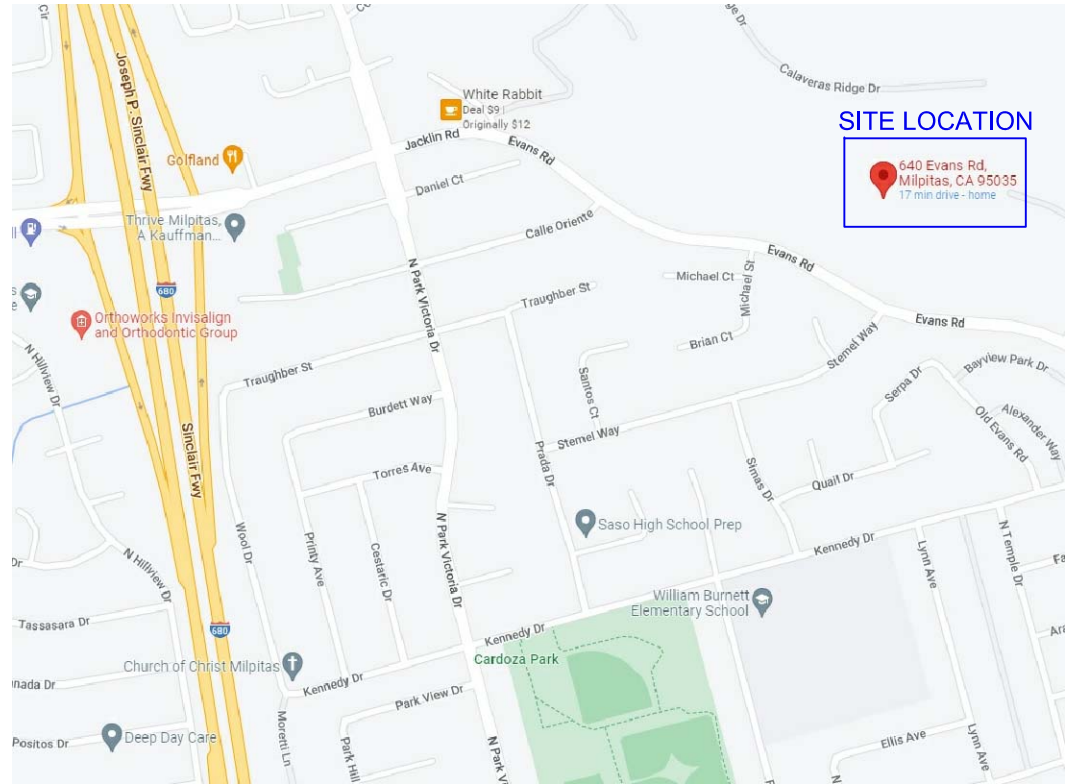
### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO City of Milpitas as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO City of Milpitas during the course of your relationship with Carahsoft OBO City of Milpitas.

# RESIDENTIAL SITE PLAN IMPROVEMENT AND CONVERT GUEST HOUSE TO ADU 640 EVANS ROAD MILPITAS, CA 95035



**FAHED HABAYEB**  
PLANNING & DESIGN  
2640 SENTER CREEK CT.  
SAN JOSE, CA. 95111  
408 483-0302  
habayeb3@aol.com

FAHED HABAYEB  
JUN. 8 2023

SITE PLAN IMPROVEMENT  
& CONVERT GUEST HOUSE TO ADU  
640 EVANS ROAD  
MILPITAS, CA 95035

| NO. | DATE | ISSUE |
|-----|------|-------|
|     |      |       |
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|-----------|----------|
| JOB NO.   | 1122     |
| SCALE     | AS NOTED |
| DRAWN BY  | FH       |
| SHEET NO. |          |

CS

## PROJECT DATA

|                        |                |
|------------------------|----------------|
| - A.P.N. #             | 02906009       |
| - ZONING               | R1-RH          |
| - OCCUPANCY            | R3/U           |
| - TOTAL PARCEL SIZE    | 129,024.7 SQFT |
| - TYPE OF CONSTRUCTION | V-B            |
| - FIRE SPRINKLER       | NO             |

|                     |             |
|---------------------|-------------|
| EXISTING MAIN HOUSE |             |
| 1 STORY HOUSE       | 3,360 SQFT. |

|                                               |           |
|-----------------------------------------------|-----------|
| EXISTING GUEST HOUSE - TO BE CONVERTED TO ADU |           |
| 1 STORY                                       | 810 SQFT. |

|                    |   |
|--------------------|---|
| NUMBER OF BEDROOMS | 4 |
| NUMBER OF BATHROOM | 3 |

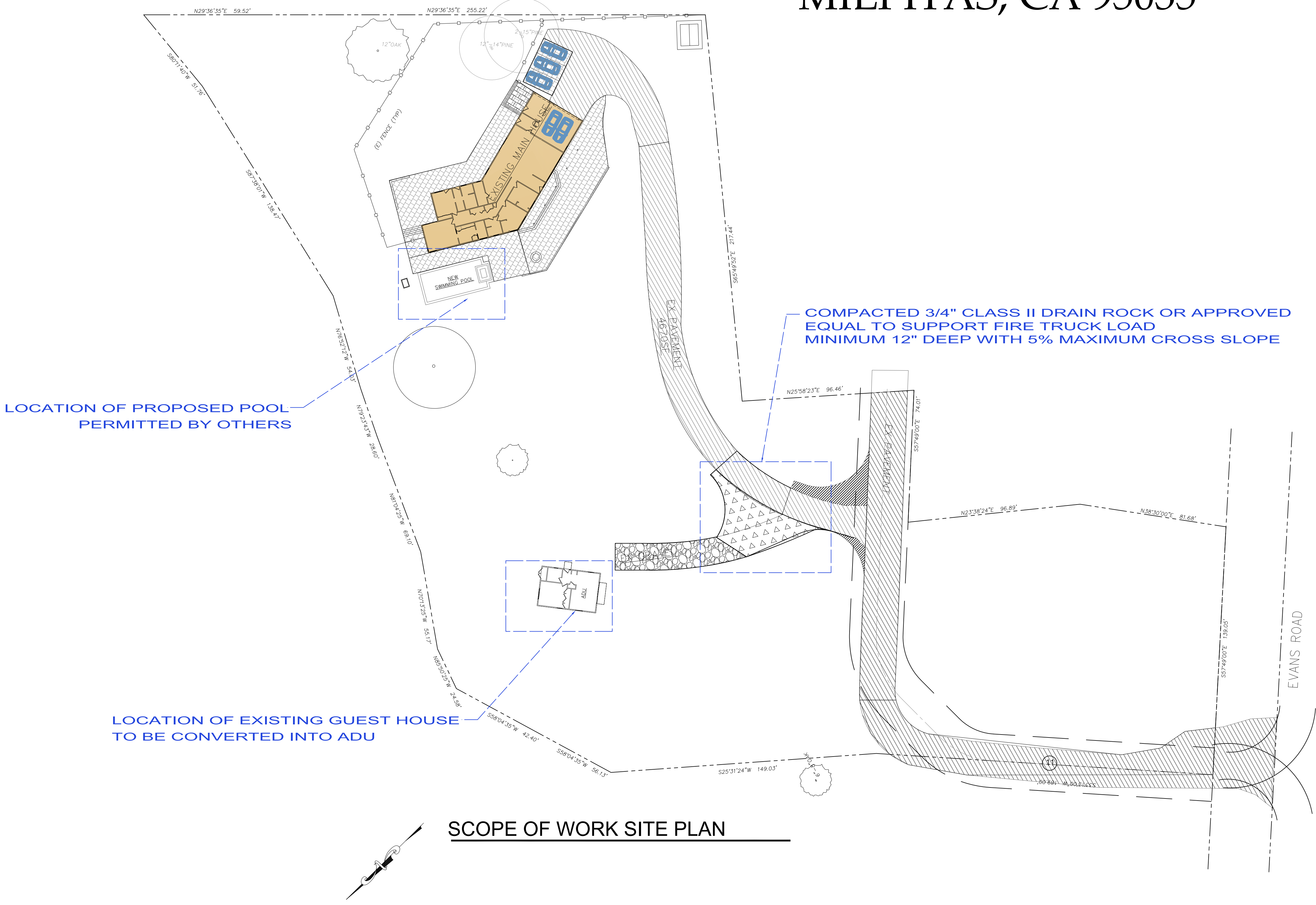
## CODES

|                                         |      |
|-----------------------------------------|------|
| CALIFORNIA RESIDENTIAL CODE (CRC)       | 2019 |
| CALIFORNIA BUILDING CODE (CBC)          | 2019 |
| CALIFORNIA ELECTRICAL CODE (CEC)        | 2019 |
| CALIFORNIA MECH. CODE (CMC)             | 2019 |
| CALIFORNIA PLUMBING CODE (CPC)          | 2019 |
| CALIFORNIA ENERGY CODE                  | 2019 |
| CALIFORNIA FIRE CODE (CFC)              | 2019 |
| CITY OF MILPITAS MUNICIPAL CURRENT CODE |      |

## DRAWING INDEX

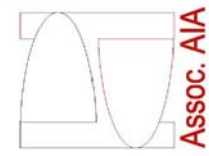
|     |                            |
|-----|----------------------------|
| CS  | COVER SHEET & PROJECT DATA |
| ST1 | EXISTING SITE PLAN         |
| ST2 | NEW SITE PLAN              |
| A1  | MAIN HOUSE FLOOR PLAN      |
| A2  | ADU FLOOR PLAN             |
| A3  | ADU EXTERIOR ELEVATIONS    |

PROJECTOWNER  
OWNER: JOE CUSTER  
640 EVANS ROAD  
MILPITAS, CA 95035  
[Joe@foinc.net](mailto:Joe@foinc.net)





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JUN. 8 2023

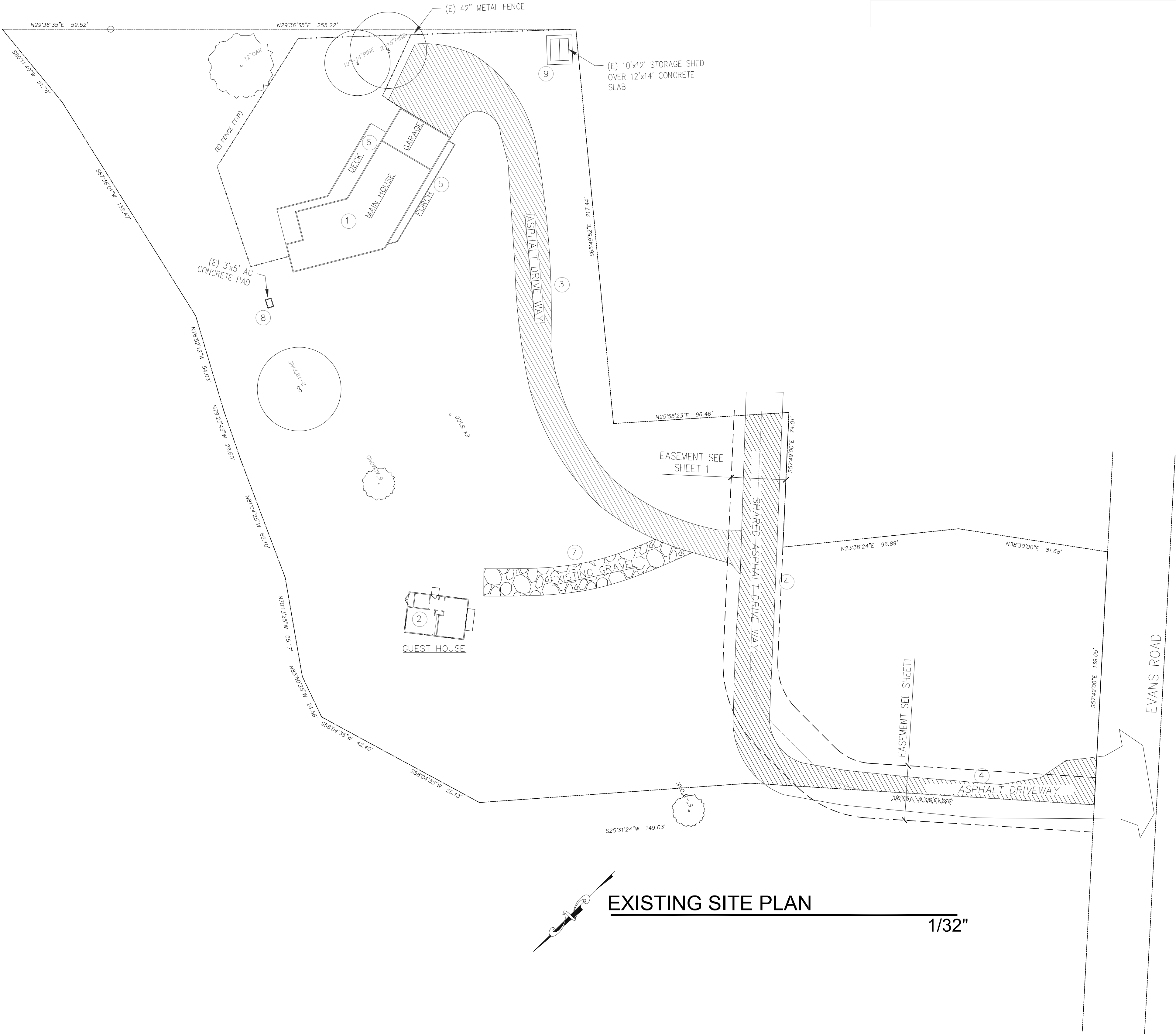
SITE PLAN IMPROVEMENT  
& CONVERT GUEST HOUSE TO ADU  
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| NO. | DATE | ISSUE |
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|-----------|----------|
| JOB NO.   | 1122     |
| SCALE     | AS NOTED |
| DRAWN BY  | FH       |
| SHEET NO. |          |

ST1

| EXISTING IMPERVIOUS AREA TABLE (APPROVED PER PLAN IN 1996) |                              |                                                       |             |                    |
|------------------------------------------------------------|------------------------------|-------------------------------------------------------|-------------|--------------------|
| AREA                                                       | TITLE                        | DESCRIPTION                                           | AREA (SQFT) | REMARKS            |
|                                                            | PARCEL SIZE                  | PARCEL LOT SIZE                                       | 129,024.70  | 2.962 ACRES        |
|                                                            | ALLOWABLE IMPERVIOUS SURFACE | 10% OF LOT SIZE                                       | 12,902.00   | IMPERVIOUS AREA    |
| 1                                                          | MAIN HOUSE                   | ONE STORY MAIN HOUSE                                  | 3,360.00    | IMPERVIOUS AREA    |
| 2                                                          | GUEST HOUSE                  | ONE STORY GUEST HOUSE                                 | 810.00      | IMPERVIOUS AREA    |
| 3                                                          | DRIVEWAY                     | ASPHALT/CONCRETE DRIVEWAY                             | 7,296.00    | IMPERVIOUS AREA    |
| 4                                                          | SHARED DRIVEWAY              | SHARED ASPHALT DRIVEWAY                               | 6,140.00    | IMPERVIOUS AREA    |
| 5                                                          | PORCH                        | FRONT PORCH OF THE MAIN HOUSE                         | 384.00      | IMPERVIOUS AREA    |
| 6                                                          | DECK                         | REAR DECK OF THE MAIN HOUSE                           | 828.00      | IMPERVIOUS AREA    |
| 7                                                          | GUEST HOUSE DRIVEWAY         | GRAVEL                                                | 1,630.00    | PERVIOUS AREA      |
| 8                                                          | EXISTING AC CONCRETE PAD     | EXISTING 3'X5' CONCRETE PAD                           | 15.00       | IMPERVIOUS AREA    |
| 9                                                          | EXISTING STORAGE SHED        | EXISTING 10'X12' STORAGE SHED W/ 12'X14' CONCRETE PAD | 168.00      | IMPERVIOUS AREA    |
| TOTAL IMPERVIOUS AREA                                      |                              |                                                       | 19,001.00   | 14.7 % OF LOT SIZE |
| TOTAL PERVIOUS AREA                                        |                              |                                                       | 1,630.00    |                    |
| 6,009 SQFT OVER ALLOWABLE                                  |                              |                                                       |             |                    |





| PROPOSED IMPERVIOUS AREA TABLE       |                                      |                                                               |            |                           |
|--------------------------------------|--------------------------------------|---------------------------------------------------------------|------------|---------------------------|
| ITEM                                 | TITLE                                | DESCRIPTION                                                   | AREA (SF)  | REMARK                    |
|                                      | PARCEL SIZE                          | PROPERTY LOT SIZE                                             | 129,024.70 | 2.962 ACRES               |
|                                      | ALLOWABLE IMPERVIOUS SURFACE         | 10% OF LOT SIZE                                               | 12,902.47  |                           |
| 1                                    | EXISTING MAIN HOUSE                  | EXISTING ONE-STORY MAIN HOUSE                                 | 3,360.00   | IMPERVIOUS AREA           |
| 2                                    | NEW SWIMMING POOL                    | SWIMMING POOL FUTURE WORKS WITH SEPARATE PERMIT               | 710.00     | IMPERVIOUS AREA           |
| 3                                    | NEW CONVERTED GUEST HOUSE ADU        | PROPOSED GUEST HOUSE CONVERT TO ADU (CREDIT TO PERVIOUS AREA) | 810.00     | CREDIT (NO IMPERVIOUS)    |
| 4                                    | EXISTING ASPHALT DRIVEWAY            | EX DRIVE WAY TO REMAIN                                        | 7,864.00   | IMPERVIOUS AREA           |
| 5                                    | EXISTING STORAGE SHED                | EXISTING 10x12' SHORAGE SHED WITH 12x14' CONCRETE PAD         | 168.00     | IMPERVIOUS AREA           |
| 6                                    | BACK AND FRONT YARD CONCRETE EDGE    | NEW PAVER AROUND THE MAIN HOUSE, PATIO AND PORCH              | 4,830.00   | PERVIOUS AREA             |
| 7                                    | ADU DRIVEWAY                         | EX GUSSET HOUSE (ADU) GRAVEL DRIVEWAY                         | 980.00     | PERVIOUS AREA             |
| 8                                    | EXISTING AC CONCRETE PAD             | EXISTING 3x5' CONCRETE PAD                                    | 15.00      | IMPERVIOUS AREA           |
| 9                                    | NEW RADIUS AREA FOR FIRE TRUCK       | NEW ASPHALT                                                   | 486        | IMPERVIOUS AREA           |
| 10                                   | PARKING AREA                         | NEW PAVERS                                                    | 568        | PERVIOUS AREA             |
| 11                                   | EXISTING SHARED DRIVEWAY             | EX SHARE DRIVEWAY TO REMAIN WITH NO CHANGE                    | 1196       | PERVIOUS AREA             |
| 12                                   | GRAVEL SECOND FIRE TRUCK TURN AROUND | WIDEN PORTION OF EXISTING GRAVEL ADU DRIVEWAY                 |            |                           |
| PROPOSED ONSITE EXCLUSIVE IMPERVIOUS |                                      |                                                               | 12,603.00  | 10.2% OF LOT SIZE         |
| TOTAL EXISTING IMPERVIOUS            |                                      |                                                               | 12,861.00  |                           |
| AMOUNT OVER IMPERVIOUS SURFACE LIMIT |                                      |                                                               | -258       | REMAINING ALLOWABLE AREA. |

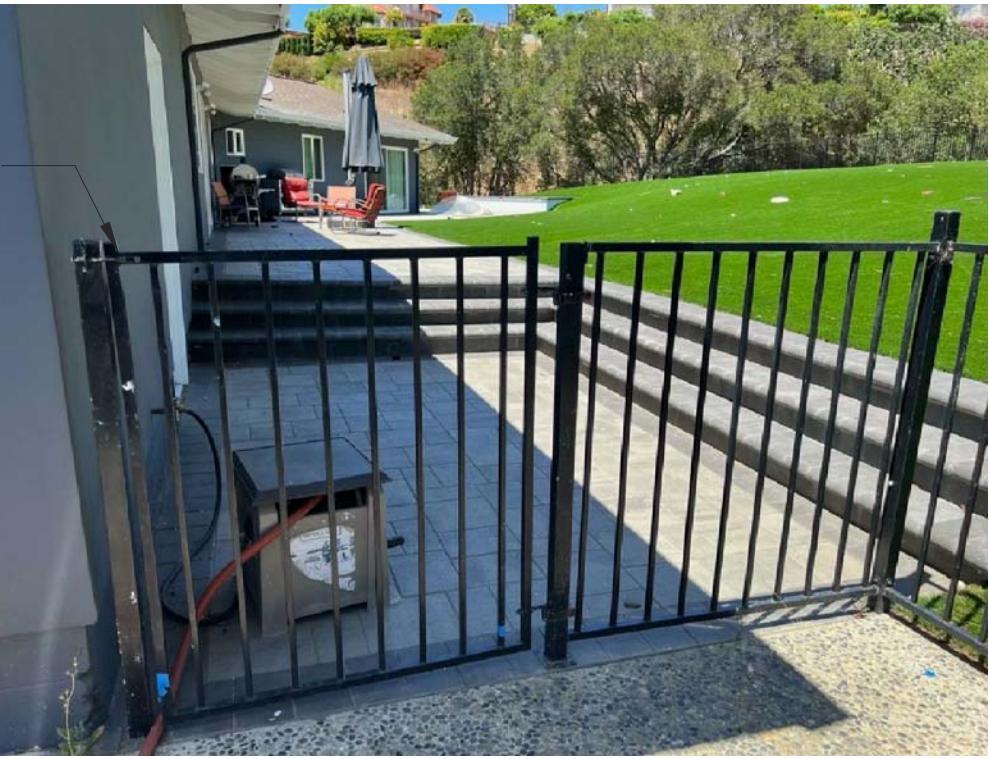
Table 1: Hillside Development Standards

| Development Standards      | Required                                                             | Existing | Proposed          | Complies |
|----------------------------|----------------------------------------------------------------------|----------|-------------------|----------|
| Setbacks                   |                                                                      |          |                   |          |
| Front                      | 25'                                                                  | Yes      | (E) 74'           | Yes      |
| Side                       | 40'                                                                  | Yes      | (E) 43'-2"        | Yes      |
| Rear                       | 40'                                                                  | Yes      | (E) 58'-6"        | Yes      |
| Size of Main Dwelling      | Max: 6,000 sq. ft.                                                   | Yes      | (E) 3,360 sq. ft. | Yes      |
| Size of Second Family Unit | Max: 1,200 sq. ft.                                                   | Yes      | (E) 810 sq. ft.   | Yes      |
| Off-Street Parking         | 4 or more bedrooms = 3 per unit, plus 1 per each additional bedroom. | Yes      | 6                 | Yes      |

| Development Standards       | Required                                                                                                                         | Existing | Proposed                                         | Complies                                                        |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------|----------|--------------------------------------------------|-----------------------------------------------------------------|
| Impervious Surface Coverage | 8,000 sq. ft. or 10% of lot total                                                                                                | Yes      | 12,853.00                                        | Yes                                                             |
| Height                      | One-story, max. ht. 17' on the westside of crestline,                                                                            | Yes      | Main Home 14' - 10"<br>2nd family unit: 13' - 3" | Yes                                                             |
| Open Space Easements        | If not approved as a PUD, at least 50% of the gross area within the subdivision shall be encumbered with an open space easement. | None     | None                                             | 45.03-7 Exempted Lot Recorded and approved On February 26, 1970 |



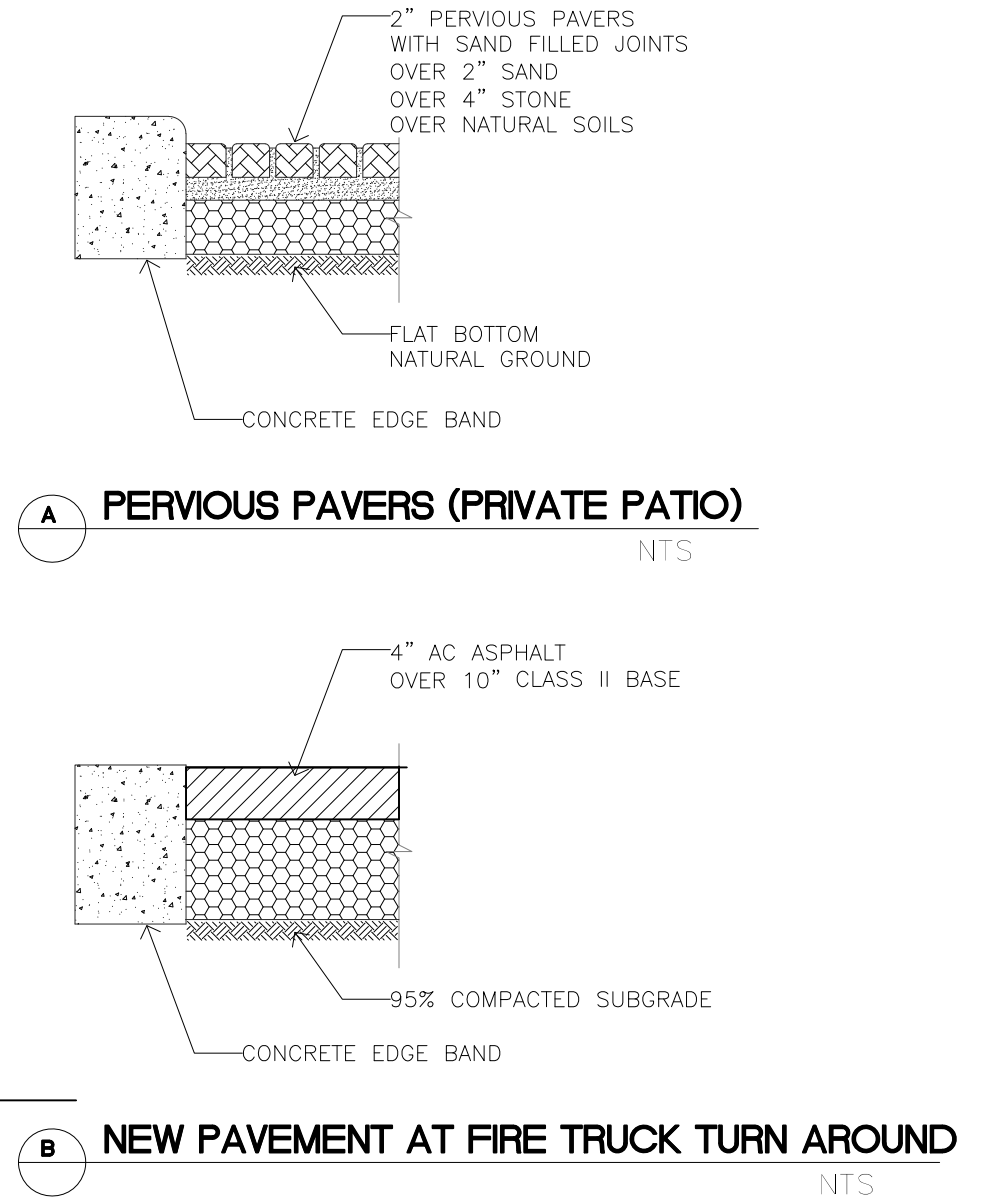
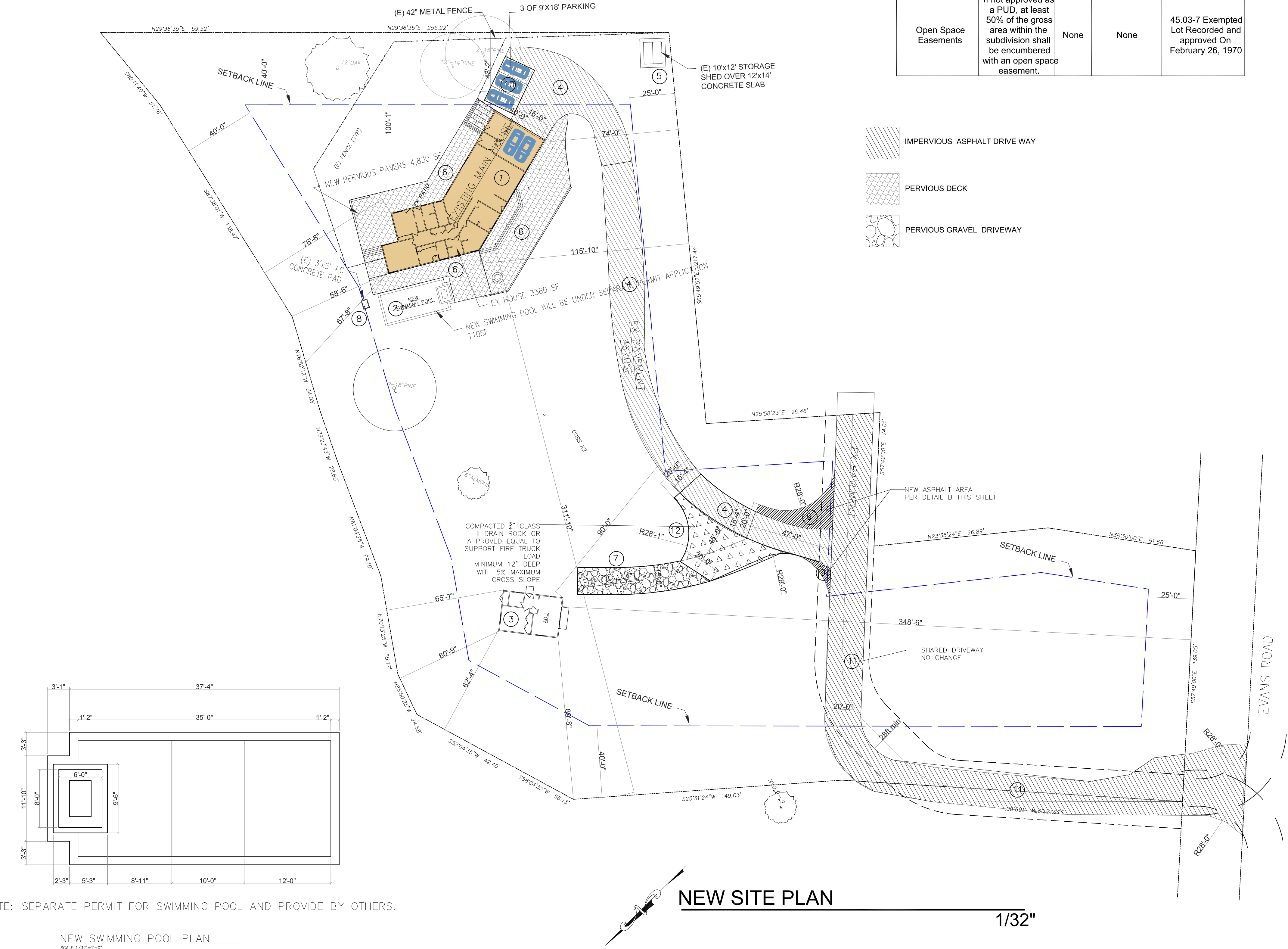
(E) 42" METAL FENCE



(E) 42" METAL FENCE

(E) FENCE DETAIL

- IMPERVIOUS ASPHALT DRIVE WAY
- PERVIOUS DECK
- PERVIOUS GRAVEL DRIVEWAY



NOTE: SEPARATE PERMIT FOR SWIMMING POOL AND PROVIDE BY OTHERS.

NEW SWIMMING POOL PLAN  
SCALE 1/32"=1'-0"

FAHED HABAYEB  
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2640 SENTER CREEK CT.  
SAN JOSE, CA. 95111  
408 483-0302  
habayeb3@aol.com

FAHED HABAYEB  
JUN. 8 2023

SITE PLAN IMPROVEMENT  
& CONVERT GUEST HOUSE TO ADU  
640 EVANS ROAD  
MILPITAS, CA 95035

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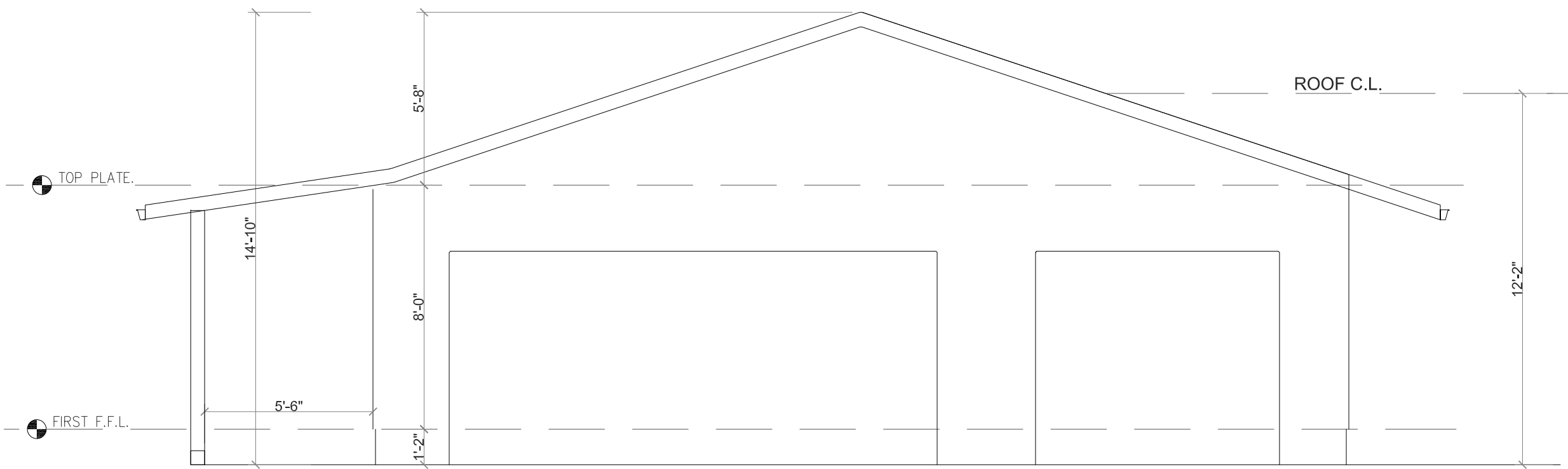
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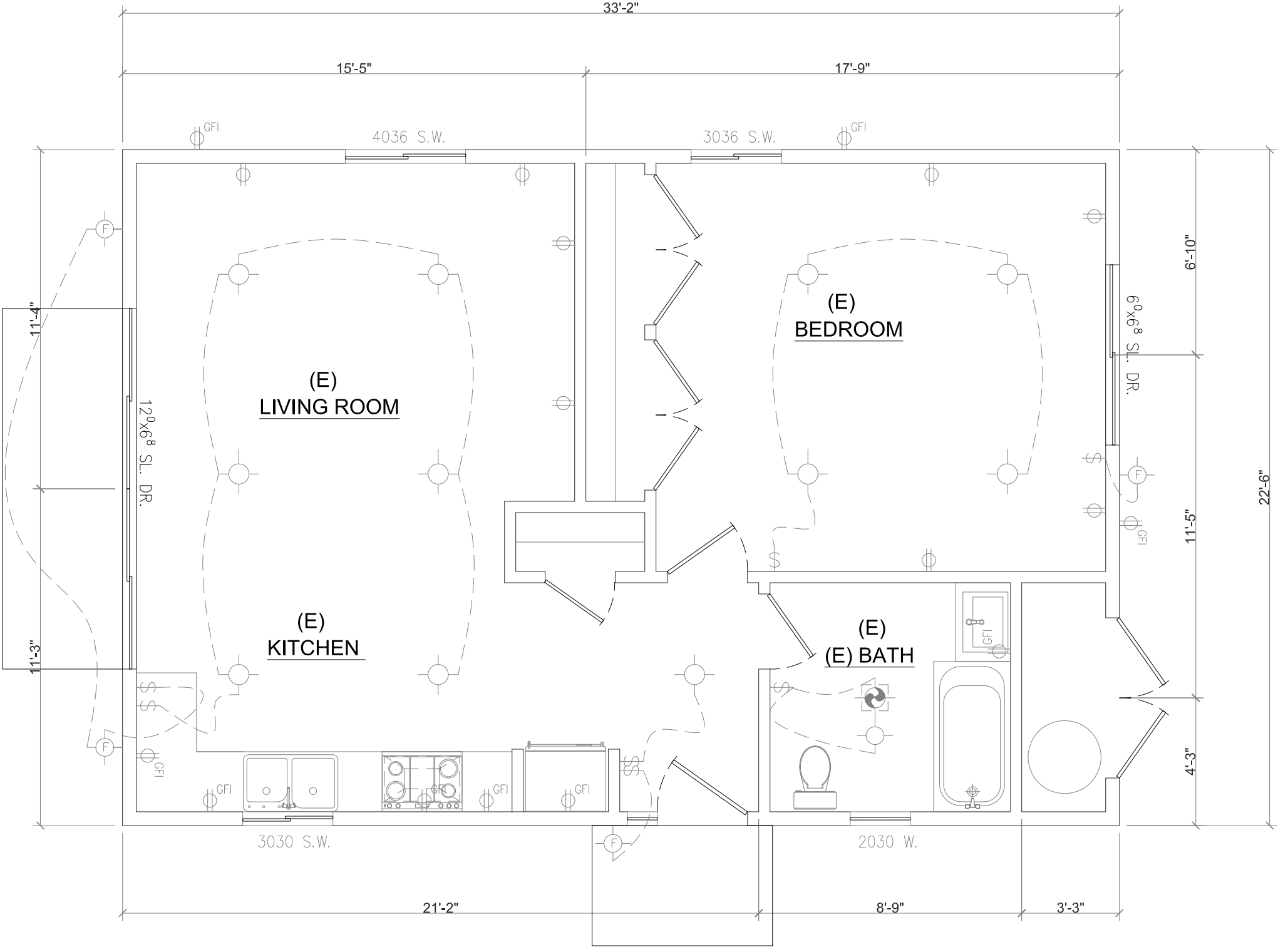
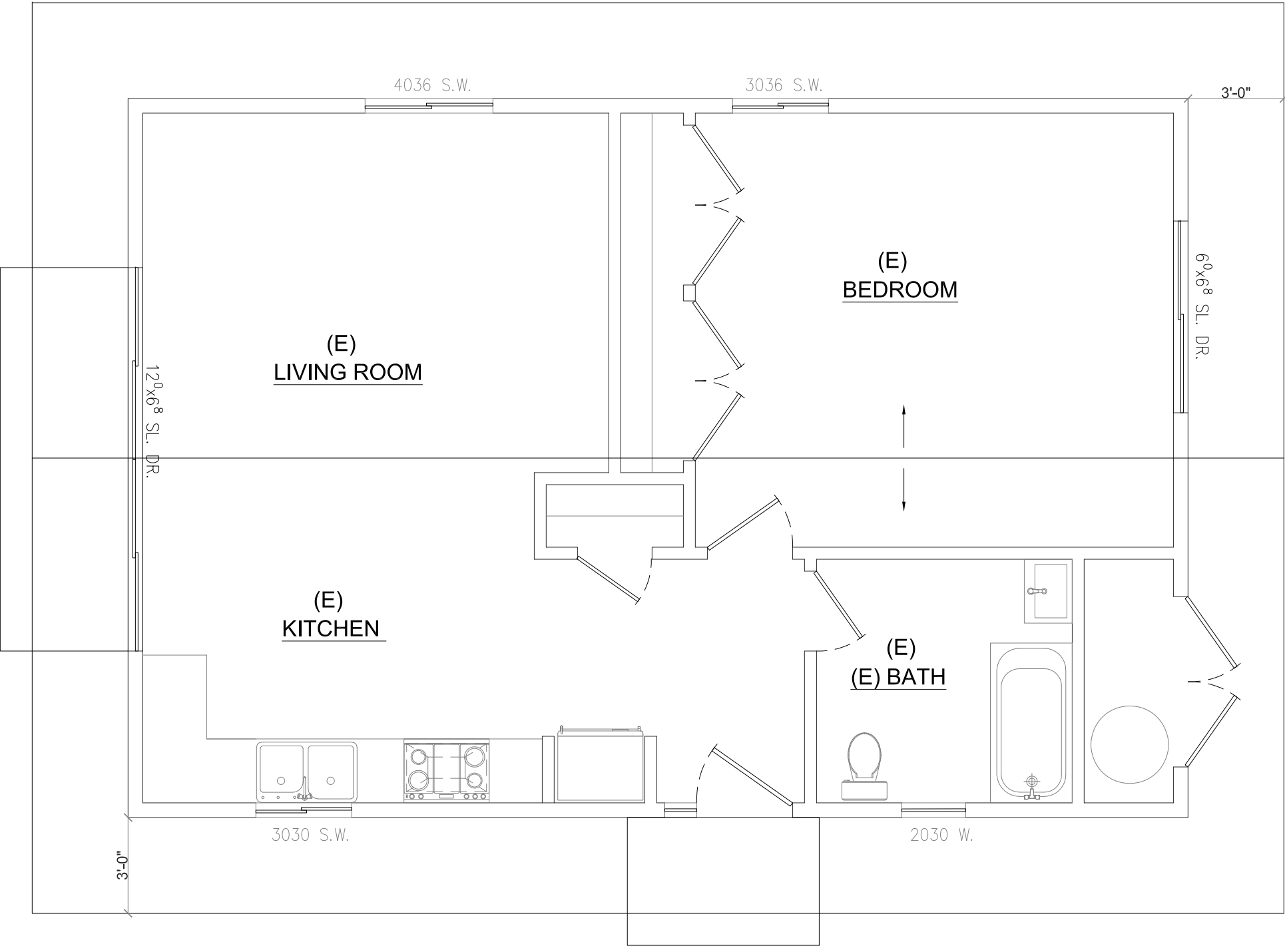
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EXISTING FLOOR PLAN

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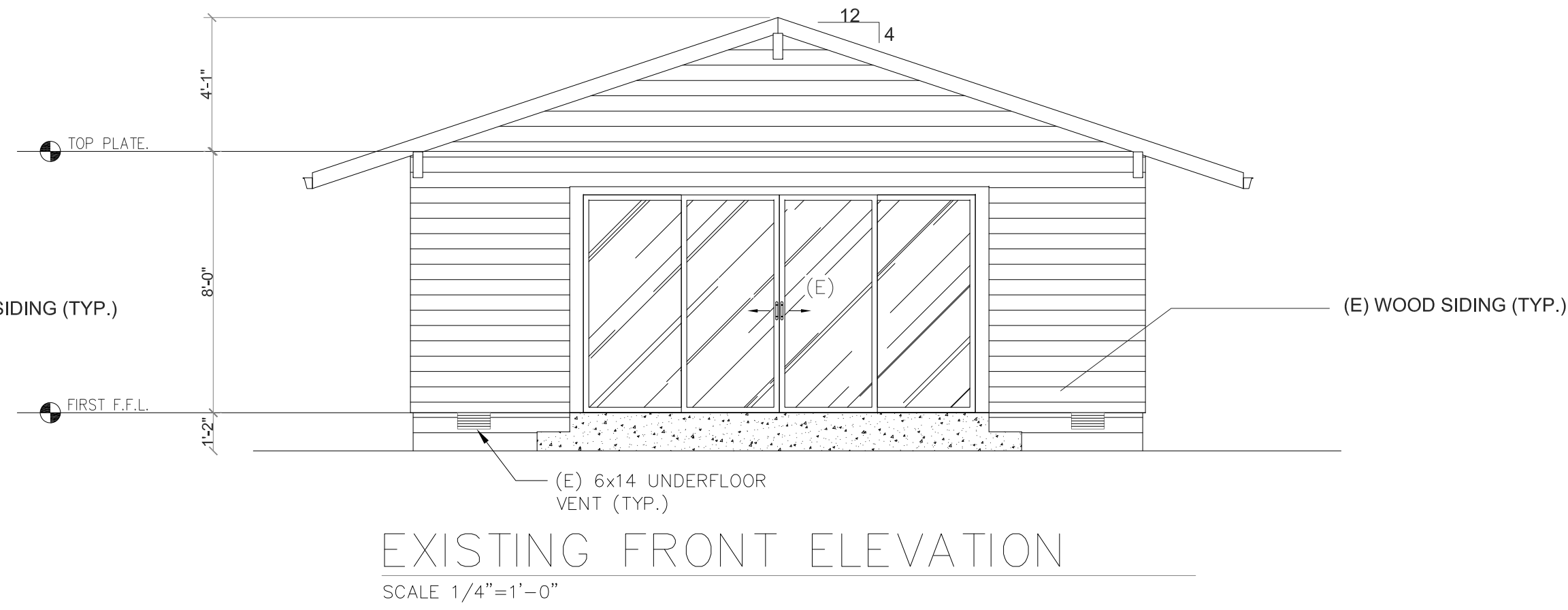
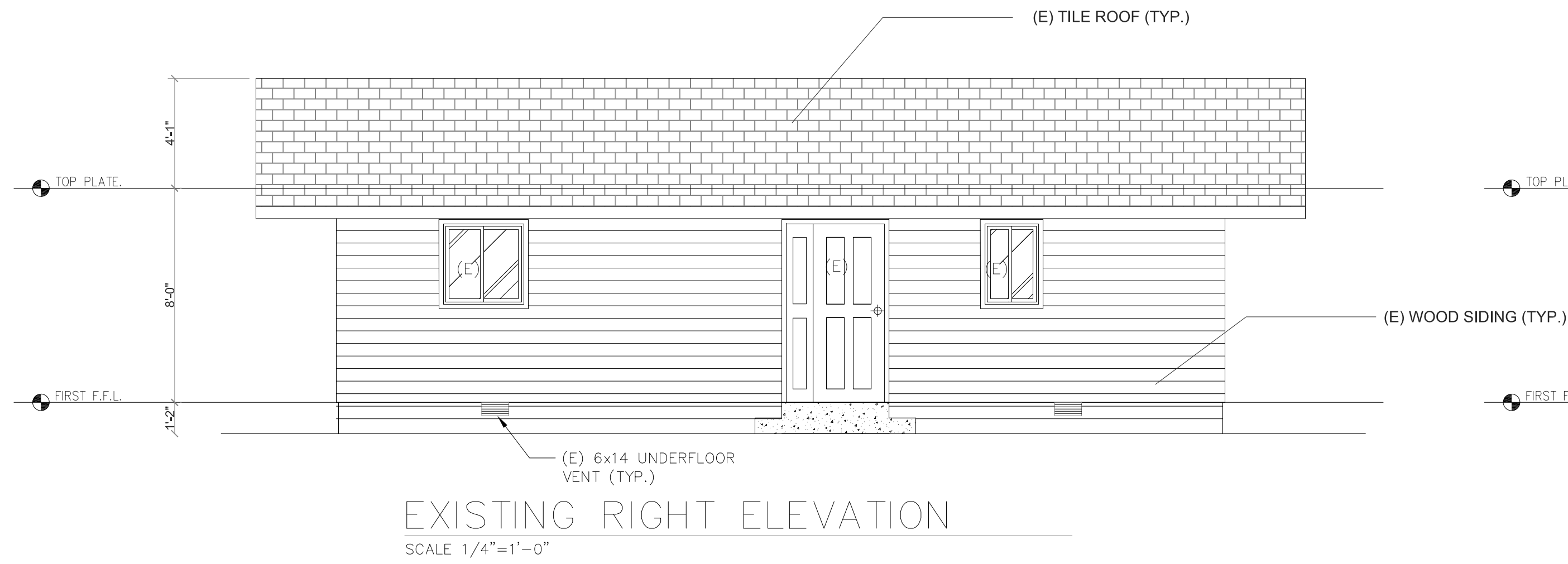
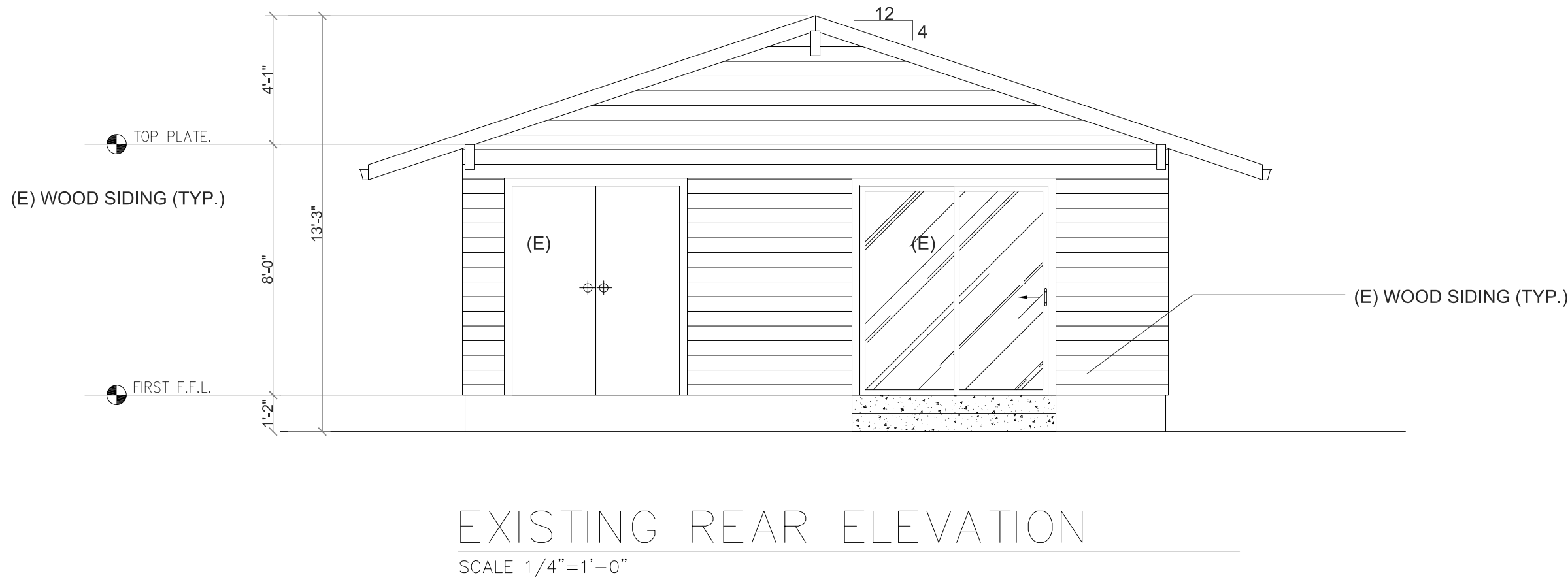
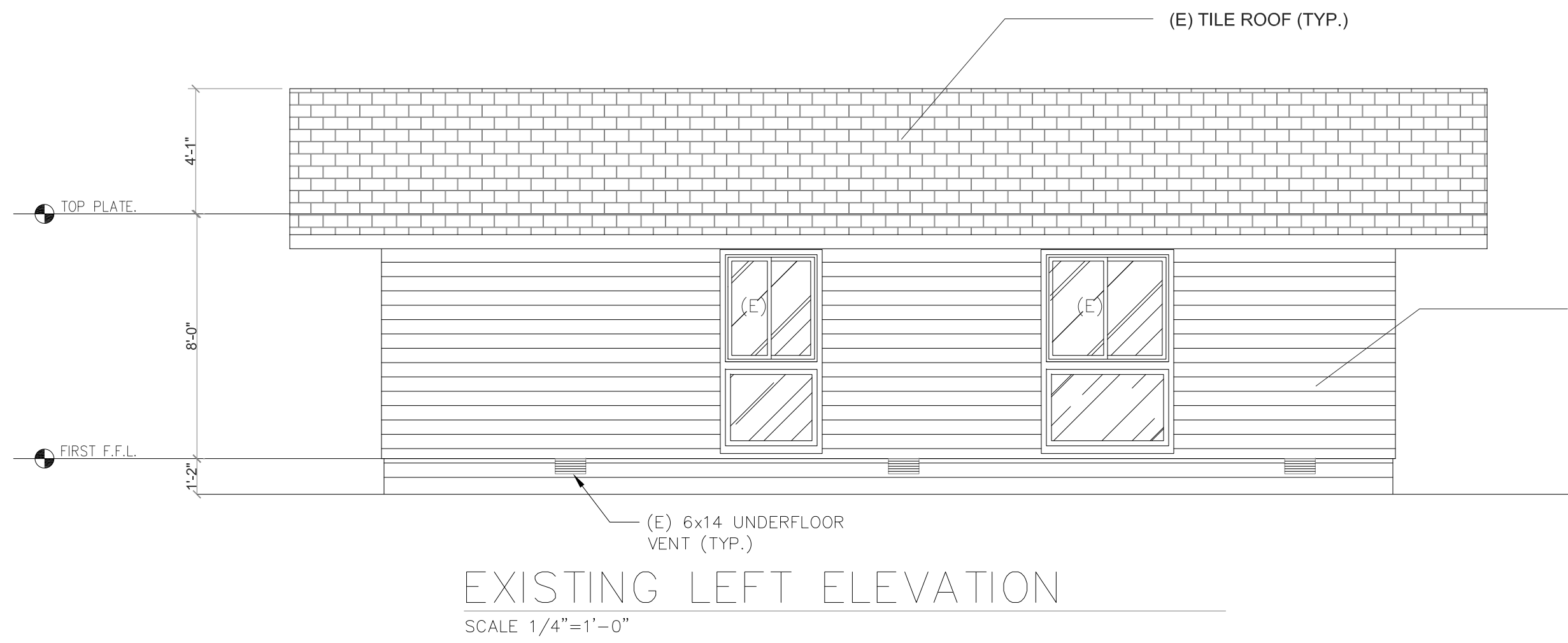




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## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                           |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Receive an Update on the Emergency Repairs to the HVAC System and Equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)</b> |
| <b>Category:</b>     | Consent Calendar-Community Services and Sustainable Infrastructure                                                                                                                                                                                                                                                        |
| <b>Meeting Date:</b> | <a href="#">9/5/2023</a>                                                                                                                                                                                                                                                                                                  |
|                      | <u>Recommendations:</u> (1) Receive an update on the emergency repairs to the HVAC system and equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.                         |

### **Background:**

Pursuant to Public Contract Code section 22050 and the attached [Council Resolution No. 9134](#), the Director of Public Works, in the case of emergency, may authorize a repair of a public facility and procure the work without giving notice for bids. An emergency is defined as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.” Additionally, State law requires the Public Works Director, as the City official with delegated authority to take emergency action, to report any emergency authorization and the reason(s) for the authorization to the City Council not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action. Further, the Public Works Director is required to report why the emergency would not permit a delay resulting from a competitive solicitation for bids and the City Council is required to review the emergency action at every regularly scheduled meeting thereafter until the emergency repair is completed. The City Council shall continue to review the emergency action at every regularly scheduled meeting thereafter until the action is terminated. At each review, the City Council shall determine, by a four-fifths vote, whether there is a need to continue the action.

Consistent with applicable State law and Council Resolution, on April 27, 2023, the Public Works Director declared an emergency and authorized the City to contract with its existing HVAC maintenance contractor, Environmental Systems Inc. (ESI), for the emergency repairs to the HVAC system at City Hall and the Public Works, Information Technology and Police Department buildings. The [Information Memorandum](#) issued on that date outlined the various equipment issues and provided a cost estimate of \$ 899,300.

### **Analysis:**

Below is a current update on the status of emergency repairs to the HVAC systems at City Hall and the Public Works, Information Technology and Police Department Buildings.

#### **City Hall**

The scope of work authorized repairs to the boiler, air handlers, and variable air volume (VAV) boxes to the City Hall building, and to date, there has been significant progress to these various items.

The contractor is still waiting for the delivery of the new boilers and pumps, which remains on-schedule with an estimated delivery of mid-September.

**Public Works/Information Technology/Police Department**

At this facility, the Building Management System (BMS), boiler pumps and VAV boxes were identified as in need of emergency repairs.

The parts and materials for the boiler and chilled water pumps have been ordered and expected to arrive mid-September. Assessment of the VAV boxes was completed and additional repair work will be required that was not originally included in the emergency declaration. The additional work is estimated at \$750,000. Staff is developing a work plan to address the additional VAV box failures and BMS control repairs and anticipates soliciting bids this fall.

**Fiscal Impact:**

Funding for these repairs is available in the City's Capital Improvement Program (CIP) budget and has been fully encumbered CIP Project 3499 - HVAC Systems Repairs funded \$620,000 for the upgrades to the Building Management System (BMS) and Variable Air Flow (VAV) boxes at both buildings. The remaining repairs were funded by CIP Project 3406 – City Building Improvements in the amount of \$279,300.

**California Environmental Quality Act:**

The emergency repair work is exempt from CEQA, per CEQA Guidelines Section 15301, Existing Facilities and 15302, Replacement or Reconstruction.

**Recommendations:**

1. Receive an update on the emergency repairs to the HVAC system and equipment for City Hall and the Public Works, Information Technology and Police Department buildings.
2. Determine by a four-fifths vote that the condition continues to constitute an emergency.

**Attachment:**

None



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Adopt a Resolution Approving the City Manager, Acting City Manager or Designee to apply for an up to \$3,500,000 Community Resilience Center (CRC) Grant from the State of California Strategic Growth Council and Authorizing the City Manager, Acting City Manager or Designee to accept a CRC grant and execute all related documents as the Authorized Agent on the Grant Agreements (Staff Contact: Matt Cano, Deputy City Manager, 408-890-8065)</b> |
| <b>Category:</b>     | Consent Calendar-Community Services and Sustainable Infrastructure                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                      | <u>Recommendation:</u> Adopt a resolution approving the City Manager, Acting City Manager or Designee to apply for an up to \$3,500,000 Community Resilience Center Grant from the State of California Strategic Growth Council and Authorizing the City Manager, Acting City Manager or Designee to accept a CRC grant and execute all related documents as the Authorized Agent on the Grant Agreements.                                                    |

### **BACKGROUND:**

The 2021-2022 State of California Climate Budget Package, which totals over \$15 billion to tackle wildfire and drought challenges, build more resilient communities, promote sustainable agriculture, and advance a nation-leading climate agenda, also allocated \$100 million to the Strategic Growth Council (SGC) over two rounds for a new Community Resilience Centers (CRC) program. SGC's program will fund planning, development, construction and upgrades of neighborhood-level Community Resilience Centers to provide shelter and resources during climate and other emergencies, such as extreme heat events and poor air quality days. The program will also fund ongoing year-round community services and programs, such as food distribution and workforce development training, that build overall community resilience. SGC received a \$110 million State General Fund appropriation for Fiscal Year 2022-2023 to implement the program. Of the total funds, \$98.6 million will be available Statewide for Round 1 grants.

### **ANALYSIS:**

Of the \$98.6 million available for grants, a total of \$84 million will be available for implementation grants, ranging from \$1 million to \$10 million each. Implementation grants will fund new construction and upgrades of facilities to serve as Community Resilience Centers, as well as services and programs that build overall community resilience.

After a review of potential projects and programs, staff determined that renovations to the Milpitas Community Center (MCC) would be the most viable project to apply for. The MCC is the City's center of community building and resilience. MCC shares its grounds with City Hall and the City's Senior Center. Through CRC Implementation Funding, the City would retrofit MCC with physical resilience improvements and offer year-round programming to help build social infrastructure. Together, these improvements will help increase climate resilience, expand economic opportunities, and reduce health, environmental, and social inequities. This multi-benefit community space will be especially important during times of climate hazard.

Built in 1982, the community center has a number of infrastructure needs. As part of the grant, staff is proposing to apply for up to \$3,500,000 in funds for a roof replacement, unisex restroom (as required by the grant), community garden and emergency response supplies. At this time, staff intends to apply for an



approximately \$3,000,000 grant. However, staff is asking for approval to apply for up to \$3,500,000 in case cost estimates increase prior to final grant submittal. Currently, the City has allocated \$220,000 from CIP Project number 3406 to initiate the design of the roof replacement at the MCC. However, funding has not yet been appropriated for the full roof replacement. If the City receives this CRC implementation grant, the roof replacement will be able to proceed in a timely manner.

Per the CRC Grant Program process, a Resolution approving the filing of the application packet and signing appropriate agreements to accept the grant is required. The Resolution captures key points including but not limited to the approval of the application, certifies that the grantee has the funds to complete the applied for project, and identifies the staff designated as the authorized agent to execute grant agreements with the State of California.

### **POLICY ALTERNATIVE(S):**

**Alternative 1: Do not Adopt a Resolution Approving the Application for up to \$3,500,000 Community Resilience Center grant funding from the State of California.**

**Pros:** Staff will be able to work on already identified projects and work responsibilities as opposed to completing the grant over the next three weeks.

**Cons:** As there is no dedicated outside revenue for improvements to the MCC, any future roof replacement funds would likely be from the City's General Fund. If the City is able to receive a grant for the roof replacement, General Fund dollars would not be diverted for this purpose, or the building would continue to deteriorate and not be able to be used to serve the community.

**Reason for Not Recommending:** Potential grant monies would allow the City to use critical General Fund dollars for other programs, projects or services.

### **FISCAL IMPACT:**

There is no fiscal impact with the adoption of the Resolution. Should the grant be awarded to the City, staff will bring back to the City council a report to create the necessary budget appropriation. Sufficient funding for the initial design of this project is included as part of Project 3406 in the Adopted Capital Improvement Program.

### **California Environmental Quality Act (CEQA):**

The City Council's action in adopting this Resolution is exempt from environmental review pursuant to CEQA Guideline 15378(b)(4) as a governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. Instead, if funding is provided, staff will look at the financial allocation and return to the City Council with a specific project or projects along with any required CEQA analysis prior to any discretionary action being taken.

### **RECOMMENDATION:**

Adopt a resolution approving the City Manager, Acting City Manager or Designee to apply for an up to \$3,500,000 Community Resilience Center Grant from the State of California Strategic Growth Council and Authorizing the City Manager, Acting City Manager or Designee to accept a CRC grant and execute all related documents as the Authorized Agent on the Grant Agreements.

### **Attachment(s):**

1. Resolution

## RESOLUTION NO.

### A RESOLUTION OF THE MILPITAS CITY COUNCIL APPROVING THE APPLICATION, ACCEPTANCE AND AGREEMENT EXECUTION FOR THE STRATEGIC GROWTH COUNCIL COMMUNITY RESILIENCE CENTER GRANT FOR THE MILPITAS COMMUNITY CENTER

**WHEREAS**, the 2021-2022 State of California Climate Budget Package, which totals over \$15 billion to tackle wildfire and drought challenges, build more resilient communities, promote sustainable agriculture, and advance a nation-leading climate agenda, also allocated \$100 million to the Strategic Growth Council (SGC) over two rounds for a new Community Resilience Centers (CRC) program; and

**WHEREAS**, SGC's program will fund planning, development, construction and upgrades of neighborhood-level Community Resilience Centers to provide shelter and resources during climate and other emergencies, such as extreme heat events and poor air quality days; and

**WHEREAS**, the applicant certifies by resolution the approval of the application prior to submission of the application to the State.

**WHEREAS**, the Milpitas Community Center shares a campus with City Hall and the Barbara Lee Senior Center. It is at the heart of the Milpitas community, and the City intends to use the Community Center as a Community Resilience Center for the next 15 years and beyond.

**NOW, THEREFORE, BE IT RESOLVED** that the Milpitas City Council hereby:

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 approves the filing of an application for Community Resilience Center grant program for the Milpitas Community Center;
3. The City Council approves the acceptance of the grant, if awarded, and the execution of all related documents to finalize the grant agreement.
4. The City Council certifies that the applicant has reviewed, understands, and agrees to the General Provisions contained in the Community Resilience Centers Program Round 1 Final Program Guidelines;
5. The City Council agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.
6. The City Council delegates the authority to execute all grant related documents to the City Manager as agent of the applicant. The City Council further delegates to the City Manager the authority to conduct all negotiations and execute and submit all documents, including,

but not limited to, applications, contracts, amendments, payment requests, and compliance with all applicable current state and federal laws which may be necessary for the completion of the aforementioned project.

**PASSED AND ADOPTED** on this the 5<sup>th</sup> day of September, 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Suzanne Guzzetta, City Clerk

\_\_\_\_\_  
Carmen Montano, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Mutalipassi, City Attorney



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Conduct a Public Hearing and Approve the Draft FY 2022-2023 Community Development Block Grant (CDBG)'s Consolidated Annual Performance and Evaluation Report (CAPER) (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing Division Manager, 408-586-3275)</b>                                                                                                                                                                                      |
| <b>Category:</b>     | Public Hearings-Community Development                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                      | <u><b>Recommendation:</b></u><br>1. Open the public hearing, hear testimony, then move to close the public hearing.<br>2. Approve the draft FY 2022-2023 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER).<br>3. Authorize the Acting City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2022-2023 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements. |

### **BACKGROUND:**

Every September, the Consolidated Annual Performance and Evaluation Report (CAPER) is required to be submitted to the U.S. Department of Housing and Urban Development (HUD). The CAPER summarizes the accomplishments of the past funding cycle and the progress towards the priority needs and goals identified in the Consolidated Plan. The CAPER describes the City's activities for FY 2022-2023 and the accomplishment toward meeting the priority needs and goals from the 2022-2025 Consolidated Plan. The CAPER further describes actual expenditures and outcomes relative to the targets in the FY 2022-2023 Annual Action Plan. This CAPER is the first progress report for the 2022-2025 Consolidated Plan that was approved by the City Council in 2022.

### **ANALYSIS:**

In FY 2022-2023, Community Development Block Grant (CDBG) allocations comprised of the City's original formula allocation of \$660,871, CDBG-CV (CARES Act) allocation of \$35,829.57, and prior year unused funds in the amount of \$77,561.90. In total, the City allocated \$774,262.47 to 18 organizations for a total of 24 activities.

The CAPER identifies some of the major accomplishments in 2022-2023:

- **Catholic Charities' Long Term Care Ombudsman Program** advocates for the rights of seniors and disabled residents in long-term care facilities and made unduplicated visits to 73 Milpitas residents in long-term care.
- **Child Advocates of Silicon Valley** is the only agency in the County that provides court-appointed volunteers (CASA) to each foster child. Child Advocates of Silicon Valley served and connected 9 Milpitas foster children youth and children to CASAs.
- **Filipino American Chamber of Commerce** provided hands-on training and a business seminar to 15 Milpitas small businesses on how to create and/or revamp their websites and marketing strategies.
- **Lighthouse of Hope Counseling Center** provides counseling, psychological support, and education to the Milpitas community. Lighthouse of Hope served 14 Milpitas residents.
- **The Milpitas Senior Center (SNP)** provided 139 Milpitas seniors with nutritious meals to promote health and food security.
- **The Milpitas Senior Center (Technology)** assisted 45 Milpitas seniors who need continued support and education in technology to help bridge the digital divide.



- **Next Door Solutions to Domestic Violence** provided 44 residents with supportive services and emergency shelter for victims of domestic violence.
- **Project Sentinel** is contracted to handle fair housing and tenant-landlord cases. Project Sentinel handled 12 fair housing cases for the year, and 27 individuals benefitted from fair housing services.
- **Pragnya** provided support to 100 children, youth, and adults from the Special Needs community by creating social-emotional connections and preventing further isolation by hosting various activities and programs.
- **Rebuilding Together Silicon Valley** preserves affordable housing by providing safety, energy efficiency, accessibility repairs, and improvements to qualified low-income renters and homeowners. Rebuilding Together made housing repairs for 27 Milpitas households.
- **Senior Adults Legal Assistance** provided free legal services to 25 qualified Milpitas seniors.
- **Silicon Valley Independent Living Center** provided housing services for persons with disabilities to 60 individuals.
- **Sourcewise** provided nutritious home-delivered meals to vulnerable 67 Milpitas seniors who have been impacted by the pandemic.
- **Terrace Gardens Senior Housing** met its goal of rehabilitating the existing community room wood trellis.
- **Terrace Gardens Meal Delivery** provided meal delivery services to 185 residents in lieu of community dining, due to the COVID-19 pandemic.
- **The Health Trust's Meals on Wheels Program** provided 2,211 hot meals to 19 homebound, low-income seniors. Additionally, they completed 316 wellness checks for Milpitas seniors.
- **YWCA Silicon Valley** provided supportive services and emergency shelter to 34 victims of domestic violence. Additionally, they responded to 52 crisis calls via the 24-hour crisis line and served 5 persons with crisis counseling identified by the Milpitas Police Department.

A total of 1,031 Milpitas residents benefitted from the CDBG program in FY 2022-2023.

Most of our subrecipients met or exceeded their goals in FY 2022-2023. For the subrecipients that did not meet their goals, most described facing challenges with being understaffed and with difficulty finding qualified staff. This will be an ongoing challenge for many of our partners while the economy remains in flux.

Our subrecipients demonstrated great flexibility in a time filled with ambiguity. It is through our partnership with our subgrantees that we continue to provide support, care, and essential services to our most vulnerable Milpitas residents.

#### **FISCAL IMPACT:**

There is no fiscal impact on the City budget other than staff time related to this item.

#### **California Environmental Quality Act (CEQA):**

The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

#### **RECOMMENDATION:**

1. Open the public hearing, hear testimony, then move to close the public hearing.
2. Approve the draft FY 2022-2023 Community Development Block Grant (CDBG)'s Consolidated Annual Performance and Evaluation Report (CAPER).
3. Authorize the Acting City Manager, or designee, to make any necessary changes and to submit the approved draft FY 2022-2023 CAPER to the U.S. Department of Housing and Urban Development (HUD) to comply with CDBG requirements.

#### **Attachment(s):**

1. Draft FY 2022-2023 CAPER



## **CITY OF MILPITAS**

---

# **DRAFT CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER)**

---

**2022-2023**

**City of Milpitas**  
**Consolidated Annual Performance and Evaluation Report (CAPER) FY 2022-2023**

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## CR-05 - Goals and Outcomes

**Progress the jurisdiction has made in carrying out its strategic plan and its action plan.**

### 91.520(a)

This could be an overview that includes major initiatives and highlights that were proposed and executed throughout the program year.

Below is a description of the progress the City of Milpitas has made in achieving the goals outlined in the Fiscal Year 2022-2023 Annual Action Plan. The City achieved many of its annual goals and is on track to meet most of the three-year goals outlined in the Consolidated Plan (2022-2025). The following goals are the basis for the activities approved and funded in the Fiscal Year 2022-2023 Annual Action Plan:

- Maintain and Preserve Existing Housing
- New Affordable Housing
- Affordable Housing Rental Rehabilitation
- Community Funding/Public Services
- Public services for low- and moderate-income residents at risk of eviction
- Fair Housing
- Public Services for Children and Youth
- Public Services for Seniors
- Public services for Domestic Violence Support
- Public Improvements including accessibility and improving public facilities
- Assist Microenterprises and Small Businesses
- Explore the use of HUD Section 108 Loan Guarantee Program

Below highlight the funded organizations' accomplishments:

- **Catholic Charities' Long Term Care Ombudsman Program** advocates for the rights of seniors and disabled residents in long-term care facilities and made unduplicated visits to 73 Milpitas residents in long-term care.
- **Child Advocates of Silicon Valley** is the only agency in the County that provides court-appointed volunteers (CASA) to each foster child. Child Advocates of Silicon Valley served and connected 9 Milpitas foster children youth and children to CASAs.
- **Filipino American Chamber of Commerce** provided hands-on training and a business seminar to 15 Milpitas small businesses on how to create and/or revamp their websites and marketing strategies.
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- **Next Door Solutions to Domestic Violence** provided 44 residents with supportive services and emergency shelter for victims of domestic violence.
- **Project Sentinel** is contracted to handle fair housing and tenant-landlord cases. Project Sentinel handled 12 fair housing cases benefitting a total of 27 residents with fair housing services.
- **Pragnya** provided support to 100 children, youth, and adults from the special needs community by creating social-emotional connections and preventing further isolation by hosting various activities and programs.
- **Rebuilding Together Silicon Valley** preserves affordable housing by providing safety, energy efficiency, accessibility repairs, and improvements to qualified low-income renters and homeowners. Rebuilding Together made housing repairs for 27 Milpitas households.
- **Senior Adults Legal Assistance** provided free legal services to 25 Milpitas seniors.
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- **YWCA Silicon Valley** provided supportive services and emergency shelter to 34 victims of domestic violence. Additionally, they responded to 52 crisis calls via the 24-hour crisis line and served 5 persons with crisis counseling identified by the Milpitas Police Department.

**Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)**

DRAFT

| Goal                                                                       | Category                                                        | Source / Amount | Indicator                          | Unit of Measure        | Expected – Strategic Plan | Actual – Strategic Plan | Percent Complete | Expected – Program Year | Actual – Program Year | Percent Complete<br><i>Item # 15.</i> |
|----------------------------------------------------------------------------|-----------------------------------------------------------------|-----------------|------------------------------------|------------------------|---------------------------|-------------------------|------------------|-------------------------|-----------------------|---------------------------------------|
| Maintain and Preserve Existing Housing                                     | Affordable Housing<br>Non-Homeless<br>Special Needs             | \$1,294,882.86  | Homeowner Housing<br>Rehabilitated | Household housing unit | 150                       | 27                      | 18%              | 27                      | 27                    | 100%                                  |
| New Affordable Housing                                                     | Affordable Housing                                              | \$50,000        | Rental units constructed           | Units Constructed      | 50                        | n/a                     | n/a              | n/a                     | n/a                   | n/a                                   |
| Affordable Housing Rental Rehabilitation                                   | Non-housing community development                               | \$100,000       | Rental units rehabilitated         | Units rehabilitated    | 148                       | 148                     | 100%             | 148                     | 148                   | 100%                                  |
| Community Funding/Public Services                                          | Homeless Non-Homeless<br>Special Needs                          | \$150,000       | Number of persons assisted         | Persons assisted       | 500                       | 174                     | 35%              | 200                     | 174                   | 87%                                   |
| Public services for low- and moderate-income residents at risk of eviction | Non-homeless special needs<br>Homeless                          | \$50,000        | Homelessness Prevention            | Persons assisted       | n/a                       | 20                      | n/a              | n/a                     | n/a                   | n/a                                   |
| Fair Housing                                                               | Affordable Housing<br>Non-homeless special needs                | \$150,000       | Number of persons assisted         | Persons assisted       | 60                        | 27                      | 45%              | 20                      | 27                    | 135%                                  |
| Public Services for Children and Youth                                     | Non-homeless special needs<br>Non-housing community development | \$45,000        | Number of persons assisted         | Persons assisted       | 50                        | 9                       | 18%              | 6                       | 9                     | 150%                                  |

|                                                                                    |                                                                     |           |                                                                                         |                         |      |     |     |     |     |      |
|------------------------------------------------------------------------------------|---------------------------------------------------------------------|-----------|-----------------------------------------------------------------------------------------|-------------------------|------|-----|-----|-----|-----|------|
| <b>Public Services for Seniors</b>                                                 | Non-homeless special needs<br>Non-housing community development     | \$210,000 | Number of persons assisted                                                              | Persons assisted        | 1250 | 553 | 44% | 697 | 553 | 79%  |
| <b>Public services for Domestic Violence Support</b>                               | Non-homeless special needs                                          | \$75,000  | Number of persons assisted                                                              | Persons assisted        | 80   | 78  | 98% | 115 | 78  | 68%  |
| <b>Public Improvements including accessibility and improving public facilities</b> | Non-housing community development                                   | \$450,000 | Number of persons assisted with improved access to a facility or infrastructure benefit | Persons assisted        | 1000 | TBD | TBD | TBD | TBD | TBD  |
| <b>Assist Microenterprises and Small Businesses</b>                                | Non-housing community development                                   | \$50,000  | Businesses assisted                                                                     | New Businesses assisted | 50   | 15  | 30% | 15  | 15  | 100% |
| <b>Explore the use of HUD Section 108 Loan Guarantee Program</b>                   | Affordable Housing<br>Homeless<br>Non-housing community development | n/a       | n/a                                                                                     | n/a                     | n/a  | n/a | n/a | n/a | n/a | n/a  |

**Table 1 - Accomplishments – Program Year & Strategic Plan to Date | Sections labeled TBD will be reported on the FY23-24 CAPER | Sections left blank will be reported by the Public Hearing Meeting on September 5th, 2023**



**Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.**

This Consolidated Annual Performance Evaluation Report (CAPER) corresponds with the first Annual Action Plan years covered by the City's 2022-2025 Consolidated Plan which was adopted by Milpitas City Council on June 14, 2022.

The CAPER provides a snapshot of how the City will utilize its CDBG allocation to meet the needs of the City's low- and moderate-income individuals and the most vulnerable populations. The following priorities were considered in order to meet the housing and community development needs in Milpitas:

- Maintain and Preserve Existing Housing
- New Affordable Housing
- Affordable Housing Rental Rehabilitation
- Community Funding/Public Services
- Public services for low- and moderate-income residents at risk of eviction
- Fair Housing
- Public Services for Children and Youth
- Public Services for Seniors
- Public Services for Domestic Violence support
- Public Improvements including accessibility and improving public facilities
- Assist Microenterprises and Small Businesses
- Explore the use of HUD Section 108 Loan Guarantee Program

The City was able to achieve most of its goals outlined in the 2022-2023 Annual Action Plan (AAP) through the CDBG formula and CDBG-CV funding.

The City allocated a total of \$774,262.47 for Program Year 2022. The breakdown of funding allocation is as follows:

CDBG Formula Funds for Program Year 2022: **\$660,871**

CDBG Prior Year Unused Formula: **\$77,561.90**

CDBG-CV Funds: **\$35,829.57**

In total, 1,031 persons were assisted in Program Year 2022. Out of the 1,031 Milpitas residents served, 553 were seniors, which makes up 54% of the population served; 174 were low-and-moderate income community members, which makes up 17% of the population served; and 78 were survivors of domestic violence, which makes up 8% of the population served.

A top priority for the City is to Maintain and Preserve Existing Housing. Through our partnership with Rebuilding Together Silicon Valley, a total of 27 homeowners/renters received assistance with emergency home repairs and safety modifications.

A high emphasis on providing public services for the Milpitas senior population resonates city-wide. Eight public service allocations totaling \$121,516.26 were approved benefiting seniors who are aging in place with long-term care, hot meals, housing search assistance, and services that help bridge the digital divide and free legal services. Additionally, Terrace Gardens, an 100% affordable senior housing development was allocated \$30,000 in CDBG funding for necessary capital improvements to the property, primarily the rehabilitation of the community wood trellis. About 20% of the total CDBG funds were allocated to serving the Milpitas senior population.

The City allocated \$48,750 for public service activities to benefit victims of domestic violence, \$10,000 in public services for children and youth, and \$56,290 to Project Sentinel to provide Fair Housing counseling to at-risk tenants in Milpitas.

One of the many hardships small business owners in Milpitas faced after the pandemic was keeping their doors open for business. A total of \$16,199.55 was allocated to reinvigorate the operations of microenterprises in Milpitas. Through our partnership with the Filipino American Chamber of Commerce, 15 small businesses that fall within the LMI income limits received assistance with business mentoring and disaster planning/preparation.

**CR-10 - Racial and Ethnic composition of families assisted**

**Describe the families assisted (including the racial and ethnic status of families assisted).**

**91.520(a)**

|                                             | <b>CDBG</b>  |
|---------------------------------------------|--------------|
| White                                       | 282          |
| Black or African American                   | 37           |
| Asian                                       | 533          |
| American Indian or American Native          | 4            |
| Native Hawaiian or Other Pacific Islander   | 4            |
| American Indian/Alaskan Native & White      | 0            |
| Asian & White                               | 2            |
| Black/African American & White              | 1            |
| A. Indian/Alaskan Native & Black/African A. | 0            |
| Other Multi-Racial                          | 168          |
| <b>Total</b>                                | <b>1,031</b> |
| Hispanic                                    | 50           |
| Not Hispanic                                | 981          |

**Table 2 – Table of assistance to racial and ethnic populations by source of funds**

**Narrative**

Table 2 depicts the accurate racial and ethnic categories of total individuals served in Program Year 2022 using the CDBG formula and CDBG-CV funds. In total, the City's CDBG program served 1,031 individuals in Program Year 2022. Of those individuals, approximately 27% were White; 4% were Black or African American; 52% were Asian; 1% were either American Indian/American Native, Native Hawaiian/Pacific Islander, American Indian/ Alaskan Native & White, Asian, and White, Black/African American and White. 16% of individuals reported as "Other Multi-Racial." Of the 1,031 individuals served, approximately 5% were Hispanic.

**CR-15 - Resources and Investments 91.520(a)****Identify the resources made available**

| Source of Funds | Source | Resources Made Available | Amount Expended During Program Year |
|-----------------|--------|--------------------------|-------------------------------------|
| CDBG            | CDBG   | \$1,595,364.45           | \$554,094.26                        |
| HOME            | HOME   |                          |                                     |
| HOPWA           | HOPWA  |                          |                                     |
| ESG             | ESG    |                          |                                     |
| Other           | Other  |                          |                                     |

**Table 3 - Resources Made Available****Narrative**

The attached PR26 Program Year 2022 report shows total expenditures of \$554,094.26 in CDBG funds. Funds returned to the line of credit is in the amount of \$122,248.13. A total of \$118,138.19 was a repayment to activity 536 Silicon Valley Independent Living Center Rent Relief for Public Service cap overage. The line of credit funds will be reallocated in Program Year 2024. The remainder amount (\$4,109.94) is an interest payment that does not belong in the line of credit line and needs to be transferred to the U.S. Treasury. This amount will be adjusted by HUD's Fort Worth office. They will reverse the funds on the grant a remit them to Treasury.

The attached PR 26 CDBG-CV Financial Summary Report shows total program expenditures of \$971,377.65. A total of \$27,060.22 was spent in Program Year 2022. The remaining balance of \$8,769.35 will be reallocated in Program Year 2024.

**Identify the geographic distribution and location of investments**

| Target Area      | Planned Percentage of Allocation | Actual Percentage of Allocation | Narrative Description |
|------------------|----------------------------------|---------------------------------|-----------------------|
| City of Milpitas | 100%                             | 100%                            |                       |

**Table 4 – Identify the geographic distribution and location of investments****Narrative**

The City of Milpitas has not established specific geographic target areas. The City attempts to provide resources to serve low- to moderate-income persons, city-wide.

## Leveraging

**Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.**

The City anticipates CDBG funds to remain constant at about the \$600,000 per year level. In conjunction with this federal program, the City will receive additional funding in the form of program income – payments paid into a revolving loan fund.

In September 2021, the City Council approved the use of \$1,100,000 in the American Rescue Plan Act (ARPA) dollars to expand the program to include mortgage relief. Under the ARPA Investment Plan, rent relief eligibility will be expanded to moderate-income residents and the City of Milpitas will now offer mortgage relief. Of the \$1,100,000 appropriated, \$150,000 will be used to partially fund a 3-year limited term Administrative Analyst. The remaining \$950,000 will cover the cost of program administration (\$85,500). Per City Council's direction, the remaining balance will be distributed with 75% (\$648,375) for rent relief and 25% (\$216,125) for mortgage relief. The existing Rent Relief Program has helped over 300 Milpitas residents through emergency hardship relief, eviction prevention, domestic violence relocation, child and family homelessness relief, and Section 8 good faith deposits.

Since March 2021, the City of Milpitas has contracted with WeHOPE's Dignity on Wheels program. Dignity on Wheels provides a mobile trailer with a shower, laundry, restroom, and on-site case management. The case manager helps connect clients to resources and services such as identification document needs and identification renewal support. At each session, WeHOPE provides supplies that include towels, laundry pods, hair and body wash, hygiene kits, and occasional clothing donations. Prior to July 2023, the City allocated \$96,552 of non-CDBG funding to WeHOPE's Dignity on Wheels Program which has serviced over 1000 individuals.

The City of Milpitas has also allocated \$300,000 to partner with the County of Santa Clara's Office of Supportive Housing to provide homeless outreach, engagement, and street-based case management services with the goal of connecting unhoused residents of the City of Milpitas to housing and other resources. The County's Homeless Engagement and Access Team lead the City's homeless outreach efforts in the community and are regularly on-site at the Dignity on Wheels service location to conduct assessments and further connect clients with a countywide network of services.

In 2017, Governor Brown signed a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. This included Senate Bill 2 Building Homes and Jobs Act (SB-2), which created a recording fee on real estate documents to increase the supply of affordable homes in California. SB-2 established that 70% of the revenue collected, beginning in the calendar year 2019, will go to locally administered affordable housing, otherwise known as Permanent Local Housing Allocation (PLHA). The funding will help cities and counties increase the supply of housing for households at or below 60% of AMI; increase assistance to affordable

owner-occupied workforce housing; assist persons experiencing or at risk of homelessness; facilitate housing affordability, particularly for lower-and moderate-income households; promote projects and programs to meet the local government's unmet share of regional housing needs allocation; and ensure geographic equity in the distribution of the funds. With the funds from the PLHA, the City plans to provide HEAT and WHRAP funding. Of the City's estimated entitlement of \$1,017,554, the City was approved to designate 5% to program administration. The remaining balance will be split with 20% for homelessness outreach assessment funding and 80% for a Workforce Housing Rental Assistance Program (WHRAP).

The City of Milpitas offers a Below Market Rate (BMR) program to assist very-low, low-, and moderate-income households in becoming homeowners. Our BMR inventory consists of dwelling units acquired through the City's Affordable Housing Ordinance. The City's basic eligibility requirements to participate include being a first-time homebuyer, having the ability to provide at least a 10 percent required down payment, and for a household's income to not exceed very-low, low-, and moderate income as defined by the California Department of Housing and Community Development (HCD). In Program Year 2022, a total of 3 BMR dwelling units (1 townhome and 2 condominiums) were sold to qualified first-time home buyers.

**CR-20 - Affordable Housing 91.520(b)**

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

|                                                                            | One-Year Goal | Actual     |
|----------------------------------------------------------------------------|---------------|------------|
| Number of Homeless households to be provided affordable housing units      | 0             | 0          |
| Number of Non-Homeless households to be provided affordable housing units  | 175           | 175        |
| Number of Special-Needs households to be provided affordable housing units | 0             | 0          |
| <b>Total</b>                                                               | <b>175</b>    | <b>175</b> |

Table 5 – Number of Households

|                                                                      | One-Year Goal | Actual     |
|----------------------------------------------------------------------|---------------|------------|
| Number of households supported through Rental Assistance             | 0             | 0          |
| Number of households supported through The Production of New Units   | 0             | 0          |
| Number of households supported through Rehab of Existing Units       | 175           | 175        |
| Number of households supported through Acquisition of Existing Units | 0             | 0          |
| <b>Total</b>                                                         | <b>175</b>    | <b>175</b> |

Table 6 – Number of Households Supported

**Discuss the difference between goals and outcomes and problems encountered in meeting these goals.**

The City of Milpitas continues to show progress in providing affordable housing projects and programs to residents. There are various programs in the City that aim to provide support to LMI clientele. One of the facilities that provide affordable housing is Terrace Gardens.

Terrace Gardens is a deed-restricted, very low and low-income senior housing facility. In Program Year 2022, Terrace Gardens received \$30,000 to rehabilitate the community wood trellis. The community wood trellis is an essential place for the staff to hold fun and teaching opportunities for low-income senior residents. With the completion of the rehab project, a total number of 148 households were supported.

One of the goals the City has is to provide rehabilitation funding for affordable housing projects. As part of the City's Home Rehabilitation program, the City partners with Rebuilding Together Silicon Valley (RTSV), to provide Milpitas residents with emergency repairs for qualified low-income homeowners. The program is designed to preserve affordable housing by providing safety, energy efficiency, accessibility repairs, and improvements to qualified households. In Program Year 2022, RTSV received \$249,566.15 in funding and this provided housing repairs for 27 Milpitas households, which meets the annual goal.

**Discuss how these outcomes will impact future annual action plans.**

The goal of creating more affordable housing will continue to be a goal in future action plans. However, the increasingly high cost of construction coupled with surging land costs have made the creation of deeply affordable housing (low, very-low, and extremely-low income) very challenging.

**Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.**

| Number of Households Served | CDBG Actual  | HOME Actual |
|-----------------------------|--------------|-------------|
| Extremely Low-income        | 377          | 0           |
| Low-income                  | 578          | 0           |
| Moderate-income             | 47           | 0           |
| <b>Total</b>                | <b>1,002</b> | <b>0</b>    |

**Table 7 – Number of Households Served**

**Narrative Information**

In Program Year 2022, the City of Milpitas served a total of 1,031 households. In total, 37% were considered extremely low-income; 56% were considered low-income; and 4% were considered moderate-income. A total of 3% of households served were considered non-LMI.



## **CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)**

**Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:**

**Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs.**

### Rent and Mortgage Relief

In October 2019, the City created a Pilot Rent Relief Program and allocated \$100,000 from the City's Affordable Housing Fund to assist the City's at-risk population to prevent eviction, and displacement, and to provide financial support for other critical housing needs. In March 2020, with the onset of the COVID-19 pandemic, the City allocated an additional \$100,000 from the Affordable Housing Fund to assist those who had been affected by the pandemic and whose housing situations were at risk. With these funds, the City assisted in the prevention of 40 households and 140 Milpitas residents from potential eviction.

The City further endorsed the success of the pilot program by permanently establishing the Rent Relief Program and allocated \$725,607 in CDBG funding over the last two subsequent program years (2020 and 2021). The success of this program could not be understated as over 100 families and over 300 residents were assisted with CDBG funds.

In September 2021, the City Council approved the use of \$1,100,000 in ARPA dollars to expand the program to include mortgage relief. Of the \$1,100,000 appropriated, \$150,000 will be used to partially fund a 3-year limited term Administrative Analyst. Per City Council's direction, the remaining balance will be distributed with 75% (\$648,375) for rent relief and 25% (\$216,125) for mortgage relief. The remaining \$950,000 will cover both rent and mortgage relief and is estimated to benefit 130 households with rental assistance and 14 households with mortgage assistance.

### WeHOPE

In December 2020, the City began a pilot program with Project WeHOPE to administer their Dignity on Wheels Mobile Shower and Laundry program in Milpitas. The City allocated \$21,372 in funding to the program and further demonstrated its commitment to providing the unhoused community with services by further allocating \$75,180 to extend its existing service contract until June 30, 2023. In June 2023, as part of the City's budget process, \$150,000 was allocated to enter a new contract with Dignity on Wheels that would cover services until June 30, 2026.

To date, 1,041 amount of presumed LMI individuals have benefited from the activity.

### Homeless Engagement and Access Team (HEAT)

The City contracted with the Santa Clara County Office of Supportive Housing to provide assessment services to the unhoused via the Homeless Engagement and Assessment Team (HEAT). The HEAT team, contracted through Abode Services, provides ongoing outreach and assessment services to the unhoused community in Milpitas. An initial allocation of \$200,000 was made by the Council in December 2020. An additional \$100,000 was recently allocated to extend the service contract for another year. To date, 287 presumed LMI individuals have benefited from the activity.

### Permanent Local Housing Allocation (PLHA)

In July 2023, the City received its signed Standard Agreement with HCD approving its 2019, 2020, and 2021 funding applications for \$1,017,554. The City was approved to designate money to continue funding the Homeless Engagement and Access Team as well as for the creation of a Workforce Housing Rental Assistance Program. The Workforce Housing Rental Assistance Program will be available for individuals whose AMI is 30% or less.

### **Addressing the emergency shelter and transitional housing needs of homeless persons**

The City continues to work closely with the County Continuum of Care and the Santa Clara County Office of Supportive Housing to address the emergency shelter and transitional housing needs of our homeless residents. In the next fiscal year, the City will report that they have formalized an outreach and assessment agreement with the County of Santa Clara to provide on-site case management, assessment, and referral to other services to help house our homeless population.

The City partners with LifeMoves to provide various services to our unhoused community. LifeMoves operates 26 facilities and service sites consisting of 12 interim shelters, a drop-in center, and several permanent supportive housing sites, as well as programs such as outreach to the unsheltered homeless population, safe parking programs, and homelessness prevention emergency assistance programs. In particular, the LifeMoves Villa Shelter (Villa) provides individuals with shelter beds and other services to all residents of Santa Clara County. The Villa has 15 family units and 9 beds available for single women for an average shelter capacity of 54 individuals per night. The Villa generally serves about 250 individuals each year, about half of whom are children. The purpose of the program is to provide interim housing and supportive service for homeless families and individuals to rapidly return to stable housing and achieve long-term self-sufficiency.

The City of Milpitas also contracts with Abode Services through the County of Santa Clara's Office of Supportive Housing to provide homeless outreach, engagement, and street-based case management services. The County's Homeless Engagement and Access Team conducts assessments of unhoused residents and connect clients with a countywide network of services including emergency shelter and transitional housing.

**Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care, and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs**

Milpitas does not currently have an institutional discharge policy. The City collaborates with the Santa Clara County CoC, which recently updated its Quality Assurance Standards to include a homeless discharge coordination policy.

The County CoC endeavors to provide guidance and resources to those released from institutions. The discharge policy includes access to reentry resource centers where, for example, an VI-SPIDAT could be administered. The VI-SPIDAT measures the acuity level of an individual and is used to inform what type of support or housing needs are required. It also serves as the entry point for access to other resources or supportive services, such as residential or outpatient treatment, transitional housing, or emergency shelter access.

CDBG and City Local Funds

- **Rent Relief Program:** The Silicon Valley Independent Living Center has been administering the City's Rent Relief Program, which offers low- and moderate-income residents no more than 3 months of rental assistance to prevent eviction, avoid community displacement, and to remain housed.
- **Child Advocates of Silicon Valley:** Child Advocates connect court-appointed special advocates (CASAs) to foster children. These volunteers must make a commitment to the children for a long-term, many for his or her entire life. The consistent support of the CASA is often the only adult who has steadily remained with the child, providing crucial mentorship.
- **Seniors Adults Legal Assistance (SALA):** SALA is committed to providing free-legal services to seniors. Legal services that SALA provides ranges from: public benefits, long-term care, alternatives to institutionalization, elder abuse, long-term care insurance, incapacity planning, probate, simple wills and housing – related to Landlord-Tenant issues. Often, many seniors do not know his or her housing rights or sign over the will of their house without knowing, and with fixed income, many are unable to provide legal help. SALA provides legal help free of charge for these low to extremely low-income seniors.

**Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again**

As noted above, the City contracted with the Santa Clara County Office of Supportive Housing to provide assessment services to the unhoused via the Homeless Engagement and Assessment Team (HEAT). The HEAT team, contracted through Abode Services, provides ongoing outreach and assessment services to the unhoused community in Milpitas. In Program Year 2022, a total of 99 outreach contacts were provided to unhoused individuals. The total number of unhoused enrolled in the SCC HEAT program is 82 and the number of VI-SPDAT assessments administered is 99.

The City of Milpitas also partners with WeHOPE's Dignity on Wheels program to provide free hot showers, laundry, and case management services for the unhoused Milpitas community. In Program Year 2022, a total number of 51 sessions were conducted in which 619 individuals participated. A total of 996 showers and 420 loads of laundry were provided by the program.

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**CR-30 - Public Housing 91.220(h); 91.320(j)**

**Actions taken to address the needs of public housing**

This is not applicable, there are no public housing developments in the City of Milpitas.

**Actions taken to encourage public housing residents to become more involved in management and participate in homeownership**

Not applicable.

**Actions taken to provide assistance to troubled PHAs**

Not applicable.

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## **CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)**

**Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)**

### **Resolution No. 8523**

The City adopted Resolution No. 8523 on February 2, 2016, which recognizes homelessness as a crucial problem in the County and will help contribute to future affordable housing projects that will house the homeless.

### **Affordable Housing Ordinance 297**

In June 2018, the City Council passed Affordable Housing Ordinance 297 which requires all new residential development projects of 10 units or more designed and intended for permanent occupancy shall construct 15% of the total number of dwelling units within the development as affordable units.

### **Housing Opportunity Zone**

The project will establish a new 'overlay district' within established critical priority areas of Milpitas and complete the associated California Environmental Quality Act (CEQA) analysis to accelerate housing production in the City. The Housing Opportunity Zone (HOZ) will provide objective standards and incentives to developers to encourage and support the development of by-right, affordable, and supportive housing projects, including housing for special-needs residents.

The project would streamline housing approvals and accelerate housing production by providing clarity and certainty to developers to stimulate development in priority areas. Incentives to developers may include reduced parking requirements, additional density bonuses beyond the State Density Bonus, increased allowable heights, streamlined permitting processes, and fee waivers.

### **Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)**

As noted above, the City contracted with the Santa Clara County Office of Supportive Housing to provide assessment services to the unhoused via the Homeless Engagement and Assessment Team (HEAT). The HEAT team, contracted through Abode Services, provides ongoing outreach and assessment services to the unhoused community in Milpitas.

### **Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)**

Historically, the County of Santa Clara has received funding from State's Department of Health Service and Federal Government for Center for Disease Control to implement a Childhood Lead

Poisoning Prevention Program. The funded programs include: community outreach screen, case management, and public education to inform low-to-moderate income and older communities. The project will then follow up with environmental testing, lead-based education, blood-lead testing for children, hazard reduction grants, and follow-up with monitoring and testing. Milpitas has adopted a Lead-Based Paint Management Plan which complies with HUD-Based Paint regulations and outlines the required states of abatement and remediation for rehabilitation projects. In addition, the City publicizes and identifies lead-based hazards and older residential projects through its Code Enforcement Division and Building Department. In addition, projects undergoing rehabilitation, especially under the City's Rehabilitation Loan Program, are supported through abatement and technical assistance on how to proceed with mitigating lead-based paint hazards.

**Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)**

The City of Milpitas prioritized the needs of microenterprises during the pandemic. Under the American Rescue Plan Act (ARPA), various small Milpitas businesses received financial assistance due to the economic hardship brought on by the COVID-19 pandemic. Selected participants must have met the very low, low, or moderate-income clientele level in order to receive the grant. The Enterprise Foundation collected income statements, tax returns, and other documents to confirm eligibility to HUD's guidelines. The total available funds awarded for the Small Business Assistance Grant Program was \$1,570,000. A total of 343 eligible small business applications were received by the City. On April 8 2022, 276 grants of \$5,000 (\$1,380,000) and 67 grants of \$1,700 (\$113,900) were awarded to various microenterprises in Milpitas. This means all the business applicants deemed eligible received funds including 46 daycare centers.

A CDBG funded Microenterprise Grant Program administered by FORWARD will come online in Program Year 2023. A total of 25 microenterprises will receive a \$2,000 grant. The new program will follow the eligibility process of the prior Small Business Assistance Grant Program. Selected participants must have met the very low, low, or moderate-income clientele level in order to receive the grant.

**Actions taken to develop institutional structure. 91.220(k); 91.320(j)**

The City is striving to improve intergovernmental and private sector cooperation to synergize efforts and resources and develop new revenues for community service needs and the production of affordable housing. Continued collaborative efforts include:

Regular quarterly meetings between entitlement jurisdictions at the CDBG Coordinators meeting.

Meet with the Regional Housing Working Group

Joint jurisdiction Request for Proposals and project review committees

Coordination on project management for projects funded by multiple jurisdictions

Community Development Roundtable monthly meetings with the real estate and development communities

**Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)**

The City benefits from a strong jurisdiction and region-wide network of housing and community development partners, such as the County and the CoC. To improve intergovernmental and private sector cooperation, the City will continue to participate with other local jurisdictions and developers in sharing information and resources.

**Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)**

The City continues to provide funding for Project Sentinel, who the City contracts for fair housing issues. Project Sentinel is a private, non-profit agency providing fair housing, tenant-landlord counseling, and dispute resolution services. Additional services include counseling, case intake, education, and outreach. Other services include HUD-certified mortgage default counseling and First-Time Homebuyer workshops are open to Milpitas residents.



## **CR-40 - Monitoring 91.220 and 91.230**

**Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with the requirements of the programs involved, including minority business outreach and the comprehensive planning requirements**

New to Program Year 2022, the City of Milpitas has developed a monitoring plan with details on standards and procedures for our partnerships with subrecipients.

The City of Milpitas Housing Division maintains a high level of integrity regarding monitoring our subgrantees. The City ensures all funded organizations comply and meet financing and programmatic requirements of HUD through our contract process. The detail and level of service that is to be performed by the subrecipients are outlined in the agreements. The terms and conditions in the agreement follow HUD regulations and are approved by our City Attorney.

As outlined in the agreements, each organization is required to submit quarterly reports of its activity progress in meeting the goals listed in the contract. In addition, the organization must submit invoices for reimbursements that document what services have been rendered. City staff takes the quarterly reports and reimbursement supporting documents and reviews items for any discrepancies. If any concerns or questions arise while reviewing the documents submitted by the organization, City staff will contact the organization and begin an internal investigation. The internal investigation will continue until the discrepancy is cleared. All funded CDBG-funded activities, including CDBG-CV-funded activities, are subject to this process.

During this Program Year, staff met with various subrecipients to get a better understanding of the services provided. Additionally, staff met to discuss best practices and data collection. Staff will continue to meet with subrecipients for monitoring via online or in-person. Housing staff is available to subrecipients if they ever have any questions regarding the program. For new subrecipients, staff will work closely with the organization to ensure compliance.

## **Citizen Participation Plan 91.105(d); 91.115(d)**

**Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.**

As described in the City's approved Citizen Participation Plan, the CAPER was made available in the Public Library, City's Website, City Hall, and per request via email to the public for public comment for 15 days. A public notice was published in the Milpitas Post and City website on August 18, 2023. Public notices were translated into Spanish, Vietnamese, and Simplified Chinese to further enhance communication with residents whose primary language is not English.

**CR-45 - CDBG 91.520(c)**

**Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.**

There are no changes in the objectives of the program.

**Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?**

No

**[BEDI grantees] Describe accomplishments and program outcomes during the last year.**

DRAFT



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Adopt a Resolution Certifying Election Results and Adding Tract No. 10592 to Community Facilities District 2008-1 (Annexation No. 25); Approve Final Tract Map No. 10592 for a Residential Project at 2001 Tarob Court; and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement. (Staff Contact: Roberto Alonzo, Principal Engineer, 408-586-3316)</b>                                                                                                                                                                                |
| <b>Category:</b>     | Consent Calendar-Community Development                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Meeting Date:</b> | 9/5/2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                      | <b><u>Recommendation:</u></b><br>(1) Following receipt of election results from the City Clerk, adopt a resolution certifying election results and adding Tract No. 10592 to Community Facilities District 2008-1 (Annexation No. 25); and<br>(2) Approve Final Tract Map No. 10592, including all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and<br>(3) Approve and authorize the City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and KB Home South Bay, Inc. |

### **BACKGROUND:**

On August 20, 2019, the City Council approved a Site Development Permit No. SD18-0014, Conditional Use Permit No. UP19-0009, Vesting Tentative Map No. MT18-0004, and Environmental Assessment No. EA19-0002 to allow construction of 40 unit residential condominium building, up to 49 feet in height (four stories), with parking for up to 74 vehicles, located on a 1.22 acre site at 2001 Tarob Court. This project is known as Lumen, and the developer is KB Home South Bay, Inc. (Developer).

### **ANALYSIS:**

The final map for the development is now complete and ready for approval by the City Council. The City Engineer has examined the final map for Tract No. 10592 and determined that the map is substantially the same as the previously approved Vesting Tentative Map and finds that it conforms to all requirements of the State of California Subdivision Map Act, Milpitas Municipal Code (MMC), and the terms and conditions of the Vesting Tentative Map. The Developer has offered required dedications to the City for public use, including easements for public street, public service and utility and emergency vehicle access purposes, as shown on the final map. Staff recommends the City Council approve the final map and to accept the dedications, subject to completion and acceptance of public improvements to be installed by the Developer.

The Developer has agreed to enter into a Subdivision Improvement Agreement (SIA) with the City for the construction of off-site public improvements for the project which will be completed with the on-site work, and the public improvements will be accepted by the City after final map approval and completion of construction. Offsite public improvements to be constructed and accepted by the City include asphalt concrete pavement, signing and striping, curb and gutter, sidewalk, driveway approach, utility mains and services, streetlights, landscaping and other miscellaneous items of work identified on the improvement plans. The water main replacement improvements within the site and its utility easement will be reimbursed by the City to the Developer through a separate Reimbursement Agreement with TASP funds. The improvements will be completed within 1-year from the date of the SIA, and the work is guaranteed by bonds or similar securities to be posted by the Developer in the amount of \$329,000. The water main improvements that will be reimbursed by the City will have a separate and specific bond in the amount of \$149,000.

The City Engineer has reviewed the public improvement plans (2-1447) and is recommending the City Council approve the Subdivision Improvement Agreement to allow for the construction of public improvements after final map approval.

The final map for Tract No. 10592 is subject to annexation into the Community Facilities District No. 2008-1 (CFD 2008-1). The City has on file a Certificate of Registrar of Voters from the County of Santa Clara certifying that there are currently no registered voters residing within the boundaries of the proposed CFD Annexation No. 25 for this development. (The certificate indicates that there were previously two voters registered within the boundaries, but those registrations have been canceled by either relocation or death of the registered voter.) The Developer is the sole property owner, and on September 5, 2023, the property owner was scheduled to vote on agreeing to the proposed Annexation No. 25. The resolution attached hereto allows the Council to certify the results of the election on annexation into CFD 2008-1. Annexation into CFD 2008-1 is subject to the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Section 53311 of the Government Code. While the Act has a number of requirements for annexation and imposition of the special tax, the Developer (as the sole landowner within the annexation territory) has agreed to waive many of the formalities including the right to have the special election conducted within the time periods specified in Government Code Section 53326, requirement for the mailing of the election ballot, requirement for the ballot to be accompanied by arguments for or against the ballot measure and the impartial analysis as required by Government Code Section 53327, and the right to protest, complaint or legal action of any nature pertaining to the procedures to be undertaken for the conduct of such election. The City Attorney has reviewed and agrees with the formalities to be waived, and a copy of the waiver executed by the Developer is on file with the City Clerk.

### **POLICY ALTERNATIVE(S):**

#### **Alternative 1:**

Deny approval of Final Map and Subdivision Improvement Agreement.

Pros: None

Cons: The denial of approval of the Final Map or the Subdivision Improvement Agreement will cause the lot to remain vacant and undeveloped. The City would not benefit from the addition of 32 new townhomes.

Reason for Not Recommending: To allow the development to move forward, staff recommends approval of Final Map and Subdivision Improvement Agreement for Tract No. 10592.

### **FISCAL IMPACT:**

Adding Tract No. 10592 to the CFD No. 2008-1 would allow the City to levy special taxes to properties within Tract No. 10592, in order to fund for public services within TASP.

### **California Environmental Quality Act (CEQA):**

The Planning Division conducted an initial environmental assessment (P-EA19-0002) of the project in accordance with the California Environmental Quality Act (CEQA). The assessment concluded that none of the circumstances necessitating preparation of a subsequent or supplemental EIR are associated with the Project. The assessment also concluded that an Addendum to the TASP EIR is the appropriate document to address these modifications rather than a subsequent EIR. The Addendum fully addressed all potential impacts associated with this project, and no material changes have been made to the project that would alter the conclusions of the Addendum.

As separate and independent bases, the project is exempt from further CEQA review pursuant to CEQA Guidelines Sections 15182 (Project Consistent with a Specific Plan), 15183 (Project Consistent with the General Plan), and 15168 (Projects Consistent with a Program EIR).

**RECOMMENDATION:**

- (1) Following receipt of election results from the City Clerk, adopt a resolution certifying election results and adding Tract No. 10592 to Community Facilities District 2008-1 (Annexation No. 25); and
- (2) Approve Final Tract Map No. 10592, including all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements; and
- (3) Approve and authorize the City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and KB Home South Bay, Inc.

**Attachment(s):**

1. Resolution certifying election results and adding Tract No. 10592 to Community Facilities District No. 2008-1 (Annexation No. 25)
2. Final Tract Map No. 10592
3. Subdivision Improvement Agreement

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CERTIFYING THE RESULTS OF  
AN ELECTION AND ADDING TERRITORY TO COMMUNITY FACILITIES DISTRICT NO. 2008-1  
(PUBLIC SERVICES)**

(Annexation No. 25)

**WHEREAS**, the City Council of the City of Milpitas (the "City Council") has previously formed Community Facilities District No. 2008-1 (Public Services) ("CFD No. 2008-1") pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), as amended, for the purpose of financing certain Public Services; and

**WHEREAS**, acting pursuant to the Act, the City Council also authorized by the adoption of Resolution No. 8601 (the "Resolution Authorizing Future Annexation") the annexation in the future of territory to CFD No. 2008-1, such territory designated as Future Annexation Area, Community Facilities District No. 2008-1 (the "Future Annexation Area"); and

**WHEREAS**, at this time the unanimous consent to the annexation of certain territory located within the Future Annexation Area to CFD No. 2008-1 has been received from the property owner of such territory, and such territory has been designated as Annexation No. 25 (the "Territory"); and

**WHEREAS**, less than twelve (12) registered voters have resided within the Territory for each of the ninety (90) days preceding the election date established for the Territory, therefore, pursuant to the Act the qualified elector of the Territory shall be the "landowner," as such term is defined in Government Code Section 53317(f), of such Territory and such landowner who is the owner of record as of the applicable election date, or the authorized representative thereof, shall have one vote for each acre or portion of an acre of the parcel of land that landowner owns within such Territory; and

**WHEREAS**, the time limit specified by the Act for conducting an election to submit the levy of the special taxes on the Territory to the qualified elector thereof and the requirements for impartial analysis and ballot arguments have been waived with the unanimous consent of the qualified elector of the Territory; and

**WHEREAS**, the City Clerk of the City of Milpitas has caused a ballot to be distributed to the qualified elector of the Territory, has received and canvassed such ballot and made a report to the City Council regarding the results of such canvass, a copy of which is attached as **Exhibit A** hereto and incorporated herein by this reference; and

**WHEREAS**, at this time the measure voted upon and such measure did receive the favorable vote of the qualified elector of the Territory, and the City Council desires to declare the results of the election; and

**WHEREAS**, a map showing the Territory and designated as Annexation Map No. 25 (the "Annexation Map"), a copy of which is attached as **Exhibit B** hereto and incorporated herein by this reference, has been submitted to this legislative body.

**NOW, THEREFORE**, the City Council of the City of Milpitas, California, acting as the legislative body of Community Facilities District No. 2008-1, hereby finds, determines and resolves as follows:

1. **Recitals.** The above recitals are true and correct.
2. **Findings.** This legislative body does hereby further determine as follows:
  - A. The unanimous consent as described in the recitals hereto to the annexation of the Territory to CFD No. 2008-1 has been given by the owner of the Territory and such consent shall be kept on file in the Office of the City Clerk of the City of Milpitas.
  - B. Less than twelve (12) registered voters have resided within the Territory for each of the ninety (90) days preceding the election date established for the each of the parcels located within the

Territory, therefore, pursuant to the Act the qualified elector for the Territory shall be the "landowner" of the Territory as such term is defined in Government Code Section 53317(f).

- C. The qualified elector of the Territory has voted in favor of the levy of special taxes on the Territory upon its annexation to CFD No. 2008-1.
3. Territory. The boundaries and parcels of property within the Territory and on which special taxes will be levied in order to pay for the costs and expenses of authorized Public Services are shown on the Annexation Map as submitted to and hereby approved by this legislative body.
4. Declaration of Annexation. This legislative body does hereby determine and declare that the Territory, and each parcel therein, is now added to and becomes a part of CFD No. 2008-1. The City Council, acting as the legislative body of CFD No. 2008-1, is hereby empowered to levy the authorized special tax within the Territory.
5. Notice. Immediately upon adoption of this Resolution, notice shall be given as follows:
- A. A copy of the Annexation Map as approved shall be filed in the Office of the County Recorder no later than fifteen (15) days after the date of adoption of this Resolution.
- B. An Amendment to the Notice of Special Tax Lien (Notice of Annexation) shall be recorded in the Office of the County Recorder no later than fifteen (15) days after the date of adoption of this Resolution.
6. Effective Date. This Resolution shall become effective upon its adoption.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Suzanne Guzzetta, City Clerk

\_\_\_\_\_  
Carmen Montano, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Mutalipassi, City Attorney

# EXHIBIT A

# CERTIFICATE OF ELECTION OFFICIAL AND STATEMENT OF VOTES CAST

[illegible]

The undersigned, ELECTION OFFICIAL OF THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DOES HEREBY CERTIFY that pursuant to the provisions of Section 53326 of the Government Code and Division 12, commencing with Section 17000 of the Elections Code of the State of California, I did canvass the returns of the votes cast at the

CITY OF MILPITAS  
COMMUNITY FACILITIES DISTRICT NO. 2008-1  
(PUBLIC SERVICES)  
SPECIAL ELECTION  
ANNEXATION NO. 25

held on the election date established for each parcel located within the territory included in Annexation No. 25.

I FURTHER CERTIFY that this Statement of Votes Cast shows the whole number of votes cast in the area proposed to be annexed to Community Facilities District No. 2008-1 for or against the Measure are full, true and correct.

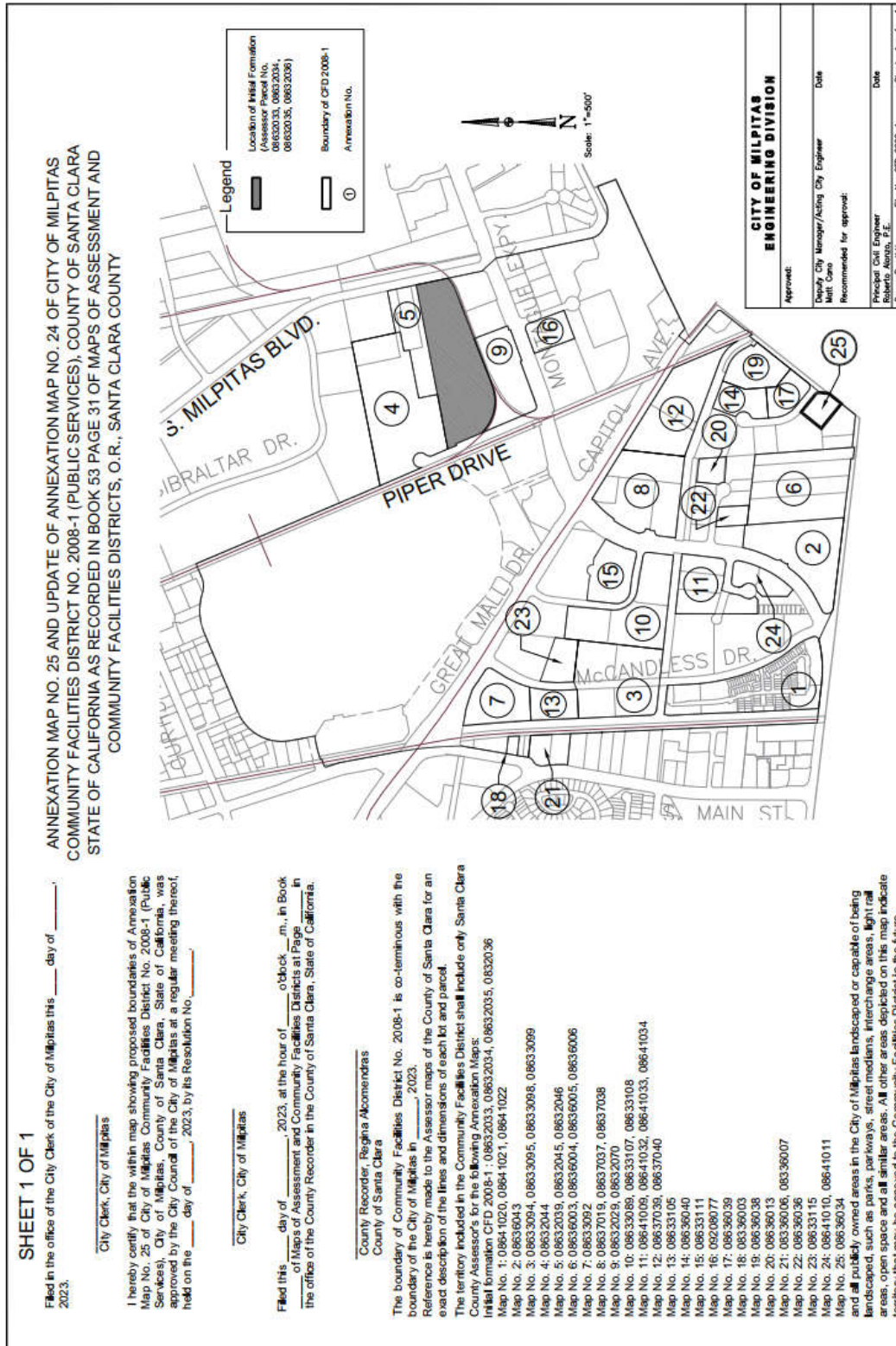
VOTES CAST ON PROPOSITION 1: YES \_\_\_\_\_  
NO \_\_\_\_\_

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SUZANNE GUZZETTA, CITY CLERK  
ELECTION OFFICIAL  
CITY OF MILPITAS  
OF THE STATE OF CALIFORNIA



EXHIBIT B  
ANNEXATION MAP



OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS FOR PUBLIC PURPOSES FOR OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

- EASEMENTS FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE).
- EASEMENTS FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE).
- EASEMENTS FOR PUBLIC SANITARY SEWER PURPOSES (SSE)

THE ABOVE MENTIONED EASEMENTS SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE AND PUBLIC UTILITY STRUCTURES AND THEIR APPURTENANCES, IRRIGATION SYSTEMS AND THEIR APPURTENANCES AND LAWFUL FENCES. UNOBSTRUCTED CONTINUOUS ACCESS SHALL BE MAINTAINED AT ALL TIMES.

THE UNDERSIGNED HEREBY DECLARES THAT THE PRIVATE STREETS ARE ESTABLISHED AS ACCESS WAYS FOR THE BENEFIT OF ALL THE CONDOMINIUM OWNERS WITHIN THIS SUBDIVISION, THEIR LICENSES, VISITORS AND TENANTS, BUT ARE NOT OFFERED FOR DEDICATION FOR PUBLIC USE. MAINTENANCE OF SAID PRIVATE STREETS IS TO BE THE RESPONSIBILITY OF THE HOMEOWNER'S ASSOCIATION OF TRACT 10592, ALL IN ACCORDANCE WITH THE COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs).

THE DESIGNATED PRIVATE STREETS ON THIS MAP IS NOT PART OF THE CITY OF MILPITAS STREET SYSTEM AND WILL NOT BE ACCEPTED FOR PUBLIC MAINTENANCE.

ALL WATER, SANITARY SEWER, AND STORM DRAIN UTILITIES WITHIN THE DISTINCTIVE BOUNDARY LINE OF THIS MAP ARE PRIVATELY OWNED AND MAINTAINED BY THE HOMEOWNER'S ASSOCIATION. ALL DRY UTILITIES (GAS, ELECTRIC, TELEPHONE, CABLE, ETC.) WITHIN THE DISTINCTIVE BOUNDARY LINE OF THIS MAP ARE OWNED AND MAINTAINED BY THE RESPECTIVE UTILITY COMPANY.

OWNER: KB HOME SOUTH BAY INC. A CALIFORNIA CORPORATION

BY: \_\_\_\_\_

NAME: PETER LEZAK

TITLE: VICE PRESIDENT

OWNER'S ACKNOWLEDGEMENT

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 \_\_\_\_\_ } SS.

COUNTY OF \_\_\_\_\_ }

ON \_\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, 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:

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

COMMISSION NO.: \_\_\_\_\_

COMMISSION EXPIRES: \_\_\_\_\_

CITY CLERK'S STATEMENT

I, SUZANNE GUZZETTA, CITY CLERK OF THE CITY OF MILPITAS, CALIFORNIA, HEREBY CERTIFY THAT SAID CITY COUNCIL, AS GOVERNING BODY OF SAID CITY AT A REGULAR MEETING HELD ON \_\_\_\_\_, HAS TAKEN THE FOLLOWING ACTIONS:

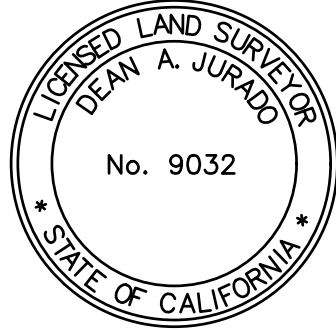
- APPROVED THIS TRACT MAP NO. 10592.
- ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC THOSE PARCELS OF LAND OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF OFFER OF DEDICATION TO WIT:
  - EASEMENTS FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE)
  - EASEMENTS FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE)
  - EASEMENTS FOR PUBLIC SANITARY SEWER PURPOSES (SSE)
- PURSUANT TO SECTION 66434(g) OF THE SUBDIVISION MAP ACT, THE FILING OF THIS MAP SHALL CONSTITUTE ABANDONMENT OF THE FOLLOWING:
  - PORTION OF AN EASEMENT SHOWN HEREON DEDICATED AND ACCEPTED ON THE PARCEL MAP – BOOK 431 OF MAPS AT PAGES 2–3, 10' PUBLIC SERVICES UTILITY EASEMENT (PSUE) ALONG TAROB COURT.
  - THAT PORTION OF TAROB COURT SHOWN HEREON THAT LIES WITHIN THE DISTINCTIVE BOUNDARY OF THIS SUBDIVISION. SAID PORTION OF TAROB COURT WAS DEDICATED AND ACCEPTED ON THE PARCEL MAP – BOOK 431 OF MAPS AT PAGES 2–3

DATED: \_\_\_\_\_ SUZANNE GUZZETTA  
CITY CLERK, CITY OF MILPITAS

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREIN MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_  
DEAN A. JURADO, PLS  
ACTING CITY SURVEYOR, CITY OF MILPITAS  
KIER & WRIGHT  
PLS NO. 9032



CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREIN MAP; THAT THE SUBDIVISION AS SHOWN THEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT THIS SUBDIVISION COMPLIES WITH PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES, APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

SIGNED: \_\_\_\_\_ DATE \_\_\_\_\_  
MATTHEW ALAN CANO, P.E.  
DEPUTY CITY MANAGER/ACTING CITY ENGINEER  
CITY OF MILPITAS  
R.C.E. NO. 65479

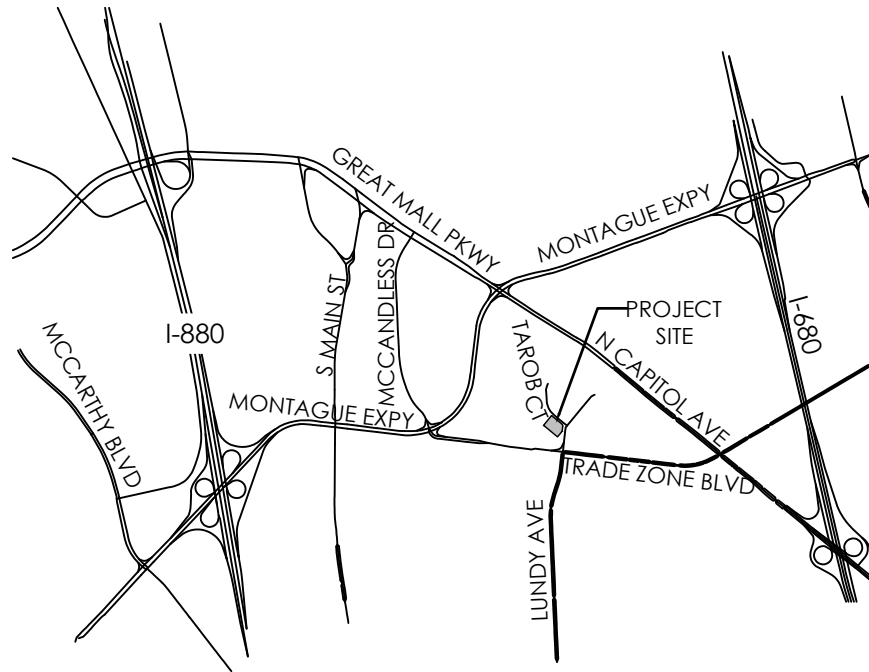


NOTES

- ALL CURVE DIMENSIONS SHOWN ARE ARC LENGTH AND DELTA, ALL DISTANCES SHOWN ARE GROUND DISTANCES AND ARE EXPRESSED IN FEET AND DECIMALS THEREOF.
- TOTAL AREA OF THIS SUBDIVISION CONTAINS 1.286± ACRES
- THE DISTINCTIVE BORDER LINE DELINEATES THE BOUNDARY OF LAND SUBDIVIDED BY THIS MAP.
- THERE IS A TOTAL OF 1 RESIDENTIAL LOT FOR 32 RESIDENTIAL CONDOMINIUM UNITS IN THIS SUBDIVISION.
- PROPOSED EASEMENT LINES ARE PARALLEL AND/OR PERPINDICULAR TO LOT LINES UNLESS SPECIFIED OTHERWISE ON THE MAP.
- SIDELINES OF THE PROPOSED 5' WIDE STRIP EASEMENTS EXTEND TO AND TERMINATE AT THE "PSUE, EVAE, PRSDE" SHOWN HEREIN AND TO THE FACE OF THE FUTURE CONSTRUCTED BUILDINGS.

GEOTECHNICAL NOTE

GEOTECHNICAL REPORTS ON THIS PROPERTY HAVE BEEN PREPARED BY CORNERSTONE EARTH GROUP DATED JULY 8, 2022, PROJECT NO. 172–16–2, SIGNED BY JOHN R. DYE, SAID REPORT HAS BEEN FILED WITH THE CITY OF MILPITAS.



VICINITY MAP  
N.T.S

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF KB HOME NORTH BAY, A DELAWARE LIMITED LIABILITY COMPANY, IN MARCH 2022. I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE DECEMBER 31, 2023; AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

RYAN M. SEXTON, P.L.S.  
L.S. NO. 9177

DATE \_\_\_\_\_



COUNTY RECORDER'S STATEMENT

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ AT \_\_\_\_\_, IN BOOK \_\_\_\_\_ OF MAPS, AT PAGES \_\_\_\_\_, AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY.

FEE: \$ \_\_\_\_\_

SERIES: \_\_\_\_\_

REGINA ALCOMENDRAS  
COUNTY RECORDER  
SANTA CLARA COUNTY, STATE OF CALIFORNIA

COUNTY CLERK RECORDER

TRACT MAP 10592  
2001 TAROB COURT  
FOR 32 RESIDENTIAL CONDOMINIUM UNITS

BEING A PORTION OF PARCEL 1 AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP", WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON NOVEMBER 28, 1978 IN BOOK 431 OF MAPS, AT PAGES 2 AND 3.  
CITY OF MILPITAS, STATE OF CALIFORNIA



AUGUST 2023

**WOOD ROGERS**  
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME  
4670 WILLOW ROAD, STE 125 TEL 925.847.1556  
PLEASANTON, CA 94588 FAX 925.847.1557

Sheet 1 of 3

JOB # 3266022

ABANDONMENT NOTES (SEE CITY CLERK'S STATEMENT ON SHEET 1)

1 PORTION OF AN EASEMENT SHOWN AND DEDICATED ON THE PARCEL MAP – BOOK 431 OF MAPS AT PAGES 2–3 FOR: PUBLIC SERVICE UTILITY EASEMENT. SAID PORTION ABANDONED PER THIS MAP.

LEGEND

|      |                                                                                                    |
|------|----------------------------------------------------------------------------------------------------|
| ●    | FOUND STANDARD CITY MONUMENT AS NOTED                                                              |
| ⊗    | SET SCRIBE IN CONCRETE CURB<br>OR 3/4" IRON PIPE TAGGED LS 9177<br>OR REBAR AND CAP TAGGED LS 9177 |
| M–M  | MONUMENT TO MONUMENT                                                                               |
| EVAE | EMERGENCY VEHICLE ACCESS EASEMENT                                                                  |
| PSUE | PUBLIC SERVICE AND UTILITY EASEMENT                                                                |
| SSE  | SANITARY SEWER EASEMENT                                                                            |
| C.L. | CENTERLINE                                                                                         |
| (OA) | OVERALL DISTANCE                                                                                   |
| (R)  | RADIAL LINE                                                                                        |
| SF   | SQUARE FEET                                                                                        |
| (1)  | RECORD REFERENCE                                                                                   |
| ---  | SUBDIVISION BOUNDARY                                                                               |
| ---  | LOT LINE                                                                                           |
| ---  | CITY LIMIT LINE                                                                                    |
| ---  | MONUMENT LINE                                                                                      |
| ---  | EXISTING EASEMENT LINE                                                                             |
| ---  | PROPOSED EASEMENT LINE                                                                             |
| ---  | C.L. 5' WIDE PSUE                                                                                  |

BASIS OF BEARINGS

THE BEARING NORTH 50°39'32" WEST BETWEEN FOUND MONUMENTS ON TAROB COURT AS SHOWN ON TRACT 10224 FILED NOVEMBER 7, 2014 IN BOOK 878 OF MAPS AT PAGES 1–9 WAS USED AS THE BASIS OF BEARINGS FOR THIS MAP.

REFERENCES

- (1) 518 MAPS 32–34 (PARCEL MAP)
- (2) 431 MAPS 2–3 (PARCEL MAP)
- (3) 878 MAPS 1–9 (TRACT 10224)
- (4) 913 MAPS 8–11 (TRACT 10421)
- (5) 926 MAPS 23–28 (TRACT 10455)
- (6) BOOK F 590 PAGE 140 (LOT LINE ADJUSTMENT)
- (7) 650 MAPS 25–26 (PARCEL MAP)

TRACT MAP 10592  
2001 TAROB COURT  
FOR 32 RESIDENTIAL CONDOMINIUM UNITS

BEING A PORTION OF PARCEL 1 AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP", WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON NOVEMBER 28, 1978 IN BOOK 431 OF MAPS, AT PAGES 2 AND 3. CITY OF MILPITAS, STATE OF CALIFORNIA

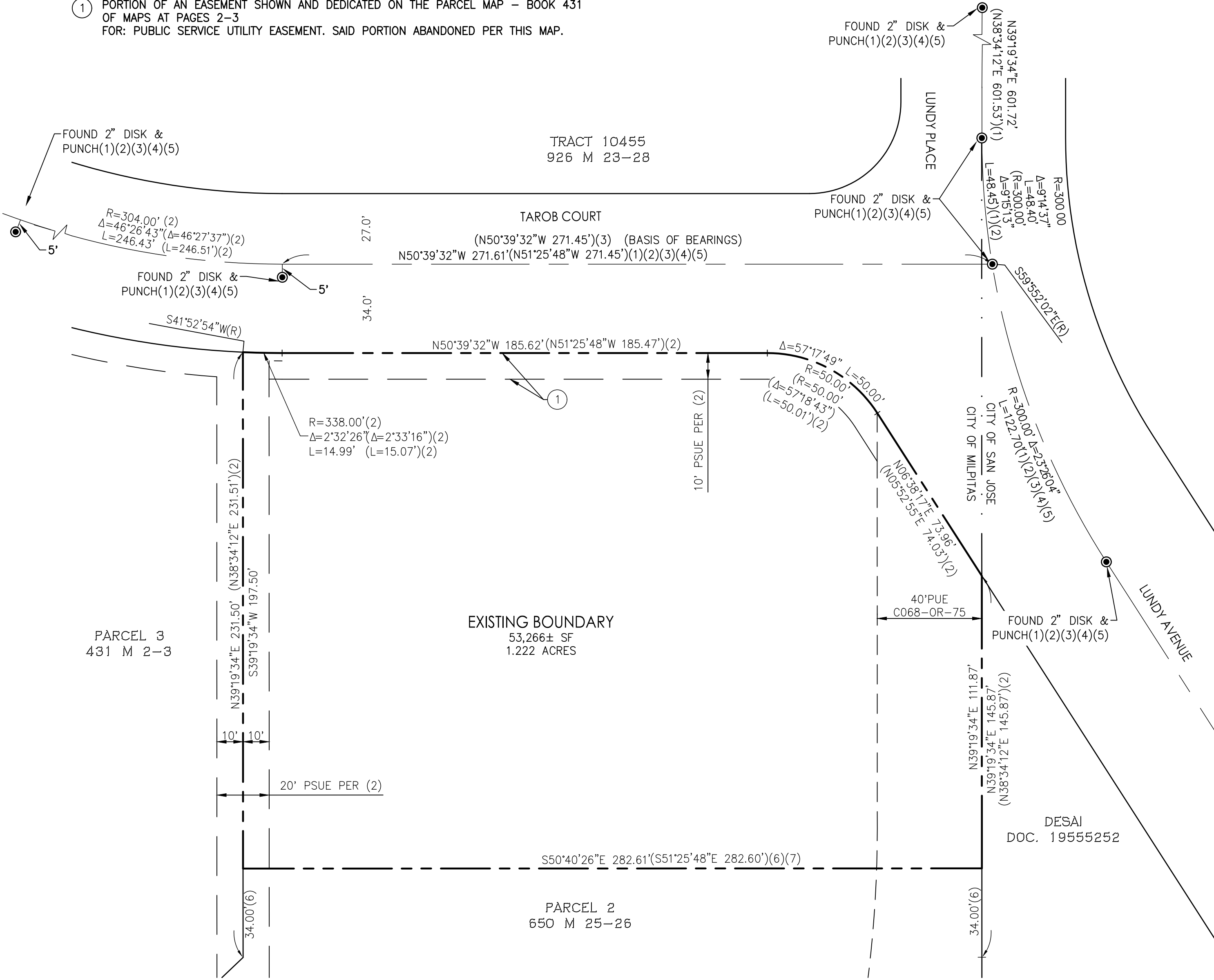
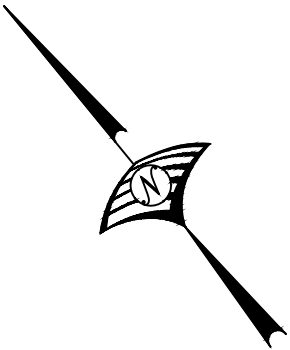
AUGUST 2023

**WOOD ROGERS**  
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME  
4670 WILLOW ROAD, STE 125 TEL 925.847.1556  
PLEASANTON, CA 94588 FAX 925.847.1557

Sheet 2 of 3

JOB # 3266022

0 15 30 60  
SCALE:1"= 30'









RECORDING REQUESTED BY:  
WHEN RECORDED RETURN TO:

CITY OF MILPITAS  
455 E. Calaveras Blvd  
MILPITAS, CA 95035  
ATTN: Engineering Department

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from recording fee, per Government Code  
Section 6103

CITY OF MILPITAS, CALIFORNIA

By: \_\_\_\_\_  
City Clerk

## **AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS**

**TRACT NO. 10592**

**Between**

**CITY OF MILPITAS**

**a California municipal corporation**

**and**

**KB Home South Bay INC.**

**a California Corporation**



**AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS  
TRACT MAP NO. 10592**

**I. PARTIES AND DATE.**

This Agreement for the Completion of Public Improvements ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the City of MILPITAS, a California municipal corporation ("City") and KB Home South Bay INC., a California Corporation with its principal office located at 10990 Wilshire Boulevard, 7<sup>th</sup> floor, Los Angeles, CA 90024 ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**II. RECITALS.**

A. On November 2, 2018, The True Life Companies (TTLC TAROB 4, LLC) submitted to City an application for approval of a vesting tentative map for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"). The vesting tentative map was prepared on behalf of The True Life Companies by Wood Rodgers, and is identified in City records as Vesting Tentative Map No. 10592 ("Tract No. 10592").

B. Developer's application for a vesting tentative tract map for Tract No. 10592 was deemed complete on September 23, 2021, On January 18, 2022, the Developer's application for a vesting tentative map for Tract No. 10592 was conditionally approved by the MILPITAS CITY COUNCIL.

C. On August 31, 2022 an assignment and assumption agreement and bill of sale was made between TTLC Tarob 4 LLC and KB Home South Bay Inc. The agreement and bill of sale transferred all of TTLC Tarob 4 LLC's rights, title and interests in the Property to KB Home South Bay Inc.

D. Developer has not completed all of the work or made all of the public improvements required by Title XI, Chapter 1, Section 7 of the City's municipal code, the Subdivision Map Act (Government Code sections 66410 *et seq.*) ("Map Act"), the conditions of approval for Tract No. 10592, or other ordinances, resolutions, or policies of City requiring construction of public improvements in conjunction with the subdivision of land.

E. Pursuant to Section XI, Chapter 1, Section 17 of the City's municipal code and the applicable provisions of the Map Act, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for Tract No. 10592.

F. Developer's execution of this Agreement and the provision of the security are made in consideration of City's approval of the final map for Tract No. 10592.

### III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until all three of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement; (b) Developer executes and records this Agreement in the Recorder's Office of the County of SANTA CLARA and (c) the City Council of the City ("City Council") approves the final map for Tract No. 10592. If the above described conditions are not satisfied within 60 days after the entry date of this Agreement, this Agreement shall automatically terminate without need of further action by either City or Developer, and Developer may not thereafter record the final map for Tract No. 10592.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of Tract No. 10592, including, but not limited to, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for Tract Map No. 10592. This includes the water main replacement within the easement on site, which will be subject to a separate reimbursement agreement ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B," which is attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. The Developer shall be responsible for the replacement, relocation, or removal of any component of any irrigation water system in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such water system. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 Prior Partial Construction of Public Improvements. Where construction of any Public Improvements has been partially completed prior to this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

2.2 Permits; Notices; Utility Statements. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility which will provide utility service to the Property, attesting that Developer has made all deposits legally required by each utility for the extension and provision of utility service to the Property.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans and specifications for such Public Improvement have been submitted to and approved by the City Engineer, or his or her designee.



Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Public Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements in Exhibit "B" are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of Public Improvements and Landscaping. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted by City pursuant to Section 11.0. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do

all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4.0 Construction Schedule. Unless extended pursuant to this Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within one (1) year of the effective date of this Agreement, unless extended pursuant to Section 4.1.

4.1 Extensions. City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. It is understood that by providing the security required under Section 13.0 et seq. of this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waives any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defense of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates established by City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

5.0 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements or development of Tract No. 10592 shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements, including City's grading regulations. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in Sections 11.0 and 13.0 et seq. of this Agreement.

6.0 Utilities. Developer shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within Tract No. 10592 in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground.

7.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to, all plan check, design review, engineering, inspection, and other service fees, and any impact or connection fees established by City ordinance, resolution, regulation, or policy, or as established by City relative to Tract No. 10592.

8.0 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

9.0 Default; Notice; Remedies.

9.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs expenses as provided for in Section 10.0 of this Agreement.

9.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

9.3 Other Remedies. No action by City pursuant to Section 9.0 *et seq.* of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

10.0 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

11.0 Acceptance of Improvements by City Council; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete and reduce the requirement Security amount pursuant to Section 13.0 et seq., which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office of the County of SANTA CLARA a notice of completion for the accepted Public Improvements in accordance with California Civil Code section 9204, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor. If Tract No. 10592 was approved and recorded as a single phase map, City shall not accept any one or more of the improvements until all of the Public Improvements are completed by Developer and approved by City. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

12.0 Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the Public Improvements and acceptance of them by the City Council ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and subject to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following the City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

**13.0      Improvement Security; Surety Bonds.** Prior to this Agreement taking effect as set forth in Section 1.0 above, Developer shall provide City with surety bonds in the amounts and under the terms set forth below ("Security"). The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this provision (Section 13.0 et seq.) shall in no way limit or modify Developer's indemnification obligation provided in Section 16.0 of this Agreement.

**13.1      Performance Bond.** To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 9.0 et seq. of this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City a faithful performance bond in the amount of Three Hundred Twenty Nine Thousand Dollars (\$329,000), and separate bond for the City water main replace in the amount of One Hundred Forty Nine Thousand Dollars (\$149,000) which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City Council may, in its sole and absolute discretion and upon recommendation of the City Engineer, partially release a portion or portions of the security provided under this section as portions of the Public Improvements are completed and accepted by the City Council, provided that Developer is not in default on any provision of this Agreement or condition of approval for Tract No. 10592, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 12.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for Tract No. 10592.

**13.2      Labor & Material Bond.** To secure payment to the contractors, subcontractors, laborers, material men, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City a labor and materials bond in the amount of Three Hundred Twenty Nine Thousand Dollars (\$329,000) and separate bond for the City water main replace in the amount of One Hundred Forty Nine Thousand Dollars (\$149,000), which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of the City Engineer after six (6) months from the date City accepts the final Public Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

**13.3      Additional Requirements.** The surety for any surety bonds provided as Security shall have a current A.M. Best's rating of no less than A:VIII, shall be licensed to do business in California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, the Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by City in enforcing the obligations of this Agreement. The Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the

Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

13.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C," unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

14.0 Lien. To secure the timely performance of Developer's obligations under this Agreement, including those obligations for which security has been provided pursuant to Sections 13 et seq. and 14 of this Agreement, Developer hereby creates in favor of City a lien against all portions of the Property not dedicated to City or some other governmental agency for a public purpose. As to Developer's default on those obligations for which security has been provided pursuant to Sections 13 et seq. and 14 of this Agreement, City shall first attempt to collect against such security prior to exercising its rights as a contract lienholder under this section.

15.0 Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of Agency as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

15.1 Public Works Determination. Developer has been alerted to the requirements of California Labor Code section 1770 et seq., including, without limitation S.B. 975, which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

16.0 Insurance.

16.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

16.1.1 General Liability. Developer and its contractors shall procure and maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.

16.1.2 Business Automobile Liability. Developer and its contractors shall procure and maintain business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

16.1.3 Workers' Compensation. Developer and its contractors shall procure and maintain workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than \$1,000,000 per occurrence, at all times during which insured retains employees.

16.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Public Improvements, liability insurance for errors and omissions with limits not less than \$1,000,000 per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Public Improvements. Such insurance shall be endorsed to include contractual liability.

16.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

16.3 Additional Insured; Separation of Insureds. The Required Insurance shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

16.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, agents, and volunteers. All policies for the Required Insurance shall

provide that the insurance company waives all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.

16.5 Certificates; Verification. Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

16.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on 30 days prior written notice to City.

16.7 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A:VIII.

17.0 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer and its surety. Developer and its surety shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

18.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, any map related to Tract No. 10592, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

#### 19.0 General Provisions.

19.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

19.2 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

19.3 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any



term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

19.4 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

**CITY OF MILPITAS**  
455 E. Calaveras Blvd  
MILPITAS, CA 92236  
Attn: Matt Cano, PE

**DEVELOPER:**  
KB Home South Bay INC.  
10990 Wilshire Blvd, Suite 700  
Los Angeles, CA 90024  
Attn: Peter Lezak

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

19.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

19.6 Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution or performance of the Public Improvements or this Agreement.

19.7 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement.

19.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

19.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

19.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

19.11 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of SANTA CLARA, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

19.12 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs, which shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (a) post judgment motions and appeals, (b) contempt proceedings, (c) garnishment, levy, and debtor and third party examination, (d) discovery, and (e) bankruptcy litigation. This section shall survive the termination or expiration of this Agreement.

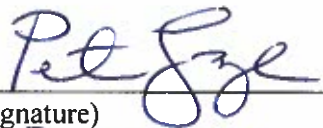
19.13 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.



**CITY OF MILPITAS**

By: \_\_\_\_\_  
Ned Thomas  
Acting City Manager  
City of MILPITAS

**KB Home South Bay, INC.**

By: \_\_\_\_\_  
(signature)   
PETER LEZAK  
(print name)  
VICE PRESIDENT  
(title)

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Michael Mutalipassi  
City Attorney  
City of MILPITAS

**APPROVED AS TO CONTENT:**

By: \_\_\_\_\_  
Lauren Lai, CPA, MPA  
Finance Director/Risk Manager  
City of MILPITAS

**APPROVED AS TO SUFFICIENCY:**

By: \_\_\_\_\_  
Matt Cano, PE  
Deputy City Manager/Acting City Engineer  
City of MILPITAS

**NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

## All Capacity 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 Contra Costa

On June 20, 2023, before me, Sara L Robbins, Notary Public, personally appeared Peter Lerak, 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.



Ema L Robles

**Signature of Notary Public**

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**CAPACITY CLAIMED BY SIGNER****DESCRIPTION OF ATTACHED DOCUMENT**

Individual  
Corporate Officer

| Title(s) |
|----------|
|----------|

Title or Type of Document

|             |         |
|-------------|---------|
| Partner (s) | Limited |
|             | General |

Number of Pages

Attorney-In-Fact  
Trustee(s)  
Guardian/Conservator  
Other:

Date of Document

**Signer is representing:**  
**Name Of Person(s) Or Entity(ies)**

**Signer(s) Other Than Named Above**

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROPERTY**  
**TRACT NO. 10592**

**LEGAL DESCRIPTION**

Real property in the City of Milpitas , County of Santa Clara, State of California, described as follows:

PARCEL 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON NOVEMBER 28, 1978 IN BOOK 431 OF MAPS, AT PAGES 2 AND 3.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF LOT 1 AS SHOWN UPON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 431 OF MAPS AT PAGES 2 AND 3, RECORDS OF SANTA CLARA COUNTY; THENCE NORTH 38° 34' 12" EAST ALONG THE NORTHWESTERLY LINE OF SAID LOT 1 A DISTANCE OF 34.00 FEET; THENCE SOUTH 51° 25' 48" EAST AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOT 1, A DISTANCE OF 282.60 FEET TO A POINT IN THE SOUTHEASTERLY LINE THEREOF; THENCE SOUTH 38° 34' 12" WEST ALONG THE LAST MENTIONED SOUTHEASTERLY LINE A DISTANCE OF 34.00 FEET TO THE MOST SOUTHERLY CORNER THEREOF; THENCE NORTH 51° 25' 48" WEST ALONG THE SOUTHWESTERLY LINE OF SAID LOT 1 A DISTANCE OF 282.60 FEET TO THE POINT OF BEGINNING, AS SET FORTH IN RESOLUTION APPROVING LOT LINE ADJUSTMENT, RECORDED SEPTEMBER 18, 1980 IN BOOK F590 PAGE 140, OFFICIAL RECORDS.

APN: 086-36-034

**EXHIBIT "B"**  
**LIST OF PUBLIC IMPROVEMENTS**  
**TRACT NO. 10592**



Prepared: S. Vangari  
5/17/2023

**Tarob Court**  
**Tract 10592 - 2001 Tarob Court**  
**32 Condominium Units (2 Buildings) 1.28 +/- Acres**  
**Preliminary Engineer's Bond Estimate**  
**Milpitas, California**

| ITEM NO                                   | DESCRIPTION                                                     | QUANTITY | UNIT | UNIT PRICE  | TOTAL           |
|-------------------------------------------|-----------------------------------------------------------------|----------|------|-------------|-----------------|
| <b>1. Demo</b>                            |                                                                 |          |      |             |                 |
|                                           | 1. Remove Existing Curb & Gutter                                | 360      | LF   | \$20.00     | \$7,200         |
|                                           | 2. Sawcut & Remove Existing Pavement                            | 11,060   | SF   | \$2.00      | \$22,120        |
|                                           | 3. Remove existing 12"W                                         | 280      | LF   | \$50.00     | \$14,000        |
|                                           | <b>Demo Subtotal</b>                                            |          |      |             | <b>\$43,320</b> |
| <b>2. Earthwork &amp; Erosion Control</b> |                                                                 |          |      |             |                 |
|                                           | 1. Fine Grading                                                 | 13,000   | SF   | \$0.50      | \$6,500         |
|                                           | 2. Erosion Control                                              | 0.30     | AC   | \$15,000.00 | \$4,477         |
|                                           | <b>Earthwork &amp; Erosion Control Subtotal</b>                 |          |      |             | <b>\$10,977</b> |
| <b>3. Street Work</b>                     |                                                                 |          |      |             |                 |
|                                           | 1. 5" Asphalt Concrete with 13" Aggregate Base                  | 6,450    | SF   | \$10.00     | \$64,500        |
|                                           | 2. Signing and Striping                                         | 1        | LS   | \$2,000.00  | \$2,000         |
|                                           | <b>Street Work Subtotal</b>                                     |          |      |             | <b>\$66,500</b> |
| <b>4. Concrete</b>                        |                                                                 |          |      |             |                 |
|                                           | 1. Vertical Curb & Gutter                                       | 390      | LF   | \$20.00     | \$7,800         |
|                                           | 2. 5' Sidewalk                                                  | 1,350    | SF   | \$4.00      | \$5,400         |
|                                           | 3. Driveway                                                     | 2        | EA   | \$5,000.00  | \$10,000        |
|                                           | <b>Concrete Subtotal</b>                                        |          |      |             | <b>\$23,200</b> |
| <b>5. Water</b>                           |                                                                 |          |      |             |                 |
|                                           | 1. 8" Recycled Water Pipe (including all appurtenances)         | 310      | LF   | \$60.00     | \$18,600        |
|                                           | 2. 8" Potable Water Pipe (including all appurtenances)          | 36       | LF   | \$60.00     | \$2,160         |
|                                           | 3. 12" Potable Water Pipe (including all appurtenances)         | 280      | LF   | \$90.00     | \$25,200        |
|                                           | 4. Connection to Existing Water                                 | 5        | EA   | \$5,000.00  | \$25,000        |
|                                           | 5. 1-1/2" Irrigation Service Pipe (including all appurtenances) | 90       | LF   | \$20.00     | \$1,800         |
|                                           | 6. 1-1/2" Irrigation Service Connection to Existing Water       | 2        | EA   | \$2,000.00  | \$4,000         |
|                                           | 7. Fire Hydrant                                                 | 2        | EA   | \$4,600.00  | \$9,200         |
|                                           | <b>Water Subtotal</b>                                           |          |      |             | <b>\$85,960</b> |
| <b>6. Storm Drain</b>                     |                                                                 |          |      |             |                 |
|                                           | 1. 15" Drain Pipe                                               | 40       | LF   | \$50.00     | \$2,000         |
|                                           | 2. Catch Basin                                                  | 1        | EA   | \$2,500.00  | \$2,500         |
|                                           | 3. Connect to Existing Storm Drain with Manhole                 | 1        | EA   | \$6,000.00  | \$6,000         |
|                                           | <b>Storm Drain Subtotal</b>                                     |          |      |             | <b>\$10,500</b> |
| <b>7. Sewer</b>                           |                                                                 |          |      |             |                 |
|                                           | 1. 8" Sewer Pipe                                                | 50       | LF   | \$60.00     | \$3,000         |
|                                           | 2. Sewer Manhole                                                | 1        | EA   | \$6,000.00  | \$6,000         |
|                                           | 3. Connect to existing sewer manhole                            | 1        | EA   | \$4,000.00  | \$4,000         |
|                                           | <b>Sewer Subtotal</b>                                           |          |      |             | <b>\$13,000</b> |



Prepared: S. Vangari  
5/17/2023

| ITEM NO                                      | DESCRIPTION                                        | QUANTITY | UNIT | UNIT PRICE | TOTAL            |
|----------------------------------------------|----------------------------------------------------|----------|------|------------|------------------|
| <b>8. Street Lighting &amp; Joint Trench</b> |                                                    |          |      |            |                  |
| 1. Street Lights                             |                                                    | 2        | EA   | \$7,000.00 | \$14,000         |
|                                              | <b>Street Lighting &amp; Joint Trench Subtotal</b> |          |      |            | <b>\$14,000</b>  |
| <b>9. Landscape &amp; Irrigation</b>         |                                                    |          |      |            |                  |
| 1. Landscape & Irrigation                    |                                                    | 1,875    | SF   | \$8.00     | \$15,000         |
| 2. Street Trees                              |                                                    | 8        | EA   | \$350.00   | \$2,800          |
|                                              | <b>Landscape &amp; Irrigation Subtotal</b>         |          |      |            | <b>\$17,800</b>  |
|                                              | <b>OFF SITE SUBTOTAL COST</b>                      |          |      |            | <b>\$285,257</b> |
|                                              | 10% Contingency                                    |          |      |            | \$28,526         |
|                                              | Mobilization (5% of Subtotal Cost)                 |          |      |            | \$14,263         |
|                                              | <b>BOND ESTIMATE OFF SITE TOTAL COST</b>           |          |      |            | <b>\$328,045</b> |

Prepared: K. Mosca  
5/17/2023

**Lundy Place**  
**Tract 10592 - 2001 Tarob Court**  
**32 Condominium Units (2 Buildings) 1.28 +/- Acres**  
**Preliminary Engineer's Bond Estimate**  
**Milpitas, California**

| ITEM NO                                          | DESCRIPTION                                       | QUANTITY | UNIT | UNIT PRICE  | TOTAL           |
|--------------------------------------------------|---------------------------------------------------|----------|------|-------------|-----------------|
| <b><u>1. Demo</u></b>                            |                                                   |          |      |             |                 |
| 1.                                               | Remove Existing Curb & Gutter                     | 100      | LF   | \$20.00     | \$2,000         |
| 2.                                               | Sawcut & Remove Existing Pavement                 | 780      | SF   | \$2.00      | \$1,560         |
|                                                  | Remove any existing water line and facilities per |          |      |             |                 |
| 3.                                               | improvement plans                                 | 1        | LS   | \$1,500.00  | \$1,500         |
|                                                  | <b>Demo Subtotal</b>                              |          |      |             | <b>\$5,060</b>  |
| <b><u>2. Earthwork &amp; Erosion Control</u></b> |                                                   |          |      |             |                 |
| 1.                                               | Fine Grading                                      | 1,700    | SF   | \$0.50      | \$850           |
| 2.                                               | Erosion Control                                   | 0.04     | AC   | \$15,000.00 | \$585           |
|                                                  | <b>Earthwork &amp; Erosion Control Subtotal</b>   |          |      |             | <b>\$1,435</b>  |
| <b><u>3. Street Work</u></b>                     |                                                   |          |      |             |                 |
| 1.                                               | Full Depth AC                                     | 200      | SF   | \$15.00     | \$3,000         |
| 2.                                               | Grind & Overlay                                   | 3,320    | SF   | \$0.25      | \$830           |
| 3.                                               | Signing and Striping                              | 1        | LS   | \$2,000.00  | \$2,000         |
|                                                  | <b>Street Work Subtotal</b>                       |          |      |             | <b>\$5,830</b>  |
| <b><u>4. Concrete</u></b>                        |                                                   |          |      |             |                 |
| 1.                                               | Vertical Curb & Gutter                            | 100      | LF   | \$20.00     | \$2,000         |
| 2.                                               | 5' Sidewalk                                       | 570      | SF   | \$4.00      | \$2,280         |
| 3.                                               | Driveway                                          | 1        | EA   | \$5,000.00  | \$5,000         |
|                                                  | <b>Concrete Subtotal</b>                          |          |      |             | <b>\$9,280</b>  |
| <b><u>5. Sewer</u></b>                           |                                                   |          |      |             |                 |
| 1.                                               | Adjust Manhole to Grade                           | 1        | EA   | \$2,000.00  | \$2,000         |
|                                                  | <b>Sewer Subtotal</b>                             |          |      |             | <b>\$2,000</b>  |
| <b><u>6. Landscape &amp; Irrigation</u></b>      |                                                   |          |      |             |                 |
| 1.                                               | Landscape & Irrigation                            | 458      | SF   | \$8.00      | \$3,664         |
| 2.                                               | Street Trees                                      | 2        | EA   | \$350.00    | \$700           |
|                                                  | <b>Landscape &amp; Irrigation Subtotal</b>        |          |      |             | <b>\$4,364</b>  |
|                                                  | <b>OFF SITE SUBTOTAL COST</b>                     |          |      |             | <b>\$27,969</b> |
|                                                  | 10% Contingency                                   |          |      |             | \$2,797         |
|                                                  | Mobilization (5% of Subtotal Cost)                |          |      |             | \$1,398         |
|                                                  | <b>BOND ESTIMATE OFF SITE TOTAL COST</b>          |          |      |             | <b>\$32,165</b> |

Prepared: S. Vangari  
8/24/2023

**Tarob Court**  
**Tract 10592 - 2001 Tarob Court**  
**32 Condominium Units (2 Buildings) 1.28 +/- Acres**  
**Preliminary Engineer's Bond Estimate For Replacement of Existing 12" Waterline**  
**Milpitas, California**

| ITEM NO                               | DESCRIPTION                                         | QUANTITY | UNIT | UNIT PRICE  | TOTAL            |
|---------------------------------------|-----------------------------------------------------|----------|------|-------------|------------------|
| <b><u>1. Demo &amp; Potholing</u></b> |                                                     |          |      |             |                  |
| 1.                                    | Pothole                                             | 2        | EA   | \$1,900.00  | \$3,800          |
| 2.                                    | OCIP Premium                                        | 1        | LS   | \$6,800.00  | \$6,800          |
| 3.                                    | Remove Ex 12" Waterline                             | 1        | LS   | \$6,200.00  | \$6,200          |
| 4.                                    | Dispose of Ex ACP 12" Water Line                    | 200      | LF   | \$173.00    | \$34,600         |
|                                       | <b>Demo Subtotal</b>                                |          |      |             | <b>\$51,400</b>  |
| <b><u>2. Water</u></b>                |                                                     |          |      |             |                  |
| 1.                                    | 12" PVC Potable Water (including all appurtenances) | 200      | LF   | \$203.00    | \$40,600         |
| 2.                                    | Pressure & Bac T Testing                            | 1        | LS   | \$8,200.00  | \$8,200          |
| 3.                                    | Connection to Existing ACP Water                    | 2        | EA   | \$14,500.00 | \$29,000         |
|                                       | <b>Water Subtotal</b>                               |          |      |             | <b>\$77,800</b>  |
|                                       | <b>OFF SITE SUBTOTAL COST</b>                       |          |      |             | <b>\$129,200</b> |
|                                       | 10% Contingency                                     |          |      |             | \$12,920         |
|                                       | Mobilization (5% of Subtotal Cost)                  |          |      |             | \$6,460          |
|                                       | <b>BOND ESTIMATE WATER REPLACEMENT TOTAL COST</b>   |          |      |             | <b>\$148,580</b> |





August 2, 2023

Peter Lezak  
Vice President Forward Planning  
**KB Home – South Bay Division**  
5000 Executive Parkway, Suite 125  
San Ramon, CA 94583

**Re: 2001 Tarob Ct. Milpitas, CA – Existing Waterline Replacement  
Proposal/Contract for Professional Services**

Dear Peter,

Wood Rodgers is pleased to provide this proposal to provide engineering and surveying services for Replacement of the existing 12" waterline at the 2001 Tarob Ct project in the City of Milpitas, CA.

Details of our project understanding, and assumptions are as follows:

**General Project - Assumptions and Understanding**

1. Existing 12-inch waterline to be replace is 200± LF, located in and existing Public Utility Easement along Lundy Place.
2. The depth and location of the waterline is shown on the approved Tentative Map and is based on As-built plans received from the City of Milpitas.

Our scope of work and estimated fee, based on the assumptions and understanding above is as follows:

**SCOPE OF WORK**

**ESTIMATED FEE**

**I. ENGINEERING**

- |                                                                                                                                                                                                                          |            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| A. Due Diligence                                                                                                                                                                                                         | \$1,500 LS |
| 1. Coordination with City of Milpitas & City of San Jose for required plans & permits.                                                                                                                                   |            |
| B. Improvement Plans – City of Milpitas                                                                                                                                                                                  | \$8,000 LS |
| 1. Prepare one set Improvement Plans for the existing 12" waterline replacement in conformance with the City of Milpitas Requirements. Plans to be submitted to the City Engineering Department for review and approval. |            |
| a. Title Sheet, General Notes and Details                                                                                                                                                                                |            |
| b. Demolition Plan                                                                                                                                                                                                       |            |
| c. Plan/Profile (showing the existing & proposed finished grade and waterline information)                                                                                                                               |            |

**Waterline Relocation - 2001 Tarob Ct, Milpitas, CA**  
 August 2, 2023  
 Page 2 of 5

|                                                                                                                                                                                                                                   |                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| C. City of San Jose Compliance/Approval                                                                                                                                                                                           | \$1,000 LS                   |
| a. Submit improvement plans to City of San Jose for review and compliance letter.                                                                                                                                                 |                              |
| D. Bond Estimates                                                                                                                                                                                                                 | \$1,000 LS                   |
| 1. Prepare a bond estimate based on first plan check submittal, revise as requested by City and Client during plan review process.                                                                                                |                              |
| E. Additional Plan Check Processing (beyond 3 <sup>rd</sup> Plan Check)                                                                                                                                                           | \$2,000 T&M                  |
| <b>TOTAL FINAL ENGINEERING ESTIMATED FEE</b>                                                                                                                                                                                      | <b>\$13,500 T&amp;M / LS</b> |
| <b>II. SUPPORT SERVICES</b>                                                                                                                                                                                                       |                              |
| A. Engineering Support - Provide engineering support as requested by the Client during plan review and processing. Support may include the following on a time and material basis.                                                | \$1,500 T&M                  |
| 1. Meetings or teleconferences with Client, City and/or other project Consultants as requested by Client.                                                                                                                         |                              |
| 2. Perform tasks and prepare exhibits.                                                                                                                                                                                            |                              |
| 3. Coordination with other professionals                                                                                                                                                                                          |                              |
| B. Construction Support - Provide office and field engineering support during bidding and construction including the following on a time and material basis;                                                                      | \$ 1,000 T&M                 |
| 1. Respond to contractor questions during bidding.                                                                                                                                                                                |                              |
| 2. Prepare miscellaneous exhibits for Construction Support as requested by the client.                                                                                                                                            |                              |
| 3. Provide construction support; attend pre-job and field meetings.                                                                                                                                                               |                              |
| C. As Built Drawings                                                                                                                                                                                                              | \$1,000 LS                   |
| 1. Provide record drawings to City upon completion of construction.                                                                                                                                                               |                              |
| <b>TOTAL SUPPORT SERVICES ESTIMATED FEE</b>                                                                                                                                                                                       | <b>\$3,500 T&amp;M/LS</b>    |
| <b>III. CONSTRUCTION SURVEYING</b>                                                                                                                                                                                                |                              |
| A. On-Site Construction Staking - Provide one (1) set of construction stakes for each of the following phases of construction. Our budget assumes the number of mobilizations shown below for a total of no more than 2 move-ins. | \$2,500 LS                   |
| 1. 12" Waterline                                                                                                                                                                                                                  |                              |
| B. Miscellaneous Staking/Re-Staking                                                                                                                                                                                               | \$1,500 T&M                  |
| 1. Provide record drawings to City upon completion of construction.                                                                                                                                                               |                              |
| <b>TOTAL SUPPORT SERVICES ESTIMATED FEE</b>                                                                                                                                                                                       | <b>\$4,000 T&amp;M/LS</b>    |
| <b>TOTAL ESTIMATE FEE</b>                                                                                                                                                                                                         | <b>\$21,000 T&amp;M / LS</b> |

The estimated fees are based on negotiated rates to be utilized for the scope of work and budgets identified above. The estimate fees and rates are confidential, and client will not disclose.

**Waterline Relocation - 2001 Tarob Ct, Milpitas, CA**

August 2, 2023

Page 3 of 5

We propose to perform the above-identified scope of work on a lump sum (LS) or time & material (T&M) basis for a total estimated fee of \$21,000 subject to the following conditions:

**CONDITIONS**

1. Any scope of work completed after December 31, 2023 may be subject to cost of living increases. The client will pay all agency plan check, inspection, permit and application fees.
2. SWPPP / NPDES preparation, permitting, monitoring and record keeping is assumed performed by others.
3. The Client shall be responsible for gathering and providing the necessary documents including but not limited to environmental, geotechnical reports and paying all agency fees.
4. The client will provide additional technical reports not included in the scope of work identified above including acoustical, biological surveys and geotechnical reports with pavement, foundation, percolation, groundwater, and earthwork recommendations as required by the agencies.
5. This proposal does not include any environmental consulting services that may be necessary for this development.
6. Any cost estimate prepared represents preliminary amounts that are subject to change. Wood Rodgers, Inc. will not assume responsibility for the use of these costs in budget analysis or be held liable for potential development cost increases associated with the development of this.
7. This proposal does not include preparation of off-site storm, sewer or water studies.
8. Client agrees that the T&M estimated costs provided herein are estimates only, that Wood Rodgers work will be performed on a time & materials basis, and that various contract scope line items included herein may be either exceeded or reduced by actual billing, based on the work requested and / or performed.
9. Reimbursable cost (printing and travel) is not included in the above fee estimate and will be charged on a time and material basis.

I trust this proposal is in sufficient detail to meet your needs. I have enclosed Exhibit A our standard invoicing, payment and liability policies/contract and Exhibit B our standard hourly rate schedule for time and material work. I would like to thank you for the opportunity to provide the requested professional services. Should you have any questions, please do not hesitate to call.

Sincerely,

**WOOD RODGERS, INC**

Karrie Mosca, PE 60815  
Vice President

**WOOD RODGERS, INC. INVOICING PAYMENT & LIABILITY POLICIES**

1. "Reimbursable expenses", including, but not limited to, mileage, blueprints, and reproduction are not included in proposal costs unless specifically identified in the scope of work. Such costs shall be billed at the stated mileage rate or vendor invoice.
2. Invoices are submitted monthly by Wood Rodgers, Inc. Client shall notify Wood Rodgers, Inc. in writing of any and all objections, if any, to an invoice within thirty (30) days of the invoice date. Otherwise, the invoice shall be deemed proper and accepted by the Client. Amounts invoiced are due and payable upon receipt. Client's account shall be considered delinquent if Wood Rodgers, Inc. does not receive full payment within forty-five (45) days after the invoice date.
3. A service charge shall be applied to delinquent accounts at the rate of 1.5% per month. Payment thereafter shall be applied first to accrued interest and then to unpaid principal. Client shall pay all costs and expenses, including without limitation, reasonable attorney's fees, incurred by Wood Rodgers, Inc. in connection with collection of delinquent accounts of Client.
4. If a delinquency occurs, Wood Rodgers, Inc. may choose to suspend work upon ten (10) days written notice to Client. Wood Rodgers, Inc. shall recommence work once such delinquency is completely cured and any and all attendant collection costs, fees, or other amounts required to be paid by Client under this contract are paid in full. If a delinquency by Client occurs and Wood Rodgers, Inc. chooses not to suspend work, no waiver or estoppel shall be implied. Client agrees and understands that if Wood Rodgers, Inc. suspends its work pursuant to this paragraph, Wood Rodgers, Inc. shall not be liable for any costs or damages, including but not limited to delay and consequential damages, to the Client, other owner of the property where such work is being performed, or any other third party, that may arise from or be related to such work suspension. Client agrees to indemnify and hold Wood Rodgers, Inc. harmless from and against any and all damages, costs, attorney's fees, and/or other expenses which Wood Rodgers, Inc. may incur as a result of any claim by any person or entity arising out of such suspension of work.
5. When non-standard billing is requested by Client, time spent by office administrative personnel in preparation of such billing shall be considered an extra cost to the project and shall be billed as such.
6. In providing services under this Agreement, Wood Rodgers, Inc. will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
7. Client and Wood Rodgers, Inc. recognize the risks, rewards, and benefits of the project and Wood Rodgers, Inc. total fee for services. The risks have been allocated such that Client and Wood Rodgers, Inc. agrees that, to the fullest extent permitted by law, the total liability of Wood Rodgers, Inc. to Client and to all construction contractors and subcontractors on the project for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes shall not exceed the total aggregate liability of \$21,000. Such causes include but are not limited to Wood Rodgers, Inc. negligence, errors, omissions, strict liability, and breach of contract and breach of warranty.
8. This agreement and the applicable Services Authorization & Agreement or Proposal/Contract constitute the entire agreement between the parties and there are no conditions, agreements or representations between the parties except as expressed in said documents. It is not the intent of the parties to this agreement to form a partnership or joint venture.



**Waterline Relocation - 2001 Tarob Ct, Milpitas, CA**  
 August 2, 2023  
 Page 5 of 5



**Effective January 1, 2023**

| <b>CLASSIFICATION</b>                                     | <b>STANDARD RATE</b> |
|-----------------------------------------------------------|----------------------|
| Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* II  | \$305                |
| Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* I   | \$270                |
| Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* II     | \$250                |
| Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* I      | \$240                |
| Project Engineer/Geologist/Surveyor/Planner/GIS/LA* II    | \$225                |
| Project Engineer/Geologist/Surveyor/Planner/GIS/LA* I     | \$210                |
| Engineer/Geologist/Surveyor/Planner/GIS/LA* II            | \$200                |
| Engineer/Geologist/Surveyor/Planner/GIS/LA* I             | \$190                |
| Assistant Engineer/Geologist/Surveyor/Planner/GIS/LA*     | \$165                |
| Designer                                                  | \$95                 |
| Senior CAD Technician/Graphics Designer II                | \$190                |
| Senior CAD Technician/Graphics Designer I                 | \$175                |
| CAD Technician/Graphics Designer                          | \$155                |
| Project Coordinator                                       | \$165                |
| Administrative Assistant                                  | \$145                |
| 1 Person Survey Crew                                      | \$235                |
| 2 Person Survey Crew                                      | \$340                |
| 3 Person Survey Crew                                      | \$435                |
| Consultants, Outside Services, Materials & Direct Charges | Cost Plus 10%        |
| Overtime Work, Expert Witness Testimony and Preparation   | Rate Plus 50%        |

\*LA = Landscape Architect

Blueprints, reproductions, and outside graphic services will be charged at vendor invoice. Auto mileage will be charged at the IRS standard rate, currently 62.5 cents per mile.

Fee Schedule subject to change January 1, 2024.

**EXHIBIT “C”**

**SURETY BONDS AND OTHER SECURITY**

**TRACT NO. 10592**

As evidence of understanding the provisions contained in this Agreement, and of the Developer’s intent to comply with same, the Developer has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

**PERFORMANCE BOND PRINCIPAL AMOUNT:** \$329,000  
 Surety: Liberty Mutual Insurance Company  
 Attorney-in-fact: Brenda Wong, Marsh USA Inc.  
 Address: 633 W. 5<sup>th</sup> Street, Suite 1200  
Los Angeles, CA 90071

**MATERIAL AND LABOR BOND PRINCIPAL AMOUNT:** \$329,000  
 Surety: Liberty Mutual Insurance Company  
 Attorney-in-fact: Brenda Wong, Marsh USA Inc.  
 Address: 633 W. 5<sup>th</sup> Street, Suite 1200  
Los Angeles, CA 90071

**WATER MAIN**  
**PERFORMANCE BOND PRINCIPAL AMOUNT:** \$149,000  
 Surety: Liberty Mutual Insurance Company  
 Attorney-in-fact: Brenda Wong, Marsh USA Inc.  
 Address: 633 W. 5<sup>th</sup> Street, Suite 1200  
Los Angeles, CA 90071

**WATER MAIN**  
**MATERIAL AND LABOR BOND PRINCIPAL AMOUNT:** \$149,000  
 Surety: Liberty Mutual Insurance Company  
 Attorney-in-fact: Brenda Wong, Marsh USA Inc.  
 Address: 633 W. 5<sup>th</sup> Street, Suite 1200  
Los Angeles, CA 90071

BOND NO. 024267996  
 INITIAL PREMIUM: Included in Performance Bond  
 SUBJECT TO RENEWAL

**CITY OF MILPITAS**  
**PARCEL/TRACT MAP IMPROVEMENTS**  
**LABOR AND MATERIAL BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and  
KB Home South Bay Inc. ("Principal"), have  
 executed an agreement for work consisting of, but not limited to, the furnishing all labor,  
 materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and  
 gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls,  
 landscaping, street lights, and all other required facilities for Parcel/Tract Map No.  
10592 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more  
 particularly set forth in that certain Agreement for Completion of Pubic Improvements dated  
                    , 2023 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated  
 herein by reference; and

WHEREAS, Principal is required to furnish a bond in connection with the  
 Improvement Agreement providing that if Principal or any of its subcontractors shall fail to pay  
 for any materials, provisions, or other supplies, or terms used in, upon, for, or about the  
 performance of the Public Improvements, or for any work or labor done thereon of any kind, or  
 for amounts due under the provisions of Title 3 (commencing with section 9000) of Part 6 of  
 Division 4 of the California Civil Code, with respect to such work or labor, that the Surety on  
 this bond will pay the same together with a reasonable attorney's fee in case suit is brought on  
 the bond.

NOW, THEREFORE, Principal and Liberty Mutual Insurance Company ("Surety"), a  
 corporation organized and existing under the laws of the State of Massachusetts,  
 and duly authorized to transact business under the laws of the State of California, are held and  
 firmly bound unto City and to any and all contractors, subcontractors, material suppliers,  
 persons, companies or corporations furnishing materials, provisions, and other supplies used in,  
 upon, for or about the performance of the Public Improvements, and all persons, companies or  
 corporations renting or hiring teams, or implements or machinery, for or contributing to the  
 Public Improvements to be done, and all persons performing work or labor upon the same and all  
 persons supplying both work and materials as aforesaid excepting the Principal, the sum of  
Three Hundred Twenty Nine Thousand dollars, (\$ 329,000.00 ), said sum being not less than 100% of the

total cost of the Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named herein, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499 et seq. of the California Government Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Improvement Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Los Angeles, this 15th day of June, 2023.

(Corporate Seal)

KB Home South Bay Inc.

Principal

By

  
PETER LEUNG

Title

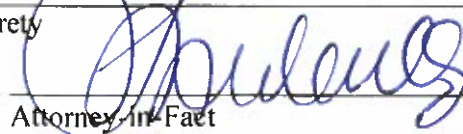
VICE PRESIDENT

(Corporate Seal)

Liberty Mutual Insurance Company

Surety

By

  
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title

Brenda Wong, VP, Attorney-in-Fact

The rate of premium on this bond is \$6.00 per thousand. The total amount of premium charges is \$ Included in Performance Bond premium of \$1,974.00/Annum  
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston MA 02116

(Name and Address of Agent or Representative for service of process in California, if different from above)

Brenda Wong, Marsh USA Inc.  
633 W. 5th Street, Suite 1200  
Los Angeles, CA 90071

(Telephone number of Surety and Agent or Representative for service of process in California)

213-624-5555

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE §1189

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 Los Angeles

On 6/15/2023 before me, S. Evans, Notary Public, personally appeared Brenda Wong 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.

(seal)

Signature

S. Evans

S. Evans, Notary Public





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

Certificate No: 8204866

## POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Brenda Wong

all of the city of Los Angeles, state of California each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 15th day of February, 2021.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company



By: David M. Carey

David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 15th day of February, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal  
Teresa Pastella, Notary Public  
Montgomery County  
My commission expires March 28, 2025  
Commission number 1126044  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella

Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

### ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

### ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company do hereby certify that this power of attorney executed by said Companies is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 15th day of June, 2023.



By: Renee C. Llewellyn

Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

"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 )SS  
COUNTY OF Contra Costa )

On June 20, 2023, before me, Sara L. Robbins, Notary Public, personally appeared Peter Lezak, 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

Sara L. Robbins



My Commission Expires: May 15, 2025

*This area for official notarial seal*

Notary Name: Sara L. Robbins

Notary Registration Number: 2357772

Notary Phone: 925-983-4524

County of Principal Place of Business: Contra Costa



BOND NO. 024267996  
 INITIAL PREMIUM: \$1,974.00  
 SUBJECT TO RENEWAL

**CITY OF MILPITAS**

**PARCEL/TRACT MAP NO. 10592 IMPROVEMENTS**

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and KB Home South Bay Inc. ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Parcel/Tract Map No. 10592 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated                     , 2023 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement to provide a good and sufficient bond for performance of the Improvement Agreement, and to guarantee and warranty the Public Improvements constructed thereunder.

NOW, THEREFORE, Principal and Liberty Mutual Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Massachusetts, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of <sup>Three Hundred</sup> Twenty Nine Thousand dollars (\$ 329,000.00), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers,

employees, and agents, as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499 et seq. of the Government Code of California as security for performance of the Improvement Agreement and security for the one-year guarantee and warranty of the Public Improvements.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Los Angeles, CA, this 15th day of June, 2023.

(Corporate Seal)

KB Home South Bay Inc.

Principal

By

PETER LEZAK

Title

VICE PRESIDENT

(Corporate Seal)

Liberty Mutual Insurance Company

Surety

By

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title

Brenda Wong, VP, Attorney-in-Fact

The rate of premium on this bond is \$6.00 per thousand. The total amount of premium charges is \$ 1,974.00.  
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

Liberty Mutual Insurance Company

175 Berkeley Street

Boston MA 02116

(Name and Address of Agent or Representative for service of process in California, if different from above)

Brenda Wong, Marsh USA Inc.

633 W. 5th Street, Suite 1200

Los Angeles, CA 90071

(Telephone number of Surety and Agent or Representative for service of process in California)

213-624-5555

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE §1189

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 Los Angeles

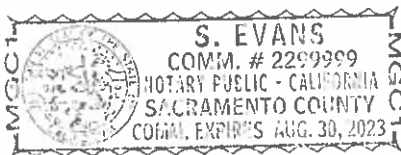
On 6/15/2023 before me, S. Evans, Notary Public, personally appeared Brenda Wong who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~-subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ 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.

(seal)

Signature *S. Evans*  
S. Evans, Notary Public





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

Certificate No: 8204866

## POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Brenda Wong

all of the city of Los Angeles, state of California each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 15th day of February, 2021.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company



By: David M. Carey

David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 15th day of February, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal  
Teresa Pastella, Notary Public  
Montgomery County  
My commission expires March 28, 2025  
Commission number 1126044  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella

Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

### ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

### ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company do hereby certify that this power of attorney executed by said Companies is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 15th day of June, 2023



By: Renee C. Llewellyn

Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit,  
currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries,  
please call 610-832-8240 or email HOSUR@libertymutual.com.

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

"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                                )SS  
COUNTY OF    Contra Costa                        )

On June 20, 2023, before me, Sara L. Robbins, Notary Public, personally appeared Peter Lezak, 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

*Sara L. Robbins*



My Commission Expires: May 15, 2025

*This area for official notarial seal*

Notary Name: Sara L. Robbins

Notary Registration Number: 2357772

Notary Phone: 925-983-4524

County of Principal Place of Business: Contra Costa

BOND NO. 024271683  
INITIAL PREMIUM: Included in Performance Bonf  
SUBJECT TO RENEWAL

**CITY OF MILPITAS**  
**PARCEL/TRACT MAP IMPROVEMENTS**  
**LABOR AND MATERIAL BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and  
KB Home South Bay Inc. ("Principal"), have  
executed an agreement for work consisting of, but not limited to, the furnishing all labor,  
materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and  
gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls,  
landscaping, street lights, and all other required facilities for Parcel/Tract Map No.  
10592 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated \_\_\_\_\_, \_\_\_\_\_ (“Improvement Agreement”);

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required to furnish a bond in connection with the Improvement Agreement providing that if Principal or any of its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for, or about the performance of the Public Improvements, or for any work or labor done thereon of any kind, or for amounts due under the provisions of Title 3 (commencing with section 9000) of Part 6 of Division 4 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, Principal and Liberty Mutual Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Massachusetts, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and to any and all contractors, subcontractors, material suppliers, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Principal, the sum of \$149,000.00 dollars, (\$ 149,000.00 ), said sum being not less than 100% of the

total cost of the Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named herein, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499 et seq. of the California Government Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Improvement Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.



IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Los Angeles, CA, this 29th day of August, 2023.

(Corporate Seal)

KB Home South Bay Inc.

Principal

By

Title

VICE PRESIDENT

(Corporate Seal)

Liberty Mutual Insurance Company

Surety

By

Attorney-in-Fact

Title

Brenda Wong, Vice President

The rate of premium on this bond is \$6.00 per thousand. The total amount of premium charges is \$ 894.00.  
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston MA 02116

(Name and Address of Agent or Representative for service of process in California, if different from above)

Brenda Wong  
Marsh USA Inc.  
633 W. 5th Street, Suite 1200, Los Angeles, CA 900710

(Telephone number of Surety and Agent or Representative for service of process in California)

213-624-5555

## All Capacity 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 CONTRA COSTA

On AUGUST 31, 2023, before me, MICHELLE C. ADAMS, Notary Public, personally appeared PETER LEZAK, 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 of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

## CAPACITY CLAIMED BY SIGNER

## DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer
- 
- ☐ Partner (s) ☐ Limited  
☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE §1189

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 Los Angeles

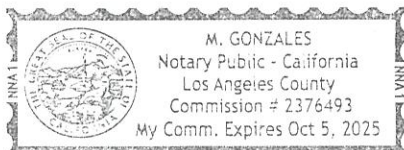
On 8/29/2023 before me, M.Gonzales, Notary Public, personally appeared Brenda Wong who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~-subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in his/~~her~~/~~their~~ 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.

(seal)

Signature M. Gonzales  
M.Gonzales, Notary Public





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Item # 16.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

Certificate No: 8204866

## POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint,

Brenda Wong

all of the city of Los Angeles, state of California each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 15th day of February, 2021.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company



By: *David M. Carey*

David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 15th day of February, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal  
Teresa Pastella, Notary Public  
Montgomery County  
My commission expires March 28, 2025  
Commission number 1126044  
Member, Pennsylvania Association of Notaries

By: *Teresa Pastella*  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

### ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

### ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company do hereby certify that this power of attorney executed by said Companies is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 29th day of August, 2023.



By: *Renee C. Llewellyn*

Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

BOND NO. 024271683

INITIAL PREMIUM: \$894.00  
SUBJECT TO RENEWAL

## CITY OF MILPITAS

**PARCEL/TRACT MAP NO. 10592      IMPROVEMENTS**

## PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and  
KB Home South Bay Inc. ("Principal"), have  
executed an agreement for work consisting of, but not limited to, the furnishing all labor,  
materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and  
gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls,  
landscaping, street lights, and all other required facilities for Parcel/Tract Map No.  
10592 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated \_\_\_\_\_, \_\_\_\_\_ (“Improvement Agreement”);

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement to provide a good and sufficient bond for performance of the Improvement Agreement, and to guarantee and warranty the Public Improvements constructed thereunder.

NOW, THEREFORE, Principal and Liberty Mutual Insurance Company  
 ("Surety"), a corporation organized and existing under the laws of the State of  
Massachusetts, and duly authorized to transact business under the laws of the State  
 of California, are held and firmly bound unto City in the sum of \$149,000.00 dollars  
 (\$ 149,000.00), said sum being not less than one hundred percent (100%) of the total  
 cost of the Public Improvements as set forth in the Improvement Agreement, we bind ourselves,  
 our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by  
 these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers,

employees, and agents, as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499 et seq. of the Government Code of California as security for performance of the Improvement Agreement and security for the one-year guarantee and warranty of the Public Improvements.



IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Los Angeles, CA, this 29th day of August, 2023.

(Corporate Seal)

KB Home South Bay Inc.

Principal

By

Title

VICE PRESIDENT

(Corporate Seal)

Liberty Mutual Insurance Company

Surety

By

Attorney-in-Fact

Title

Brenda Wong, Vice President

(Attach Attorney-in-Fact Certificate)

The rate of premium on this bond is \$6.00 per thousand. The total amount of premium charges is \$ 894.00.  
(The above must be filled in by corporate attorney.)

### THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston MA 02116

(Name and Address of Agent or Representative for service of process in California, if different from above)

Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston MA 02116

(Telephone number of Surety and Agent or Representative for service of process in California)

213-624-5555

## All Capacity 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.

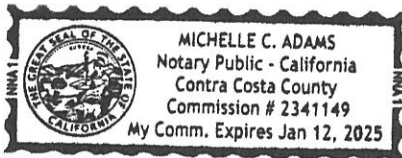
STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

On AUGUST 31, 2023, before me, MICHELLE C. ADAMS, Notary Public, personally appeared PETER LEZAK, 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]  
Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer
- \_\_\_\_\_  
Title(s)
- ☐ Partner ☐ Limited  
(s) ☐ General
- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE §1189

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 Los Angeles

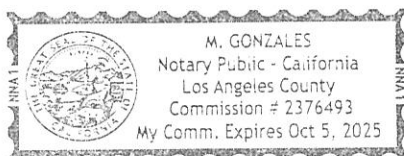
On 8/29/2023 before me, M.Gonzales, Notary Public, personally appeared Brenda Wong who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~-subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ 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.

(seal)

Signature *M. Gonzales*  
M.Gonzales, Notary Public





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

Certificate No: 8204866

## POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Brenda Wong

all of the city of Los Angeles, state of California each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 15th day of February, 2021.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company



By: David M. Carey

David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 15th day of February, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal  
Teresa Pastella, Notary Public  
Montgomery County  
My commission expires March 28, 2025  
Commission number 1126044  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

### ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

### ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company do hereby certify that this power of attorney executed by said Companies is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 29th day of August, 2023.



By: Renee C. Llewellyn

Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.



## CITY OF MILPITAS AGENDA REPORT (AR)

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item Title:</b>   | <b>Accept an Allocation of \$1,600,000 in State Funding for the Milpitas SMART Program, Approve a Budget Appropriation into CIP Project No. 3493, and Provide Direction to Staff on Proposed Program Modifications (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053, Jay Lee, Interim Planning Director, 408-586-3077)</b>                                                                                                                        |
| <b>Category:</b>     | Community Development                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Meeting Date:</b> | 9/5/2023                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                      | <u>Recommendation:</u> <ol style="list-style-type: none"> <li>1. Accept \$1,600,000 in State funding through the Budget Act of 2023 (AB 102) for the Milpitas SMART program and approve a budget appropriation of \$1,600,000 in State funding into CIP Project No. 3493 Milpitas SMART.</li> <li>2. Receive a presentation on the current Milpitas SMART pilot program and provide direction on staff recommendations for proposed program modifications.</li> </ol> |

### **Background:**

In November 2016, Santa Clara County voters approved the 2016 Measure B ballot measure, a 30-year half-cent countywide sales tax to enhance transit, highways, expressways and active transportation programs for bicycles and pedestrians. The Santa Clara Valley Transportation Authority (VTA) established the 2016 Measure B Innovative Transit Service Models Program to provide approximately \$6 million in funding to eligible cities through a competitive grant application process.

City staff in partnership with RideCo, a transportation consulting firm that provides on-demand transit solutions, submitted a grant application for funding through the Innovative Transit Service Models Program to develop and implement Milpitas SMART, a 12-month pilot program to provide a flexible, convenient first/last-mile transit solution with convenient connections to VTA light rail and the Milpitas Transit Center. On March 4<sup>th</sup>, the VTA Board of Directors approved the recommended projects, including Milpitas SMART, and authorized the General Manager to execute the necessary agreements. The City of Milpitas was awarded the full amount of the grant request in the amount of \$1,084,732. On April 5, 2022, the City Council authorized the City Manager to execute a funding agreement with VTA to receive this funding and a subscription and services agreement with RideCo in a not-to-exceed amount of \$1,355,916 for consultant services to operate Milpitas SMART.

Milpitas SMART launched on September 12, 2022 and initially provided first/last-mile connections to or from four key hubs in the City of Milpitas: (1) Milpitas City Hall, (2) Milpitas Transit Center, (3) Great Mall, and (4) VTA Alder Station. Riders could book trips from any one of nearly a hundred virtual stops across the City to any of these four hubs and vice versa. Despite the City's extensive marketing and outreach efforts, ridership for the service remained low through February at approximately 5 passengers per weekday. Furthermore, staff received significant community feedback requesting direct access to key destinations outside the hubs including the Milpitas Library and Milpitas High School.

To meet this demand and increase ridership, City staff requested and received VTA approval to transition Milpitas SMART from a hub-and-spoke to a point-to-point service model. In February 2023, the City implemented this service change. On August 8, 2023, the City Council approved amendments to the funding agreement with VTA and subscription and services agreement with RideCo and authorized the City Manager to execute the amended agreements to reflect this service change.

## **Analysis:**

### **Program Update**

#### **Ridership**

Since transitioning to a point-to-point service model in February 2023, ridership has increased dramatically each month. Under the hub-and-spoke model, Milpitas SMART averaged approximately 82 passengers per month. In July 2023 alone, Milpitas SMART serviced 1,581 passengers, which is over 19 times higher than the average monthly ridership before the service change. In August, the monthly ridership is projected to exceed 2,500 passengers.

#### **Marketing**

City staff has partnered with RideCo to continue initiating a wide range of marketing efforts to increase community awareness of the program and increase ridership, including fare promotions, bus shelter ads near rail stations, bus stop signage throughout the City, digital signs at City Hall and the Milpitas Transit Center, brochures at City recreation and community facilities, social media posts and paid ads, in-person outreach at key locations and City-sponsored events, and outreach to local businesses. Currently, the project team is carrying out a summer marketing campaign and coordinating with the Milpitas Unified School District (MUSD) to market the service to students as the new school year begins.

#### **Project Funding**

The project budget for the initial term of 12 months is \$1,356,000, which is funded by a combination of grant funds from VTA's 2016 Measure B Program, developer contributions, and the General Government CIP Fund. The City anticipates expending \$934,000 by the end of the initial 12-month term in mid-September, leaving a remaining balance of \$432,000.

Due to the cost savings from the low ridership and associated operating costs in the early months of the program, the City will be able to operate Milpitas SMART for an additional 4 to 5 months beyond the original 12-month program term. The City is also slated to receive \$1,600,000 in funding from the State through the Budget Act of 2023 (AB 102) to continue operating Milpitas SMART once VTA grant funds are expended and the initial pilot program ends.

The table below summarizes the project funding based upon the original and new funding and includes Rideco's estimated fare revenues and costs.

|                                                         |                    |
|---------------------------------------------------------|--------------------|
| <b>Council Approved Budget for Project initial Term</b> | <b>\$1,355,916</b> |
|                                                         |                    |
| Spent to-date (Sept. 2022 – July 2023)                  | \$814,000          |
| Estimated expenses (Aug 2023 – Sept. 2023)              | \$120,000          |
| <b>Estimated Expenses (for 12-month term)</b>           | <b>\$934,000</b>   |
|                                                         |                    |
| Fare Revenue received through July 2023                 | \$7,000            |
| Estimated fare revenue (Aug 2023 – Sept 2023)           | \$3,000            |
| <b>Estimated Fare Revenue (for 12-month term)</b>       | <b>\$10,000</b>    |
|                                                         |                    |
| Estimated Project Remaining Funds (Sept 2023)           | \$421,916          |
| Additional State Allocation                             | \$1,600,000        |
| <b>Estimated Project remaining funding</b>              | <b>\$2,021,916</b> |

## Future Program Options

By the end of the initial 12-month term concluding in September 2023, the anticipated total project remaining funding is approximately \$2.2 million. City staff is exploring program updates to improve Milpitas SMART and better serve the Milpitas community and is seeking feedback from the City Council on the future direction of the program. If the City were to continue operating Milpitas SMART without any changes, the program is expected to be funded through September 2025.

### Service Hours Expansion

City staff is considering two options for expanding the services hours into the early mornings, late evenings, and weekends to capture demand for new types of trips including early morning commutes, evening dining, and recreational activities.

#### **Option 1 (Recommended):** *Extend weekday service from 7am-7pm to 6am-9pm and add Saturday service 7am-9pm*

This option would better utilize vehicle revenue hours by reallocating periods of excess supply while maintaining service levels. As a result, although the service would operate 29 more hours per week, the additional cost would amount to only 12 vehicle revenue hours per week. The funding duration would be reduced by 2 months from the baseline scenario under the current service parameters.

#### *Option 2: Option 1 + Sunday service 7am-9pm*

The vehicle operator currently does not provide Sunday service. Therefore, there are less efficiencies to be gained through this option, which would cost 43 vehicle revenue hours per week and reduce the funding duration by 4 months.

### Fleet Conversion

Based on previous feedback from the City Council and community input, City staff is considering two options for converting the current fleet into electric vehicles to minimize greenhouse gas emissions and the impact of Milpitas SMART on the environment. Electric vehicle hourly rates are expected to be about 40 percent more than current rates (from \$58.65 to about \$88). Additionally, electric vehicles can only operate for 6 hours per day without charging. Therefore, roughly double the vehicle fleet would be necessary to maintain current service levels.

#### **Option 1 (Recommended):** *Replace 1 vehicle with 2 electric minivans in January 2024*

This option would reduce the funding duration by 1 month.

#### *Option 2: Replace all 6 vehicles with 12 electric minivans in January 2024*

This option would reduce the funding duration by 7 months.

#### *Option 3: Hybrid vehicles*

As an alternative to fully electric vehicles, hybrid vans could be considered. Hybrid hourly rates are quoted to be about 30 percent more than current rates (from about \$58.65 to about \$77). Hybrid vehicles can operate all day without needing to recharge. Replacing all vehicles with hybrid vehicles in January 2024 would reduce the funding duration by 4 to 5 months.

## Fares and Promotions

In response to City Council feedback heard at the August 8, 2023 meeting, City staff in coordination with RideCo evaluated two options in analyzing the potential impact on the project budget. The current standard fare is \$2.50 per ride, but the program offers a reduced fare of \$1.00 per ride for youth, seniors, disabled, and low-income persons. The City of Morgan Hill operates a similar micro-transit program through RideCo with the same fares. Silicon Valley Hopper, which is another micro-transit program that services Cupertino and Santa Clara, charges \$3.50 per ride but offers a discounted fare of \$1.75.

*Option 1: Offer free fares for 4 months*

*Option 2: Offer free fares for the duration of the project*

Fares account for about 10 percent of Milpitas SMART's operational funding. As such, offering free fares, whether for 4 months or the duration of the project, would reduce the funding duration by around 1-2 months. However, long-term free fares may have unintended consequences:

1. Consequence-free behavior such as excessive cancellations and no shows may result in operational inefficiencies and impact the timeliness and convenience of the service other users.
2. Passengers may have a difficult time adapting to charged fares if/when they are reintroduced, which will be necessary for the long-term viability of the service.

Furthermore, the City offered free rides for all of April, and while the monthly ridership increased in April, the ridership did not experience a significant decrease in May once the free fares ended. In fact, the monthly ridership continues to increase each month, demonstrating that users are willing to pay for this service. Additionally, the long-term goal is to establish a sustainable funding model using a combination of grants, contributions from employers and developers, City funds, and fare revenue to continue operating Milpitas SMART into the foreseeable future.

## **Next Steps**

Following this discussion, staff will return with an updated subscription and services agreement with RideCo to reflect the program updates based on Council's direction. The City will also need to negotiate an updated agreement with VTA to continue our partnership in marketing the service and integrating Milpitas SMART into VTA's broader transit system.

## **Policy Alternatives:**

**Alternative 1: Do not accept \$1,600,000 in State funding through the Budget Act of 2023 (AB 102) for the Milpitas SMART program.**

**Pros:** In rejecting \$1,600,000 in State funding, the Milpitas SMART program would potentially end, and the City would avoid expending staff time and resources to manage the program.

**Cons:** If the City were to reject \$1,600,000 in State funding, the City would have to commit more staff time and resources to secure alternative external funding sources or expend City resources to continue the program. If the City is unable to secure funding for the program, the program would end, and an important and valuable service would be eliminated. Current users who rely on the service to commute to work, visit key destinations, and complete daily trips would have to turn to other more expensive and less convenient transportation options.

**Reason not recommended:** The \$1,600,000 in State funding would allow the City to continue operating Milpitas SMART into 2025. Without this funding, the City would have to commit more staff time and resources to secure alternative funding and risk having to end the program altogether. With the success of the point-to-point service model, continued marketing efforts, and potential expansion of the services hours, the ridership is expected to continue increasing if the program were to be extended. Milpitas SMART provides a valuable and much-needed service to Milpitas' residents, employees, and visitors. Furthermore, the General Plan includes several policies to promote alternative modes of transportation, first/last-mile solutions, and public transit improvements to support the City's circulation goals. The receipt and use of State funding to continue operating Milpitas SMART supports these General Plan policies and goals.

**Fiscal Impact:**

The City will receive \$1,600,000 in funding from the State through the Budget Act of 2023 (AB 102) to operate Milpitas SMART for another year once VTA grant funds are expended and the initial pilot program ends. The extension of the Milpitas SMART program will require approval of a budget appropriation of \$1,600,000 in State funding into Project No. 3493 Milpitas SMART.

**California Environmental Quality Act:**

Not applicable. The selection and contractual arrangement of planning services do not constitute a project, in accordance with Section 15378 of the CEQA Guidelines.

**Recommendation:**

1. Accept \$1,600,000 in State funding through the Budget Act of 2023 (AB 102) for the Milpitas SMART program and approve a budget appropriation of \$1,600,000 in State funding into CIP Project No. 3493 Milpitas SMART.
2. Receive a presentation on the current Milpitas SMART pilot program and provide direction on staff recommendations for proposed program modifications.

**Attachment:**

1. Monthly KPI Summaries Report
2. Budget Change Form
3. Updated CIP Project No. 3493

| Monthly KPI Metric Summaries Report |          |              |                 |                      |                        |                   |                  |                            |                                     |                  |                                            |                   |                       |                        |                                               |                                   |
|-------------------------------------|----------|--------------|-----------------|----------------------|------------------------|-------------------|------------------|----------------------------|-------------------------------------|------------------|--------------------------------------------|-------------------|-----------------------|------------------------|-----------------------------------------------|-----------------------------------|
| Milpitas SMART                      |          |              |                 |                      |                        |                   |                  |                            |                                     |                  |                                            |                   |                       |                        |                                               |                                   |
| Month                               | # Riders | # New Riders | # Repeat Riders | Avg. Rides Per Rider | # Passengers Completed | # Rides Completed | Shared Rides (%) | Avg. Shared Fare Occupancy | Avg. Daily User Conversion Rate (%) | Avg. Ride Rating | % Rides With 1-2 Star Ratings and Comments | # Abandoned Rides | Pickup Violations (%) | Dropoff Violations (%) | # Unique Users That Experienced Failed Search | Passengers Per Vehicle Hour (PVH) |
| 2023-07                             | 281      | 152          | 129             | 4.9                  | 1581                   | 1372              | 26%              | 2.1                        | 68%                                 | 4.900            | 0%                                         | 0                 | 2%                    | 1%                     | 12                                            | 1.3                               |
| 2023-06                             | 228      | 129          | 99              | 5.2                  | 1393                   | 1185              | 24%              | 2.1                        | 65%                                 | 4.893            | 0%                                         | 0                 | 2%                    | 1%                     | 13                                            | 1.1                               |
| 2023-05                             | 179      | 111          | 68              | 5.8                  | 1155                   | 1036              | 26%              | 2.1                        | 62%                                 | 4.887            | 1%                                         | 0                 | 2%                    | 2%                     | 9                                             | 0.9                               |
| 2023-04                             | 107      | 75           | 32              | 6.6                  | 830                    | 701               | 21%              | 2.1                        | 65%                                 | 4.911            | 0%                                         | 1                 | 5%                    | 2%                     | 4                                             | 0.7                               |
| 2023-03                             | 44       | 25           | 19              | 5.3                  | 242                    | 232               | 15%              | 2.1                        | 71%                                 | 4.890            | 0%                                         | 0                 | 3%                    | 2%                     | 6                                             | 0.2                               |
| 2023-02                             | 19       | 6            | 13              | 4.2                  | 83                     | 80                | 5%               | 2.0                        | 50%                                 | 4.873            | 1%                                         | 0                 | 4%                    | 5%                     | 0                                             | 0.1                               |
| 2023-01                             | 14       | 5            | 9               | 4.2                  | 64                     | 59                | 7%               | 2.0                        | 59%                                 | 4.820            | 2%                                         | 1                 | 0%                    | 0%                     | 0                                             | 0.0                               |
| 2022-12                             | 13       | 7            | 6               | 4.3                  | 56                     | 56                | 0%               | 0.0                        | 58%                                 | 4.947            | 0%                                         | 0                 | 0%                    | 0%                     | 1                                             | 0.0                               |
| 2022-11                             | 15       | 10           | 5               | 5.4                  | 85                     | 81                | 2%               | 2.0                        | 55%                                 | 4.841            | 1%                                         | 0                 | 0%                    | 2%                     | 5                                             | 0.1                               |
| 2022-10                             | 10       | 4            | 6               | 5.2                  | 53                     | 52                | 0%               | 0.0                        | 37%                                 | 4.977            | 0%                                         | 0                 | 4%                    | 2%                     | 0                                             | 0.1                               |
| 2022-09                             | 23       | 23           | 0               | 4.0                  | 150                    | 93                | 26%              | 2.0                        | 37%                                 | 4.854            | 0%                                         | 0                 | 4%                    | 6%                     | 2                                             | 0.2                               |



## City of Milpitas, California

**BUDGET CHANGE FORM**

| Type of Change                                           | From (Credit)        |             | To (Debit)          |             |
|----------------------------------------------------------|----------------------|-------------|---------------------|-------------|
|                                                          | Account              | Amount      | Account             | Amount      |
| Check one:                                               | 331-951-3493-15-3569 | \$1,600,000 | 331-951-3493-2-4800 | \$1,600,000 |
| <input checked="" type="checkbox"/> Budget Appropriation |                      |             |                     |             |
| <input type="checkbox"/> Budget Transfer                 |                      |             |                     |             |

**Background:**

In November 2016, Santa Clara County voters approved the 2016 Measure B ballot measure, a 30-year half-cent countywide sales tax to enhance transit, highways, expressways and active transportation programs for bicycles and pedestrians. The Santa Clara Valley Transportation Authority (VTA) established the 2016 Measure B Innovative Transit Service Models Program to provide approximately \$6 million in funding to eligible cities through a competitive grant application process.

City staff in partnership with RideCo, a transportation consulting firm that provides on-demand transit solutions, submitted a grant application for funding through the Innovative Transit Service Models Program to develop and implement Milpitas SMART, a 12-month pilot program to provide a flexible, convenient first/last-mile transit solution with convenient connections to VTA light rail and the Milpitas Transit Center. On March 4<sup>th</sup>, the VTA Board of Directors approved the recommended projects, including Milpitas SMART, and authorized the General Manager to execute the necessary agreements. The City of Milpitas was awarded the full amount of the grant request in the amount of \$1,084,732. On April 5, 2022, the City Council authorized the City Manager to execute a funding agreement with VTA to receive this funding and a subscription and services agreement with RideCo in a not-to-exceed amount of \$1,355,916 for consultant services to operate Milpitas SMART.

Milpitas SMART launched on September 12, 2022 and initially provided first/last-mile connections to or from four key hubs in the City of Milpitas: (1) Milpitas City Hall, (2) Milpitas Transit Center, (3) Great Mall, and (4) VTA Alder Station. Riders could book trips from any one of nearly a hundred virtual stops across the City to any of these four hubs and vice versa. Despite the City's extensive marketing and outreach efforts, ridership for the service remained low through February at approximately 5 passengers per weekday. Furthermore, staff received significant community feedback requesting direct access to key destinations outside the hubs including the Milpitas Library and Milpitas High School.

To meet this demand and increase ridership, City staff requested and received VTA approval to transition Milpitas SMART from a hub-and-spoke to a point-to-point service model. In February 2023, the City implemented this service change. On August 8, 2023, the City Council approved amendments to the funding agreement with VTA and subscription and services agreement with RideCo and authorized the City Manager to execute the amended agreements to reflect this service change.

**Analysis:****Program Update****Ridership**

Since transitioning to a point-to-point service model in February 2023, ridership has increased dramatically each month. Under the hub-and-spoke model, Milpitas SMART averaged approximately 82 passengers per month. In July 2023 alone, Milpitas SMART serviced 1,581 passengers, which is over 19 times higher than the average monthly ridership before the service change. In August, the monthly ridership is projected to exceed 2,500 passengers.

**Marketing**

City staff has partnered with RideCo to continue initiating a wide range of marketing efforts to increase community awareness of the program and increase ridership, including fare promotions, bus shelter ads near rail stations, bus stop signage throughout the City, digital signs at City Hall and the Milpitas Transit Center, brochures at City recreation and community facilities, social media posts and paid ads, in-person outreach at key locations and City-sponsored events, and outreach to local businesses. Currently, the project team is carrying out a summer marketing campaign and coordinating with the Milpitas Unified School District (MUSD) to market the service to students as the new school year begins.

**Project Funding**

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|                                                         |                    |
|---------------------------------------------------------|--------------------|
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*Option 1: Offer free fares for 4 months*

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1. Consequence-free behavior such as excessive cancellations and no shows may result in operational inefficiencies and impact the timeliness and convenience of the service other users.
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**Next Steps**

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**Policy Alternatives:**

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Pros: In rejecting \$1,600,000 in State funding, the Milpitas SMART program would potentially end, and the City would avoid expending staff time and resources to manage the program.

Cons: If the City were to reject \$1,600,000 in State funding, the City would have to commit more staff time and resources to secure alternative external funding sources or expend City resources to continue the program. If the City is unable to secure funding for the program, the program would end, and an important and valuable service would be eliminated. Current users who rely on the service to commute to work, visit key destinations, and complete daily trips would have to turn to other more expensive and less convenient transportation options.

Reason not recommended: The \$1,600,000 in State funding would allow the City to continue operating Milpitas SMART into 2025. Without this funding, the City would have to commit more staff time and resources to secure alternative funding and risk having to end the program altogether. With the success of the point-to-point service model, continued marketing efforts, and potential expansion of the services hours, the ridership is expected to continue increasing if the program were to be extended. Milpitas SMART provides a valuable and much-needed service to Milpitas' residents, employees, and visitors. Furthermore, the General Plan includes several policies to promote alternative modes of transportation, first/last-mile solutions, and public transit improvements to support the City's circulation goals. The receipt and use of State funding to continue operating Milpitas SMART supports these General Plan policies and goals.

**Fiscal Impact:**

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**California Environmental Quality Act:**

Not applicable. The selection and contractual arrangement of planning services do not constitute a project, in accordance with Section 15378 of the CEQA Guidelines.

**Recommendation:**

1. Accept \$1,600,000 in State funding through the Budget Act of 2023 (AB 102) for the Milpitas SMART program and approve a budget appropriation of \$1,600,000 in State funding into CIP Project No. 3493 Milpitas SMART.
2. Receive a presentation on the current Milpitas SMART pilot program and provide direction on staff recommendations for proposed program modifications.

**Attachment:**

1. Monthly KPI Summaries Report
2. Budget Change Form
3. Updated CIP Project No. 3493

☐ Check if City Council Approval required.

Meeting: September 5, 2023

|                                                    |                                        |                                |
|----------------------------------------------------|----------------------------------------|--------------------------------|
| <b>Requested by:</b>                               | <b>Department Head:</b> Jay Lee        | <b>Date:</b> September 5, 2023 |
| <b>Reviewed by:</b>                                | <b>Finance Director:</b> Lauren Lai    | <b>Date:</b> September 5, 2023 |
| <b>Approved by:</b>                                | <b>Acting City Manager:</b> Ned Thomas | <b>Date:</b> September 5, 2023 |
| <b>Date approved by City Council, if required:</b> |                                        | <b>Confirmed by:</b>           |

## Community Improvement Projects

Project No.

3493

# Milpitas OnDemand



|                               |                                  |
|-------------------------------|----------------------------------|
| <b>Category:</b>              | Community Improvement            |
| <b>City Council Priority:</b> | Transportation and Transit       |
| <b>Project Location:</b>      | Citywide                         |
| <b>Managing Department:</b>   | Planning                         |
| <b>Contract Person:</b>       | Ned Thomas [3273]/Jay Lee [2713] |
| <b>Project Stage:</b>         | Implementation                   |
| <b>Estimated Schedule :</b>   |                                  |
| <b>Design</b>                 | 2022-2024                        |
| <b>Construction</b>           |                                  |
| <b>Reoccurring Project:</b>   | No                               |

## Description

This project provides for a pilot program to provide micro-transit connection services throughout Milpitas. The demand-responsive transit service initially operated as a “hub and spoke” model, an innovative service model that functions as a hybrid between first-last mile and point-to-point service. Riders were able to book trips from any one of nearly a hundred virtual stops across the City to any of the “hubs” locations. Now, riders can book trips from any virtual stop to another virtual stop within Milpitas, similar to other ride-hailing services. For example, riders can book trips from their home to anywhere within the City and vice versa.

## Notes

On 4/5/2022, City Council approved a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Innovative Transit Service Models Program and subscription and service agreement with RideCo. The pilot program started in September 2022 and was set to end in September 2023. The City expects to receive \$1.6 million in State funding through the Budget Act of 2023 (AB 102), which will allow the program to continue beyond the initial program term pending City Council direction.

N/A City of Milpitas

## Community Improvement Projects

Uncommitted Balance  
as of 5/31/2023

\$0

Council  
Approval

4/5/2022

Milpitas OnDemand

Project No. 3493

## Estimated Cost

| Phase          | Prior Year         | FY 2023-24         | FY 2024-25 | FY 2025-26 | FY 2026-27 | FY 2027-28 | Total              |
|----------------|--------------------|--------------------|------------|------------|------------|------------|--------------------|
| Administration | 1,355,916          | 1,600,000          | 0          | 0          | 0          | 0          | 2,955,916          |
| <b>TOTAL</b>   | <b>\$1,355,916</b> | <b>\$1,600,000</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$2,955,916</b> |

## Funding Source

|                              | Prior Year         | FY 2023-24         | FY 2024-25 | FY 2025-26 | FY 2026-27 | FY 2027-28 | Total              |
|------------------------------|--------------------|--------------------|------------|------------|------------|------------|--------------------|
| Measure B                    | 1,084,732          | -                  | 0          | 0          | 0          | 0          | 1,084,732          |
| Grants/Reimb./Developer fees | 200,000            | 1,600,000          | 0          | 0          | 0          | 0          | 1,800,000          |
| General Government CIP Fund  | 71,184             | -                  | 0          | 0          | 0          | 0          | 71,184             |
| <b>TOTAL</b>                 | <b>\$1,355,916</b> | <b>\$1,600,000</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$2,955,916</b> |

## Finance Notes

City Council 4/5/2022 - Project created with Budget Appropriation of \$1,084,732 from Measure B Innovative Transit Service Models Program Funds, \$200,000 from Developer Fees and \$71,184 from General Government CIP Fund for a total of \$1,355,916. Developer Fees: contribution from Embarcadero Capital Partners and Bridge Development (235 N. McCarthy Blvd).

## Operating Impact Notes

This project may impact operating expenses in future years. As the scope of this project is better defined through the design process, operating impacts will be reviewed and adjustments may be brought forward in future budgets.

City of Milpitas

N/A