



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, SEPTEMBER 19, 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>

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_XhoC6tf4RIqqgIAblOkilA

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 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

(b) CONFERENCE WITH LEGAL COUNSEL – Existing Litigation

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

City as Defendant

Lorin Preston v. City of Milpitas, Workers' Compensation Appeals Board nos. ADJ11353145,

ADJ11353106, ADJ15144006, and ADJ15056426.

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)

PUBLIC FORUM (7:05 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 (7:15 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 and October 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

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

C2. Approve City Council City Council Meeting Minutes of August 29 and September 5, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Meeting minutes of August 29 and September 5, 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. Receive Report and Direct City Attorney to Introduce an Ordinance Regarding Regulation of Sidewalk Vendors in Parks and Public Rights of Way (Staff Contact: Michael Mutalipassi, City Attorney, 408-858-3040)

Recommendation: Receive a report and direct the City Attorney to introduce an ordinance regarding the regulation of street vendors in parks and public rights of way consistent with the Council's policy and SB 946.

C6. Consider Recommendations from Mayor Montano for Removal from City Commission, and Accept Commissioner Resignation (Contact: Mayor Montano, 408-586-3024)

Recommendation: Approve the removal of Steven Huang as non-voting Student Commissioner from the Economic Development and Trade Commission; Accept the resignation of Zeya Mohsin from the Planning Commission; and direct the City Clerk to post the notice of unscheduled vacancies.

C7. Review and Accept the 2023 Legislative Season Action Report, Including an Update on 2023 State and Federal Earmark Requests (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012)

Recommendation: Review and accept the 2023 Legislative Season Action Report, including an update on 2023 State and Federal Earmark Requests.

C8. Authorize and Approve the Out-of-State Travel to Washington, D.C., for Mayor Carmen Montano to Attend the Forward Latino *National Advocacy Day* to be held on October 4 – 5, 2023, for an Estimated Total Not-to-Exceed Amount of \$2,000 Budgeted Under the Individual Elected Official Allocation for Conferences/Meetings/Trainings (Staff Contact: Ned Thomas, Acting City Manager, 408-586-3059)

Recommendation: Authorize and approve the out-of-state travel to Washington, D.C., for Mayor Carmen Montano to attend the Forward Latino *National Advocacy Day* to be held on October 4 – 5, 2023, for an estimated total not-to-exceed amount of \$2,000 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

C9. Authorize the City Manager to Execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 2001 Tarob Court Project by KB Home South Bay, Inc.; and Approve Budget Appropriation in the Amount of \$149,000.00 to the Non-Departmental Operating Budget in the TASP Fund (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Recommendation: Authorize the City Manager to execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 2001 Tarob Court Project by KB Home South Bay, Inc.; and Approve budget appropriation in the amount of \$149,000.00 to the non-departmental operating budget in the TASP Fund.

C10. Approve and Authorize the City Manager to Execute the Improvement Agreement with Extra Shine Car Wash, Inc., for the Completion of Offsite Public Improvements Located at 554 South Main Street Associated with Site Development Permit (SD18-0010) and Conditional Use Permit

(UA18-0020) (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Recommendation: Approve and authorize the City Manager to execute the Improvement Agreement with Extra Shine Car Wash, Inc., for the completion of offsite public improvements located at 554 South Main Street associated with Site Development Permit (SD18-0010) and Conditional Use Permit (UA18-0020).

C11. Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and DREF Milpitas, LLC, for the Apple Inc. Site Improvement Project at 260 S. Milpitas Blvd. (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and 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 DREF Milpitas, LLC, for the Apple Inc. Site Improvement Project at 260 S. Milpitas Blvd.

C12. Review and Approve the FY 2022-23 Fourth Quarter Financial Status Report, Fund Balances Thereof and Related Budget Amendments and Vehicle Purchase Order to Close-out the FY 2022-23 Budget and Authorize an Additional \$100,000 Blanket Purchase Order to the National Auto Fleet Cooperative Agreement for Vehicle Carry-Forward (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Recommendation: (1) Review the FY 2022-23 Quarterly Financial Status Report for the quarter ending June 30, 2023 (unaudited); (2) Approve budget amendments; and (3) Authorize an additional \$100,000.00 to the National Auto Fleet Cooperative Agreement blanket purchase order for vehicle carry-forward.

C13. Approve and Authorize the City Manager to Execute Amendment No. 1 to the Professional Services Agreement with Liebert Cassidy Whitmore for an Additional Agreement Amount of \$200,000.00, Subject to the Annual Appropriation of Funds (Staff Contact: Nick Raisch, Human Resources Director, 408-586-3086)

Recommendation: Approve and authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with Liebert Cassidy Whitmore ("LCW") for an additional agreement amount of \$200,000.00, subject to the annual appropriation of funds.

C14. Adopt a Resolution Approving and Authorizing the City Manager to Execute an Agreement Amendment with Insight Public Sector, Inc. (Staff Contact: Nick Raisch, Human Resources Director, 408-586-3086)

Recommendation: Approve and authorize the City Manager to execute an agreement amendment with Insight Public Sector, Inc., with additional funding in the amount of \$116,425.49, subject to the annual appropriation of funds, for a total agreement amount of \$300,441.49.

C15. Approve an Amendment of the Master Services and Purchasing Agreement with Axon Enterprise, Inc., by Increasing the Total Not-to-Exceed Amount from \$913,178.60 to \$1,026,887.82 Over the Five-Year Term (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406; and Frank Morales, Assistant Chief of Police, 408-586-2521)

Recommendation: Approve an amendment of the Master Services and Purchasing Agreement with Axon Enterprise, Inc., by increasing the total not-to-exceed amount from \$913,178.60 to \$1,026,887.82 over the five-year term.

- C16.** 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)

Recommendations: (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.

- C17.** Accept the FY 2022-23 Commissioners Annual Report for Six (6) Commissions and Approve Six (6) Commission Work Plans for FY 2023-24 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Recommendation: (1) Accept the FY 2022-23 Commissioners Annual Report; and (2) Approve proposed FY 2023-24 Work Plans for: (a) Arts Commission (including two requested workplan additions detailed in the report); (b) Library and Education Commission; (c) Parks, Recreation and Cultural Resources Commission; (d) Senior Advisory Commission; (e) Veterans Commission; and (f) Youth Advisory Commission.

COMMUNITY DEVELOPMENT (7:20 PM)

- 18.** Approve Proposed Project Locations Pertaining to Project No. 4299 Bicycle Improvement Project to be Funded by Caltrans 2022 Priority Legislative Budget Project (PLPB) Earmarks (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Acting Transportation and Traffic Manager, 408-586-3316)

Recommendation: Approve proposed project locations pertaining to Project No. 4299 Bicycle Improvement Project to be funded by Caltrans 2022 Priority Legislative Budget Project (PLPB) Earmarks.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (8:00 PM)

- 19.** Approve Historical Park Marker Project at Various City Parks and Appropriate Funds of \$90,000 to CIP No. 3489 (Staff Contact: Tegan McLane, Community Engagement and Inclusion Administrator, 408-586-3212)

Recommendation: Approve Historical Park Marker Project concept at Bob McGuire, Frederick Creighton, Peter B. Gill, Jose Higuera Adobe, Murphy, Sunnyhills Albert Augustine Jr. Memorial, and Delano Manongs parks and appropriate \$90,000.00 to Public Art CIP No. 3489.

LEADERSHIP AND SUPPORT SERVICES (8:30 PM)

- 20.** Provide Feedback Regarding Potential Amendments to Title V, Chapter 9, Section 4.05 of the Milpitas Municipal Code Related to Use of Noise-Amplifying Devices at Gill Park (Staff Contact: Michael Mutalipassi, City Attorney, 408-858-3040)

Recommendation: Provide feedback regarding potential amendments to Title V, Chapter 9, Section 4.05 of the Milpitas Municipal Code Related to use of noise-amplifying devices at Gill Park and direct the City Attorney to prepare a clarifying amendment consistent with the Council's policy.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (9:00 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.

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 / 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 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: www.milpitas.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at 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 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
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MILPITAS CITY COUNCIL CALENDAR

September 2023

October						
S	M	T	W	4	5	6
1	2	3	4	5	6	7
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15	16	17	18	19	20	21
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29	30	31				

Item # C1.

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

September 2023						
S	M	T	W	T	F	S
3	4	5	6	7	8	9
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MILPITAS CITY COUNCIL CALENDAR

October 2023

November						
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26	27	28	29	30		

Item # C1.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 7:00 PM -Parks, Recreation & Cultural Resources Commission (HL)	3 6:00 PM -Closed Session 7:00 PM -City Council	4 1:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) (Santa Clara) 5:30 PM -Veterans Commission (CM) 7:00 PM -Community Advisory Commission (EC)	5 5:30 PM -Milpitas Chamber of Commerce Board (GB) 5:30 PM -Santa Clara VTA Board of Directors (CM)	6	7
8	9 4:30 PM -Economic Development and Trade Commission (CM)	10	11 4:30 PM -City Council Transportation Subcommittee (CM/EC) 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM -Planning Commission	12 4:00 PM -Treatment Plant Advisory Committee (CM) (San Jose) 4:00 PM -Santa Clara VTA Policy Advisory Committee (EC) 6:00 PM -Youth Advisory Commission (HL) 7:00 PM -Cities Assoc of SCC Board of Directors (CM)	13	14 11:00 AM -Delano Manongs Park Opening Ceremony (McCandless Drive)
15	16 7:00 PM -Science, Technology, and Innovation Commission (GB)	17 5:00 PM -Closed Session 7:00 PM -City Council	18 6:00 PM -Energy and Environmental Sustainability Commission (EC)	19 10:30 AM -South Bay Odor Stakeholders Group (CM) 3:00 PM -VTA Safety, and Transit Planning & Operations Committee (CM)	20	21
22	23	24 1:30 PM -Senior Advisory Commission (CM)	25 12:00 PM -Santa Clara Valley Water District - Water Commission (CM) 5:30 PM -Cities Assoc. of SCC - Recycling and Waste Reduction Commission (CM) 7:00 PM -Planning Commission	26 12:00 PM -Santa Clara County Library JPA Board of Directors (CM) (Campbell)	27	28
29	30	31 				



SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

MINUTES
TUESDAY, AUGUST 29, 2023

The City Council of the City of Milpitas convened in a Special Meeting of the Milpitas City Council on August 29, 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 Special City Council meeting to order at 5:30 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmembers Barbadillo (5:40 PM), Lien, and Phan.
ABSENT: None

PLEDGE OF ALLEGIANCE

Mayor Montano led the Pledge of Allegiance.

PUBLIC FORUM

There were no public speakers.

ANNOUNCEMENT OF CONFLICT OF INTEREST

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.

READING OF THE CITY COUNCIL CODE OF CONDUCT

Mayor Montano read the City Council Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the August 29, 2023 Special Meeting Agenda

Motion/Second: Vice Mayor Chua / Councilmember Lien

Motion carried by the following:

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

NOES: None.

ABSENT: Councilmember Barbadillo

AGENDA ITEMS

1. **Review City Council Procedures and Protocols Handbook and Provide Direction to Staff (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053)**

Recommendation: Review City Council Procedures and Protocols Handbook, provide input, and direct staff to bring back modifications, if any, for Council consideration.

Acting City Manager Thomas introduced the item. Assistant City Manager Kantak, joined by City Attorney Mutalipassi, presented the report.

Chapter II - Duties of the City Council

- Section C: Duties of the Vice Mayor - when and how the Vice Mayor is selected.

Mayor Montano proposed changing the Vice Mayor appointment from every two years to at the discretion of the mayor with the option to appoint every year. Vice Mayor Chua asked if the duration can be dictated by the Mayor and would then approved by the City Council. City Attorney Mutalipassi noted that both appointment and removal would be by the recommendation of the Mayor with approval of City Council. Assistant City Manager suggested language for the handbook that the appointment would come before the City Council annually at the start of every calendar year. Both the Mayor and Vice Mayor agreed with the suggested language.

Councilmember Phan reflected on past Vice Mayor appointments and suggested the Council work together to appoint the Vice Mayor for a full two-year term, noting that a single-year term occurred only once before. Mayor Montano spoke on the working relationship between the Mayor and Vice Mayor and suggested that this change would provide opportunity for other Councilmembers to get the experience of filling the position.

Chapter III - Mayor and Councilmember Conduct

- Section A: Use of electronic devices; use of laptops and cell phones in Closed Session.

Mayor Montano asked to include language in the Code of Conduct adding that use of electronic devices during Closed Session to the prohibited, voicing concern for the sensitivity of closed session issues. Acting City Manager Thomas suggested also adding language to Chapter 4, Section D, Number 4 regarding the use of electronic devices if this is a supported change. Mayor Montano supported this suggestion.

Councilmember Barbadillo suggested that adopting additional rules on top of existing rules and legislation would be overkill. Councilmember Phan spoke in opposition to the recommendation, cautioning against this. Vice Mayor Chua noted that rules against technology won't stop leaks from happening.

City Attorney Mutalipassi clarified that ex parte communication at the dais is considered a Brown Act violation and that during a meeting, members of the public must address the entire council at the same time.

Chapter IV - Meetings

- Section F 2: Presiding Officer - Seating

In response to questions from Vice Mayor Chua, City Attorney Mutalipassi noted that the Council was not currently following the handbook policy for seating assignments. Vice Mayor Chua recommended staff return with less ambiguous language and define that seniority was determined by continuous service as an elected official. City Attorney Mutalipassi suggested revising the handbook language so that the Mayor and Vice Mayor sit at the center of the dais and remaining councilmembers select their seats in order of seniority. Vice Mayor Chua agreed with the suggestion. Councilmember Lien noted she asked to address this issue in the past. She suggested the Council should be consistent in following the handbook language, including seating order.

- Section G 1-5 Voting, Rules of Procedure; Roberts Rules of Order

Councilmember Barbadillo voiced concern with the order of voting, noting his name was always called first, when he hadn't had the time to consider the matter. Vice Mayor Chua questioned if there a way to alternate which Councilmember would be called on first to vote. City Attorney Mutalipassi noted that members may pass on the vote and then be returned to afterwards. Council asked staff to return with options for consideration.

Chapter VI – City Council Actions

- Proclamations and Commendations

Vice Mayor Chua asked the method of recourse if the Mayor chooses to not issue a commendation. City Attorney Mutalipassi noted there is not an appeal process, but that the Councilmember could ask for a resolution issuing a commendation. Vice Mayor Chua asked to return with language to that effect. City Attorney Mutalipassi suggested a commendation using the community mark as an option for councilmembers. Mayor Montano asked staff to return with those options to review.

City Council Salaries

Title 1, Chapter 13, Milpitas Municipal Code and SB 329 (2023)

City Attorney Mutalipassi provided information on SB 329 allowing the City Council to adopt an ordinance to increase salaries by up to 5% each year that no increase was given. He offered to prepare an ordinance to adopt the salary increase. Vice Mayor Chua asked to bring back those options for the City Council to consider. Councilmember Phan proposed a salary setting commission and asked if the Council should consider becoming a Charter City. Vice Mayor Chua suggested Councilmember Phan bring the topic up during Announcements and Future Agenda Items. Councilmember Lien also asked for clarification and possible flexibility on coverage for lodging with a certain mileage from the City. She noted that it is more convenient to stay overnight at some destinations within driving distance of Milpitas than driving to and from home.

Training and Travel Budget

Councilmember Lien suggested setting a dollar threshold prior to going to City Council for approval. Assistant City Manager Kantak offered to return with options for Council consideration. Mayor Montano also asked for a list of items for which the training and travel budget may be used.

Policies and Procedures for Censure

Mayor Montano questioned the definition of admonishment as called for in the adopted Censure policy. She asked staff to return with definitions of the sanctions detailed for a councilmember and asked to receive copies of censure policies from MUSD and other cities.

Interns

Mayor Montano voiced concerns with limitations on school status and age. Vice Mayor Chua asked to include graduates for consideration. Councilmember Phan suggested including a time frame after graduating to be considered for an intern position and responded that the purpose of an internship was to develop skills and gain experience. He followed up, noting that internships available to anyone regardless of school status and age are jobs, not internships.

Keys to the City

Mayor Montano and Vice Mayor Chua asked for guidelines to consider for granting keys to the City. Vice Mayor Chua suggested it should only be for a significant or measurable contribution to the community and also suggested limits on the number that can be issued. Councilmember Phan suggested delegating the process to the City Council. Vice Mayor Chua referenced the City Facility Naming Policy as a reference for developing guidelines to issuing keys to the City.

Photographs of Past Councilmembers

Mayor Montano noted that the picture of a former Councilmember, Debbie Giordano, that served for 12 years, was missing. She suggested there be a minimum number of years or terms served before a photo can be

displayed with past councilmembers, and that it applies to all Mayors, Vice Mayors, and Councilmembers. Vice Mayor Chua suggested establishing a minimum number of years to qualify for having a photo on the wall. Councilmember Lien remarked that once a Councilmember has served, they have the right to have their picture on the wall. Mayor Montano agreed with Councilmember Lien and suggested a waiting period of five years after serving before a picture is hung on the wall of the Council Chamber. The Mayor also suggested a waiting period of seven years before posting the photo. There was consensus in support of all members being recognized with a photo. The Council asked staff to return with recommendations.

Chapter IV - Meetings

Assistant City Manager Kantak noted that staff recommended deleting the reference to Council meeting start time as it is governed by the Milpitas Municipal Code. She also recommended that meeting minutes be kept per best practices.

Chapter V – Meeting Agendas and Minutes

Vice Mayor Chua asked for clarification on p. 21 of the handbook, Item 2a, as to who can request an item to be added to the agenda, both for Closed and Open Session agendas, and asked to make the language very clear. She also asked to include a notation in the handbook that the City Manager can also call a special meeting.

Mayor Montano questioned if the City Council desired to hire a consultant and conduct a retreat to continue revising the handbook.

ANNOUNCEMENTS

There were no announcements.

ADJOURNMENT

Mayor Montano adjourned the meeting at 7:50 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES
TUESDAY, SEPTEMBER 5, 2023

The City Council of the City of Milpitas convened on September 5, 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 6:01 PM. Roll Call was taken by City Clerk Guzzetta.

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

ABSENT: Councilmember Phan (6:03 PM).

City Attorney Mutalipassi announced the closed session items. The City Council adjourned to Closed Session at 6:03 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

The City Council reconvened in open session at 7:00 PM

CLOSED SESSION ANNOUNCEMENT:

City Attorney Mutalipassi reported that there was no action taken on Closed Session items.

PLEDGE OF ALLEGIANCE

Mayor Montano led the Pledge of Allegiance.

INVOCATION

Councilmember Barbadillo presented the invocation.

PRESENTATIONS

Mayor Montano and the City Council presented a proclamation in recognition of "National Preparedness Month" to Fire Chief Jason Schoonover and in recognition of "National Suicide Prevention Week" to Lorinne Patterson from the HOPE Suicide Prevention Task Force. She also presented certificates of commendation to Milpitas High School students participating in the Digital Map Project.

PUBLIC FORUM

There were no public speakers.

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. 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.

READING OF THE CITY COUNCIL CODE OF CONDUCT

Mayor Montano read the Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the September 5, 2023 Regular Meeting Agenda.

Motion/Second: Vice Mayor Chua / Councilmember Barbadillo

Motion carried by the following:

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

NOES: None

ABSENT: None

CONSENT CALENDAR

Motion: to approve the Consent Calendar

Motion/Second: Vice Mayor Chua / Mayor Montano

Motion carried by the following:

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

NOES: None

ABSENT: None

There were no public speakers.

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

Received 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)

Approved 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)

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

Received Mayor Montano's recommendations and approved removals from the Science, Technology and Innovation Commission; Approved and confirmed recommendations for appointments to City Commissions; Accepted the resignation of Charles Lingle from the Energy and Environmental Sustainability Commission; and directed the City Clerk to post the notice of unscheduled vacancies.

Community Advisory Commission:

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

Economic Development and Trade Commission:

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

Science, Technology and Innovation Commission:

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

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)

Authorized and approved 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)

Approved and authorized 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)

Approved and authorized 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)**

Approved and authorized 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)**

Received 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)**

Accepted and approved a budget appropriation of \$200,000.00 from the Affordable Housing and Community Benefit Fund and authorized 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)**

Considered the exemption in accordance with CEQA and adopted **Resolution No. 9270** 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)**

(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.

- 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)**

Adopted **Resolution No. 9271** 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 authorized 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

- 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)**

Acting City Manager Thomas introduced the report. Economic Development Director Andrade and Housing Division Manager Musallam presented the report.

Housing Division Manager Musallam responded to questions from the City Council.

Mayor Montano opened the public hearing.

There were no public speakers.

Mayor Montano closed the public hearing.

After discussion, motion: to approve the draft FY 2022-2023 Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report (CAPER); and 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.

Motion/Second: Vice Mayor Chua / Councilmember Lien

Motion carried by the following:

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

NOES: None

ABSENT: None

COMMUNITY DEVELOPMENT

- 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)**

Principal Engineer Alonzo presented the report.

There were no public speakers.

Mayor Montano stated that this is the time for the City Clerk to canvass the ballots and to report the results of the election to the City Council.

City Clerk Guzzetta reported that one ballot was received and opened the sealed ballot. She stated that the proposition was unanimously approved.

After discussion, motion: to receive election results from the City Clerk and adopt **Resolution No. 9272** certifying the election results and adding Tract No. 10592 to Community Facilities District 2008-1 (Annexation No. 25); 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 Approve and authorize the City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and KB Home South Bay, Inc

Motion/Second: Councilmember Lien / Vice Mayor Chua

Motion carried by the following:

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

NOES: None

ABSENT: None

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)

Acting City Manager Thomas introduced the item. Acting Planning Director Lee presented the report, joined by Project Manager Sam Moffitt and Assistant City Manager Kantak.

There were the following public speakers:

1. Voltaire Montemayor

Vice Mayor Chua questioned the four-month reduction based on the Option 1 recommendation and asked if, with the grant funding, the program would continue on as planned.

Councilmember Barbadillo suggested the prudence of beginning to explore additional funding sources to continue the program beyond 2025 and supported continuing the Milpitas SMART program.

Councilmember Lien questioned if expanding hours was related to outreach efforts.

Mayor Montano supported the service hours expansion to extend weekday service from 7am-7pm to 6am-9pm and add Saturday service, and to begin by slowly converting to a hybrid fleet one vehicle at a time.

Vice Mayor Chua asked staff to look into other sources to support the program and to consider other options for efficiency such as fixed route service.

Assistant City Manager Kantak queried the Council for support the conversion a hybrid vehicle fleet. There was general consensus from the Council to consider hybrid vehicles.

Acting City Manager Thomas reiterated the City Council direction and asked for clarification on fares and promotions. Assistant City Manager noted that staff recommended four months of free fares over the year. Both Mayor Montano and Vice Mayor Chua supported the recommendation. There was consensus from the City Council to support continuing to charge current fares while offering more promotions, including the recommended four months of free fares over the course of a year.

After discussion, motion: to 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.

Motion/Second: Councilmember Lien / Councilmember Barbadillo

Motion carried by the following:

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

NOES: None

ABSENT: None

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Mayor Montano asked for the following future agenda items:

1. Council to consider an amendment to the Affordable Housing Ordinance to increase the below-market-rate (BMR) requirement from 15% to 20% for all new residential projects and explore flexibility in meeting the new requirement. There was unanimous consensus from the City Council to add it to the prioritization list.
2. Consider an art project for the City Hall lobby make recommendations to the City Council. Acting City Manager Thomas noted that to use public art funds, it would need to be considered by the Arts Commission. Consensus from the City Council was that before funds are released to receive input from the Arts Commission.

Councilmember Phan requested the Council consider exploring taking steps towards becoming a Charter City. There was consensus from the City Council to add the item to the prioritization list (Noes: Mayor Montano).

Vice Mayor Chua made the following requests:

1. City Attorney look at the policy for commissioners to release funds without the approval of the City Council. If any commission is granting a waiver, it must go through the City Council. There was unanimous support from the City Council to move the item forward.
2. Police Chief to have staff complete analysis if, working with the County, it would be beneficial to have a location where residents can pickup Narcan. There was unanimous support from the City Council to move the item forward.

ADJOURNMENT

Mayor Montano adjourned the meeting at 8:55 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # C3.

as of 9/14/2023

October 3, 2023 – Regular Meeting

CLOSED SESSION

- Labor Relations

INVOCATION (Councilmember Phan)

PRESENTATION

- Fire Prevention Week (Proclamation)
- Indigenous Peoples' Day (Proclamation)
- Hindu American Awareness and Appreciation Month (Proclamation)
- Clean Air Day (Proclamation)

CONSENT CALENDAR

1. Receive City Council calendar for October 2023 (City Clerk)
2. Approve City Council Meeting minutes of September 19, 2023 (City Clerk)
3. Preview list of items for October 17, 2023 (City Clerk)
4. Councilmember Request List (City Clerk)
5. HDL Agreement (Finance)
6. Report on Emergency HVAC Repairs (Public Works)
7. Disposition of Fleet and Equipment (Public Works)

COMMUNITY DEVELOPMENT

8. Proposed Amendment to Shopping Cart Ordinance and Fee Increase for Retrieved Cart Delivery to Participating Stores (Building)
9. Workforce Housing (Housing)
10. Comprehensive Zoning Ordinance Update (Planning)

COMMUNITY SERVICES

11. Storm Fee Discussion (Public Works)

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

OPEN ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Have the Police Chief direct staff to complete an analysis in partnership with the County to determine if it would be beneficial to have a location where residents can pickup Narcan	Chua	9/5/2023	This item will be discussed at the next Council prioritization meeting.
2	City Attorney to look at the policy for commissioners to release funds without the approval of the City Council. If any commission is granting a waiver, it must go through the City Council	Chua	9/5/2023	This item will be discussed at the next Council prioritization meeting.
3	Explore taking steps towards becoming a Charter City	Phan	9/5/2023	This item will be discussed at the next Council prioritization meeting.
4	Consider an art project for the City Hall lobby, receive input from Arts Commission	Montano	9/5/2023	This item will be discussed at the next Council prioritization meeting.
5	Ordinance to increase the below-market-rate (BMR) requirement from 15% to 20% for all new residential projects and explore flexibility in meeting the new requirement	Montano	9/5/2023	This item will be discussed at the next Council prioritization meeting.
6	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	This task is completed. The Fire Chief sent an informational memo to the Mayor and City Council on September 5, 2023.
7	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 Fall 2023. Any potential next steps will be determined following this preliminary review.
8	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.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
9	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
10	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.
11	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.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
12	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.
13	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 during the upcoming CIP budget process.
14	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
15	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	Quarterly reports to City Council are ongoing.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
16	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.
17	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.
18	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.
19	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.
20	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.
21	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.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
22	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.
23	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.
24	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.
25	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.
26	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.
27	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.
28	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.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
29	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.
30	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)

Item Title:	Receive Report and Direct City Attorney to Introduce an Ordinance regarding Regulation of Sidewalk Vendors in Parks and Public Rights of Way (Staff Contact: Michael Mutalipassi, City Attorney, 408-858-3040)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/19/2023
Recommendation:	Receive a report and direct the City Attorney to introduce an ordinance regarding the regulation of street vendors in parks and public rights of way consistent with the Council's policy and SB 946.

BACKGROUND:

Among the prohibitions set forth in MMC V-9-4.00 *et seq.* is a prohibition against conducting any business or concession within a park. Section V-9-4.01 prohibits, without a permit, "[t]he conduct of any trade, calling, occupation, business or profession (including, but not limited to, the business of peddling, hawking or vending any goods, wares or merchandise of any kind). (The Council declares it to be its intent that permits hereunder shall be granted only in exceptional circumstances of benefit to the community at large.)" MMC section V-9-4.01 was adopted by the City Council in 1974. However, in 2018, former Governor Brown signed SB 946 into law. SB 946 places substantial restrictions on local control of sidewalk vendors, including prohibiting local authorities from banning sidewalk vendors from selling food or merchandise in a park owned or operated by the local authority. SB 946 preempts MMC section V-9-4.01 such that it must be amended. While SB 946 restricts the local control, it does allow local agencies to have some regulatory control over sidewalk vendors.

ANALYSIS:

SB 946 amended the California Government Code to include Chapter 6.2, sections 51036 to 51039, regulating sidewalk vendors. Section 51038 allows local authorities to adopt a program to regulate sidewalk vendors so long as the program complies with the requirements of the section. Section 51038 prohibits local authorities from requiring sidewalk vendors from operating within specific parts of the City or specific parts of the public right of way, except when those restrictions are directly related to objective health, safety, or welfare concerns. It prevents a local authority from prohibiting sidewalk vendors from selling food or merchandise in a park owned or operated by the local authority unless the prohibition is directly related to objective health, safety, or welfare concerns; necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; or necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. The local authority cannot require any sidewalk vendor to obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise, including the consent of brick and mortar businesses. A local authority cannot restrict the neighborhoods sidewalk vendors may operate in, except the local authority may ban stationary sidewalk vendors in areas that are zoned exclusively residential (but cannot ban roaming sidewalk vendors from those areas.) A local authority cannot restrict the overall number of sidewalk vendors within its jurisdiction unless the restriction is directly related to objective health, safety, or welfare concerns.

Local authorities may adopt requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns. Limitations on hours of operation may not be unduly restrictive, and in nonresidential areas, any limitations on hours of operations for sidewalk vendors cannot be more restrictive than the hours of operations for any other businesses on the same street. Local authorities can require sidewalk vendors to maintain sanitary conditions; make requirements that ensure ADA compliance; obtain from the City a valid business license; require sidewalk vendors possess a valid California seller's permit; require additional licenses from other state or local agency

to the extent required by law; require compliance with other generally applicable laws; and require a sidewalk vendor to submit certain information regarding his or her operations.

Staff recommends that the Council direct the City Attorney to prepare a SB 946 compliant ordinance creating a program to regulate sidewalk vendors and to amend or delete MMC section V-9-4.01 in conformity with that program. Recommended regulations include:

- Requiring sidewalk vendors to obtain a City of Milpitas business license;
- Allowing a waiver of the business license fee if the vendor is not associated with a corporation or franchise;
- Requiring sidewalk vendors to comply with the ADA;
- Requiring sidewalk vendors to maintain sanitary conditions;
- Requiring sidewalk vendors to obtain valid applicable licenses from the State and County to the extent otherwise required by law;
- Banning stationary sidewalk vendors from strictly residential neighborhoods; and
- Banning any sidewalk vendor from operating in a strictly residential neighborhood before 7 a.m. or after 7 p.m.

POLICY ALTERNATIVE(S):

Alternative 1: Direct the City Attorney to prepare an ordinance creating a SB 946 compliant program for the regulation of street vendors in parks and public rights of way and to amend or delete MMC section V-9-4.01 in conformity with that program.

Pros: The City will be able to regulate street vendors in compliance with state law.

Cons: None.

Alternative 2: Do not take action to regulate street vendors in parks and public rights of way.

Pros: Staff will not expend time preparing an ordinance.

Cons: The City will not be able to regulate street vendors in parks or public rights of way. MMC section V-9-4.01 will not be enforceable as it will be preempted by state law.

FISCAL IMPACT:

There is no fiscal impact to directing the City Attorney to introduce an ordinance. There may be some fiscal impacts associated with licensing street vendors. Those fiscal impacts will be evaluated upon introduction of an ordinance.

California Environmental Quality Act (CEQA):

The action has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378.

RECOMMENDATION:

Receive a report and direct the City Attorney to introduce an ordinance regarding the regulation of street vendors in parks and public rights of way consistent with the Council's policy and SB 946.

Attachment(s):

1. SB 946

Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with
Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.2. SIDEWALK VENDORS

51036. For purposes of this chapter, the following definitions apply:

(a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

(b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

(d) “Local authority” means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority’s sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4) (A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

(1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(d) Notwithstanding subdivision (b), a local authority may do both of the following:

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the

Food and Agricultural Code and any regulations adopted pursuant to that chapter. A “swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority’s temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (1) A violation of a local authority’s sidewalk vending program that complies with Section 51038 is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Recommendations from Mayor Montano for Removal from City Commission, and Accept Commissioner Resignation (Contact: Mayor Montano, 408-586-3024)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/19/2023
	<u>Recommendation:</u> Approve the removal of Steven Huang as non-voting Student Commissioner from the Economic Development and Trade Commission; Accept the resignation of Zeya Mohsin from the Planning 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. Most of the 13 City Commissions include a non-voting Student Commissioner seat. Students Commissioners must be in grades 9 through 12 and live in the City of Milpitas.

In accordance with the City of Milpitas Commission By-Laws, any 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.

By state law, a Notice of an Unscheduled Vacancy must be posted by the City Clerk to advertise the vacant Commission seats. Pursuant to California Government Code §54974, the notice of unscheduled vacancy shall be posted not earlier than 20 days before the vacancy occurs. 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.

Analysis:

Steven Huang, the non-voting student member on the Economic Development and Trade Commission graduated from high school and no longer qualifies to sit on the commission as a non-voting student member.

Commissioner Zeya Mohsin submitted her resignation from the Planning Commission effective October 1, 2023.

The notice of these unscheduled vacancies will be posted Wednesday, September 20, 2023.

Fiscal Impact:

There is no fiscal impact associated with this item.

Recommendation:

Approve the removal of Steven Huang as non-voting Student Commissioner from the Economic Development and Trade Commission; Accept the resignation of Zeya Mohsin from the Planning Commission; and direct the City Clerk to post the notice of unscheduled vacancies.

Attachments:

1. Planning Commissioner Zeya Mohsin resignation

Suzanne Guzzetta

From: sguzzetta@milpitas.gov
Subject: FW: Planning Commission

From: Carmen Montano [REDACTED]
Date: August 21, 2023 at 11:37:49 AM PDT
To: Zeya Mohsin [REDACTED]
Subject: Planning Commission

HIZeya,
I understand. Family is number one. Thank you for all your years of service to our community.
Please keep in touch.
Mayor Montano

From: Z Mohsin [REDACTED]
Sent: Monday, August 21, 2023 8:18 AM
To: carmen montano [REDACTED] Carmen Montano [REDACTED]
Subject: Planning Commission

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](#).

To: Mayor City of Milpitas
Re: Letter of Resignation – Planning Commission

Hello Mayor Carmen Montano,

This letter is to inform you that, unfortunately, I am resigning from my position with the city planning commission effective October 1, 2023. Due to family commitments, I will not be able to continue with the remaining term of my appointment to the commission.

I am grateful for the wonderful experiences and opportunities that have been afforded to me while in this position. It has been a pleasure to have been a part of this organization, and I will always look back fondly upon my time here.

Look forward to staying connected and working together again in the future.

Sincerely,

Zeya Mohsin
[REDACTED]

--
Thanks,
ZMohsin

Item # C6.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Review and Accept the 2023 Legislative Season Action Report, Including an Update on 2023 State and Federal Earmark Requests (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/19/2023
	<u>Recommendation:</u> Review and accept the 2023 Legislative Season Action Report, including an update on 2023 State and Federal Earmark Requests.

BACKGROUND:

On May 18, 2021, the City Council approved the [Legislative Advocacy Policy](#). The Policy includes Legislative Guiding Principles and establishes clear guidelines for advancing City goals and positions through legislative review and advocacy at the regional, state, and federal levels of government and provides guidance for City officials who serve on regional, state, and national boards, committees, and commissions when they are asked to review public policy matters and issues.

On September 6, 2022, the Mayor and City Council directed staff to issue a request for proposals for Federal and State legislative advocacy services. In January 2023, the City contracted with Kiley & Associates for these services, the primary areas of focus for this contract include:

- Tracking pending legislation and issues that could be impactful or important to the City;
- Advocating or opposing legislation that significantly impacts the City; and
- Engaging with State and Federal agencies to expedite reimbursement for expenditures, clarify administrative rulings, advocate for funding requests, etc.

Kiley & Associates specializes in advocacy at the Federal level, and they have partnered with the firm of Gonsalves & Sons to provide the City with specific advocacy and expertise at the State level.

Legislation and issues of interest are brought to the City's attention through several means: League of California Cities, National League of Cities, Cities Association of Santa Clara County, City Councilmembers, legislators, city staff, community members, and professional or governmental organizations. Per the Council Policy, all legislation or issues of interest shall be referred to the City Manager's Office.

On June 6, 2023, Agenda Item C5 (<https://milpitasca.portal.civicclerk.com/event/5/files>) of the City Council meeting included a status of the one time funding or "earmark" requests that the City made to State and Federal representatives in calendar year 2023. An update on the status of these requests is included in the analysis section of this agenda report.

ANALYSIS:

Per the City Policy, staff is providing the 2023 legislative season action updates to the Council. This report covers legislative advocacy including preparation and issuance of letters of support and opposition of bills under consideration by the California legislature as well as the successful advocacy of earmarked Federal and State funding.

Legislative Advocacy – Letters Issued to the State Legislature

Based on the Legislative Advocacy Police and Legislative Guiding Principles, staff recommended a support or oppose position on 14 bills, for the Mayor's signature. Consistent with the policy, Mayor Carmen Montano signed the letters supporting or opposing these bills. The letters are included as Attachment 2 of this report.

The table below provides a summary of the 14 measures the City opposed or supported including the number and author of the measure, description of the measure, the City's position and the primary City Legislative Policy guiding principle guiding the support or opposition to the measure.

Item No.	Measure No. & Author	Measure Title	Measure Description	City Position	Primary Legislative Guiding Principle
1	AB 33 (Bains)	Fentanyl Addiction and Overdose Prevention Task Force.	This law in California sets up different categories or 'Schedules' for controlled substances, including the drug fentanyl, with the greatest restrictions and penalties for Schedule I drugs. It is illegal to possess or purchase for sale specified controlled substances such as fentanyl and punishment can include 2-4 years in prison. This bill sets up a new task force that will look into the impact of fentanyl abuse in the state and will collect data, evaluate solutions and increase public awareness.	Support	2. Support Efforts to Keep Milpitas Safe
2	AB 367 (Maienschein)	Controlled substances: enhancements	This bill states that if a person sells, furnishes, administers, or gives away fentanyl or a related substance and that person suffers a significant or substantial physical injury as a result, then the person who sold, furnished, administered, or gave away the substance can get an added sentence of 3-5 years in state prison.	Support	2. Support Efforts to Keep Milpitas Safe
3	SB 363 (Eggman)	Conservatorship Reform and Behavioral Health Bed Database	This bill would establish a real-time dashboard of available beds in psychiatric and substance abuse facilities.	Support	7. Support and Promote Inclusive Communities
4	SB 43 (Eggman)	Conservatorship Reform and Behavioral Health Bed Database	This bill would make it easier to provide treatment to those unable to care for themselves.	Support	7. Support and Promote Inclusive Communities
5	AB 474 (Rodriguez)	State Threat Assessment Center: Transnational Criminal Organizations	This bill will improve community safety in the City of Milpitas for our first responders and residents. Our police officers and firefighters are encountering fentanyl at an alarming rate. Each encounter places them at risk of an unintentional overdose.	Support	2. Support Efforts to Keep Milpitas Safe
6	AB 955 (Petrie-Norris)	Controlled Substances	This bill will improve community safety in the City of Milpitas for our first responders and residents. Our police officers and firefighters are encountering fentanyl at an alarming rate. Each encounter places them at risk of an unintentional overdose.	Support	2. Support Efforts to Keep Milpitas Safe
7	AB 1175 (Quirk-Silva, et.al)	Outdoor Advertising	This bill would allow a local jurisdiction to request from Caltrans a five-year extension of an original provision of the Outdoor Advertising Act that treated off-site advertising displays located in a former redevelopment area as an on-premises sign. Support of this bill was coordinated with the City partners at the Great Mall.	Support	5. Protect and Increase Local Funding, No Unfunded Mandates
8	SB 719 (Becker)	Law enforcement agencies: radio communications.	This bill would require law enforcement agencies in California such as municipal police departments, county sheriff's departments, local law enforcement agencies, and university and college police departments to provide real	Oppose	2. Support Efforts to Keep Milpitas Safe

			time access to their radio communications by 2024. It would also require those agencies to make sure any criminal justice information obtained through CLETS (the California Law Enforcement Telecommunications System) is not accessible to the public. If expenses incurred by local agencies are determined to be mandated by the state, reimbursement will be provided.		
9	AB 742 (Jackson)	Law enforcement: police canines.	Existing law allows police officers to use a certain amount of force when making an arrest in order to prevent an escape or in response to resistance. The law also prevents the use of physical objects, like chemical agents and projectiles, to disperse any assembly, protest or demonstration, as long as it meets certain standards. This bill would make it illegal for law enforcement to use an unleashed police dog when apprehending someone, and prevent them from using any police canine for crowd control, or training police dogs in a way that does not follow this bill.	Oppose	2. Support Efforts to Keep Milpitas Safe
10	AB 1532 (Haney)*	Office conversion projects.	This bill would allow developers of certain housing projects to convert office buildings into residential dwellings without needing additional permits or approvals. Additionally, it would exempt these conversions from impact fees, and would require local governments to review and approve these projects as a "use by right." Furthermore, it would establish a program to award funding to these "office conversion projects," and when approved, the state would reimburse local governments for the costs incurred.	Oppose	1. Protect Local Control
11	AB 1504 (McCarty)	Planning and Zoning: Electric Vehicle Charging Infrastructure: Public Right-Of-Way	This bill would expand administrative review requirements to charging stations installed in the public right-of-way and charging stations installed with a battery storage system.	Oppose	1. Protect Local Control
12	SB 423 (Wiener)	Land use: streamlined housing approvals: multifamily housing developments.	This bill would change the law for approving development projects. It would require local governments to approve certain types of development projects, such as multifamily housing developments, that meet certain objective planning standards. The standards would change to include deleting the standard that prohibits the project in a coastal zone, alternative definition for "affordable housing costs," and certification that wage and labor standards will be met. It would also allow the Department of General Services to act in the place of a locality or local government at their discretion. The bill would prohibit public oversight of the development and require reimbursement to local agencies and school districts if otherwise mandated.	Oppose	1. Protect Local Control
13	AB 1572 (Friedman)	Potable Water: nonfunctional turf	Would make legislative findings and declarations concerning water use, including that the use of potable water to irrigate nonfunctional turf is wasteful and incompatible with state policy relating to climate change, water conservation, and reduced reliance on the Sacramento-San Joaquin Delta ecosystem. The bill would direct all appropriate state agencies to encourage and support the elimination of irrigation of nonfunctional turf with potable water.	Neutral if amended	8. Promote Livability and Environmental Stewardship

14	AB 84 (Ward)	Property tax: welfare exemption: affordable housing.	This bill would create a partial exemption from property taxes for rental housing and related facilities owned or operated by certain types of non-profit entities if certain conditions are met, such as, financing from qualified 501(c)(3) bonds, deed restrictions or regulatory agreements with lower income rental rates. It would also provide that this partial exemption is available for property subject to legal restriction providing units for lower income households, and would require an affidavit accompanying the claim for exemption. This bill would also require the county assessor to conditionally grant the exemption and would require reimbursement for certain costs mandated by the state. It would take effect immediately as a tax levy.	Oppose	1. Protect Local Control
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* A letter opposing AB 1532 was not sent forward as the bill is no longer moving forward. However, staff has left the bill on the above list to track the City position for future reference if this bill were to proceed again in a future legislative session

State and Federal Earmark Funding requests

As indicated in the June 6, 2023 City Council agenda report, the City received \$5.5 million in earmark funding in 2022 as follows:

1. Carbon Neutral Homes Incentive Program (\$3 million from State of California);
2. Homelessness Prevention and Unhoused Services (\$1.5 million from State of California);
3. Bike Lanes Facility Enhancement Project (\$1 million from State of California)

Staff submitted additional funding requests in 2023 for various projects and received a total of \$2 million (\$1.5 million for Milpitas SMART and \$500,000 for Main Street). The table below provides a description of each project or program along with a current status of the funding requests.

Project or Program	Description	Status
Main Street Lighting project	A key shovel ready priority project in this area for the City to continue spurring economic development is the Main Street lighting project. This project consists of design and construction of street lights and signal improvements along Main Street from Carlo to Great Mall Parkway and is estimated at \$7.8 million. The project will be built in three phases. Design is completed for the first phase (Carlo to Corning) and the construction is estimated at \$2.4 million. The City requested support for the construction funding (\$2.4 million) for this first phase of the project.	Representative Ro Khanna submitted a request for Federal funding for this project and Assemblymember Alex Lee submitted a State request for funding for this project. \$500,000 was allocated to this project from the Federal Government. No funding was allocated by the State Government. Given the fact that the \$500,000 is substantially less than the \$2.4 million requested, staff will coordinate with the Federal Government, and the Mayor and City Council, on how to best utilize this funding to enhance Main Street.
Milpitas SMART	In alignment with the City of Milpitas's adopted Climate Action Plan, this program is an app-based local transit service that provides convenient, affordable and on-demand connection for residents, visitors and businesses in Milpitas.	\$1.6 million was provided by the State Government for this project.
Milpitas Urban Search and Rescue	In 2000, the Milpitas Fire Department acquired a heavy rescue apparatus (USAR-86). The primary mission of a heavy rescue apparatus is to provide the Fire Department with a multifunction apparatus that has the ability to carry and rapidly deploy, the thousands of pounds of heavy rescue equipment required to manage the myriad of Special Operations and Technical Rescue Incidents that an urban "all hazards" fire department can be expected to respond to. The current equipment is at the end of its useful	Senator Alex Padilla submitted a Federal funding request for this project. This funding was not received.

	life. The City has allocated nearly \$400,000 for this equipment. The City requested support for all or a portion of the remaining funding (\$1.2 million) necessary to purchase the new equipment.	
Milpitas Public Safety Microgrid	In alignment with the City of Milpitas' adopted Climate Action Plan, the Public Safety Microgrid Project installs a combined solar-microgrid-battery system at the facility that houses the City's Police Station, 911 Call Center, Public Works and Information Technology Departments. This will ensure that these facilities can function during power shutdowns/outages and reduce Green House Gas emissions on a daily basis. The City requested support for all or a portion of the \$3.1 million necessary for implementation of this project.	Both Senators Dianne Feinstein and Alex Padilla submitted a Federal funding request for this project. This funding was not received.
Cardoza Park Softball Fields	The Milpitas North Valley Police Athletic League Softball League, formerly known as Milpitas North Valley Bobby Sox, has offered inclusive softball activities for 400 Milpitas youth annually for 24 years focusing on giving young girls in our community the confidence and leadership skills to succeed in life, while also being active and healthy using the fundamentals of athletics. For most of the program's life, it was held at the Russell Middle School Bobby Sox fields, owned by the Milpitas Unified School District (MUSD). In 2021, MUSD started to renovate the Russell Middle School fields for multi-use play with a track, soccer field, and small softball field. To support the continuation of softball league activities, the City temporarily transitioned the PAL Softball Program to Dixon Landing Park Sports fields. Aside from the youth players and their families, thousands of interleague players and spectators stretching from San Lorenzo to the Central Valley, visit Milpitas for team play, scrimmages, and tournaments.	No funding requests were submitted, or received, by State or Federal representatives for this project

FISCAL IMPACT:

Any fiscal impact will be identified when, and if, the implementation of a particular legislation requires Council approval or funding. This would typically be as part of the City's annual budget approval process.

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:

Review and Accept the 2023 Legislative Season Action Report, Including an Update on 2023 State and Federal Earmark Requests.

Attachment(s):

Attachment 1 – Legislative Advocacy Policy and Legislative Guiding Principles

Attachment 2 – Legislative Advocacy Letters sent in 2023



CITY OF MILPITAS

Item # C7.

Revision	Date
Original	5/18/2021

CITY COUNCIL POLICY

Policy No: 1-2	LEGISLATIVE ADVOCACY POLICY	Effective Date: 5/18/2021
Revision No: N/A	Policy Administrator: City Manager	Next Review Due: Click or tap to enter a date.
Related Policies and Procedures: Click or tap here to enter text.	Approved by: City Council, 5/18/2021, Item # C9: 5-0 vote	Date Approved: 5/18/2021

1. PURPOSE

- 1.1. To establish clear guidelines for advancing City goals and positions through legislative review and advocacy at the regional, state, and federal levels of government and to provide guidance for City officials who serve on regional, state, and national boards, committees, and commissions when they are asked to review public policy matters and issues.

2. POLICY

- 2.1. This policy outlines the guiding principles and process to enable a comprehensive review of legislation affecting the City of Milpitas, seek Council's position on proposed legislation, and to make the City's position known.
- 2.2. All legislative reviews shall be made on the basis of the effect on the City and the community as a whole, and taking into account existing City positions, policies, or goals.
- 2.3. The City shall support the legislative positions of the Cities Association of Santa Clara County, League of California Cities, and the National League of Cities, on priority bills that benefit the City of Milpitas.
- 2.4. The City shall adopt Legislative Guiding Principles (LGP) based on approved Council Priority Areas, the adopted General Plan, the Economic Development Strategy, and other Council approved master plans and strategic plans.
- 2.5. On an annual basis, the LGP shall be updated as needed, and shall be approved by the City Council at the beginning of the calendar year.

3. DEFINITIONS

- 3.1. The following definitions are provided solely as a guide to assist in the application of this policy and may be subject to change.
 - 1.1.1. Department – Includes all City departments and offices
 - 1.1.2. Economic Development Strategy – A five year strategy document adopted by the City Council in May 2020
 - 1.1.3. General Plan – A comprehensive planning document adopted by the Council in March 2021



Revision	Date
Original	5/18/2021

LEGISLATIVE ADVOCACY POLICY / POLICY # 1-2

- 1.1.4. Legislative Advocacy – A position of support or opposition to proposed legislation
- 1.1.5. Legislative Guiding Principles – Principles adopted on an annual basis by the City Council to guide the City's position on proposed legislation
- 1.1.6. Milpitas Municipal Code – Codification of the General Ordinances of Milpitas

4. PROCEDURE

- 4.1. Legislation and issues of interest are brought to the City's attention through several means: League of California Cities, National League of Cities, Cities Association of Santa Clara County, Councilmembers, legislators, City staff, community members, and professional or governmental organizations. All legislation or issues of interest shall be referred to the City Manager's Office.
- 4.2. City Manager's Office (CMO) shall review the proposed legislation and, if warranted, request assistance from the City Attorney and/or from one or more departments.
- 4.3. The process for evaluation and action related to proposed legislation of particular interest to the City shall be as follows:
 - 1.1.1. CMO/Department shall evaluate the proposed bill for its impact on Milpitas, recommend a position and potential action, and draft a position statement or support/opposition letter.
 - 1.1.2. If Council has previously adopted a policy directly relevant to the proposed legislation or if the proposed legislation is generally consistent with the City's Legislative Guiding Principles, the Mayor or City Manager may sign a letter supporting or opposing legislation on behalf of the City as further detailed below.
 - 1.1.3. If there is no Council policy relative to the legislation, the issue is politically controversial, or there is significant community interest in the issue, the proposed legislation, including a recommendation to support, remain neutral, or oppose the legislation, will be brought to Council for consideration.
 - 1.1.4. Letters and other communications expressing the City's position on legislation will bear the signature of the Mayor in accordance with the Milpitas Municipal Code. If the legislation will mainly impact the City's operations, the communication may be signed by the City Manager or designee.
 - 1.1.5. In order to keep the City Council informed of all City communications on legislation, copies of the letter or summary of actions will be distributed to the City Council as information items.
- 4.4. Quarterly legislative updates on items of interest will be provided to the City Council.



Revision	Date
Original	5/18/2021

LEGISLATIVE ADVOCACY POLICY / POLICY # 1-2**CITY OF MILPITAS – LEGISLATIVE GUIDING PRINCIPLES****1. Protect Local Control**

The City values its ability and authority to exercise local control, enable excellent public services and protect and enhance the quality of life for Milpitas residents and businesses. The City supports efforts to streamline regulations that benefit the administration of the City and opposes efforts that erode the City's authority to control its own affairs.

2. Support Efforts to Keep Milpitas Safe

The City supports legislation and policies that enable local officials to access resources to provide quality police, fire, emergency management, emergency medical services, youth violence prevention initiatives, and to engage the community in its own safety.

3. Support Efforts to Create Affordable Housing

The City supports legislation and policies that enable local officials to access resources to support the creation of affordable housing and to strive for a balance of jobs and housing in each city across the region.

4. Support City's Vision for Strategic, Sustainable, and Smart Growth

The City strives to foster economic development, including planning and implementation of regional transportation and traffic congestion relief projects. The City supports legislation and policies that support local initiatives to develop or redevelop the community to strengthen the local and regional economy, to accommodate local workers' housing needs in places close to transit and jobs, and to continually improve services provided to the community.

5. Protect and Increase Local Funding, No Unfunded Mandates

The City opposes legislation, policies, or budgets that have negative impacts on City services, revenues or costs. The City supports efforts that protect and enhance local governments' revenues, maximize access to State and Federal funding sources, and increase local funding flexibility including legislation that allows the City to recover costs related to state and federal mandates.

6. Pursue or Retain Federal and State Funding for Key Efforts

In order to support the City's efforts and key policies to provide quality services, affordable housing, transportation, and public infrastructure for its residents and businesses, and to fund the needed strategic support services, it is necessary that the federal and state governments act as partners with local government and provide appropriate levels of funding for these City and regional efforts.

7. Support and Promote Inclusive Communities

The City values diversity and recognizes all residents, including immigrants, as valuable contributors to our community's success. Support legislation that helps our residents be safe, healthy, and able to thrive, while providing opportunities to actively engage in civic, cultural, and economic life.



CITY OF MILPITAS

Item # C7.

Revision	Date
Original	5/18/2021

LEGISLATIVE ADVOCACY POLICY / POLICY # 1-2

8. Promote Livability and Environmental Stewardship

The City values a sustainable quality of life in an urban environment. The City supports legislation and policies that emphasize sustainable development; improve environmental standards and the regulatory process; provide incentives and financial support for preservation of natural resources; promote sustainable energy and water policies; and support efforts to mitigate odor issues.

9. Promote Investment in Infrastructure

The City supports legislation and policies that promote investing in the maintenance and rehabilitation of aging infrastructure and build system capacity expansion in a smart and sustainable manner.



June 5, 2023

The Honorable Reginald Jones-Sawyer
Chair, Assembly Public Safety Committee
1020 N Street, Room 111
Sacramento, CA 95814

RE: Support of Fentanyl and Substance Use-Related Legislation

Dear Assembly Member Jones-Sawyer,

The City of Milpitas is encouraged that the Assembly Public Safety Committee will be considering a slate of bills that could help save countless lives throughout our state. The City of Milpitas supports several critically needed fentanyl and substance use-related pieces of legislation. These measures would stem the tide of illicit substance-related deaths in California and bring relief to the many communities mourning tragic, preventable deaths.

According to the Centers for Disease Control and Prevention, 71,000 people died from a synthetic opioid-related overdose in the United States in 2021, of which 7,000 deaths occurred in California. In other words, 1 out of every 10 deaths from synthetic opioids in the United States occurs in California. The increase in drug-related overdose deaths is largely being driven by the increase in synthetic opioid-related deaths, primarily fentanyl.

Local communities experience the realities of the opioid epidemic every day through the increasing toll on families, first responders, educators, child welfare agencies, public safety officials, health professionals, and community organizations, among others. As committed partners in finding solutions to address the growing substance use crisis in our state, the City of Milpitas supports the following measures:

Assembly Public Safety Special Hearing on Fentanyl

AB 33 (Bains) Fentanyl Addiction and Overdose Prevention Task Force.

AB 367 (Maienschein) Controlled Substances: Enhancements.

AB 474 (Rodriguez) State Threat Assessment Center: Transnational Criminal Organizations.

AB 955 (Petrie-Norris) Controlled Substances

Collectively, these bills will improve community safety in the City of Milpitas for our first responders and residents. Our police officers and firefighters are encountering fentanyl at an alarming rate. Each encounter places them at risk of an unintentional overdose. Additionally, the prevalence and availability of synthetic opioids has led to an increase in medical aids and deaths because of overdose in the City of Milpitas. These critical Assembly Bills will create a prevention task force, enhance sentencing for those that manufacture

and distribute fentanyl and establish penalties for those who utilize social media platforms to facilitate sales of the deadly drug.

Now, more than ever, is the time to act on measures that will preserve human life and improve the safety and well-being of all Californians.

For these reasons, the City of Milpitas requests your support on these fentanyl-related measures.

Sincerely,



Mayor Carmen Montano
City of Milpitas

C: Members, Assembly Public Safety Committee through Committee Secretaries
(via email: Elizabeth Potter: elizabeth.potter@asm.ca.gov; and Samarpreet Kaur: samarpreet.kaur@asm.ca.gov)
Seth Miller, League of California Cities Peninsula Division Public Affairs Manager (via email: smiller@calcities.org)
Milpitas City Council
Ashwini Kantak, Acting City Manager
Matt Cano, Deputy City Manager
Jared Hernandez, Police Chief



OFFICE OF MAYOR CARMEN MONTANO

Item # C7.

City of Milpitas

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March 17, 2023

Senate Rules Committee
California State Senate
State Capitol, Room 400
Sacramento, CA 95814

**RE: SB 43 / 363 (Eggman) Conservatorship Reform and Behavioral Health Bed Database –
NOTICE OF SUPPORT**

Dear Senators,

As Mayor of City of Milpitas in Santa Clara County, I am writing in strong support of SB 43, Conservatorship Reform, and SB 363, Behavioral Health Bed Database, which will strengthen and reform our conservatorship system while also establishing a statewide database for behavioral health resources.

California faces a startling dearth of behavioral health services across the state. The abusive approach of past psychiatric institutions was rightfully phased out in California decades ago. While well-intentioned, the elimination of these facilities created major gaps in beds and services for those with a serious mental illness (SMI) or substance use disorder (SUD). Last century, [our country hit a peak](#) of 337 psychiatric beds per 100,000 individuals. In 2016, that number plummeted to 12 beds per 100,000 people. Without a robust healthcare infrastructure and the ability to compel treatment, thousands of Californians have been left without critical assistance in managing and recovering from behavioral health issues.

According to the California Health Care Foundation, [one in 26 Californians suffer from a serious mental illness](#) that impairs their daily activities. [One in three jailed Californians suffer from a mental health issue](#). Estimates for the frequency of behavioral health issues among our unhoused population ranges from [one in three](#) to [as high as two in three](#). As public servants, we must identify and promote the most effective, evidence-based care suited to each individual's needs across the behavioral health continuum. The outcomes we effectuate now for our most vulnerable residents will be a profound measurement of our success to future generations.

I thank Senator Eggman for introducing SB 43 and SB 363 as essential steps towards our collective goal of expanding access to treatment. SB 43 will modernize the Lanterman–Petris–Short Act to consider individuals with the most acute conditions for conservatorship. Individuals who experience SMI, SUD, homelessness, or all three are far more unlikely to recognize the severity of their condition, let alone the need for treatment. Family members, medical providers, first responders and community



members are often desperate to get someone into treatment, but face extraordinary difficulty in doing so under current law. People with severe mental health challenges also tax our vital health and safety systems, impact neighborhoods and small businesses, and cycle in and out of emergency departments and jail. These are often the most expensive, least effective ways to provide them the services they need.

Conservatorships are a last-resort attempt to care for an individual who has become “gravely disabled,” which is currently defined as not being able to provide ones’ self with food, clothing, and shelter. SB 43 would enhance the definition of “gravely disabled” to a renewed focus on those who are unable to prevent serious physical or mental harm to themselves or others due to an inability to provide for their own basic needs. In addition to families, the Public Guardian can petition for conservatorship, allowing local governments to redirect individuals away from the criminal justice system and emergency departments and link them to effective care. Expanding our use of conservatorships is a practical and moral imperative. [Governor Newsom has led valuable reforms in this area](#), such as the expansion of Laura’s Law, CARE Court, and advocating for additional utilization of public conservatorships.

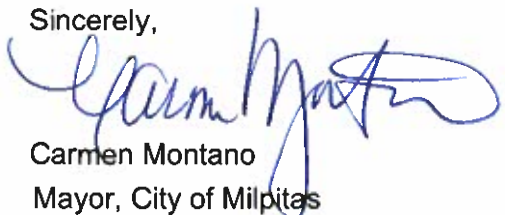
Additionally, SB 43 addresses the inability for medical experts to present documented medical analysis from healthcare providers in the adjudication process. Due to the 2016 California Supreme Court Case, *People v. Sanchez*, out-of-court statements not presented by the commentator are labeled hearsay, and therefore inadmissible. Experts on the stand often rely on the analysis of medical professionals to argue as to why someone may need to be placed under conservatorship. Their clinical evaluation can provide critical context for why an individual should be considered for conservatorship. Under SB 43, courts will receive a more holistic medical background regarding the potential conservatee, ensuring juries are further equipped to determine whether conservatorship is justifiable.

I also applaud SB 363, a long-overdue creation of a state-run virtual dashboard for behavioral health beds. Some counties, [including ours](#), independently operate dashboards displaying available bed count of county-owned and contracted facilities specializing in treatments across the behavioral health continuum. Generally, these dashboards are updated daily rather than in real-time, meaning there is no standardized sharing of data between facilities when hours, minutes, or seconds count towards getting someone into treatment. SB 363 would direct the State Department of Health Care Services to create a database of behavioral health facilities and share bed capacity as it is changing in real-time. A comprehensive repository of specialized services such as chemical dependency recovery hospitals, acute psychiatric hospitals, and mental health rehabilitation centers will provide breathing room for overwhelmed emergency departments and link individuals to condition-specific resources.

SB 43 and 363 jointly confront our behavioral health crisis with valuable tools and will provide meaningful, measurable outcomes for our shared goal of aiding vulnerable Californians and reducing the community impacts of serious behavioral health issues.

Thank you for your leadership on this important issue.

Sincerely,



Carmen Montano
Mayor, City of Milpitas



OFFICE OF MAYOR CARMEN MONTANO

Item # C7.

City of Milpitas

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May 31, 2023

The Honorable Assemblymember Chris R. Holden
Chair, Assembly Appropriations Committee
1021 O Street, Suite 8220
Sacramento, CA 95814

SUBJECT: AB 1175 (Quirk-Silva): Outdoor Advertising Displays
Notice of Support

Dear Assemblymember Holden,

The City of Milpitas supports AB 1175, which would amend the Outdoor Advertising Act (OAA) to allow qualifying off-site advertising displays located in a former redevelopment area to be treated the same as on-premises signage. This would effectively exempt qualifying signs from certain deadlines and restrictions imposed by the OAA for up to five years. A local jurisdiction could request the five-year extension from Caltrans between January 1, 2024, and January 1, 2025.

To qualify for a five-year extension, the outdoor advertising display would need to meet the following criteria for good cause:

- The City has made a finding that the advertising display has had a positive economic impact on the redevelopment project area and provides a public benefit;
- Caltrans has made no final determination of any violation by the display owner or operator of the OAA or any illumination standards for the previous ten years;
- The display owner or operator has complied with all other standards adopted by the City.

The City of Milpitas supports AB 1175 because it recognizes the importance of preserving local control over land use regulation. The bill also recognizes the positive economic impact of maintaining attractive outdoor advertising displays for major businesses in the community, especially for those businesses that do not have direct frontage on a major freeway. When attractively designed and regularly maintained, such signage can be an effective economic development tool in promoting local businesses.

"In Milpitas, the Great Mall has been an important regional shopping destination, a major sales tax revenue generator, and approximately 200 retailers have provided vital job opportunities for local and Silicon Valley



residents for nearly 30 years. The Great Mall is situated between two major freeways, I-880 and I-680, and maintains off-premises advertising displays near key exits with modest signage for major tenants as well as wayfinding to help drivers navigate from the exits to the Great Mall. Both signs are located on private property and have not had violations or complaints in the past ten years.

The City of Milpitas has written to Caltrans to confirm that the two outdoor advertising displays owned, operated, and maintained by the Great Mall and Simon Property Group in Milpitas are in conformance with all provisions of Business and Professions Code Section 5273. Specifically, both displays advertise businesses or activities operating within the boundaries of a former redevelopment area, and at least 10 percent of the total advertising copy, but less than the maximum of 100 square feet, is used to identify the route to the Great Mall of the Bay Area from the nearest freeway offramp. The City will happily provide annual certification in a letter or other form to meet Caltrans certification requirements. The City will also continue to work with the Great Mall management team to ensure the maintenance of the two displays.

For these reasons, the City of Milpitas supports AB 1175. If you have questions or would like to discuss our position on this matter, please contact Milpitas Planning Director Ned Thomas at 669-213-5528 or via email at nthomas@milpitas.gov.

Sincerely,



Mayor Carmen Montano
City of Milpitas

C: Seth Miller, League of California Cities Peninsula Division Public Affairs Manager (via email: smiller@calcities.org)
League of California Cities (via email: cityletter@calcities.org)
Milpitas City Council
Ashwini Kantak, Acting City Manager
Matt Cano, Deputy City Manager
Michael Mutalipassi, City Attorney
Ned Thomas, Planning Director
Alex Andrade, Economic Development Director
Jocelyn Gubler, Vice President, Development, Simon Property Group
Robson Souza, General Manager, Great Mall
Lynn Rice, Director of Marketing and Business Development, Great Mall



OFFICE OF MAYOR CARMEN MONTANO

Item # C7.

City of Milpitas
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September 8, 2023

The Honorable Aisha Wahab
Chair, Senate Public Safety Committee 1020 N Street, Room 545
Sacramento, CA 95814

RE: SB 719 (Becker) Law Enforcement Agencies: Radio Communications.
Notice of OPPOSITION *(As Introduced 2/16/23)*

Dear Senator Wahab:

The City of Milpitas must respectfully **oppose** SB 719 (Becker). This measure would create significant cost and logistical challenges for police agencies by requiring “real time” access to radio activity while responding to emergency calls.

In October of 2020, the California Department of Justice (DOJ) sent out a bulletin to all law enforcement agencies regarding radio encryption. This bulletin stemmed from an order by the Federal Bureau of Investigations to restrict all criminal justice information (CJI) and personal identifiable information (PII) to authorized personnel. The bulletin stated all transmission of such information must be encrypted and provided agencies two options: 1) move to full encryption of radio communications, or 2) establish a policy to restrict dissemination of CJI and PII, or data elements that meet those definitions.

To comply with the DOJ bulletin, many California law enforcement agencies were required to upgrade their radio systems. This cost millions of dollars, even for smaller agencies.

Under existing law, all radio communications are available through already existing Public Records Act regulations. Allowing “real time” access would potentially disrupt local law enforcement response as media personnel dispatch to volatile scenes. Not only will their news vans potentially block ingress and egress routes for first responders, but they could also potentially put themselves in danger, further impacting first responder strategies.

Additionally, this increased access runs contrary to standards set forward by the California Law Enforcement Telecommunications System (CLETS) Policies, Practices and Procedures. As stated in the DOJ Memo, access to Criminal Justice Information and Personally Identifiable Information must be limited to authorized personnel which includes authorized law enforcement, criminal justice personnel, or lawfully authorized designees. Access to information derived from CLETS is intended to remain confidential and for official use only.



SB719 fails to recognize operational challenges and puts our front-line officers in unnecessary peril by forcing California Law Enforcement Telecommunications System (CLETS) information to be shared via alternate means such as a cell phone or computer. This creates a hazardous setting in that officers are not able to remain primarily focused on the situation at hand. Instead of being able to quickly use their dedicated primary radio channel to get vital information, they will have to change channels, turn their attention to keying in a number on a phone, wait in the queue for the call or request to be answered, and remain until the data is processed/returned. Because a phone call is a one-on-one conversation, other officers will not have situational awareness should the CLETS return reveal dangerous subject details. The same concern exists for an officer to change channels or enter the information on a tablet or laptop.

The measure is also overly broad in its definition of media representative or organization. The words, "any news service," allows for anyone with a podcast or social media account to claim media privileges.

Additionally, in emergency situations, law enforcement often requests dispatchers to broadcast the involved party's California Law Enforcement Telecommunications System (CLETS) information over the main channel for safety reasons. Officers need to know in "real time" who they may be encountering prior to arrival. This includes the person's criminal history and if they have a proclivity of violence toward law enforcement. It would be impractical to switch over to a different channel to receive this information while responding to an emergency call adversely impacting public safety response times and putting our residents unnecessarily at risk. . Officers would miss not only information going over the main channel regarding the current scene but also those on the main channel would not hear the information about the suspect's history.

Cal Cities supports accountability on the part of law enforcement agencies concerning police technology and policies, as well as related oversight by local governing bodies. However, limits must be in place on disclosure of the full capabilities of technology to the general public where such disclosure would compromise the effectiveness of the technology's law enforcement applications

For these reasons, the City of Milpitas respectfully opposes your measure. If you have any questions, do not hesitate to contact me at 408-586-3024 or at cmontano@milpitas.gov.

Sincerely,



Carmen Montano
Mayor, City of Milpitas

C: The Honorable Josh Becker
Members, Senate Public Safety Committee
Mary Kennedy, Chief Consultant, Senate Public Safety Committee
Eric Csizmar, Consultant, Senate Republican Caucus
League of CA Cities Peninsula Division, Seth Miller (via E-mail: smiller@calcities.org)
League of California Cities (via E-mail: cityletters@calcities.org)
Milpitas City Council
Ned Thomas, Acting City Manager
Ashwini Kantak, Assistant City Manager



OFFICE OF MAYOR CARMEN MONTANO

Item # C7.

City of Milpitas

408 586 3000

455 E. Calaveras Blvd.

Milpitas, CA 95035

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May 8, 2023

The Honorable Assemblymember Dr. Corey A. Jackson
1021 O Street, Suite 6120
Sacramento, CA 95814

SUBJECT: AB 742 (Jackson) Vehicle: Prohibition of the use of police canines for apprehensions, arrests, or crowd control.
Notice of Opposition

Dear Assemblymember Dr. Jackson,

The City of Milpitas strongly opposes the passage of AB 742, which would prohibit the use of police canines in the apprehension or arrest of a suspect, to physically apprehend (bite) in any situation, or any manner of crowd control. The passage of AB 742 eliminates an irreplaceable law enforcement team member and invaluable tool responsible for countless saved lives of citizens and law enforcement officers, as well as the de-escalation of many situations.

Police canines are relied upon more for their innate abilities for hearing and smell for safety and protection than their ability to apprehend an individual physically. Scientific research has estimated that a canine's sense of smell is, on average, between 10,000 and 100,000 times greater than a human. Similarly, a canine's ability to not only hear sounds humans cannot register but their ability to alert to even the most minor sound within aggregate noise makes them even more critically perceptive. Whether searching for a violent suspect hiding inside a house or identifying a potential threat down a dark alley, police canines uniquely protect their partners and our communities. In most encounters between police and a suspect, the mere announcement by officers that a canine is present will cause suspects to decide against resisting or fleeing, thereby saving lives.

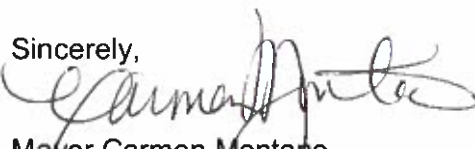
Law enforcement has also recognized the power canines possess and the need to control that force. As such, canine programs undergo incredible ongoing training and review. All actions are overseen and governed by well-established department policies and held accountable by local governing bodies such as the Commission on Peace Officer Standards and Training (POST) and state law. Furthermore, the use of force standards set in statute in the U.S. Supreme Court decision in *Graham v. Connor* in 1989 applies in the event of a canine deployment. Fortunately, in the overwhelming majority of situations, canines assist in de-escalating conflict and prevent force from being necessary.



The Milpitas Police Department's Canine Program was established in 1959 and remains California's second-longest, continuously active canine program in the State. In the past three (3) years, Milpitas Police canines have been deployed 254 times for various reasons, including but not limited to searching buildings and open areas for suspects, searching for articles of evidence, and searching for elderly residents or young children who have wandered away from their homes or schools. Of the 254 deployments, only one (1) resulted in the physical apprehension of a suspect. That apprehension resulted in a minor injury to the suspect. The use of police canines by the Milpitas Police Department has almost always resulted in the de-escalation of an incident involving an apprehension. Furthermore, the mere presence of a canine often motivates a suspect to comply with an officer's lawful order and canines have been important tools in department community engagement events.

As with other legislation this year, the justification for banning police canines centers on racial bias. The City of Milpitas condemns all racial bias, whether in policing or not. We continue to partner in addressing bias directly but stand against proposed laws that eliminate or ban legitimate police operations and powers. Working collaboratively, we can continue addressing inequity without jeopardizing public safety through these broad restrictions.

For these reasons, the City of Milpitas opposes AB 742.

Sincerely,

Mayor Carmen Montano
City of Milpitas

C: Seth Miller, League of California Cities Peninsula Division Public Affairs Manager (via email: smiller@calcities.org)
League of California Cities (via email: cityletter@calcities.org)



OFFICE OF MAYOR CARMEN MONTANO

Item # C7.

City of Milpitas

408.586.3000

455 E. Calaveras Blvd.

Milpitas, CA 95035

www.milpitas.ca.gov

September 8, 2023

The Honorable Cecilia Aguiar-Curry
Chair, Assembly Committee on Local Government

1020 N Street, Room 157
Sacramento, CA 95814

RE: AB 1504 (McCarty) Electric Vehicle Charging Stations: Permit Applications.
Notice of OPPOSITION

Dear Chair Aguiar-Curry,

The City of Milpitas regrettably must oppose unless amended AB 1504 (McCarty), which would require local jurisdictions to develop and complete a plan for the installation of electric vehicle charging stations (EVCS) in the public right-of-way that includes a permitting process.

Cities throughout California are supportive of helping the state address climate change and achieve its landmark greenhouse gas emission reduction goals. For years, cities have been leaders in supporting projects and programs that reduce greenhouse gas emissions by improving water and energy efficiency, increasing the diversion of materials away from landfills, and expanding access to renewable energy resources.

Additionally, cities across the state are working to quickly process EVCS permit applications to meet the state's ambitious zero-emission vehicles and EVCS goals.

While California aggressively strives to reach the target of installing 250,000 shared EVCS by 2025, AB 1504 goes much further possibly compromising the public's health and safety. AB 1504, as amended April 11th, requires a local agency to consult with local departments, energy providers, building, planning and transportation departments, as well as include the proposed EVCS plan in the next public hearing. Additionally, AB 1504 would require local agencies to complete an assessment on EVCS in the private right-of-way, identify planning and permitting barriers to EVCS and to evaluate competing uses in the public right of way. Moreover, AB 1504 requires local agencies to complete an equity analysis to determine locations for EVCS in the public right of way, as well as develop site-specific design requirements and identify necessary updates to relevant code of the local agency.

While we support greater transparency and governmental efficiency, these proposed mandates appear duplicative in nature in the gathering and assessment of information that are typically considered when a local jurisdiction reviews EVCS applications and we are unaware of impediments in the current process that are preventing the deployment EVCS throughout the state.



While there are numerous applications and advantages to using battery energy storage systems it is important to keep in mind that there are hazards associated with these installations.

While there is growing interest in utilizing battery energy storage systems, the technology is still nascent and experiencing hazards that are unique to these systems. AB 1504 requires a costly planning process without an allocation from the state or including any specific explicit fee authority on EVCS permitting for cost recovery to comply with the proposed mandates contained in this measure.

For these reasons, we must regrettably oppose AB 1504, unless amended to be contingent on a future appropriation or contain explicit fee authority on EVCS permitting to recover costs associated with the various requirements proposed by this measure.

Cities support increased EV usage and related infrastructure; however, AB 1504 impacts would have potential negative consequences to our communities. If you have any questions, do not hesitate to contact me at 408-586-3024 or at cmontano@milpitas.gov.

Sincerely,



Carmen Montano
Mayor, City of Milpitas

C: The Honorable Kevin McCarty
Members, Assembly Committee on Local Government
Angela Mapp, Chief Consultant, Assembly Committee on Local Government
William Weber, Consultant, Assembly Republican Caucus
League of CA Cities Peninsula Division, Seth Miller (via E-mail: smiller@calcities.org)
League of California Cities (via E-mail: cityletters@calcities.org)
Milpitas City Council
Ned Thomas, Acting City Manager
Ashwini Kantak, Assistant City Manager
Matt Cano, Deputy City Manager



OFFICE OF MAYOR CARMEN MONTANO

Item # C7.

City of Milpitas

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Milpitas, CA 95035

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September 8, 2023

The Honorable Scott Wiener
Chair, Senate Committee on Housing
1021 O Street, Suite 3330
Sacramento, CA 95814

**RE: SB 423 (Wiener) By-right housing approvals: multifamily housing developments: SB 35
(Chapter 366, Statutes of 2017) expansion.
Notice of Opposition**

Dear Senator Wiener:

The City of Milpitas writes to express our opposition to your measure, SB 423, which would greatly expand SB 35 (Chapter 366, Statutes of 2017) provisions and extend the Jan. 1, 2026 sunset date to Jan. 1, 2036.

On any given day, newspaper headlines in California and across the nation are highlighting the state's growing housing supply and affordability crisis. Seven in ten Californians view housing affordability as one of the top problems in their community, and there is growing concern from residents that housing prices are so expensive, younger generations will be priced out of ever being able to buy a home.

The City of Milpitas intimately understands this crisis as it plays out in our community every day. Local leaders are working to find creative solutions so homes of all income levels can be built. They're taking on these difficult and complex tasks, and in many cases successfully planning for more than 2.5 million new homes statewide, all while navigating the state's annual barrage of overreaching housing bills that have thus far demonstrated limited success.

This measure would double-down on the recent trend of the state overriding its own mandated local housing plans by forcing cities to approve certain housing projects without regard to the needs of the community, opportunities for environmental review, or public input. While it may be frustrating for some developers to address neighborhood concerns about traffic, parking, and other development impacts, those directly affected by such projects have a right to be heard. Public engagement also often leads to better projects. Not having such outlets will increase public distrust in government and result in additional ballot measures limiting housing development.

Additionally, SB 35 has limited City staff's ability to adequately implement important transportation and utility requirements by requiring ministerial approval. Many of these requirements must be implemented on a project-by-project basis and cannot be expressed as an objective standard. Therefore, the City of Milpitas has been unable to implement many of its project-specific requirements, which are critical to the health and safety of our communities.



Instead of continuing to pursue top-down, one-size-fits-all legislation, lawmakers should partner with local officials. That's why the League of California Cities is calling on the Governor and lawmakers to include a \$3 billion annual investment in the state budget to help cities prevent and reduce homelessness and spur housing development. Targeted, ongoing funding is the only way cities can find community-based solutions that get our residents off the streets and keep them in their homes. California will never produce the number of homes needed with an increasingly state driven, by-right housing approval process. What is really needed is a sustainable state investment that matches the scale of this long-term crisis.

For these reasons, the City of Milpitas respectfully opposes your measure. If you have any questions, do not hesitate to contact me at 408-586-3024 or at cmontano@milpitas.gov.

Sincerely,



Carmen Montano
Mayor, City of Milpitas

C: Members, Senate Committee on Housing
League of CA Cities Peninsula Division, Seth Miller (via E-mail: smiller@calcities.org)
League of California Cities (via E-mail: cityletters@calcities.org)
Milpitas City Council
Ned Thomas, Acting City Manager
Ashwini Kantak, Assistant City Manager
Matt Cano, Deputy City Manager



OFFICE OF MAYOR CARMEN MONTANO

Item # C7.

City of Milpitas

408.586.3000
455 E. Calaveras Blvd.
Milpitas, CA 95035
www.milpitas.ca.gov

September 8, 2023

The Honorable Dave Min
Chair, Senate Committee on Natural Resources and Water 1021 O Street, Ste. 3220
Sacramento, CA 95814

RE: AB 1572 (Friedman) – Neutral If Amended

Dear Chair Min:

On behalf of the City of Milpitas, we are writing to express our position of neutral if amended on AB 1572, which would create a regulatory structure around a prohibition on the use of potable water for the irrigation of nonfunctional turf on properties other than single-family homes. We do not have concerns with banning the irrigation of certain nonfunctional turf with potable water, but have one outstanding policy issue concerning the continued inclusion of multifamily housing within the scope of the bill.

The City of Milpitas a position of oppose unless amended, which was updated following the amendments on May 18 to the new position of neutral if amended. Each set of amendments made to the bill to date has continued to address concerns.

Background

The State Water Resources Control Board (State Water Board) is in the process of implementing the requirements of AB 1668 (Friedman) and SB 606 (Hertzberg), which were signed into law in 2018 and call for the creation of an urban water use standard. When the regulations are finalized, all urban water retail suppliers will be required to meet their urban water use objective based on the water that is needed in its service area for efficient indoor residential water use; outdoor residential water use; commercial, industrial and institutional (CII) irrigation with dedicated meters; water loss; unique local conditions (variances); and a bonus incentive for potable water reuse.

During the current drought, Governor Newsom has issued a number of executive orders calling on state and local agencies to implement various changes for drought response. On March 28, 2022, the Governor issued Executive Order N-7-22 calling on the State Water Board to implement emergency regulations by May 25, 2022 that, among other things, prohibited the use of potable water for the irrigation of nonfunctional turf. ACWA, CMUA, and RWA supported these regulations while asking for specific consideration for disadvantaged communities and supporting the State Water Board's recognition of the importance of tree health. These regulations were set to expire in June of 2023; the State Water Board just readopted these emergency regulations which will remain in effect until June 2024 once approved by the Office of Administrative Law.



Inclusion of Multifamily Housing

The proposed ban in AB 1572 would encompass all urban outdoor landscapes other than single-family homes. We believe the exclusion of single-family homes is appropriate. Further, we appreciate that the bill limits the prohibition of irrigation to potable water, which recognizes local efforts to implement locally sustainable recycling programs that will help mitigate some of the impacts of drought on our landscapes. However, we are concerned about the inclusion of multifamily housing in the prohibition. Urban retail water suppliers do not uniformly categorize multifamily housing as either residential or as part of the commercial, industrial, and institutional sectors. Further, under the urban water use objective, which urban retail water suppliers have been working toward implementing, multifamily housing is considered residential. By combining multifamily housing with the commercial, industrial, and institutional sectors in this bill, different parts of the law would be treating these properties differently, leading to confusion.

By including multifamily housing in the scope of this prohibition, the State will be treating apartment renters differently from single-family homeowners or renters of single-family homes. Those that live in single-family homes, whether as renters or owners, would have no limitation on turf on the property, while apartment renters would be more limited. This bill prohibits irrigation of nonfunctional turf but does not require that nonfunctional turf be replaced with other climate appropriate landscaping. Many commercial and institutional properties will have strong incentives to replace their nonfunctional turf with an appropriate alternative landscape because these are public interfacing spaces. Many multifamily residential building owners will not have such strong incentives. By simply eliminating the irrigation of nonfunctional turf, multifamily properties are likely to face increased tree mortality and heat island impacts with nonfunctional turf simply being left to die with no appropriate replacement or all turf, including functional spaces, being removed in favor of other materials.

While we appreciate that the bill now includes a provision allowing affordable housing and disadvantaged communities additional time and making this conversion contingent upon state funding, this does not completely address our concern about the inclusion of multifamily housing. We continue to request excluding multifamily housing from the scope of this bill consistent with the State Water Board's emergency regulations.

We appreciate this Committee's consideration. If you have any questions, do not hesitate to contact me at 408-586-3024 or at cmontano@milpitas.gov.

Sincerely,



Carmen Montano
Mayor, City of Milpitas

C: The Honorable Laura Friedman
Members, Senate Committee on Natural Resources and Water
League of CA Cities Peninsula Division, Seth Miller (via E-mail: smiller@calcities.org)
League of California Cities (via E-mail: cityletters@calcities.org)
Milpitas City Council
Ned Thomas, Acting City Manager
Ashwini Kantak, Assistant City Manager
Matt Cano, Deputy City Manager



OFFICE OF MAYOR CARMEN MONTANO

Item # C7.

City of Milpitas

408.586.3000
455 E. Calaveras Blvd.
Milpitas, CA 95035
www.milpitas.ca.gov

September 8, 2023

The Honorable Jacqui Irwin
Chair, Assembly Revenue and Taxation Committee
1020 N Street, Room 167A
Sacramento, CA 95814

RE: AB 84 (Ward) Property tax: welfare exemption: affordable housing.
Notice of OPPOSITION (3/7/2023)

Dear Assembly Member Irwin,

The City of Milpitas regrettably must oppose AB 84 (Ward), which would negatively impact local government property tax revenues by providing significant expansions of the “property tax welfare exemption.” Specifically, AB 84 allows land (including vacant land) to qualify for the exemption from the date restrictions are placed on the property, not when construction commences, expands the 140% Area Median Income (AMI) rule to cover all deed restricted affordable housing, and eliminates the statutory sunset date.

The City of Milpitas supports continuing to expand affordable housing statewide and efforts to reduce the cost of developing affordable housing. While the City of Milpitas finds the intent of AB 84 laudable, the measure fails to provide safeguards to ensure the exemption is not abused.

For example, allowing vacant land to receive the welfare exemption from the date of deed restriction rather than when construction commences, with no time limitation, incentivizes “land banking.” This would result in the opposite of the bills intent, ultimately disincentivizing developers from beginning construction in a reasonable and timely manner.

Additionally, expanding the ability of *all* affordable housing properties (not just Low-Income Housing Tax Credit units) to receive the welfare exemption if a tenant’s income increases from 80 percent to 140 percent AMI is being done so without legislative oversight. This is the very same oversight the Legislature deemed necessary when passing AB 1193 (Gloria, Chapter 756, Statutes of 2017), which imposed a 2027-28 fiscal year sunset date on the AMI rule expansion for Low-Income Housing Tax Credit units.

AB 84’s risks unfortunately outweigh its benefits and will disproportionately impact local governments including school districts. The negative fiscal impacts of this measure will be exclusively borne by local governments, without a guarantee that conditions to develop affordable housing will improve. We applaud the intent of the measure but have ongoing concerns with proposals that erode the local government tax base without a backfill from the state. While the City of Milpitas supports efforts to reduce the cost of developing affordable housing, local governments can ill-afford any additional erosion of local tax revenues in the short-or-long-term.



For these reasons, City of Milpitas respectfully opposes your measure. If you have any questions, do not hesitate to contact me at 408-586-3024 or at cmontano@milpitas.gov.

Sincerely,



Carmen Montano
Mayor, City of Milpitas

C: The Honorable Christopher M. Ward
Members, Assembly Committee on Revenue and Taxation
Harrison Bowlby, Associate Consultant, Assembly Committee on Revenue and Taxation
Julia King, Consultant, Assembly Republican Caucus
League of CA Cities Peninsula Division, Seth Miller (via E-mail: smiller@calcities.org)
League of California Cities (via E-mail: cityletters@calcities.org)
Milpitas City Council
Ned Thomas, Acting City Manager
Ashwini Kantak, Assistant City Manager
Matt Cano, Deputy City Manager



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize and Approve the Out-of-State Travel to Washington, D.C., for Mayor Carmen Montano to Attend the Forward Latino <i>National Advocacy Day</i> to be held on October 4 – 5, 2023, for an Estimated Total Not-to-Exceed Amount of \$2,000 Budgeted Under the Individual Elected Official Allocation for Conferences/Meetings/Trainings (Staff Contact: Ned Thomas, Acting City Manager, 408-586-3059)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/19/2023
Recommendation:	Authorize and approve the out-of-state travel to Washington, D.C., for Mayor Carmen Montano to attend the Forward Latino <i>National Advocacy Day</i> to be held on October 4 – 5, 2023, for an estimated total not-to-exceed amount of \$2,000 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

BACKGROUND:

The Forward Latino organization holds its Annual National Advocacy Day in Washington, D.C. This highly attended annual advocacy day is scheduled for October 4-5, 2023. The Mayor's attendance at the 2023 National Advocacy Day organized by the national organization called Forward Latino will provide advocacy and policy training, a briefing at the White House, and visits to the offices of United States Representatives and Senators. This series of meetings will bring together advocates from across the country to advocate on specific issues aligned with the City's needs and interests such as community policing, safe neighborhoods, economic development, education, housing, immigration, and healthcare.

Participation in the National Advocacy Day event will provide Mayor Montano with direct access to White House staff and members of the California Congressional delegation where she can advocate on behalf of the City's needs and interests. Advocacy training is a step toward fostering inclusivity and cooperation within the City and better serving the needs of the City's diverse community. This training will also provide the Mayor with opportunities to network with other advocates and leaders, building valuable relationships that may lead to partnerships and resources that benefit the City.

Due to the event location, the Mayor will travel on October 3 to attend the first event on October 4; and will leave one day later to provide schedule flexibility to the City's legislative consultant in scheduling additional meetings with members of the California Congressional delegation. 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 Mayor Carmen Montano and the City's legislative consultants to have dialogues with the California Congressional delegations. Continued participation and attendance in conferences also ensure that the Milpitas community is fully represented at the regional, state, and national levels. Mayor Carmen Montano will be representing the City as a Latina Mayor.

POLICY ALTERNATIVE(S):

Not Applicable

FISCAL IMPACT:

The estimated expense for the Washington, D.C. 2023 National Advocacy Day organized by the Forward Latino organization, including the registration fee, is \$2,000. To date, Mayor Carmen Montano has an estimated balance of \$7,750 in 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 the out-of-state travel to Washington, D.C., for Mayor Carmen Montano to Attend the forward Latino *National Advocacy Day* to be held on October 4 – 5, 2023, for an estimated total not-to-exceed amount of \$2,000 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

Attachment(s):

- (1) Draft conference agenda
- (2) Council budget tracking



- HOME
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- ISSUES & PROGRAMS
- CONTACT US
- TAKE ACTION ▾
- MEDIA
- 🌐

National Advocacy Day

Moving Forward Together

Forward Latino Board Members, Officers, Staff, Advisors & Affiliate Leaders are invited to join us for our 2023 National Advocacy Day in Washington, D.C. This action will bring together advocates from across the country to advocate on specific issues important to our nation's Hispanic community.

Activities will include advocacy and policy training, a briefing at the White House, visits with U.S. Representatives and Senators, a private tour of the memorials on the National Mall and more!

The number of participants is limited so register today!

Agenda

Wednesday, October 4, 2023

- 2 p.m. Advocacy & Policy Training at Hotel
- 4 p.m. Depart for Private Memorial Tour on the National Mall
- 6 p.m. Return to Hotel
- Evening Free

Thursday, October 5, 2023

- 8 a.m. Depart for The White House
- 11 a.m. Depart The White House for Luncheon
- 12 p.m. Luncheon
Dirksen Senate Office Building
Room: SD-G11
50 Constitution Ave NE
Washington, DC 20002
- 1 p.m. Congressional Visits
- 5 p.m. End of Day Meeting (for those able to attend)

Notice:

The agenda is subject to change.

Step 1 of 3: Register for Event

Name*

Travel and Training FY 23-24 Budget Tracking for Council

ATTACHMENT Item # C8.

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

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

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

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



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize the City Manager to Execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 2001 Tarob Court Project by KB Home South Bay, Inc.; and Approve Budget Appropriation in the Amount of \$149,000.00 to the Non-Departmental Operating Budget in the TASP Fund (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	9/19/2023
Recommendation:	Authorize the City Manager to execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 2001 Tarob Court Project by KB Home South Bay, Inc.; and Approve budget appropriation in the amount of \$149,000.00 to the non-departmental operating budget in the TASP Fund.

BACKGROUND:

On January 18, 2022, the City Council approved a Site Development Permit No. SD21-0004, Conditional Use Permit No. UP21-0005, Vesting Tentative Map No. MT21-0001 and Environmental Assessment No. EA21-0002 to allow development of a 32-unit townhome subdivision comprised of two multi-family buildings, up to 50 feet in height (three to four stories), with tandem garages accessed from a central drive aisle, and associated site improvements on a 1.22 gross acre site located in the multi-family high density residential (R3) zoning district at 2001 Tarob Court (APN 086-36-034) within the Milpitas Metro Specific Plan area.

Projects within the TASP area are required to pay TASP Development Impact Fees (TASP Fee) to be used for design and construction of certain public facilities and improvements within the TASP area. In addition to the construction of the required TASP improvements for the project, the City requested the Developer to replace an existing 12-inch domestic water main within an existing PSUE along the south-eastern part of the property. The water main replacement will serve more than the Developer's properties within the TASP Area. The developer will be reimbursed for the actual cost to replace the water main, which is estimated not to exceed \$149,000 from the TASP Fund.

A Fee Reimbursement Agreement is proposed to allow for the reimbursement against the TASP Fund paid by the Developer for replacement of the existing 12" Domestic Water Main. The Fee Reimbursement Agreement has been reviewed by the City Attorney as to form.

ANALYSIS:

Staff recommends the City Council grant authorization to the City Manager to execute the Fee Reimbursement Agreement for the construction of the TASP Public Improvements. The Developer will be reimbursed for the actual cost for the construction of the new public improvement's design and construction of the new 12 inch domestic water main line that runs along the south-eastern public service utility easement, which is estimated not to exceed \$149,000.

POLICY ALTERNATIVE(S):

Alternative 1:

Do not approve granting authorization to the City Manager to approve the Fee Reimbursement Agreement Amendment.

Pros: None

Cons: If the Fee Reimbursement Agreement is not authorized the City would have to find other means to construct the public improvements or have to construct the public improvements ourselves. The City has determined that there will be greater efficiency if the Developer replaces the new 12-inch domestic water main during the construction of their project.

Reason for Not Recommending: Granting acceptance of installed public improvements would allow the City to own and maintain the improvements and would ensure that water main infrastructure stay up to date and reduce the risk of infrastructure failure.

FISCAL IMPACT:

The fee reimbursement for the public improvements would be funded by the TASP Fee. The actual amount of the reimbursement will be based upon the actual cost for design and construction of the improvements. The estimated reimbursement amount is not to exceed \$149,000. A budget appropriation is needed from the TASP Fund.

California Environmental Quality Act (CEQA):

T

On January 18, 2022, City Council found and determined that the Project is exempt from further CEQA review pursuant to (1) CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning) (2) CEQA Guidelines Section 15182 (Projects Pursuant to a Specific Plan); and (3) CEQA Guidelines Section 15168 (Program EIR). As part of the analysis to develop the conclusion on January 18, 2022, an Addendum to the TASP EIR was determined to be the appropriate document to address the modifications rather than a subsequent or supplemental EIR. The Addendum was developed and fully addressed all potential impacts associated with the project, and no material changes were made to the project that altered the conclusions of the Addendum.

RECOMMENDATION:

Authorize the City Manager to execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 2001 Tarob Court Project by KB Home South Bay, Inc.; and Approve budget appropriation in the amount of \$149,000.00 to the non-departmental operating budget in the TASP Fund.

Attachment(s):

Attachment 1: Fee Reimbursement Agreement

Attachment 2: Budget Change Form

**CITY OF MILPITAS
FEE REIMBURSEMENT AGREEMENT
FOR TRANSIT AREA SPECIFIC PLAN PUBLIC FACILITIES AND
PUBLIC IMPROVEMENTS**

This Fee Reimbursement Agreement for Milpitas Metro Plan Public Facilities and Public Improvements (the “**Agreement**”), dated as of _____, 2023, is by and between the City of Milpitas, a municipal corporation of the State of California (“**City**”), and KB Home South Bay, Inc., a California corporation (“**Developer**”).

WITNESSETH:

WHEREAS, Developer is the permittee of that certain real property (APN No. 086-36-034) located at 2001 Tarob Court in Milpitas, California; and

WHEREAS, on January 18, 2022, the City Council conditionally approved Site Development Permit No. SD21-0004, Conditional Use Permit No. UP21-0005, Vesting Tentative Map No. MT21-0001, and Environmental Assessment No. EA21-0002 to allow development of a 32-Unit Townhome Subdivision comprised of two multi-family buildings, up to 50 feet in height (Three to Four Stories), with tandem garages accessed from a central drive aisle, and associated site improvements on a 1.22 gross acre site located in the multi-family high density residential (R3) zoning district at 2001 Tarob Court in Milpitas, California while making findings of CEQA exemption (the “**KB Housing Project**”); and

WHEREAS, City has adopted a Milpitas Metro Plan and a Transit Area Specific Plan Development Impact Fee (the “**TASP Fee**”) to provide funds to finance public facilities and public improvements within the Milpitas Metro area; and

WHEREAS, City has adopted a Fiscal Mitigation and Services Plan for the TASP (EPS no. 17107) in 2008, as amended in 2014, outlining the public facilities and public improvements that are to be constructed with the TASP fees (the “**Financing Plan**”); and

WHEREAS, the Project is in the Milpitas Metro area and subject to the TASP Fee; and

WHEREAS, the total Milpitas TASP Fee for the Project is estimated to be One Million Four Hundred Eight Thousand Two Hundred Eighty-Eight Dollars (\$1,408,288). and

WHEREAS, in partnership with the Developer, the City has requested that the developer replace an existing water main that is long passed its recommend life cycle. The developer agrees to replace the water main requested by the City and the City will reimburse the Developer for the construction costs. A complete list of reimbursable items are shown in Exhibit A. (the foregoing being the “**Improvements**” and the construction documents describing the Improvements being the “**Designs**”). The Improvements and Designs are included in the Financing Plan and would otherwise be financed by the Milpitas TASP Fee, and which Improvements and Designs will serve more than the KB Housing Project; and

WHEREAS, City and Developer desire to enter into this Agreement to provide for allowable reimbursement against the Milpitas TASP Fee paid by Developer for the Improvements and Designs.

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Developer hereby agree as follows:

SECTION 1. Allowable Fee Reimbursements

Subject to the terms, conditions, and obligations of this Agreement, the City shall provide reimbursement to the Developer, from a portion of the Milpitas TASP Fee actually paid by Developer, in an amount based on verifiable actual costs of the Improvements and Designs pursuant to the procedure in Section 9 of this Agreement, which shall equal the actual amount paid by Developer to complete the Improvements and Designs. Under no circumstance shall the reimbursement exceed the amount of One Hundred Forty-Nine Thousand Dollars (\$149,000). Under no circumstance shall the reimbursement exceed the actual amount of the TASP fee paid by the developer.

SECTION 2. Reimbursement Issuance Timing

- 2.1 Developer shall pay the City the full applicable Milpitas TASP Fee, prior to issuance of building permits per conditions of approval 79.
- 2.2 City shall pay to Developer the reimbursement required hereunder upon Developer's completion and City's acceptance of the Improvements and Designs as stipulated hereinafter, including Developer's provision of all supporting documentation for all costs in accordance with the timing specified in Section 9 below.

SECTION 3. Completion of the Improvements

- 3.1 Developer shall complete construction of the **Improvements** in accordance with the plans and specifications approved by City and in accordance with City standard construction specifications and this Agreement, and the related Improvement Agreement. All **Improvements** shall be completed (determined by filing of a notice of completion) prior to issuance of first certificate of occupancy for the KB Housing project.
- 3.2 In the event the **Improvements** are not fully constructed and accepted by City as set forth herein, Developer shall be in breach of this Agreement, and in violation of the Project conditions of approval. In addition to all other legal remedies available at law or equity, City may seek reimbursement from Developer for all reimbursements provided under this Agreement including interest at the legal rate. Additionally, City may withhold any and all certificates of occupancy, building permits or any other City approval or permit relating to the Project.

SECTION 4. Inspection of Improvements

- 4.1 City shall at all times have access to the construction site during construction of the **Improvements**. Developer shall furnish City with all reasonable information necessary for ascertaining full knowledge of the **Improvements** with respect to the progress, workmanship and character of materials and equipment used and employed in the work contemplated herein.
- 4.2 Neither observation of the work by City nor failure of City to inspect the **Improvements** or to discover defects in material or workmanship shall relieve Developer from its obligations to complete construction in accordance with the plans and specifications approved by City and to ensure that the **Improvements** are free of defects in materials and workmanship.

SECTION 5. Acceptance of the Improvements

- 5.1 At such time as the Developer believes that the **Improvements** are complete, the Developer shall provide written notice of completion to the City, requesting an inspection. Within ten (10) business days, or as mutually agreed following the date of receipt of the Developers' written notice of completion of **Improvements**, the City shall conduct a final inspection of the applicable **Improvements**. If during the final inspection, the City determines that the **Improvements** have not been completed in accordance with all applicable codes, regulations, permits and approved plans, the City shall prepare a punch list of all items to be completed by the Developer and shall provide such punch list to the Developer within ten (10) business days or as mutually agreed following the final inspection.
- 5.2 If the City delivers such punch list to the Developer within said ten (10) business day period, or such other mutually agreed upon period, then the Developer shall undertake to repair such punch list items in a diligent manner within twenty (20) calendar days. Upon completion of the punch list work, the Developer shall request another final inspection from the City and within ten (10) business days following such written notice from the Developer, the City shall conduct another final inspection.
- 5.3 If the City determines that the punch list work is complete and no other deficiencies are identified, the Developer shall be deemed to have successfully completed the final inspection. If the City determines that the punch list work is not complete, then City and Developer shall repeat the inspection/punch list procedures specified in this Section until the successful completion of the punch list work and a final inspection. At such time as Developer has successfully completed the final inspection, City shall schedule the initial acceptance of the completed **Improvements** within thirty (30) calendar days thereafter before the City Council.

SECTION 6. Conveyance of the Improvements

Once the **Improvements** are accepted by the City Council and no liens have been filed with respect to such **Improvements** within ninety (90) days following the date of filing the Notice of Completion for such Improvement (or if valid liens were filed during such period, such liens have been bonded around or removed prior to acceptance), the **Improvements** shall become the property of the City. The Developer shall take any and all actions necessary to convey to the City and vest in the City full, complete and clear title to the **Improvements** through the City's initial and final acceptance procedures.

SECTION 7. Completion and Acceptance of the Designs

- 7.1 Developer shall perform and complete the **Designs** in accordance with the Project conditions. The **Designs** are considered deemed complete upon approval of the construction plans and specifications, including all required supporting documents by the City.

- 7.2 In the event the **Designs** are not fully completed and approved by City and/or other public agencies as set forth herein, Developer shall be in breach of this Agreement and in violation of the Project conditions of approval. In addition to all other legal remedies available at law or equity, City may seek reimbursement from Developer for all reimbursements provided under this Agreement including interest at the legal rate (if and to the extent any such reimbursements have been provided hereunder). Additionally, City may withhold any and all certificate of occupancy, building permit, or any other City approval or permit relating to the Project. City approved plans and specifications, including all supporting documents become City property upon completion of the **Designs**.

SECTION 8. Delivery of Design Plans and Specifications

Prior to acceptance of the **Improvements** by the City, the Developer shall deliver to the City copies of all plans, specifications, shop drawings, as-built plans, operating manuals, service manuals, warranties and other documents relating to the design, construction, installation and operation of the applicable **Improvements**. Plans shall be submitted in CAD format, GIS format and/or PDF format as acceptable to the City.

SECTION 9. Supporting Documents for the Actual Costs

Following Developer's completion and City's acceptance of the **Improvements** and the **Designs** provided in Sections 3 to 8 above, the Developer shall provide final invoices, records, change order documents, payment invoices, cancelled checks and other necessary documents, as requested by the City, in order to provide to the City a final accounting of the total amount of actual costs for the **Improvements** and the **Designs**. The City shall thereafter have sixty (60) days in which to review and approve such items. If the City notifies the Developer within that 60-day period that it does not approve all such items, and, if the Developer disputes the disapproval of such items by the City, the sixty (60) days may be extended as mutually agreed upon to provide an opportunity for the Parties to use diligent and good faith effort to resolve said dispute. Assuming no dispute as to the final accounting (or once said dispute has been resolved), the City shall, within thirty (30) days thereafter, reimburse the Developer the actual costs to complete the Improvement and Design, as documented in the final accounting, not to exceed the amount of TASP fees paid by the Developer. The amount of the actual costs for the **Improvements** and the **Designs** shall not exceed the estimated value for "KB Housing Project Improvements" identified on **Exhibit "A"** in the amount not to exceed One Hundred Forty-Nine Thousand Dollars (\$149,000) without the express prior written approval of the City, which will require an amendment of this Agreement.

SECTION 10. Limited City Obligation

The reimbursement obligations arising from this Agreement are neither a debt of the City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except for the developer impact fees that would have otherwise been collected for the **Improvements**, the **Designs** and other capital facilities set forth in the Project plans for the TASP Fee program. Neither the City of Milpitas general fund nor any other fund of the City, except the TASP Fee program, shall be liable for the reimbursement or payment of any obligations arising from this Agreement. The reimbursement or taxing power of the City is not pledged for the payment of any obligation arising from this Agreement. The Developer shall not compel the forfeiture of any of the City's property to satisfy any obligations arising from this Agreement.

SECTION 11. Liens, Claims, and Encumbrances

Prior to acceptance of the **Improvements** by the City, the Developer shall provide a written guarantee and assurance to the City that there are no liens, claims, or monetary encumbrances on the **Improvements** and the **Designs**, together with unconditional final releases from all contractors and material suppliers, and with copies of invoices and corresponding checks issued by the Developer for all items for which fee reimbursements are requested under this Agreement for the **Improvements** and the **Designs**. The City shall have no obligation to accept the **Improvements**, or to issue any reimbursements for **Improvements** and the **Designs** until the Developer has cleared any and all liens, claims and monetary encumbrances from the **Improvements** and the **Designs** and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.

SECTION 12. No Third Party Beneficiary

By entering into this Agreement, City is not entering into any contract or agreement with any general contractor, subcontractor, or other party nor is any general contractor, subcontractor, or other party a third party beneficiary of this Agreement, and City shall have no obligation to pay any general contractor, subcontractor, or other party for any work that such general contractor, subcontractor, or other third party may do pursuant to the plans and specifications for the **Improvements** and the **Designs**.

SECTION 13. Warranty and Repair

In accordance with this Section 13 and the terms and conditions of the Subdivision Improvement Agreement, Developer hereby warrants the **Improvements** as to materials and workmanship and should any failure of any **Improvements** occur within a period of one (1) year after initial acceptance of such **Improvements** by City Council, the Developer shall promptly cause the needed repairs to be made without cost to the City. The provisions contained herein shall not be deemed to limit any rights Developer has or may have to seek damages or other relief from any acts or omissions of any contractor involved in the construction or design of the **Improvements**. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer or any materials used in the **Improvements** nor in any way limit any rights of City in equity or law under this Agreement.

SECTION 14. Notice

Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City: Matt Cano, P.E., Deputy City Manager/Acting City Engineer
Milpitas City Hall
455 East Calaveras Boulevard
Milpitas, CA 95035
Phone: 408-586-3012

Developer: Peter Lezak, Vice President
 KB Home South Bay, Inc.
 10990 Wilshire Blvd, Suite 700
 Los Angeles, CA 90024

Any party hereto may, by notice given hereunder, designate a different address to which subsequent notices, payments, and instruments shall be delivered to it.

SECTION 15. Term

The term of this Agreement shall start as of the date first written above and shall remain in effect for a one-year term, unless extended by the parties by written agreement.

SECTION 16. Captions

Captions to Sections of this Agreement are for convenience purposes only and are not part of this Agreement.

SECTION 17. Severability

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

SECTION 18. Successors and Assigns/Reimbursements to Developer

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The TASP Fee Reimbursement granted herein shall run with the land with respect to their application against the TASP Fees otherwise payable upon development of the Project.

SECTION 19. Governing Law Venue

This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Santa Clara, State of California.

SECTION 20. Indemnity

To the fullest extent permitted by law, Developer shall protect, indemnify, defend (with counsel acceptable to City) and hold City, its officers, employees, and agents harmless from and against any and all liability, loss, cost and obligations arising out of or resulting from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to the (i) activities performed by Developer, its officers, employees, or agents under this Agreement, or (ii) negligence, omission or willful misconduct by Developer, its officers, employee, or agents.

SECTION 21. Time of Essence

Time is of the essence in the performance of this Agreement.

SECTION 22. Waiver

Developer agrees that waiver by City of any breach or violation of any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition or obligation.

SECTION 23. Compliance with Laws

Developer has been alerted to 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. If the work to be performed under this Agreement by Developer is being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, Developer agrees to fully comply with such Prevailing Wage Laws. Developer shall defend, indemnify and hold 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 Developer and its contractors 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 Section 1776), hours of labor (Labor Code Sections 1813 and 1815), public works contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). It shall be the sole responsibility of Developer to determine whether to comply with Prevailing Wage Laws 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 comply with Prevailing Wage Laws for work required by this Agreement.

SECTION 24. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by all parties.

SECTION 25. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

[\[signatures on following page\]](#)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day of the year first above written.

CITY:**KB HOME SOUTH BAY INC.:**

By: _____
Ned Thomas
Acting City Manager

By: _____
Peter Lezak
Vice President

APPROVED AS TO FORM:

By: _____
Michael Mutalipassi
City Attorney

APPROVED AS TO CONTENT:

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

APPROVED AS TO CONTENT:

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

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.

EXHIBIT A
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
<u>1. Demo & Potholing</u>					
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
	Demo Subtotal				<u>\$51,400</u>
<u>2. Water</u>					
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
	Water Subtotal				<u>\$77,800</u>
	OFF SITE SUBTOTAL COST				<u>\$129,200</u>
	10% Contingency				\$12,920
	Mobilization (5% of Subtotal Cost)				\$6,460
	BOND ESTIMATE WATER REPLACEMENT TOTAL COST				<u>\$148,580</u>





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 |
| <ol style="list-style-type: none"> 1. Coordination with City of Milpitas & City of San Jose for required plans & permits. | |
| B. Improvement Plans – City of Milpitas | \$8,000 LS |
| <ol style="list-style-type: none"> 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. <ol style="list-style-type: none"> a. Title Sheet, General Notes and Details b. Demolition Plan c. Plan/Profile (showing the existing & proposed finished grade and waterline information) | |

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 rd Plan Check)	\$2,000 T&M
TOTAL FINAL ENGINEERING ESTIMATED FEE	\$13,500 T&M / LS

II. SUPPORT SERVICES

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.	
TOTAL SUPPORT SERVICES ESTIMATED FEE	\$3,500 T&M/LS

III. CONSTRUCTION SURVEYING

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.	
TOTAL SUPPORT SERVICES ESTIMATED FEE	\$4,000 T&M/LS

TOTAL ESTIMATE FEE \$21,000 T&M / LS

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.

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

EXHIBIT A

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.



EXHIBIT B

Effective January 1, 2023

CLASSIFICATION	STANDARD RATE
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.

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From (Credit)		To (Debit)	
	Account	Amount	Account	Amount
Check one:	350-2931	\$149,000	350-951-4841	\$149,000
☒ Budget Appropriation				
☐ Budget Transfer				

Recommendation: Authorize the City Manager to Execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 2001 Tarob Court Project by KB Home South Bay, Inc. Approve budget appropriation in the amount of \$149,000 to the non-departmental operating budget in the TASP Fund.

BACKGROUND:

On January 18, 2022, the City Council approved a Site Development Permit No. SD21-0004, Conditional Use Permit No. UP21-0005, Vesting Tentative Map No. MT21-0001 and Environmental Assessment No. EA21-0002 to allow development of a 32-unit townhome subdivision comprised of two multi-family buildings, up to 50 feet in height (three to four stories), with tandem garages accessed from a central drive aisle, and associated site improvements on a 1.22 gross acre site located in the multi-family high density residential (R3) zoning district at 2001 Tarob Court (APN 086-36-034) within the Milpitas Metro Specific Plan area.

Projects within the TASP area are required to pay TASP Development Impact Fees (TASP Fee) to be used for design and construction of certain public facilities and improvements within the TASP area. In addition to the construction of the required TASP improvements for the project, the City requested the Developer to replace an existing 12-inch domestic water main within an existing PSUE along the south-eastern part of the property. The water main replacement will serve more than the Developer's properties within the TASP Area. The developer will be reimbursed for the actual cost to replace the water main, which is estimated not to exceed \$149,000 from the TASP Fund.

A Fee Reimbursement Agreement is proposed to allow for the reimbursement against the TASP Fund paid by the Developer for replacement of the existing 12" Domestic Water Main. The Fee Reimbursement Agreement has been reviewed by the City Attorney as to form.

ANALYSIS:

Staff recommends the City Council grant authorization to the City Manager to execute the Fee Reimbursement Agreement for the construction of the TASP Public Improvements. The Developer will be reimbursed for the actual cost for the construction of the new public improvement's design and construction of the new 12 inch domestic water main line that runs along the south-eastern public service utility easement, which is estimated not to exceed \$149,000.

POLICY ALTERNATIVE(S):

Alternative 1:

Do not approve granting authorization to the City Manager to approve the Fee Reimbursement Agreement Amendment.

Pros: None

Cons: If the Fee Reimbursement Agreement is not authorized the City would have to find other means to construct the public improvements or have to construct the public improvements ourselves. The City has determined that there will be greater efficiency if the Developer replaces the new 12-inch domestic water main during the construction of their project.

Reason for Not Recommending: Granting acceptance of installed public improvements would allow the City to own and maintain the improvements and would ensure that water main infrastructure stay up to date and reduce the risk of infrastructure failure.

FISCAL IMPACT:

The fee reimbursement for the public improvements would be funded by the TASP Fee. The actual amount of the reimbursement will be based upon the actual cost for design and construction of the improvements. The estimated reimbursement amount is not to exceed \$149,000. A budget appropriation is needed from the TASP Fund.

California Environmental Quality Act (CEQA):

Granting authorization to the City Manager to approve the Fee Reimbursement Agreement is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

RECOMMENDATION:

Authorize the City Manager to Execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 2001 Tarob Court Project by KB Home South Bay, Inc. Approve budget appropriation of \$149,000 to the non-departmental operating budget in the TASP fund.

Attachment(s):

Attachment 1: Fee Reimbursement Agreement

Attachment 2: Budget Change Form

☐ Check if City Council Approval required.

Meeting: September 19, 2023

Requested by:	Department Head: Matt Cano	Date:
Reviewed by:	Finance Director: Lauren Lai	Date:
Approved by:	Acting City Manager: Ned Thomas	Date:
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute the Improvement Agreement with Extra Shine Car Wash, Inc., for the Completion of Offsite Public Improvements Located at 554 South Main Street Associated with Site Development Permit (SD18-0010) and Conditional Use Permit (UA18-0020) (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; Roberto Alonzo, Principal Civil Engineer, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	9/19/2023
	<u>Recommendation:</u> Approve and authorize the City Manager to execute the Improvement Agreement with Extra Shine Car Wash, Inc., for the completion of offsite public improvements located at 554 South Main Street associated with Site Development Permit (SD18-0010) and Conditional Use Permit (UA18-0020).

BACKGROUND:

On May 18, 2021, the Milpitas City Council approved a Site Development Permit (SD18-0010) and Conditional Use Permit (UA18-0020) for construction of a new 5,490 square foot drive-thru car wash building, trash enclosure, parking area, and associated off-site public improvements at Extra Shine Car Wash, 554 South Main Street (APN 086-25-012). Off-site public improvements to be constructed include curb, gutter, sidewalk, driveways, utility services, and other miscellaneous items of work identified on the public improvement plans.

ANALYSIS:

The Developer, Extra Shine Car Wash, Inc., has agreed to enter into an Improvement Agreement (**Attached**) with the City for construction of project off-site public improvements which will be completed and accepted by the City upon completion of construction. The off-site public improvements will be completed within 1-year from the date of the Agreement, and the work is guaranteed by bonds or similar security to be posted by the Developer in the amount of \$445,148.00. The City Engineer has reviewed the public improvement plans (2-1433) and recommends the City Council approve the Improvement Agreement to allow for the construction of public improvements to proceed.

POLICY ALTERNATIVE(S):

Alternative 1:

Deny approval of Improvement Agreement for the installation of off-site public improvements.

Pros: None

Cons: Denying approval of the Improvement Agreement will cause construction of the off-site public improvements to be delayed and will prevent the owner and new tenants from occupying the newly constructed buildings.

Reason for Not Recommending: The proposed off-site public improvements are designed to support the public, Extra Car Wash and the new constructed building. Staff recommends the City Council approve the Improvement Agreement for construction of the off-site public improvements.

FISCAL IMPACT:

The Developer reimbursed the city for costs associated with plan review, permitting and construction inspection for off-site public improvements constructed by the Developer. The City will have perpetual ownership and maintenance responsibilities for the improvements following construction and acceptance of the project. The Public Works Department provides funding for future maintenance of newly accepted City infrastructure through their operating budget.

California Environmental Quality Act (CEQA):

Approval of the Improvement Agreement implements this project for which CEQA review has already been completed by the Planning Division, and for which the Milpitas City Council finds on May 18, 2021 is exempt from environmental review under CEQA, pursuant to CEQA Guidelines Section 15303(c) (New Construction or Conversion of Small Structures), and, as a separate and independent basis, determined that the proposed Project is exempt from CEQA review pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning).

RECOMMENDATION:

Approve and Authorize the City Manager to Execute the Improvement Agreement with Extra Shine Car Wash, Inc., for the completion of Offsite Public Improvements Located at 554 South Main Street Associated with Site Development Permit (SD18-0010) and Conditional Use Permit (UA18-0020).

Attachment(s):

Improvement Agreement

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

554 SOUTH MAIN STREET

between

CITY OF MILPITAS

a California municipal corporation

and

EXTRA SHINE CAR WASH, INC.

a California corporation

**AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS
EXTRA SHINE CAR WASH, 554 SOUTH MAIN STREET**

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 Extra Shine Car Wash, Inc., a corporation with its principal office located at 7183 Fawn Hills Lane, Pleasanton, California ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

II. RECITALS.

A. On September 17, 2018, Developer submitted to City an application for approval of a Site Development Permit (P-SD18-0010) and Conditional Use Permit (P-UA18-0020) for the development of a new car wash and associated site improvements for Extra Shine Car Wash (the "Project") for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property").

B. On May 18, 2021, the MILPITAS CITY COUNCIL conditionally approved Developer's application for a Site Development Permit (P-SD18-0010) and Conditional Use Permit (P-UA18-0020) for the Project.

C. Developer has not completed all of the work or made all of the public improvements required by Title X, Chapter 1, Section 8 of the City's Municipal Code, the conditions of approval for the Project, or other ordinances, resolutions, or policies of City requiring construction of public improvements in conjunction with the subdivision of land.

D. Pursuant to Title X, Chapter 1, Section 8 of the City's Municipal Code, 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 the Project.

E. Developer's execution of this Agreement and the provision of the security are made in consideration of City's approval of the Project.

III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement and (b) Developer executes and records this Agreement in the Recorder's Office of the County of SANTA CLARA. 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.

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 the Project, 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 the Project ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B," which is attached hereto and incorporated herein by this reference, and as shown on the City-approved Improvement Plan No. 2-1433 on file with the City. 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", and as shown on the City-approved Improvement Plan No. 2-1433 on file with the City, 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 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 the Project 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 the Project.

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. 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 Four Hundred Forty-Five Thousand One Hundred and Forty-Eight Dollars (\$445,148.00), 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 the Project, 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 the Project.

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 Four Hundred Forty-Five Thousand One Hundred and Forty-Eight Dollars (\$445,148.00), 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 RESERVED.

15.0 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.

16.0 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.

16.1 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.

17.0 Insurance.

17.1 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.

17.1.1 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.

17.1.2 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.

17.1.3 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.

17.1.4 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.

17.2 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.

17.3 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.

17.4 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.

17.5 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.

17.6 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.

17.7 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.

18.0 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.

19.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement 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.

20.0 General Provisions.

20.1 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.

20.2 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.

20.3 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.

20.4 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 East Calaveras Boulevard
MILPITAS, CA 95035
Attn: Matt Cano
Deputy City Manager/
Acting City Engineer

DEVELOPER:
7183 Fawn Hills Lane
PLEASANTON, CA 94566
Attn: Jagjot S. Kahlon
Chief Financial Officer

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.

20.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

20.6 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.

20.7 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.

20.8 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.

20.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

20.10 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.

20.11 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.

20.12 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.

20.13 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

CITY OF MILPITAS

By: _____
 (signature)
Ned Thomas
 Acting City Manager
 City of MILPITAS

EXTRA SHINE CAR WASH, INC.

By: J. Kahlon
 (signature)
Jagjot S. Kahlon
 (print name)
Chief Financial Officer
 (title)

APPROVED AS TO FORM:

By: _____
 (signature)
Michael Mutalipassi
 City Attorney
 City of MILPITAS

APPROVED AS TO CONTENT:

By: _____
 (signature)
Lauren Lai, CPA, MPA
 Finance Director/Risk Manager
 City of MILPITAS

APPROVED AS TO CONTENT:

By: _____
 (signature)
Matt Cano
 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

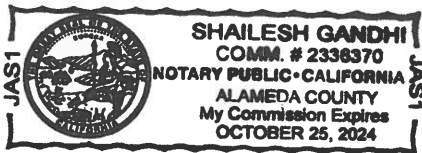
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Alameda

On 5-11, 2023, before me, Shailesh Gandhi, Notary Public, personally appeared Jagjit S. Kahlou, 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.

Shailesh Gandhi
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
- ☐ Partner ☐ Limited
☐ 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

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 _____

On _____, 20____, before me, _____, Notary Public, 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 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)
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: | Title(s)

Limited
General |
|---|------------------------------------|

Title or Type of Document

Number of Pages

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

EXTRA SHINE CAR WASH, 554 SOUTH MAIN STREET

LEGAL DESCRIPTION

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

ALL OF PARCEL TWO, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY FOR WILLIAM J. SCILACCI, BEING A PORTION OF THE MILPITAS RANCHO AND LYING WITHIN THE CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 4, 1965, IN BOOK 190 OF MAPS, AT PAGE 42.

APN: 086-25-012

EXHIBIT “B”

LIST OF PUBLIC IMPROVEMENTS

EXTRA SHINE CAR WASH, 554 SOUTH MAIN STREET

**ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS**

City of Milpitas

3/13/2023

Item	Quantity	Unit	Unit/Cost	Item Total
Project Mobilization	1	LS	\$ 45,000.00	\$ 45,000.00
Erosion Control	1	LS	\$ 36,750.00	\$ 36,750.00
DEMOLITION				
Remove Existing Asphalt Pavement	171	SF	\$ 5.00	\$ 855.00
Remove existing concrete pavement	1033	SF	\$ 5.00	\$ 5,165.00
remove existing curb and gutter	105	LF	\$ 40.00	\$ 4,200.00
Removal/abandonment of sewer lateral	24	LF	\$ 35.00	\$ 840.00
Removal/abandonment of water lateral	23	LF	\$ 25.00	\$ 575.00
Removal/abandonment of 12" storm drain main	91	LF	\$ 35.00	\$ 3,185.00
UTILITIES				
15" Corrugated HDPE pipe - Storm Drain	42	LF	\$ 150.00	\$ 6,300.00
6" SDR-26 PVC Pipe - Sanitary Sewer	25	LF	\$ 120.00	\$ 3,000.00
2" Copper Pipe - Domestic and Irrigation Water	55	LF	\$ 80.00	\$ 4,400.00
1" Copper Pipe - Irrigation Water	10	LF	\$ 80.00	\$ 800.00
6" C900 PVC SDR 14 Pipe - Fire Water	32	LF	\$ 150.00	\$ 4,800.00
Storm Drain Connection to Existing Manhole	1	LS	\$ 20,000.00	\$ 20,000.00
Storm drain Junction Box	1	EA	\$ 5,000.00	\$ 5,000.00
Domestic Water Connection to Existing Service Line	1	LS	\$ 20,000.00	\$ 20,000.00
2" Domestic Water Service and Meter Box	1	LS	\$ 20,000.00	\$ 20,000.00
Fire Water Connection to Existing Service Line	1	LS	\$ 25,000.00	\$ 25,000.00
2" Irrigation Water Service and Meter box	1	LS	\$ 20,000.00	\$ 20,000.00
Sanitary Sewer Connection to Existing Service Line	1	LS	\$ 25,000.00	\$ 25,000.00
2" Domestic Water Meter	1	LS	\$ 5,000.00	\$ 5,000.00
1" Irrigation Water Meter	1	LS	\$ 3,500.00	\$ 3,500.00
2" Domestic Water Backflow Preventers	1	LS	\$ 3,500.00	\$ 3,500.00
1" Irrigation Water Backflow Preventers	1	LS	\$ 2,500.00	\$ 2,500.00
6" Gate Valve - Fire Water	1	LS	\$ 8,000.00	\$ 8,000.00
6" RDPA - Fire Water	1	LS	\$ 75,000.00	\$ 75,000.00
6" Cleanout - Sanitary Sewer	1	LS	\$ 2,500.00	\$ 2,500.00
SITE WORK				
Fine Grading	1,500	SF	\$ 1.00	\$ 1,500.00
Pedestrian Concrete Pavement	518	SF	\$ 20.00	\$ 10,360.00
Vehicular Concrete Pavement	704	SF	\$ 25.00	\$ 17,600.00
12" asphalt plug	100	SF	\$ 10.00	\$ 1,000.00
Concrete Curb and Gutter	178	LF	\$ 75.00	\$ 13,350.00
Pavement Striping Restoration	1	LS	\$ 10,000.00	\$ 10,000.00

Subtotal	\$ 404,680.00
Cost Estimating Contingency (10%)	\$40,468.00
Estimated Construction Costs	\$445,148.00

EXHIBIT "C"**SURETY BONDS AND OTHER SECURITY****EXTRA SHINE CAR WASH, 554 SOUTH MAIN STREET**

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: \$445,148.00

Surety: SureTec Insurance Company

Attorney-in-fact: David Melman

Address: 3131 Camino Del Rio North, Suite 1450
San Diego, CA 90017

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT: \$445,148.00

Surety: SureTec Insurance Company

Attorney-in-fact: David Melman

Address: 3131 Camino Del Rio North, Suite 1450
San Diego, CA 90017

Originals (1)

BOND NO. 4464901
 INITIAL PREMIUM: \$9,403.00
 SUBJECT TO RENEWAL

CITY OF MILPITAS
EXTRA SHINE CAR WASH, 554 SOUTH MAIN STREET IMPROVEMENTS
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and Extra Shine Car Wash, Inc., a California corporation ("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 the development of a new car wash and associated site improvements for Extra Shine Car Wash ("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 SureTec Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Texas, 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 Four Hundred Forty-Five Thousand One Hundred and Forty-Eight dollars (\$445,148.00), 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,

Bond 4464901

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.

Bond 4464901

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 San Diego, CA, this 1st day of May, 2023,
_____.

(Corporate Seal)

Extra Shine Car Wash, Inc.PrincipalBy J. KahlenTitle CEO

(Corporate Seal)

SureTec Insurance CompanySuretyBy David MelmanAttorney-in-Fact, David Melman

(Attach Attorney-in-Fact Certificate)

Title Attorney in Fact

The rate of premium on this bond is 25/20/15 slide per thousand. The total amount of premium charges is \$ 9,403.00.

(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)

SureTec Insurance Company3131 Camino Del Rio North, Suite 1450San Diego, CA 92108

(Name and Address of Agent or Representative for service of process in California, if different from above)

Vivian Imperial, CT Corp818 West Seventh StreetLos Angeles, CA 90017

(Telephone number of Surety and Agent or Representative for service of process in California)

213-627-8252

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

Item # C10.

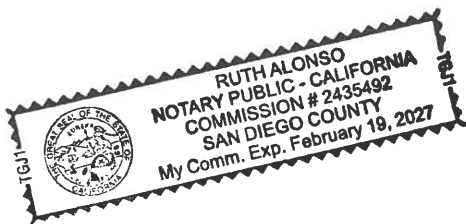
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CaliforniaCounty of San DiegoOn May 1, 2023 before me, Ruth Alonso, Notary Publicpersonally appeared David Melman

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.



Ruth Alonso
Signature of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S)
☐ MEMBER of LLC
☒ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR

OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

SureTec Insurance Company**DESCRIPTION OF ATTACHED DOCUMENT**

Bond 4464901
Title or Type of Document

Number of Pages

May 1, 2023
Date of Document

Signer(s) other than named above

POA# 4464901

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Gloria S. Becerra, Dave B. Roalkvam, David Melman, Ruth Alonso, Amanda Harvey, Evan M. DeBow,
Eric Taylor, Maria Melendez, Rene Brandt, Deanna Fonseca, Albert Espino

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 28th day of April, 2023.

SureTec Insurance Company

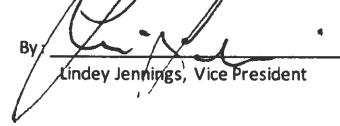
By:


Michael C. Keimig, President



Markel Insurance Company

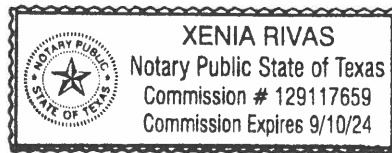
By:


Lindsey Jennings, Vice President

State of Texas
County of Harris:

On this 28th day of April, 2023 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



By:


Xenia Rivas, Notary Public
My commission expires 9/10/2024

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 1st day of May, 2023.

SureTec Insurance Company

By:


M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By:


Andrew Marquis, Assistant Secretary

Any Instrument Issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this Power you may call (713) 812-0800 on any business day between 8:30 AM and 5:00 PM CST.

Originals (1)

BOND NO. 4464901
 INITIAL PREMIUM: Premium Included in Performance Bond
 SUBJECT TO RENEWAL

CITY OF MILPITAS

EXTRA SHINE CAR WASH, 554 SOUTH MAIN STREET IMPROVEMENTS

LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and Extra Shine Car Wash, Inc., a California corporation ("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 the development of a new car wash and associated site improvements for Extra Shine Car Wash ("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 SureTec Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of Texas, 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 Four Hundred Forty-Five Thousand One Hundred and Forty-Eight dollars, (\$445,148.00), said sum being not

Bond 4464901

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.

Bond 4464901

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 San Diego, CA, this 1st day of May, 2023,
_____.

(Corporate Seal)

Extra Shine Car Wash, Inc.PrincipalBy J. KahlTitle CFO

(Corporate Seal)

SureTec Insurance CompanySuretyBy David MelmanAttorney-in-Fact, David Melman

(Attach Attorney-in-Fact Certificate)

Title Attorney in Fact

The rate of premium on this bond is 25/20/15 slide per thousand. The total amount of premium charges is \$ 9,403.00.

(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)

SureTec Insurance Company3131 Camino Del Rio North, Suite 1450San Diego, CA 92108

(Name and Address of Agent or Representative for service of process in California, if different from above)

Vivian Imperial, CT Corp818 West Seventh StreetLos Angeles, CA 90017

(Telephone number of Surety and Agent or Representative for service of process in California)

213-627-8252

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

Item # C10.

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 CaliforniaCounty of San DiegoOn May 1, 2023 before me, Ruth Alonso, Notary Publicpersonally appeared David Melman

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.



Ruth Alonso
Signature of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S)
☐ MEMBER of LLC
☒ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR

OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

SureTec Insurance Company**DESCRIPTION OF ATTACHED DOCUMENT**

Bond 4464901
Title or Type of Document

Number of Pages

May 1, 2023
Date of Document

Signer(s) other than named above

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.

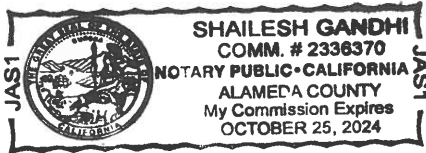
STATE OF CALIFORNIA
COUNTY OF Alameda

On 5-3-, 2023, before me, Shailesh Gandhi, Notary Public, personally appeared Jagjit Kalhon, 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.



Shailesh Gandhi
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
CEO
 Title(s)
- ☐ Partner ☐ Limited
 (s) ☐ General
- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Bond 4464901
Title or Type of Document

Number of Pages

May 1st 2023
Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Extra Shine Car Wash

Signer(s) Other Than Named Above

POA# 4464901

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Gloria S. Becerra, Dave B. Roalkvam, David Melman, Ruth Alonso, Amanda Harvey, Evan M. DeBow,
Eric Taylor, Maria Melendez, Rene Brandt, Deanna Fonseca, Albert Espino

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in surety ship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 28th day of April, 2023.

SureTec insurance Company

By:


Michael C. Keimig, President



Markel Insurance Company

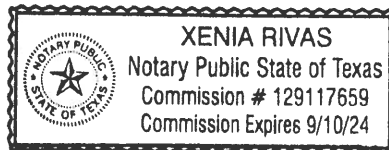
By:


Lindey Jennings, Vice President

State of Texas
County of Harris:

On this 28th day of April, 2023 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



By:


Xenia Rivas, Notary Public
My commission expires 9/10/2024

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 1st day of May, 2023.

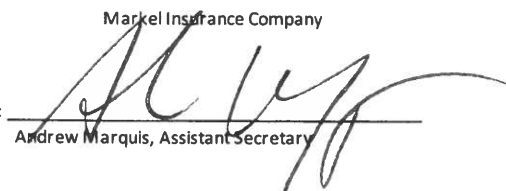
SureTec Insurance Company

By:


M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By:


Andrew Marquis, Assistant Secretary

Any Instrument Issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this Power you may call (713)812-0800 on any business day between 8:30 AM and 5:00 PM CST.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and DREF Milpitas, LLC, for the Apple Inc. Site Improvement Project at 260 S. Milpitas Blvd. (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	9/19/2023
	<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 DREF Milpitas, LLC, for the Apple Inc. Site Improvement Project at 260 S. Milpitas Blvd.

BACKGROUND:

On May 24, 2023, the Property Owner received an approved building permit from the City allowing the development of the Property, for the construction of a new paved parking area and associated offsite and onsite improvements, landscaping, irrigation, and stormwater treatment measures on a 0.62 acre portion of a 7.28 acre site located at 260 South Milpitas Boulevard.

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 Apple Inc. Site Improvement Project uses one type of storm water treatment device; the bio-retention stormwater treatment. The developer, DREF Milpitas, LLC, will be responsible for the perpetual maintenance and operation of the storm water treatment facilities which will be owned by the property owners and not maintained by the City.

DREF Milpitas, LLC, 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 for Not Recommending: 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, staff recommends approval of the Agreement.

FISCAL IMPACT:

The developer will pay for the required annual maintenance and inspection of the stormwater facilities.

California Environmental Quality Act (CEQA):

On October 19, 2022, the Planning Department found that the project is categorically exempt from further environmental review pursuant to Section 15332 (In-Fill Development Projects) of CEQA. Execution of the Agreement is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

RECOMMENDATION:

Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and DREF Milpitas, LLC for the Apple Inc. Site Improvement Project at 260 S. Milpitas Blvd.

Attachment(s):

1. Stormwater Management Facilities Operation and Maintenance Agreement
2. Operation and Maintenance Plan

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
 Exempt From Recording Fees
 Govt Code §27383

(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: 086-38-005

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 DREF Milpitas, LLC, a Delaware limited liability company ("Property Owner") 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 Property Owner is the owner 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 Property Owner received a building permit from the City allowing the development of the Property, including the construction of a paved parking area and associated stormwater treatment measures on a 7.27 acre site located at 240-270 South Milpitas Boulevard in Milpitas (the "Project"); and subject to conditions set forth in the following (collectively "City Approvals"):
 - 1. Building Permit No. B-SI22-0021
- 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 Property Owner to install, operate and maintain, at no cost or expense to the City, 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 Property Owner's maintenance, operations, and inspection obligations 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 Property Owner, 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. Property Owner 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 Owner shall be responsible for the costs incurred in operating, maintaining, repairing and replacing the BMPs. Property Owner shall not destroy or remove the BMPs or modify any measure in any manner that would lessen its effectiveness. Property Owner 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 Property Owner:

The Property Owner, 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 Property Owner shall submit the Inspection Report on these BMPs to the City Engineer no later than July 15th of each year.

SECTION 3. Facility Inspection by the City:

- (a) **Right of Entry.** The Property Owner, 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 Property Owner 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 Owner, 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 Owner, 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 Owner, 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 Property Owner:

- (a) **Enforcement Action.** If the Property Owner 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 Property Owner in any manner authorized by law or in equity.
- (b) **City Maintenance.** In the event of Property Owner'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 Property Owner 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 Property Owner shall have such additional time after the initial 30 days to complete a cure so long as Property Owner 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 Property Owner. 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 Property Owner

shall reimburse the City for all the reasonable costs and expenses incurred by the City. The City will provide the Property Owner with an itemized invoice of the City's costs and expenses and the Property Owner shall make full payments to the City within thirty (30) days of the date of the invoice. If the Property Owners 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:

Property Owner 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 Property Owner, 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 Property Owner shall provide the new owner 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 Property Owner, on Property Owner'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 Property Owner and the Property Owner 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 Property Owner 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 Property Owner 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 Property Owner agree that the law governing this Agreement shall be that of the State of California and that Property Owner shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 10. Recordation:

Property Owner 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 Property Owner, 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 Property Owner fails to timely record this Agreement, City shall be authorized but not required to record the Agreement.

SECTION 11. Books and Records:

- A. The Property Owner 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 Property Owner'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 PROPERTY OWNER:

DREF Milpitas, LLC
Attn: Meghan Concannon
Four Embarcadero Center, Suite 3300
San Francisco, CA 94111

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:

PROPERTY OWNER:

**DREF MILPITAS, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

By: _____

Name: Meghan Concannon
Title: Vice President

CITY:

**CITY OF MILPITAS,
A CALIFORNIA 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

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

County of San Francisco)

On August 16, 2023 before me, V. Hernandez, a Notary Public, personally appeared

Meghan Concannon,
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

V. Hernandez

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

Plat and Description for the site

EXHIBIT B
Operation and Maintenance Plan

STORMWATER MANAGEMENT PLAN

260 S MILPITAS BOULEVARD

MILPITAS, CA

PREPARED BY:

KIER + WRIGHT

3350 SCOTT BOULEVARD, BUILDING 22

SANTA CLARA, CA 95054

NEKTARIOS MATHEOU, P.E.

May 10, 2023

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Appendices

CERTIFICATIONS

C.3 DATA FORM

DESIGN DRAWINGS

SITE LEGAL DESCRIPTION

OPERATIONS & MAINTENANCE PLAN

GEOTECHNICAL MEMORANDUM

PROJECT DESCRIPTION

Project Addresses: 260 S Milpitas Blvd, Milpitas, CA 95035

Project APN(s): 086-38-005

This is a commercial use project that proposes to rebuild and expand an existing loading dock and truck parking area and new stormwater treatment facilities for the disturbed areas. The project site consists of 7.28 acres of land at 260 S Milpitas Blvd, of which the project will disturb 0.62 acres. The existing buildings, landscape, and hardscape for the majority of the site will remain in place.

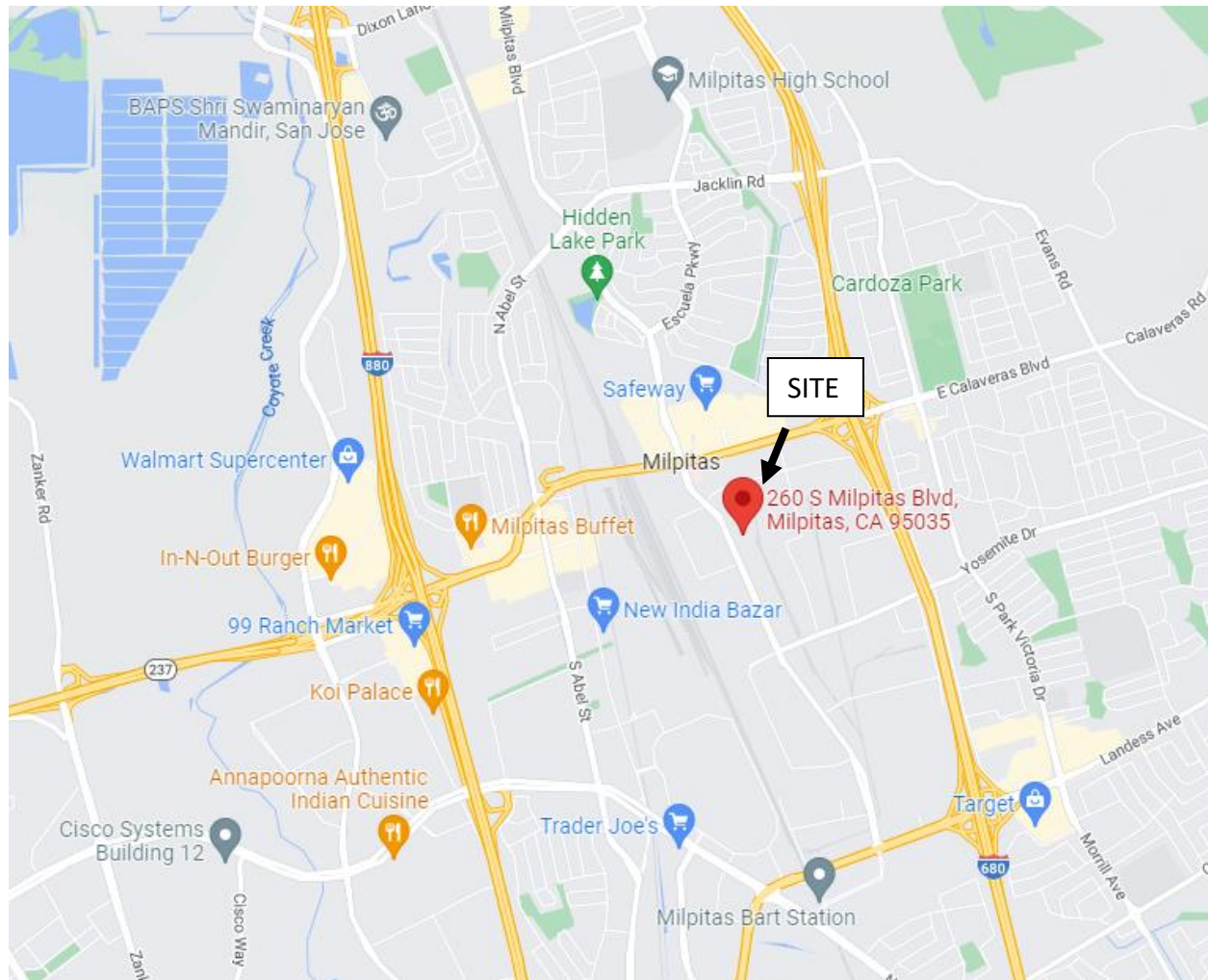
CONTACT INFORMATION**Developer: Apple, Inc.**

One Apple Park Way,
Cupertino, CA 95014
Phone: (408) 996-1010

Civil Engineer: Kier & Wright

3350 Scott Blvd Building 22
Santa Clara, CA 95054
Phone: (408) 727-6665

VICINITY MAP



PROPOSED IMPROVEMENTS

The project proposed to replace approximately 25,000 SF of pavement located in a rear loading dock area on the east side of the site. Runoff from this rebuilt area will be directed into a bioretention basin via surface flow before infiltrating or being conveyed to the site's existing on-site storm drain system which ultimately flows to the main in Milpitas Blvd.

While regrading is occurring within the loading dock area, overall drainage patterns on the site are not being changed in a way that would impact the existing storm drain system. The new development will very slightly decrease the overall impervious area at the site, essentially leaving the net impervious area unchanged from the existing condition and having a negligible impact on the amount of stormwater runoff leaving the site. See the attached C.3 form for details.

DRAINAGE BASIN

The entire site ultimately drains to the 18" main in S Milpitas Blvd. This water will discharge into the Wrigley Creek Watershed which flows into the San Francisco Bay.

STORMWATER MANAGEMENT FACILITIES & MAINTENANCE

Runoff from the site will be collected into treatment measures in the form of a Bioretention Pond. The water will be directed through surface flow as shown in the site grading and drainage plan into the proposed biotreatment areas.

Bioretention ponds are open, sloped trench areas with vegetation that allow runoff to be retained within the pond. They are designed to treat runoff by filtering raw runoff through the soil media in the treatment area. Biotreatment ponds trap particulate pollutants (suspended solids and trace metals) and promote infiltration. They are designed to allow for gradual release of storm runoff into the storm drain system. The imported Biotreatment Soil Mix used in the pond per C.3 stormwater guidebook specifications is designed to have an infiltration rate of 0.5 in/hr, such that a 6" deep pond will be fully drained within 12 hours of the rainfall event, removing the hazard of standing water in the pond. Refer to Chapter 6 of the SCVURPPP's C.3 Stormwater Handbook for additional information.

The bioretention pond on this site is sized according to the combination volume-flow method. Per the Phase II permit requirements, as less than 50% of the impervious area on the site is being disturbed, the stormwater control measures are being applied just the disturbed area. The detailed drainage management areas for the project as well as the biotreatment area calculations are shown on the attached Stormwater Management Plan sheet.

Stormwater Control Measures (SCMs) designed for Water Quality Treatment, Runoff Retention and/or Peak Management must be maintained to ensure proper performance. Regulated Projects with structural SCMs are required to follow the Operation and Maintenance (O&M) Plan and Maintenance Agreement that clearly establishes responsibility for all structural SCMs. An O&M Agreement is included in the appendix of this report.

STORMWATER TREATMENT CALCULATIONS

Worksheet for Calculating the Combination Flow and Volume Method

1.0 Project Information

- 1-1 Project Name: **AQ-07**
 1-2 City application ID: **Milpitas**
 1-3 Site Address or APN: **260 S Milpitas**
 1-4 Tract or Parcel Map No: **Parcel Number**
 1-5 Site Mean Annual Precip. (MAP)¹ **15.0** Inches

These calculations are based on the combination flow and volume hydraulic sizing method provided in the Alameda, San Mateo, and Santa Clara County C.3 Technical Guidance Manuals. The steps presented below are explained in Chapter 5, Section 5.1 of the guidance manuals.

Refer to the Mean Annual Precipitation Map in Appendix D of the C.3 Technical Guidance to determine the MAP, in inches, for the site.

[Click here for map](#)

- 1-6 Applicable Rain Gauge²

San Jose Airport (SCVURPPP)

MAP adjustment factor is automatically calculated as:

1.08

(The "Site Mean Annual Precipitation (MAP)" is divided by the MAP for the applicable rain gauge, shown in Table 5.2, below.)

2.0 Calculate Percentage of Impervious Surface for Drainage Management Area (DMA)

- 2-1 Name of DMA:

DMA 1

For items 2-2 and 2-3, enter the areas in square feet for each type of surface within the DMA.

Type of Surface	Area of surface type within DMA (Sq. Ft)	Adjust Pervious Surface	Effective Impervious Area
2-2 Impervious Surface	24,898	1.0	24,898
2-3 Pervious Surface*	2,036	0.1	204
Total DMA Area (square feet) =		26,934	

*Self-Treating and Self-Retaining not included

- 2-4 Total Effective Impervious Area (EIA) **25,102** Square feet

3.0 Calculate Unit Basin Storage Volume in Inches

Table 5-2: Unit Basin Storage Volumes (in inches) for 80 Percent Capture Using 48-Hour Drawdowns		
Applicable Rain Gauge	Mean Annual Precipitation (in)	Unit Basin Storage Volume (in) for Applicable Runoff Coefficients (Calculated for 100% Imperviousness)
San Jose Airport (SCVURPPP)	13.9	0.58
Palo Alto (SCVURPPP)	13.7	0.62
Palo Alto (SMCWPPP)	14.6	0.64
Gilroy (SCVURPPP)	18.2	1.00
Morgan Hill (SCVURPPP)	19.5	1.00
Boulder Creek (SMCWPPP)	55.9	2.04
La Honda (SMCWPPP)	24.4	0.86
Half Moon Bay (SMCWPPP)	25.92	0.82
San Francisco (SMCWPPP)	21	0.73
San Francisco Airport (SMCWPPP)	20.1	0.85
San Francisco Oceanside (SMCWPPP)	19.3	0.72
Oakland Airport (CWPAC)	18.35	1.00

- 3-1 Unit basin storage volume from Table 5.2: **0.58** Inches

(The coefficient for this method is 1.00, due to the conversion of any landscaping to effective impervious area)

- 3-2 Adjusted unit basin storage volume: **0.63** Inches

(The unit basin storage volume is adjusted by applying the MAP adjustment factor.)

- 3-3 Required Capture Volume (in cubic feet): **1,309** Cubic feet

(The adjusted unit basin sizing volume [inches] is multiplied by the size of the DMA and converted to feet)

4.0 Calculate the Duration of the Rain Event

- 4-1 Rainfall intensity **0.2 Inches per hour**
 4-2 Divide Item 3-2 by Item 4-1 **3.13** Hours of Rain Event Duration

5.0 Preliminary Estimate of Surface Area of Treatment Measure

- 5-1 4% of DMA impervious surface **1,004** Square feet
 5-2 3% of DMA impervious surface **753** Square feet
 5-3 Volume of treated runoff for area in Item 5-2 **982** Cubic feet (Item 5-2 * 5 inches per hour * 1/12 * Item 4-2)

6.0 Initial Adjustment of Depth of Surface Ponding Area

- 6-1 Subtract Item 5-3 from Item 3-3 **327** Cubic feet (Amount of runoff to be stored in ponding area)
 6-2 Divide Item 6-1 by Item 5-2 **0.4** Feet (Depth of stored runoff in surface ponding area)
 6-3 Convert Item 6-2 from ft to inches **5.2** Inches (Depth of stored runoff in surface ponding area)
 6-4 If ponding depth in Item 6-3 meets your target depth of 6"-12", then Item 7-1 is equal to Item 5-2. If not, continue to Step 7-1.

7.0 Optimize Size of Treatment Measure

- 7-1 Enter actual treatment area larger or smaller than Item 5-2 based off plans. **725** Sq.ft. (enter larger area if you need less ponding depth; smaller for more depth.)
 7-2 Volume of treated runoff for area in Item 7-1 **945** Cubic feet (Item 7-1 * 5 inches per hour * 1/12 * Item 4-2)
 7-3 Subtract Item 7-2 from Item 3-3 **364** Cubic feet (Amount of runoff to be stored in ponding area)
 7-4 Divide Item 7-3 by Item 7-1 **0.50** Feet (Depth of stored runoff in surface ponding area)
 7-5 Convert Item 7-4 from feet to inches **6.0** Inches (Depth of stored runoff in surface ponding area)
 If the ponding depth in Item 7-5 meets target, stop here. If not, repeat Steps 7-1 through 7-5 until you obtain target depth. If the slope of the drainage area > 1%, then 11" will be the max ponding depth (slopes >1% will increase the ponding depth by 0.2 inches).
 7-6

HYDRAULIC SIZING CALCULATIONS

DMA (sf)	DMA (ac)	Csite	I10	unit	Q10	unit
26934	0.61832	0.840	1.68	in/hr	0.8726	CFS

Pipe ID	Qunit	Diam	unit	Slope	unit	n	Capacity	Max Q
1	CFS	8	in.	0.005	ft/ft	0.012	0.9257	0.9953

d/D	Q	unit	V	unit
0.5	0.4628	CFS	2.6519	fps
0.75	0.8441	CFS	3.0058	fps
0.93	0.9953	CFS	2.9418	fps
1	0.9257	CFS	2.6519	fps

Hydraulic sizing calculations are based on the attached grading and drainage plans. Pipe #1 is the proposed 8" Ductile Iron pipe connecting the biotreatment pond to the existing site storm drain system.

Storm intensity was taken from the NOAA Hydrometeorological Design Studies Center Database, assuming a time of concentration of 10 minutes.

LID SITE DESIGN STRATEGIES

This site is utilizing the following LID site design strategies to minimize the impact of the development:

- Limit disturbance of creeks and natural drainage features
- Minimize compaction of highly permeable soils
- Minimize impervious surfaces
- Minimize stormwater runoff by directing runoff from driveways and/or uncovered parking lots onto vegetated areas

MITIGATION MEASURES

No post-development flow attenuation mitigation measures are required beyond the stormwater treatment being proposed. Because the project does not increase impervious area on the site, the post-development flow rate shall be lower than the pre-development flow rate, and the site is disturbing less than 1 acre of land.

OWNER CERTIFICATION:

I do hereby certify under penalty of law that all storm water management construction will be done according to the Storm Water Management Plan and its attachments.

Signature

Date

Type or print name and title

ENGINEER CERTIFICATION:

This document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel prepared the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for preparing the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

_____
Signature

12/13/2022

Date

Nektarios Matheou

Type or print name and title

(Note: Any subsequent amendments to the SWMP should be reflected on this page)



City of Milpitas – Stormwater Requirements C.3 Data Form

Santa Clara Valley Urban Run-Off Pollution Prevention Program

Which Projects Must Comply with Stormwater Requirements?

All projects that create and/or replace **10,000 sq. ft.** or more of impervious surface on the project site must fill out this worksheet and submit it with the development project application.

All restaurants, auto service facilities, retail gasoline outlets, and uncovered parking lot projects (stand-alone or part of another development project, including the top uncovered portion of parking structures) that create and/or replace **5,000 sq. ft.** or more of impervious surface on the project site must also fill out this worksheet.

Interior remodeling projects, routine maintenance or repair projects such as re-roofing and re-paving, and single family homes that are not part of a larger plan of development are **NOT** required to complete this worksheet.

What is an Impervious Surface?

An impervious surface is a surface covering or pavement that prevents the land's natural ability to absorb and infiltrate rainfall/stormwater. Impervious surfaces include, but are not limited to rooftops, walkways, paved patios, driveways, parking lots, storage areas, impervious concrete and asphalt, and any other continuous watertight pavement or covering. Pervious pavement, underlain with pervious soil or pervious storage material (e.g., drain rock), that infiltrates rainfall at a rate equal to or greater than surrounding unpaved areas OR that stores and infiltrates the water quality design volume specified in Provision C.3.d of the Municipal Regional Stormwater Permit (MRP) is not considered an impervious surface.

For More Information

For more information regarding selection of Best Management Practices for stormwater pollution prevention or stormwater treatment in Santa Clara County: http://www.scvurppp-w2k.com/c3_handbook_2012.shtml

1. Project Information

Project Name: MP-01 **APN #** 086-38-005

Project Address: 260 S Milpitas Blvd, Milpitas, CA 95035

Cross Streets: S Milpitas Blvd & Turquoise St

Applicant/Developer Name: Apple

Project Phase(s): 1 of 1 **Engineer:** Kier & Wright

Project Type (Check all that apply): ☐ New Development ☒ Redevelopment

☐ Residential ☐ Commercial ☐ Industrial ☐ Mixed Use ☐ Public ☐ Institutional

☐ Restaurant ☒ Uncovered Parking ☐ Retail Gas Outlet ☐ Auto Service (SIC code) _____

☐ Other _____ (5013-5014, 5541, 7532-7534, 7536-7539)

Project Description: Repaving and expansion of a loading dock yard and associated truck parking

Project Watershed/Receiving Water (creek, river, or bay): Wrigley Creek

2. Project Size

a. Total Site Area: 7.28 acre	b. Total Site Area Disturbed: 0.62 acre (including clearing, grading, or excavating)			
	Existing Area (ft²)	Proposed Area (ft²)		Total Post-Project Area (ft²)
		Replaced	New	
Impervious Area				
Roof	142,141	0	0	142,141
Parking	139,039	24,898	0	139,022
Sidewalks and Streets	4,333	0	0	4,333
c. Total Impervious Area	285,513	24,898	0	285,496
d. Total new and replaced impervious area		24,898		
Pervious Area				
Landscaping	31,415	1,465	17	31,432
Pervious Paving	0	0	0	0
Other (e.g. Green Roof)	0	0	0	0
e. Total Pervious Area	31,415	1,465	17	31,432
f. Percent Replacement of Impervious Area in Redevelopment Projects (Replaced Total Impervious Area ÷ Existing Total Impervious Area) x 100% = 8.72% %				

3. State Construction General Permit Applicability:

a. Is #2.b. equal to one acre or more?

- ☐ Yes, applicant must obtain coverage under the State Construction General Permit (i.e., file a Notice of Intent and prepare a Stormwater Pollution Prevention Plan) (see www.swrcb.ca.gov/water_issues/programs/stormwater/construction.shtml for details).
- ☒ No, applicant does not need coverage under the State Construction General Permit.

4. MRP Provision C.3 Applicability:a. Is #2.d. equal to **10,000** sq. ft. or more, or **5,000** sq. ft. or more for restaurants, auto service facilities, retail gas outlets, and uncovered parking?

- ☒ Yes, C.3. source control, site design, and treatment requirements apply.
- ☐ No, C.3. source control and site design requirements may apply – check with local agency

b. Is #2.f. equal to 50% or more?

- ☐ Yes, C.3. requirements (site design, source control, as appropriate, and stormwater treatment) apply to entire site.
- ☒ No, C.3. requirements only apply to impervious area created and/or replaced.

5. Hydromodification Management (HM) Applicability:

a. Does project create and/or replace one acre or more of impervious surface AND is the total post-project impervious area greater than the pre-project (existing) impervious area?

- ☐ Yes (continue) ☒ No – exempt from HM, go to page 3

b. Is the project located in an area of HM applicability (green area) on the HM Applicability Map? (www.scvurppp-w2k.com/hmp_maps.htm)

- ☐ Yes, project must implement HM requirements
- ☒ No, project is exempt from HM requirements

6. Selection of Specific Stormwater Control Measures:**Site Design Measures**

- ☒ Minimize land disturbed
- ☐ Minimize impervious surfaces
- ☐ Minimum-impact street or parking lot design
- ☒ Cluster structures/pavement
- ☐ Disconnected downspouts
- ☐ Pervious pavement
- ☐ Green roof
- ☐ Microdetention in landscape
- ☐ Other self-treating area
- ☐ Self-retaining area
- ☐ Rainwater harvesting and use (e.g., rain barrel, cistern connected to roof drains) ¹
- ☐ Preserved open space: _____ ac. or sq. ft
(circle one)
- ☐ Protected riparian and wetland areas/buffers (Setback from top of bank: _____ ft.)
- ☐ Other _____

Source Control Measures

- ☐ Alternative building materials
- ☐ Wash area/racks, drain to sanitary sewer²
- ☐ Covered dumpster area, drain to sanitary sewer²
- ☐ Sanitary sewer connection or accessible cleanout for swimming pool/spa/fountain²
- ☒ Beneficial landscaping (minimize irrigation, runoff, pesticides and fertilizers; promotes treatment)
- ☐ Outdoor material storage protection
- ☐ Covers, drains for loading docks, maintenance bays, fueling areas
- ☒ Maintenance (pavement sweeping, catch basin cleaning, good housekeeping)
- ☒ Storm drain labeling
- ☐ Other _____

Treatment Systems

- ☐ None (all impervious surface drains to self-retaining areas)

LID Treatment

- ☐ Rainwater harvest and use (e.g., cistern or rain barrel sized for C.3.d treatment)
- ☐ Infiltration basin
- ☐ Infiltration trench
- ☐ Exfiltration trench
- ☐ Underground detention and infiltration system (e.g. pervious pavement drain rock, large diameter conduit)

Biotreatment ³

- ☒ Bioretention area
- ☐ Flow-through planter
- ☐ Tree box with bioretention soils
- ☐ Other _____

Other Treatment Methods

- ☐ Proprietary tree box filter⁴
- ☐ Media filter (sand, compost, or proprietary media)⁴
- ☐ Vegetated filter strip⁵
- ☐ Dry detention basin⁵
- ☐ Other _____

Flow Duration Controls for Hydromodification Management (HM)

- ☐ Detention basin
- ☐ Underground tank or vault
- ☐ Bioretention with outlet control
- ☐ Other _____

¹ Optional site design measure; does not have to be sized to comply with Provision C.3.d treatment requirements.

² Subject to sanitary sewer authority requirements.

³ Biotreatment measures are allowed only with completed feasibility analysis showing that infiltration and rainwater harvest and use are infeasible.

⁴ These treatment measures are only allowed if the project qualifies as a "Special Project".

⁵ These treatment measures are only allowed as part of a multi-step treatment process.

7. Treatment System Sizing for Projects with Treatment Requirements

Indicate the hydraulic sizing criteria used and provide the calculated design flow or volume:

Treatment System Component	Hydraulic Sizing Criteria Used ³	Design Flow or Volume (cfs or cu.ft.)
Bioretention Pond	3	982 cu.ft.

- ³Key: 1a: Volume – WEF Method
 1b: Volume – CASQA BMP Handbook Method
 2a: Flow – Factored Flood Flow Method
 2b: Flow – CASQA BMP Handbook Method
 2c: Flow – Uniform Intensity Method
 3: Combination Flow and Volume Design Basis

8. Alternative Certification: Was the treatment system sizing and design reviewed by a qualified third-party professional that is not a member of the project team or agency staff?

☒ Yes

☐ No

Name of Reviewer: David Tietje, P.E. (EKI)

9. Operation & Maintenance Information

A. Property Owner's Name: DREF Milpitas LLC

B. Responsible Party for Stormwater Treatment/Hydromodification Control O&M:

a. Name:

Sherry Martinez

b. Address:

1111 Broadway, Suite 1850, Oakland, CA 94607

c. Phone/E-mail:

(949) 351-7478 / sherry.martinez@cbre.com

This section to be completed by City of Milpitas staff.

O&M Responsibility Mechanism

Indicate how responsibility for O&M is assured. Check all that apply:



O&M Agreement



Other mechanism that assigns responsibility (describe below):

Reviewed:

Planning Department

Planning Division: _____

Other (Specify): _____

Public Works Department

Land Development: _____

Other (Specify): _____

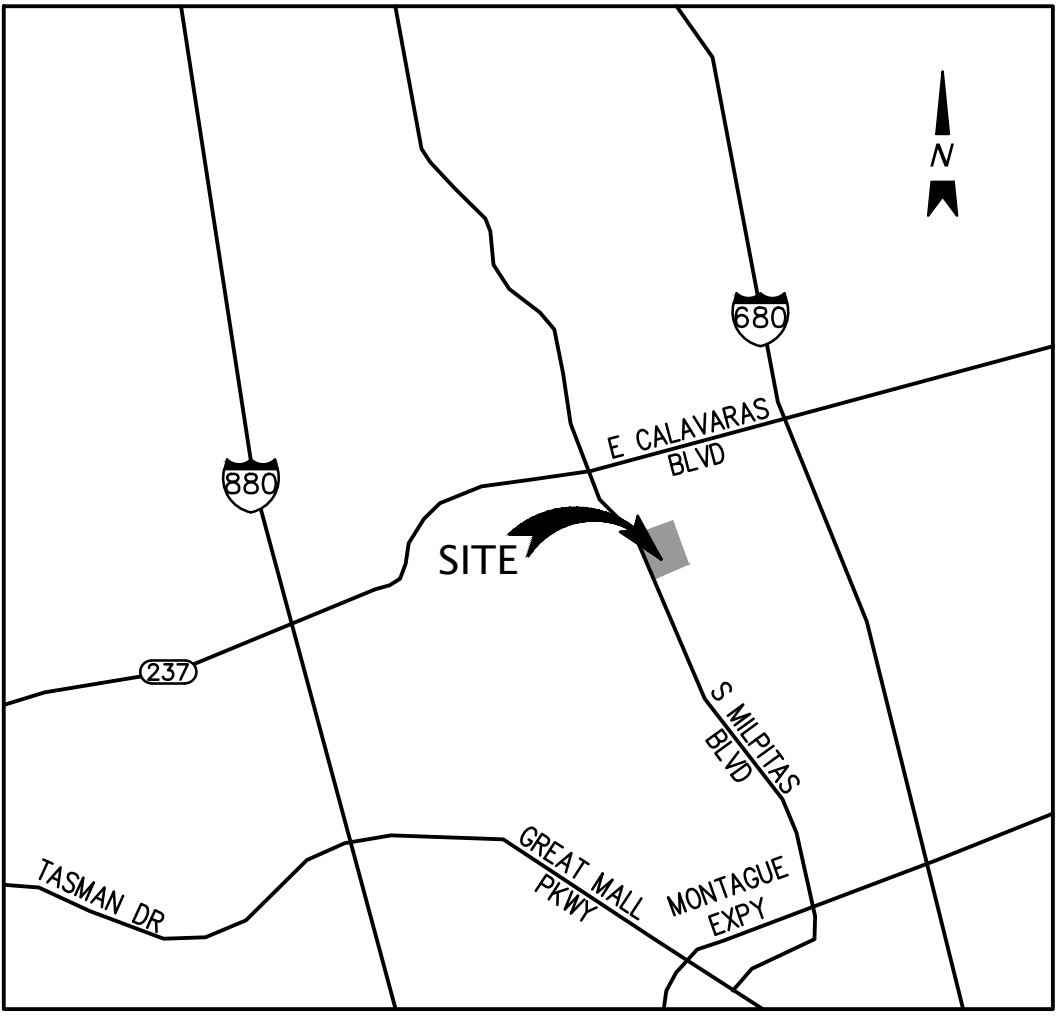
GENERAL NOTES

- ALL WORK SHALL BE IN CONFORMANCE WITH THE CITY OF MILPITAS DEPARTMENT OF PUBLIC WORKS' STANDARD SPECIFICATIONS AND DETAILS. ALL WORK SHALL BE SUBJECT TO APPROVAL OF AND INSPECTION BY THE CITY ENGINEER.
- AT LEAST ONE SET OF APPROVED PLANS SHALL BE ON THE SITE AT ALL TIMES FOR INSPECTION. ANY DEVIATION FROM THE APPROVED PLANS DURING CONSTRUCTION WILL REQUIRE 48 HOURS PRIOR NOTICE AND APPROVAL OF THE CITY ENGINEER.
- THE PERMITTEE/CONTRACTOR SHALL NOTIFY THE CITY OF MILPITAS ENGINEERING DIVISION TWO (2) BUSINESS DAYS PRIOR TO THE START OF ANY WORK.
- IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO ASCERTAIN THE EXISTENCE OF ANY AND ALL UNDERGROUND FACILITIES, WHICH MAY BE SUBJECT TO DAMAGE BY REASON OF HIS OPERATIONS. THE CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT (USA) AT (800) 642-2444, 48 HOURS PRIOR TO ANY EXCAVATION. WORK SHALL START WITHIN 5 DAYS AFTER THE ISSUANCE OF A USA INQUIRY IDENTIFICATION NUMBER. COMPLETE REMOVAL OF THE USA MARKINGS SHALL BE WITHIN 2 WORKING DAYS AFTER COMPLETION OF THE EXCAVATION. BACKFILL AND SURFACE REPLACEMENT OR FOURTEEN (14) CALENDAR DAYS FOLLOWING THE ISSUANCE OF THE INQUIRY IDENTIFICATION NUMBER UNLESS OTHERWISE SPECIFIED.
- CONTACTING USA DOES NOT RELIEVE THE CONTRACTOR FROM HIS RESPONSIBILITY TO DETERMINE LOCATION AND DEPTH OF BURIED UTILITIES OR REPAIR OF BURIED UTILITIES DAMAGED BY HIS OPERATION.
- NOISE-PRODUCING CONSTRUCTION AND GRADING OPERATIONS SHALL BE LIMITED TO WEEKDAYS (MONDAY THROUGH FRIDAY) EXCEPT CITY HOLIDAYS AND FROM THE HOURS OF 7:30 A.M. TO 6:00 P.M. ALL EQUIPMENT SHALL BE ADEQUATELY MUFFLED AND MAINTAINED. NO CHANGES SHALL BE ALLOWED WITHOUT PRIOR WRITTEN CONSENT OF THE CITY. ALL REQUESTS FOR CHANGE MUST BE MADE A MINIMUM OF 72 HOURS PRIOR TO THE NEED FOR THE IMPLEMENTATION OF THE REQUESTED CHANGE.
- IT SHALL BE UNDERSTOOD THAT THE TERM "CITY ENGINEER" AS USED HEREIN IS THE CITY ENGINEER OF THE CITY OF MILPITAS OR HIS AUTHORIZED REPRESENTATIVE.
- A PRE-CONSTRUCTION CONFERENCE SHALL BE SCHEDULED AT LEAST TWO WORKING DAYS IN ADVANCE OF COMMENCEMENT OF ANY CONSTRUCTION WORK FOR THE IMPROVEMENTS DELINEATED WITHIN THIS SET OF PLANS. THE FOLLOWING INDIVIDUALS SHALL BE IN ATTENDANCE: OWNER/DEVELOPER, CONTRACTOR(S), CITY ENGINEER, ENGINEER, CONSTRUCTION INSPECTOR, OR THEIR AUTHORIZED REPRESENTATIVES.
- THE CONTRACTOR SHALL SUBMIT A SCHEDULE OF ALL GRADING OPERATIONS AND RECEIVE APPROVAL OF SAID SCHEDULE FROM THE CITY ENGINEER PRIOR TO OR THE DAY OF THE PRE-CONSTRUCTION CONFERENCE.
- THE CONSTRUCTION CONTRACTOR AGREES, THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, TO ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR THE JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS.
- THE CONTRACTOR SHALL PROVIDE EMERGENCY TELEPHONE NUMBERS FOR PUBLIC WORKS, AMBULANCE, POLICE, AND FIRE DEPARTMENTS AT THE JOB SITE.
- THE CONTRACTOR SHALL NOT DISTURB OR DESTROY ANY PERMANENT SURVEY POINTS WITHOUT THE CONSENT OF THE CITY ENGINEER. IN THE EVENT IT BECOMES NECESSARY TO REMOVE OR DISTURB A MONUMENT, THE PERSON SO DOING SHALL FIRST OBTAIN PERMISSION, IN WRITING, FROM THE CITY ENGINEER AND SHALL DEPOSIT WITH THE CITY ENGINEER A SUFFICIENT AMOUNT, BASED UPON THE CITY ENGINEER'S ESTIMATE, TO COVER THE COST OF PRELIMINARY REFERENCING AND FINAL RELOCATION OF THE MONUMENT.
- ALL CONSTRUCTION STAKING SHALL BE DONE BY A REGISTERED CIVIL ENGINEER OR LICENSED LAND SURVEYOR. UPON COMPLETION OF GRADING, THE CONTRACTOR SHALL REQUEST THE LICENSED LAND SURVEYOR TO CHECK THE GRADES AND CERTIFY THAT THE PADS ARE GRADED TO WITHIN $\pm$ 0.10 FOOT OF FINISH PAD GRADE.
- THE CONTRACTOR SHALL PROVIDE FOR INGRESS AND EGRESS TO AND FROM PRIVATE PROPERTY ADJACENT TO THE WORK AREA THROUGHOUT THE PERIOD OF CONSTRUCTION.
- THE CONTRACTOR IS RESPONSIBLE FOR MATCHING EXISTING STREETS, SURROUNDING LANDSCAPE AND OTHER IMPROVEMENTS, WITH A SMOOTH TRANSITION IN GRADE AVOIDING ANY ABRUPT OR APPARENT CHANGES IN GRADE OR CROSS SLOPE, LOW SPOTS, OR HAZARDOUS CONDITIONS.
- EXISTING CURB AND SIDEWALK WITHIN THE PROJECT LIMITS THAT ARE DAMAGED OR DISPLACED, EVEN THOUGH THEY WERE NOT TO BE REMOVED, SHALL BE REPAIRED OR REPLACED, EVEN IF THE DAMAGE OR DISPLACEMENT OCCURRED PRIOR TO ANY WORK PERFORMED BY THE CONTRACTOR. CONTRACTOR SHALL DOCUMENT CONDITION VIA PHOTOGRAPHS PRIOR TO THE START OF CONSTRUCTION.
- THE CONTRACTOR SHALL CONTROL DUST BY WATERING EXPOSED SURFACES AS NEEDED. INCREASED WATERING SHALL BE REQUIRED WHEN WIND SPEEDS EXCEED 10 MPH OR WHEN DIRECTED BY THE CITY.
- NO PERSON SHALL, WHEN HAULING ANY EARTH, SAND, GRAVEL, STONE, DEBRIS, PAPER, OR ANY OTHER SUBSTANCE OVER ANY PUBLIC STREETS OR OTHER PUBLIC PLACE, ALLOW MATERIAL TO BLOW OR SPILL OVER AND UPON SAID PUBLIC OR ADJACENT PRIVATE PROPERTY. ALL LOADS LEAVING THE SITE SHALL BE COVERED.
- THE CONTRACTOR SHALL PROVIDE A STABILIZED CONSTRUCTION ENTRANCE/EXIT TO PREVENT THE TRACKING OF SOIL, DUST, MUD, OR CONSTRUCTION DEBRIS ONTO PUBLIC STREETS.
- MUD TRACKED ONTO STREETS OR ADJACENT PROPERTIES SHALL BE REMOVED IMMEDIATELY; STREET SHALL BE SWEEPED WITH A POWER SWEEPER (NOT PRESSURE WASHED) AS DIRECTED BY THE CITY.
- A DISPOSAL SITE FOR ANY OFF-SITE HAIL OF DIRT MATERIALS SHALL BE APPROVED BY THE CITY PRIOR TO APPROVAL OF THE GRADING PERMIT. THE OFF-SITE HAIL ROUTE FOR EXCESS DIRT OR CONSTRUCTION DEBRIS IS SUBJECT TO APPROVAL OF THE CITY ENGINEER.
- "UNAUTHORIZED" SIGN WILL BE POSTED IN EITHER OF THE FOLLOWING LOCATIONS, PER CBC SECTION 11B-502.8:
 - AT EACH ENTRANCE TO AN OFF-STREET PARKING FACILITY, OR;
 - IMMEDIATELY ADJACENT TO ON-SITE ACCESSIBLE PARKING AND VISIBLE FROM EACH PARKING SPACE.

SITE IMPROVEMENT PLANS OF 260 SOUTH MILPITAS BOULEVARD

MILPITAS,

CALIFORNIA



VICINITY MAP

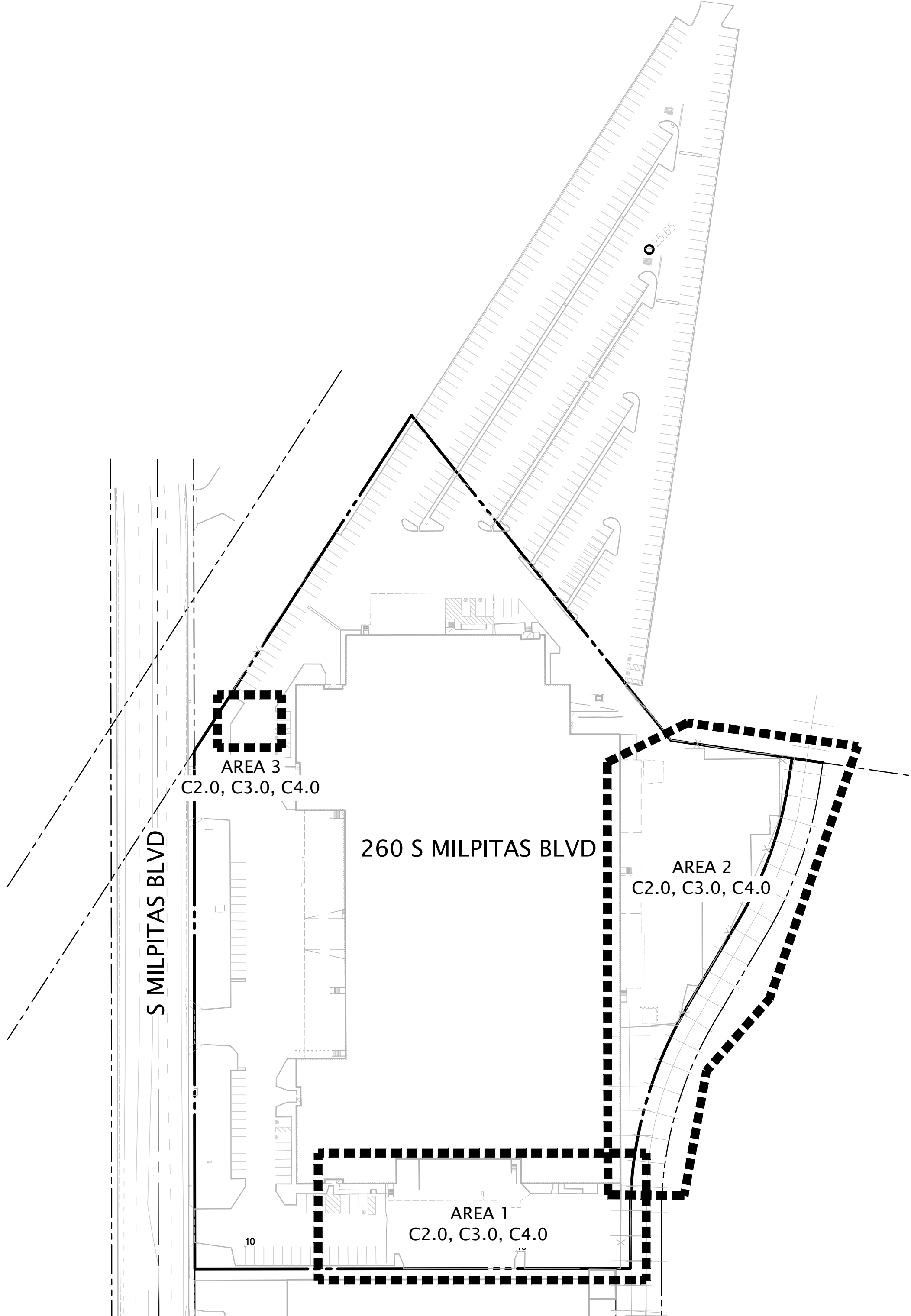
NOT TO SCALE

SHEET INDEX

SHEET	DESCRIPTION
CIVIL	
C1.0	COVER SHEET
C1.1	DETAILS
C2.0	EXISTING SITE PLAN & BOUNDARY
C3.0	GRADING, DRAINAGE & UTILITY PLAN
C4.0	STORMWATER CONTROL PLAN

SCOPE OF WORK

- AREA 1:
REMOVAL AND REPLACEMENT OF A FENCE WITH VEHICLE AND MAN GATES, INSTALLATION OF SAFETY DRAINS IN AREAS RECEIVING RUNOFF FROM THE ADJACENT WORKSPACES.
- AREA 2:
REMOVAL AND REPLACEMENT OF AC PAVEMENT IN REAR LOADING DOCK AREA. CHANGES TO THE LIMITS OF PAVEMENT. INSTALLATION OF NEW STORMWATER TREATMENT FACILITIES AND ASSOCIATED UNDERGROUND CONNECTIONS. NEW STRIPING FOR PROPOSED TRUCK PARKING
- AREA 3:
GRIND AND OVERLAY OF EXISTING PAVEMENT TO REDUCE A DRAMATIC DIP WITHIN VEHICLE DRIVE AISLE. ADJUSTING RIM OF EXISTING CATCH BASIN TO NEW SLIGHTLY RAISED GRADE.

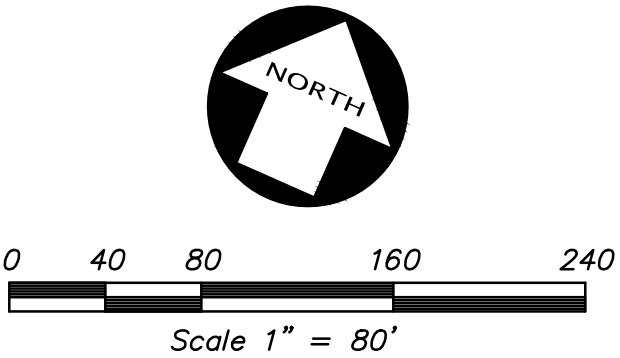


CIVIL ENGINEER

KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.
ATTN: NECTARIOS MATHEOU, P.E.
3350 SCOTT BLVD BLDG 22
SANTA CLARA, CA 95054
(408) 727-6665

ARCHITECT

HGA
ATTN: SCOTT COLSON
84 WEST SANTA CLARA ST., SUITE 200
SAN JOSE, CA 95113
(408) 288-7833



CONSTRUCTION STAKING NOTE:

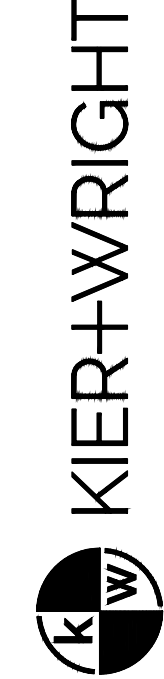
FOR ALL STAKING SCHEDULING AND REQUEST FOR PROPOSALS PLEASE CONTACT:
CHUY MARTINEZ
(408) 727-6665 EXT. 1035 cmartinez@kierwright.com



Know what's below.
Call before you dig.

COVER SHEET
OF
260 SOUTH MILPITAS BOULEVARD

DATE	MAY 2023
SCALE	AS SHOWN
DESIGNED BY	NM
DRAWN BY	MC
JOB NO.	A21212
SHEET	C1.0
OF	SHEETS



3350 Scott Boulevard, Building 22
Santa Clara, California 95054
Phone: (408) 727-6665
www.kierwright.com

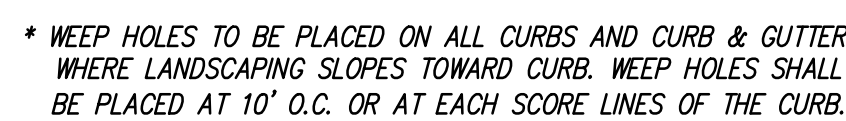


CALIFORNIA

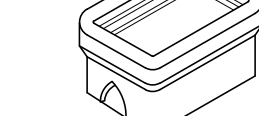
MILPITAS,



7



8



ETE BOX



4



NOT TO SCALE

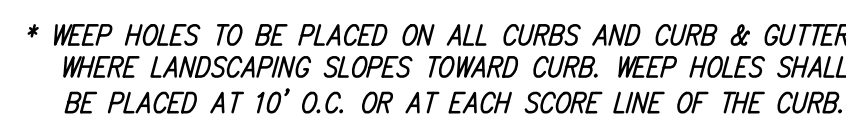


TYPICAL SECTION

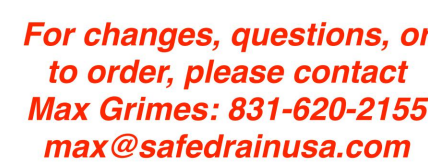
- ## DROP INLET TABLE

*	CP2424	2K	24	600	24	600	5	125	*
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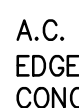


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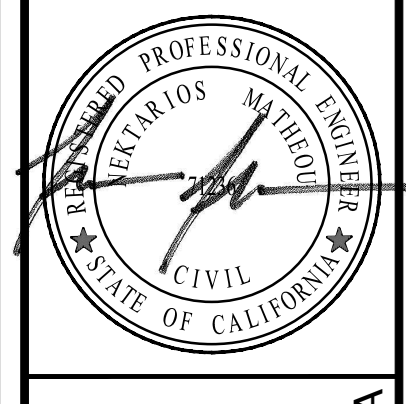
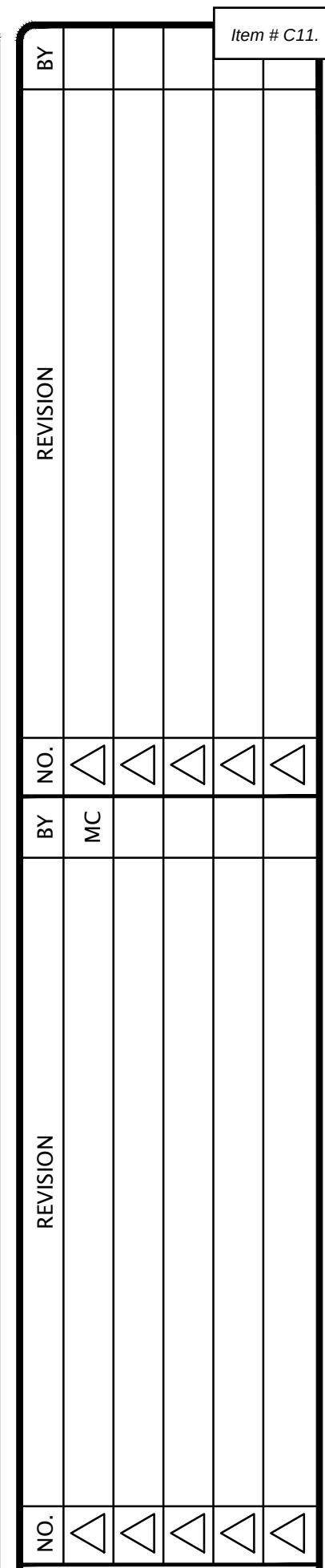
- GENERAL NOTES:**
Installation by manufacturer or an approved contractor.
All Welds continuous and water tight.
304 Stainless Steel 12 gauge.
Measurements subject to change due to existing structural conditions.

2



3

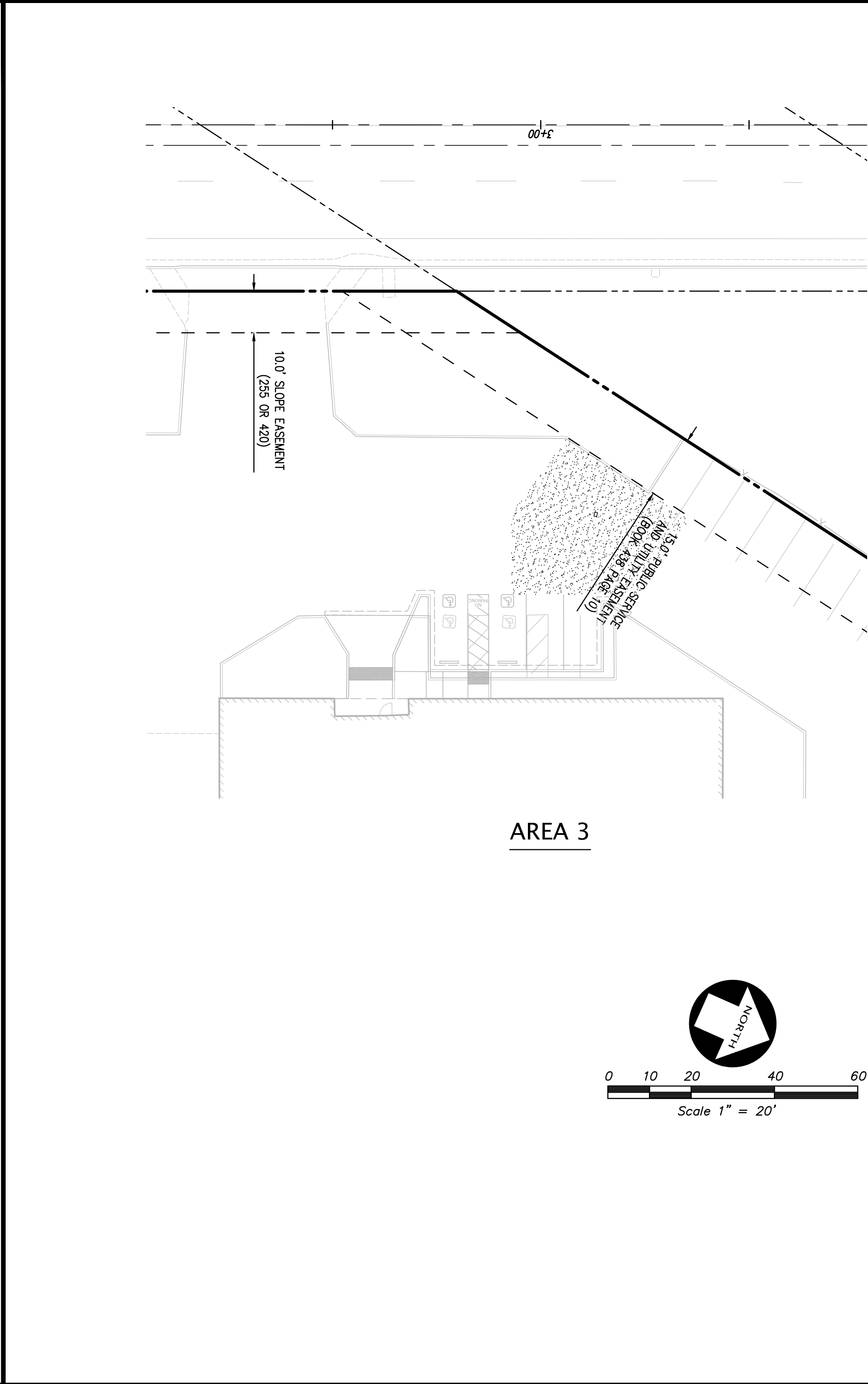
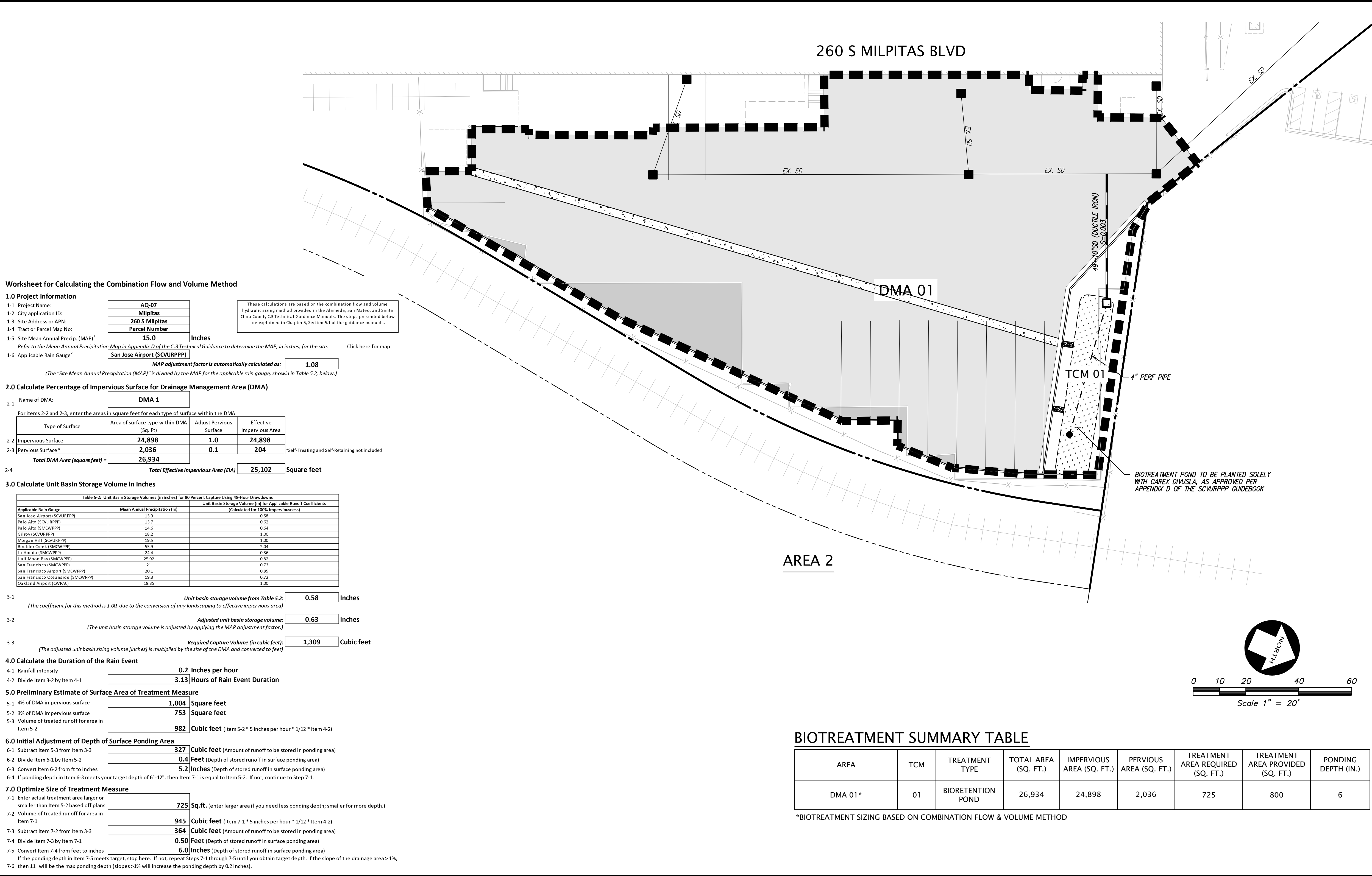
DATE	MAY 2023
SCALE	AS SHOWN
DESIGNED BY	NM
DRAWN BY	MC
JOB NO.	A21212
SHEET	C1.1
OF	SHEETS



GRADING, DRAINAGE & UTILITY PLAN
OF
260 SOUTH MILLPITAS BOULEVARD
MILLPITAS, CALIFORNIA

- | | |
|-------------|----------|
| DATE | MAY 2023 |
| SCALE | AS SHOWN |
| DESIGNED BY | NM |
| DRAWN BY | MC |
| JOB NO. | A21212 |
| SHEET | C3.0 |
| OF | SHEETS |

153



BIOTREATMENT SUMMARY TABLE

AREA	TCM	TREATMENT TYPE	TOTAL AREA (SQ. FT.)	IMPERVIOUS AREA (SQ. FT.)	PERVIOUS AREA (SQ. FT.)	TREATMENT AREA REQUIRED (SQ. FT.)	TREATMENT AREA PROVIDED (SQ. FT.)	PONDING DEPTH (IN.)
DMA 01 *	01	BIORETENTION POND	26,934	24,898	2,036	725	800	6

*BIOTREATMENT SIZING BASED ON COMBINATION FLOW & VOLUME METHOD



KIER+WRIGHT

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Phone (408) 727-6665
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STORMWATER CONTROL PLAN
OF
260 SOUTH MILPITAS BOULEVARD

CALIFORNIA

MILPITAS,

DATE	MAY 2023
SCALE	AS SHOWN
DESIGNED BY	NM
DRAWN BY	MC
JOB NO.	A21212
SHEET	C4.0
OF	SHEETS

LEGAL DESCRIPTION

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

PARCEL ONE:

PARCEL 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A PORTION OF THE MILPITAS RANCHO", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MARCH 23, 1979 IN [BOOK 438 OF MAPS AT PAGES 9 AND 10](#).

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES BELOW THE DEPTH OF 500 FEET OF SAID REAL PROPERTY WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED FROM SACRAMENTO NORTHERN RAILWAY, A CORPORATION, RECORDED OCTOBER 3, 1980 AS INSTRUMENT NO. [6857909](#).

PARCEL TWO:

PARCEL A AS SHOWN ON THE PARCEL MAP ENTITLED "BEING A PORTION OF THE MILPITAS RANCHO AND A RESUBDIVISION OF PARCEL 5, MAP 417 M 12-13 LYING WITHIN THE CITY OF MILPITAS" FILED DECEMBER 9, 1985 IN [BOOK 553 OF MAPS, PAGE 8](#), SANTA CLARA COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES BELOW A DEPTH OF 500 FEET OF SAID REAL PROPERTY, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED BY STANDARD REALTY AND DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION IN THE DEED RECORDED MAY 19, 1978 IN [BOOK D681, PAGE 462](#) OF OFFICIAL RECORDS.

APN: 086-38-005 (Affects Parcel One) and 086-28-048 (Affects Parcel Two)

**Stormwater Treatment Measure Operation and Maintenance
Inspection Report to the City of Milpitas, California**

Item # C11.

This report and attached Inspection and Maintenance Checklists document the inspection and maintenance conducted for the identified stormwater treatment measure(s) subject to the Maintenance Agreement between the City and the property owner during the annual reporting period indicated below.

I. Property Information:

Property Address or APN: 260 S Milpitas Blvd, Milpitas, CA

Property Owner: DREF MILPITAS, LLC c/o CBRE

II. Contact Information:

Name of person to contact regarding this report: Sherry Martinez

Phone number of contact person: (949) 351-7478 Email: sherry.martinez@cbre.com

Address to which correspondence regarding this report should be directed:

1111 Broadway, Suite 1850

Oakland, CA 94607

III. Reporting Period:

This report, with the attached completed inspection checklists, documents the inspections and maintenance of the identified treatment measures during the time period from _____ to _____.

IV. Stormwater Treatment Measure Information:

The following stormwater treatment measures (identified treatment measures) are located on the property identified above and are subject to the Maintenance Agreement:

Identifying Number of Treatment Measure	Type of Treatment Measure	Location of Treatment Measure on the Property

V. Summary of Inspections and Maintenance:

Summarize the following information using the attached Inspection and Maintenance Checklists:

Identifying Number of Treatment Measure	Date of Inspection	Operation and Maintenance Activities Performed and Date(s) Conducted	Additional Comments

VI. Sediment Removal:

Total amount of accumulated sediment removed from the stormwater treatment measure(s) during the reporting period: _____ cubic yards.

How was sediment disposed?

landfill

other location on-site as described in and allowed by the maintenance plan

other, explain _____

VII. Inspector Information:

The inspections documented in the attached Inspection and Maintenance Checklists were conducted by the following inspector(s):

Inspector Name and Title	Inspector's Employer and Address

VIII. Certification:

I hereby certify, under penalty of perjury, that the information presented in this report and attachments is true and complete:

Signature of Property Owner or Other Responsible Party

Date

Type or Print Name

Company Name

Address

Phone number: _____ Email: _____

Bioretention Area Maintenance Plan for 260 S Milpitas Blvd

Date: 12-01-2022

Project Address and Cross Streets 260 S Milpitas Blvd, Milpitas, CA

Assessor's Parcel No.: 86-38-005

Property Owner: Apple Inc. Phone No.: _____

Designated Contact: _____ Phone No.: _____

Mailing Address: _____

The property contains 1 bioretention area, located as described below and as shown in the attached site plan¹.

Bioretention Area No. 1 is located in the eastern corner of the site adjacent to a truck parking/loading dock yard.

I. Routine Maintenance Activities

The principal maintenance objective is to prevent sediment buildup and clogging, which reduces pollutant removal efficiency and may lead to bioretention area failure. Routine maintenance activities, and the frequency at which they will be conducted, are shown in Table 1.

Table 1 Routine Maintenance Activities for Bioretention Areas		
No.	Maintenance Task	Frequency of Task
1	Remove obstructions, debris and trash from bioretention area and dispose of properly.	Monthly, or as needed after storm events
2	Inspect bioretention area for ponded water. If ponded water does not drain within 2-3 days, till and replace the surface soil and replant.	Monthly, or as needed after storm events
3	Inspect inlets for channels, soil exposure or other evidence of erosion. Clear obstructions and remove sediment.	Monthly, or as needed after storm events
4	Remove and replace all dead and diseased vegetation.	Twice a year
5	Maintain vegetation and the irrigation system. Prune and weed to keep bioretention area neat and orderly in appearance. Remove and or replace any dead plants.	Twice a year
6	Check that mulch is at appropriate depth (2 inches per soil specifications) and replenish as necessary before wet season begins.	Monthly
7	Inspect the energy dissipation at the inlet to ensure it is functioning adequately, and that there is no scour of the surface mulch.	Annually, before the wet season begins
8	Inspect bioretention area using the attached inspection checklist.	Monthly, or after large storm events, and after removal of accumulated debris or material

¹ Attached site plan must match the site plan exhibit to Maintenance Agreement.

II. Use of Pesticides

The use of pesticides and quick release fertilizers shall be minimized, and the principles of integrated pest management (IPM) followed:

1. Employ non-chemical controls (biological, physical and cultural controls) before using chemicals to treat a pest problem.
2. Prune plants properly and at the appropriate time of year.
3. Provide adequate irrigation for landscape plants. Do not over water.
4. Limit fertilizer use unless soil testing indicates a deficiency. Slow-release or organic fertilizer is preferable. Check with municipality for specific requirements.
5. Pest control should avoid harming non-target organisms, or negatively affecting air and water quality and public health. Apply chemical controls only when monitoring indicates that preventative and non-chemical methods are not keeping pests below acceptable levels. When pesticides are required, apply the least toxic and the least persistent pesticide that will provide adequate pest control. Do not apply pesticides on a prescheduled basis.
6. Sweep up spilled fertilizer and pesticides. Do not wash away or bury such spills.
7. Do not over apply pesticide. Spray only where the infestation exists. Follow the manufacturer's instructions for mixing and applying materials.
8. Only licensed, trained pesticide applicators shall apply pesticides.
9. Apply pesticides at the appropriate time to maximize their effectiveness and minimize the likelihood of discharging pesticides into runoff. With the exception of pre-emergent pesticides, avoid application if rain is expected.
10. Unwanted/unused pesticides shall be disposed as hazardous waste.

III. Vector Control

Standing water shall not remain in the treatment measures for more than five days, to prevent mosquito generation. Should any mosquito issues arise, contact the Santa Clara Valley Vector Control District (District). Mosquito larvicides shall be applied only when absolutely necessary, as indicated by the District, and then only by a licensed professional or contractor. Contact information for the District is provided below.

Santa Clara Valley Vector Control
District 1580 Berger Dr.
San José, California 95112
Phone: (408) 918-4770 / (800) 675-1155 - Fax: (408) 298-6356
www.sccgov.org/portal/site/vector

IV. Inspections

The attached Bioretention Area Inspection and Maintenance Checklist shall be used to conduct inspections monthly (or as needed), identify needed maintenance, and record maintenance that is conducted



December 13, 2022
BAGG Project No. APPLE-45-00

Carl Bacon, Project Manager
carlbacon@apple.com
Real Estate and Development
Apple Inc.
530 Stevens Avenue / MS 319-6PM1
San Jose, California 95129

Dear Mr. Bacon,

Geotechnical Engineering Consultation-
Mitigation of Distressed Parking Lot Pavement
260 S. Milpitas Boulevard
Milpitas, California

This letter documents our observations during a visit to the subject site on August 12, 2022 to examine the distressed rear parking lot, and provide recommendations for its repair and/or replacement.

Several pits excavated by the grading contractor in the distressed area of the parking lot on the east side of the building revealed highly expansive, soft and saturated reddish brown fat clay. The suspected Resistance (R) value for this type of soil is typically less than 5. To stabilize the subgrade for the support of automobiles or delivery trucks, we recommend that the pavement should be pulverized and the subgrade treated with 5% by weight of quick lime (or lime-cement mixture) to depths of 12 to 18 inches with the thicker treatment preferred given the chaotic and saturated nature of the subgrade soil. Subgrade work in this manner should allow construction of a pavement section consisting of 6 inches of Caltrans Class 2 aggregate base overlain by 4 inches of asphaltic concrete. The subgrade as well as the aggregate base and the asphaltic concrete layers should be compacted to a minimum of 95% of the maximum dry density.

While the site soils consist of relatively impermeable fat clay, bio-treatment ponds with imported bio-filtration soil mix may be constructed as planned for stormwater management as well as cleansing the runoff, provided an underdrain system is constructed to remove excess water during peak flows and discharge it to the local storm drainage system.

We trust this letter satisfies your requirements at this time. The recommendations in this letter are contingent upon the geotechnical observation and testing of all pertinent aspects of the lime-treatment and compaction of the subgrade as well as the pavement components by BAGG Engineers' field staff.

Very truly yours,

BAGG Engineers

Ebbi Hamidieh

Ebbi Hamidieh
Principal

Jason Van Zwol

Jason Van Zwol
Chief Engineer





CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Review and Approve the FY 2022-23 Fourth Quarter Financial Status Report, Fund Balances Thereof, and Related Budget Amendments to Close-out the FY 2022-23 Budget and Authorize an Additional \$100,000 Blanket Purchase Order to the National Auto Fleet Cooperative Agreement for Vehicle Carry-Forward (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/19/2023
Recommendation:	1. Review the FY 2022-23 Quarterly Financial Status Report for the quarter ending June 30, 2023 (unaudited), 2. Approve budget amendments, and 3. Authorize an additional \$100,000 to the National Auto Fleet Cooperative Agreement blanket purchase order for vehicle carry-forward.

BACKGROUND:

On June 7, 2022, the City Council adopted the Fiscal Year (FY) 2022-23 Operating Budget in the amount of \$207.8 million and the General Fund Budget in the amount of \$117.6 million. The City Council approved budget amendments that realigned revenue with updated projection and reduced personnel and non-personnel costs. The FY 2022-23 amended budget for General Fund revenue is \$124.0 million and expenditures is \$123.4 million. Consistent with the fiscal reporting policies, staff monitors and tracks revenues and expenditures for all funds with an emphasis on the General Fund and Enterprise Funds.

ANALYSIS:

This staff report provides the final quarterly update for FY 2022-23 on budget versus actual revenues and expenditures of the General, Water, and Sewer Funds, based on unaudited financial reports as of June 30, 2023. Further, this staff report includes recommendations to close out the FY 2022-23 budget and implement the Council approved reserve policies.

Fourth Quarter Financial Status Report

The summary information below and three attachments provide an overview of the financial status for the General, Water, and Sewer funds for FY 2022-23 as of June 30, 2023. This summary also includes a variance analysis of budget vs. actual revenues and expenditures for the fourth quarter of FY 2022-23. This information is preliminary and subject to year-end close and independent auditor review.

The table below briefly summarizes the unaudited General Fund FY2022-23 revenues, expenditures, and surplus of \$9.5 million, which is primarily due to one-time revenue and expenditure savings.

General Fund (\$ million)	FY2022-23 Adopted Budget	FY2022-23 Amended Budget As of 02/15/23	Unaudited Actual As of 6/30/23	Budget Variance \$	Budget Variance %
Revenue *	\$117.6	\$124.0	\$128.0	\$4.0	3.2%
Expenditure	117.6	123.4	118.5	(4.9)	3.9%
Surplus/(Deficit)	0	0.6 **	9.5		

** Revenues for FY22-23 is net of 30% Excess ERAF Property Tax due to pending litigation.

* Primarily due to prior year encumbrances Pos and contracts

General Fund Revenues (Attachment 1)

For the twelve months ending June 30, 2023, the General Fund has received \$128.0 million in revenues (net Excess ERAF) or 103.2%, of the FY 22-23 amended operating budget of \$124.0 million, which includes operating transfers in. The variance is primarily due to *one-time revenues* related to property tax (\$3.2 million), sales and use tax (\$4.9 million), franchise fees (\$151K), and other revenues. The amended budget of \$124.0 million is comprised of the \$117.6 million of the adopted budget plus the budget amendments of \$6.0 million and a grant carryover of \$0.3 million. A summary analysis on major revenue sources of unaudited figures is provided below.

General Fund Revenues	FY23	FY23	FY23	FY23
	Amended	Revenue	Revenue	Percentage
	Budget as of 2/15/2023	As of 6/30/23	Outstanding Favorable/ (Unfavorable)	of Amended Budget
Property Tax *	\$ 44,041,044	\$ 47,210,420	\$ 3,169,376	107.2%
Sales and Use Tax	29,263,446	31,259,802	\$ 1,996,356	106.8%
Sales and Use Tax - Measure F	6,955,000	7,215,906	\$ 260,906	103.8%
Licenses, Permits & Fines	9,984,759	8,259,590	\$ (1,725,169)	82.7%
Hotel/Motel Tax	10,475,622	11,189,758	\$ 714,136	106.8%
Operating Transfer In	7,168,627	7,168,628	\$ 1	100.0%
Charges for Services	6,674,294	6,599,113	\$ (75,181)	98.9%
Franchise Fees	5,538,665	5,689,722	\$ 151,057	102.7%
Intergovernmental	2,221,147	2,014,567	\$ (206,580)	90.7%
Other Taxes	1,067,452	1,044,357	\$ (23,095)	97.8%
Other Revenues	349,657	858,731	\$ 509,074	245.6%
Interest Income	264,000	634,276	\$ 370,276	240.3%
Total General Fund Revenue	\$ 124,003,714	\$ 129,144,870	\$ 5,141,156	104.1%
* Deduct 30% Excess ERAF (litigation)		\$ (1,141,415)	\$ (1,141,415)	
Total Gen Fund Revenues, net of Excess ERAF		\$ 128,003,455	\$ 3,999,741	103.2%

- Property Taxes and Redevelopment Property Tax Trust Fund:** For the twelve months ending June 30, 2023, \$47.2 million, or 107.2%, of the \$44.0 million of the amended budget has been received. Revenues are 10.4% higher than last year at the same time, due to a higher Excess ERAF payment received. The restated property tax revenues, net of 30% Excess ERAF due to pending litigation is \$46.1 million or 104.8% of the \$44.0 million of amended budget. The City received \$3.8 million in comparison with \$2.1 million budgeted for Excess ERAF. This \$1.6 million of favorable Excess ERAF is one-time revenue and Santa Clara County continues to caution the City against relying upon this surplus in future year services. The court case may still be appealed, and this Excess ERAF revenue remains a contingency.
- Sales & Use Tax:** For the twelve months ending June 30, 2023, \$31.3 million, or 106.8%, of the \$29.3 million amended budget has been received. Revenues are 11.3% greater than last year at the same time, however \$1 million is a one-time favorable variance due to the timing of retailer remittance between prior year and current year.
- Sales & Use Tax - Measure F:** The district tax became operative April 1, 2021 and sunsets in eight years. For the quarter ending June 30, 2023, the City received \$7.2 million, or 103.8%, of the amended budget.

- **Franchise Fees:** For the twelve months ending June 30, 2023, \$5.7 million, or 102.7%, of the \$5.5 million amended budget has been received. Revenues are 9.7% greater than last year at the same time.
- **Hotel/Motel (TOT) Tax:** For the twelve months ending June 30, 2023, \$11.2 million, or 106.8%, of the \$10.5 million amended budget has been received. Revenues are 39.7% greater than last year at the same time primarily due to the performance of the new hotel and several other hotels. Overall, the hotel operators did generate higher revenues than prior year; however most did not achieve the revenue level anticipated in the amended budget. At \$11.2 million, it remains 23% below historical high of \$14.5 million in FY2018-19.
- **License and Permits:** For the twelve months ending June 30, 2023, \$8.3 million, or 82.7%, of the \$10.0 million amended budget has been received. Revenues are 25.7% lower than last year at the same time. Building Permit was \$1.1 million below budget and Plan Check was \$0.4 million below budget.
- **Charges for Services:** For the twelve months ending June 30, 2023, \$6.6 million, or 98.9%, of the \$6.7 million amended budget has been received. Revenues are 16.0% greater than last year due to increased revenues in fire service charges and recreation fees.
- **Other Revenues:** – For the twelve months ending June 30, 2023, \$0.9 million, or 245.6% of the \$0.4 million amended budget. This favorable revenue is due primarily to one-time receipts of utility penalties, which was prompted when the City resumed shut-off procedures including penalties.
- **Intergovernmental:** For the twelve months ending June 30, 2023, \$2.0 million, or 90.7%, of the \$2.2 million amended budget has been received. Revenues are 32.1% lower than last year primarily due to less fire mutual aid reimbursement. Intergovernmental revenues have offsetting expenditures.

General Fund Expenditures (Attachment 2)

For the twelve months ending June 30, 2023, the General Fund expenditures were \$118.5 million (including encumbrance of \$2.0 million), which is \$4.8 million (3.9%) less than the amended budget of \$123.4 million. The budget represents the adopted appropriation of \$117.6 million, plus \$1.6 million of prior year encumbrances, and \$4.1 million in amendments. As a result of general recruitment and/or competitive labor markets, staff vacancies primarily contributed to the expenditures savings. Consequently, it is prudent to deem this as one-time expenditure variance that provides additional fund balance resources, instead of on-going reductions of General Fund operating budget.

Unanticipated Expenditure Reserve

In accordance with the City Council approved Budget Guidelines, as part of the quarterly financial status reports, staff shall report on the use of the Unanticipated Expenditure Reserve for the 4th quarter.

Description	Amount
AG Witt, LLC	5,899
Baker Tilly US, LLP	23,300
Kiley & Associates	24,750
Liebert Cassidy Whitmore	21,697
JPMorgan Chase Bank	5,964
TOTAL for the Quarter Ending June 30, 2023	\$81,610

General Fund Reserve Policies Implementation and recommendation

For the fiscal year ended June 30, 2023, the City's General Fund unaudited net surplus is \$9.5 million (net 30% Excess ERAF), with revenues of \$128.0 million and expenditures of \$118.5 million. This net surplus is deemed one-time because the favorable revenue variances are primarily non-recurring and the expenditure savings are predominately due to staff vacancies.

Based on the General Fund unaudited FY 2022-23 operating expenditures of \$118.5, the reserve target for the Contingency Reserve and the Budget Stabilization Reserve (BSR) is set at \$19.8 million or 16.67% of approximately \$118.5 million. Consistent with the Council approved General Fund Reserve Policies (resolution no. 9167, dated June 7, 2022), staff allocated the FY 2022-23 General Fund surplus as illustrated in table below. Also important of note, due to the pending education relief augmentation fund (ERAF) litigation, the proposed surplus allocation sets aside \$1.1 million for ERAF Litigation Contingency, which is based upon County contingency guidance of 30% of \$3.8 million FY23 ERAF revenues.

Policy Tiers	(in millions)	FY 2021-22 Reserve balance (as of 6/30/2022)	Recommended Allocation/ Per Council Policy	FY 2022-23 Reserve balance (as of 6/30/2023)	Reserve Target Per Fiscal Policies
1	Contingency Reserve	18.5	1.2	19.7	19.8
1	Budget Stabilization Reserve	18.5	1.2	19.7	19.8
	Future Deficit Reserve	1.5	-	1.5	N/A
2	CalPERS Rate Stabilization *	4.1	1.0	5.1	N/A
2	Artificial Turf Replacement	1.6	0.2	1.8	2.0
	Facilities Replacement Fund	7.0		7.0	10.0
Total General Fund Various Reserves		\$52.6	\$3.6	\$54.8	
	CalPERS Rate Stabilization	0.9	-	0.9	
3	General Government CIP (20%)	0.7	1.2	1.9	
3	Storm Drain (30%)	1.0	1.8	2.8	
3	Housing Community Benefit (10%)	0.4	0.6	1.0	
3	Transportation & Transit (10%)	0.4	0.6	1.0	
3	Technology Replacement Fund (15%)	2.7	0.9	3.6	5.0
3	SPAR (Strategic Property Acq. Rev) (10%)	-	0.6	0.6	
3	Gen Fund Unassigned (5%)	0.3	0.3	0.6	
	Subtotal	6.5	5.8	12.2	
Total Fund Balance Allocation		\$59.2	\$9.5	\$67.1	
ERAF Litigation Contingency		\$1.2	\$1.1	\$2.3	N/A
* Pension 115 Trust is presented separately					

Water Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2023, \$30.6 million of charges for services, or 92.5%, of the \$33.1 million budgeted has been received. Total revenue received amounts to \$31.3 million, or 93.4%, of the \$33.5 million budgeted.

Expenditures: For the twelve months ending June 30, 2023, \$28.1 million, or 88.8%, of the \$31.7 million amended budgeted has been spent.

Water Fund Expenditure Savings: For the fiscal year ended June 30, 2023, the Water Fund realized unaudited revenues of \$31.3 million and expenditures of \$29.0 million. This resulted in a one-time Water Fund expenditure savings of \$2.3 million.

Sewer Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2023, \$24.7 million of charges for services, or 100.9%, of the \$24.5 million budgeted has been received. Total revenue received amounts to \$25.3 million, or 102.4%, of the \$24.7 million budgeted.

Expenditures: For the twelve months ending June 30, 2023, \$17.5 million, or 99.2%, of the \$17.6 million amended budgeted has been spent.

Sewer Fund Expenditure Savings: For the fiscal year ended June 30, 2023, the Sewer Fund realized unaudited revenues of \$25.3 million and expenditures of \$17.5 million. This resulted in a one-time Sewer Fund expenditure savings of \$7.8 million.

Budget Amendment Recommendations

Staff recommends for Council consideration and approval the following budget amendments to align appropriations to actual expenditures incurred, services rendered, and revenues received. The budget appropriation amendment recommendations are summarized below:

- a. Increase Police budget from Federal Asset Seizure Fund 263 fund balance by \$60,000 due to purchase of the Mobile Emergency Operations Center (MEOC) as budgeted in CP# 3464 Mobile Emergency Operations Center. This is due to the accounting requirement of posting costs within the Federal Asset Seizure Fund 263 versus the CP# 3464. This is not a request for additional budget appropriation.
- b. Appropriate the interest earned from Lease Revenue Bond by \$33,024 to increase the budget for CP# 3447 Fire Station No. 2 Replacement Project. This action will increase total budget amount by \$33,024, increase funding source in CP# 3447 Fire Station with Lease Revenue Bond Proceeds by \$853,210 and decrease General Government CIP funding source by \$853,210. This is to swap funding source between CP# 3447 and CP# 3488 Community and Senior Center Energy Resilience Project.
- c. Increase funding source in CP# 3488 Community and Senior Energy Resilience Project with General Government CIP by \$853,210 and decrease Lease Revenue Bond funding source by \$853,210. This is to swap funding source between CP# 3447 and CP# 3488 Community and Senior Center Energy Resilience Project, and this action will not change the total budget amount in CP# 3488.
- d. Budget carryforward for vehicles of \$343,834 to reduce budget in FY2022-23 and re-appropriate in FY2023-24. Due to supply chain inventory shortage, these vehicles could not be purchased in FY2022-23. Authorize an additional \$100,000 to the National Auto Fleet Cooperative Agreement blanket purchase order for this vehicle carry-forward
- e. Budget carryforward for Economic Development for Innovation District Consultant (\$75,000) and Property Asset Management Services (\$50,000) to reduce budget in FY2022-23 and re-appropriate in FY2023-24. Due to the unique nature of these services, vendor selection could not be finalized in FY2022-23.

POLICY ALTERNATIVE(S):

Alternative 1: Direct adherence to reserve policy without set aside for ERAF litigation contingency.

Pros: More resources may be allotted to other priorities.

Cons: ERAF litigation may be appealed and this matter may ultimately result in a negative outcome(s) for the City and resources may not be available for the potential financial obligation(s).

Reason not recommended: Staff recommends a conservative approach to this complex ERAF legal matter and to set aside FY2022-23 surplus until final litigation resolution, the Council may direct Staff to re-allocate these resources for future use should the matter prevail in the City's favor.

FISCAL IMPACT:

For the fiscal year ended June 30, 2023, the City's General Fund unaudited surplus of \$9.5 million, with revenues of \$128.0 million and expenditures of \$118.5 million. This result is primarily from one-time revenues and expenditure savings.

California Environmental Quality Act (CEQA):

This item is not a Project under CEQA exempt under CEQA Guideline 15378(b)(4) as it is a government fiscal activity that does not involve a commitment to any specific project which may result in a potentially significant physical impact on the environment.

RECOMMENDATION:

1. Review the FY 2022-23 Quarterly Financial Status Report for the Quarter Ending June 30, 2023, and
2. Approve budget amendments and
3. Authorize an additional \$100,000 to the National Auto Fleet Cooperative Agreement blanket purchase order for vehicle carry-forward.

Attachment(s):

1. FY 2022-2023 General Fund Revenues Report for Fiscal Year-To-Date June 30, 2023
2. FY 2022-2023 General Fund Expenditures by Department June 30, 2023
3. FY 2022-2023 Water and Sewer Funds Financial Status for Fiscal Year-To-Date June 30, 2023
4. Budget Change Form

CITY OF MILPITAS

General Fund Revenues

For Fiscal Year-To-Date June 30, 2023

	FY23	FY23	FY23	FY23	FY23	FY23	FY23	FY22	Percentage
	Adopted			Amended	Revenue	Revenue	Percentage	Revenue	Increase
		Budget	Grant	Budget	As of 6/30/23	Outstanding	of Amended	as of 6/30/22	(Decrease)
General Fund Revenues	Budget	Amendments	Carryover	as of 2/15/2023		Favorable/ (Unfavorable)	Budget		FY23 / FY22
Property Tax *	\$ 42,636,192	\$ 1,404,852		\$ 44,041,044	\$ 47,210,420	\$ 3,169,376	107.2%	\$ 42,758,866	10.4%
Sales and Use Tax	27,418,416	1,845,030		29,263,446	31,259,802	\$ 1,996,356	106.8%	28,091,127	11.3%
Sales and Use Tax - Measure F	6,409,019	545,981		6,955,000	7,215,906	\$ 260,906	103.8%	6,273,147	15.0%
Licenses, Permits & Fines	11,484,759	-1,500,000		9,984,759	8,259,590	\$ (1,725,169)	82.7%	11,115,358	-25.7%
Hotel/Motel Tax	8,329,238	2,146,384		10,475,622	11,189,758	\$ 714,136	106.8%	8,012,001	39.7%
Operating Transfer In	7,168,627			7,168,627	7,168,628	\$ 1	100.0%	6,752,931	6.2%
Charges for Services	5,969,453	704,841		6,674,294	6,599,113	\$ (75,181)	98.9%	5,686,474	16.0%
Franchise Fees	5,448,428	90,237		5,538,665	5,689,722	\$ 151,057	102.7%	5,187,786	9.7%
Intergovernmental	1,081,728	819,800	319,619	2,221,147	2,014,567	\$ (206,580)	90.7%	2,968,070	-32.1%
Other Taxes	1,067,452			1,067,452	1,044,357	\$ (23,095)	97.8%	1,366,018	-23.5%
Other Revenues	349,657			349,657	858,731	\$ 509,074	245.6%	560,995	53.1%
Interest Income	264,000			264,000	634,276	\$ 370,276	240.3%	263,226	141.0%
Total General Fund Revenue	\$ 117,626,970	\$ 6,057,125	\$ 319,619	\$ 124,003,714	\$ 129,144,870	\$ 5,141,156	104.1%	\$ 119,035,999	8.5%
* Deduct 30% Excess ERAF (litigation)					\$ (1,141,415)	\$ (1,141,415)			
Total Gen Fund Revenues, net of Excess ERAF					\$ 128,003,455	\$ 3,999,741			

City of Milpitas
General Fund Expenditure By Department Financial Status
For Fiscal Year-To-Date June 30, 2023

Departments	Adopted Budget	Amendments	Grants C/O	Encumb. C/O	Amended Budget	Expenditure	Encumbrance	Total YTD Exp.	% of Amended Budget	FY22 Expenditure Including Encumbrance	% of Amended FY22 Budget
City Council	557,729	-67,901	0	50,933	540,761	343,597	49,698	393,295	72.7%	358,902	64.6%
City Manager	2,149,366	3,485	0	145,223	2,298,074	2,224,400	72,533	2,296,933	100.0%	2,263,927	109.5%
City Clerk	567,660	-89,022	0	0	478,638	416,588	0	416,588	87.0%	506,283	90.2%
Economic Development	965,847	1,385	0	750	967,982	776,510	0	776,510	80.2%	836,368	91.2%
Policy Planning	4,240,602	-152,053	0	196,906	4,285,455	3,761,095	122,231	3,883,326	90.6%	3,965,480	96.7%
Building Safety & Housing	6,175,459	-98,998	0	86,804	6,163,265	5,849,992	72,446	5,922,438	96.1%	5,034,479	89.8%
City Attorney	1,198,946	-247,999	0	0	950,947	707,071	34,610	741,681	78.0%	991,070	96.3%
Engineering	3,971,355	-281,379	0	14,193	3,704,169	3,448,649	20,080	3,468,729	93.6%	3,430,900	92.7%
Finance	4,384,364	48,058	0	17,292	4,449,714	4,180,282	191,249	4,371,531	98.2%	4,307,936	100.6%
Fire	28,188,870	657,347	0	162,568	29,008,785	28,542,555	210,856	28,753,411	99.1%	29,378,897	105.7%
Human Resources	1,937,584	2,533	0	9,692	1,949,810	1,814,319	15,566	1,829,885	93.8%	1,628,823	88.0%
Information Technology	4,091,945	-409,850	0	3,000	3,685,095	2,949,177	139,830	3,089,007	83.8%	3,241,939	89.9%
Non-Departmental	7,570,821	2,384,205	0	267,008	10,222,034	8,385,214	586,370	8,971,584	87.8%	7,888,095	70.7%
Planning	1,927,812	-34,148	23,774	303,834	2,221,272	2,117,989	118,271	2,236,260	100.7%	2,158,049	101.9%
Police	37,935,204	-635,612	17,819	107,882	37,425,293	36,975,147	185,888	37,161,035	99.3%	34,842,481	99.7%
Public Works	9,692,160	77,305	0	349,060	10,118,525	9,254,940	259,163	9,514,103	94.0%	9,009,239	98.4%
Recreation & Community Services	5,969,980	770,226	0	47,027	6,787,233	6,115,339	74,568	6,189,907	91.2%	5,033,925	96.4%
Transfers Out	341,866	2,050,000	0	0	2,391,866	2,391,866	0	2,391,866	100.0%	340,590	100.0%
Grand Total	117,626,968	4,129,635	41,593	1,565,266	123,363,463	116,493,635	2,031,128	118,524,763	96.1%	111,251,903	96.8%

City of Milpitas
Water and Sewer Financial Status
For Fiscal Year-To-Date June 30, 2023 (unaudited)

Water Fund

Revenue Categories	Adopted Budget	Amendments	Grants C/O	Amended Budget	Receipt	Outstanding	% Receipt	Receipt 6/30/2022	% Receipt 6/30/2022
Charges for Services	33,144,215	0	0	33,144,215	30,648,421	2,495,794	92.5%	30,249,470	97.1%
Intergovernmental	0	0	0	0	59,084	(59,084)	0.0%	205,447	0.0%
Licenses, Permits & Fines	0	0	0	0	99,113	(99,113)	0.0%	(4,401)	0.0%
Other Revenues	0	0	0	0	59,517	(59,517)	0.0%	379,560	215.5%
Use of Money and Property	369,729	0	0	369,729	424,440	(54,711)	114.8%	199,327	53.6%
Grand Total	33,513,944	0	0	33,513,944	31,290,575	2,223,369	93.4%	31,029,403	98.4%

Expenditures by Department	Adopted Budget	Amendments	Grants C/O	Encumb. C/O	Amended Budget	Expenditure	Encumbrance	Total YTD Exp.	% of Amended Budget	Total YTD Exp. 6/30/2022	% of Amended Budget 6/30/2022
City Attorney	9,000	0	0	0	9,000	0	0	0	0.0%	4,805	68.0%
Engineering	0	0	0	0	0	0	0	0	0.0%	29,500	100.0%
Finance	1,111,223	2,147	0	18,537	1,131,907	939,583	11,647	951,230	84.0%	864,797	83.2%
Non-Departmental	23,073,631	10,334	0	318,060	23,402,025	19,995,503	4,753	20,000,256	85.5%	19,469,599	94.4%
Public Works	4,372,217	48,358	0	32,170	4,452,745	4,480,972	20,534	4,501,506	101.1%	4,274,680	99.4%
Transfers In/Out/Revenue	2,687,393	0	0	0	2,687,393	2,687,393	0	2,687,393	100.0%	2,571,407	100.0%
Grand Total	31,253,464	60,839	0	368,767	31,683,070	28,103,451	36,934	28,140,385	88.8%	27,214,788	95.2%

Sewer Fund

Revenue Categories	Adopted Budget	Amendments	Grants C/O	Amended Budget	Receipt	Outstanding	% Receipt	Receipt 6/30/2022	% Receipt 6/30/2022
Charges for Services	24,482,217	0	0	24,482,217	24,699,029	(216,812)	100.9%	21,338,805	103.3%
Intergovernmental	0	0	0	0	0	0	0.0%	100,623	0.0%
Licenses, Permits & Fines	0	0	0	0	56,775	(56,775)	0.0%	(11,746)	0.0%
Operating Transfer In	39,282	0	0	39,282	39,282	0	100.0%	11	102.2%
Use of Money and Property	205,863	0	0	205,863	518,432	(312,569)	251.8%	287,809	114.7%
Grand Total	24,727,362	0	0	24,727,362	25,313,518	(586,156)	102.4%	21,715,502	103.4%

Expenditures by Department	Adopted Budget	Amendments	Grants C/O	Encumb. C/O	Amended Budget	Expenditure	Encumbrance	Total YTD Exp.	% of Amended Budget	Total YTD Exp. 6/30/2022	% of Amended Budget 6/30/2022
City Manager	0	0	0	0	0	0	0	0	0.0%	0	0.0%
Engineering	0	0	0	0	0	0	0	0	0.0%	14,500	100.0%
Finance	711,305	1,248	0	18,537	731,090	609,959	11,647	621,606	85.0%	565,230	93.0%
Non-Departmental	10,437,767	10,333	0	27,145	10,475,245	9,125,128	23,458	9,148,586	87.3%	8,232,725	65.7%
Public Works	3,881,262	1,005,867	0	63,930	4,951,059	6,174,942	72,451	6,247,393	126.2%	3,008,369	88.5%
Transfers In/Out/Revenue	1,444,196	0	0	0	1,444,196	1,444,196	0	1,444,196	100.0%	1,482,966	100.0%
Grand Total	16,474,530	1,017,448	0	109,612	17,601,590	17,354,225	107,556	17,461,781	99.2%	13,303,790	73.8%

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change (For Fiscal Year 2022-2023)	From (Credit)		To (Debit)	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	100-721-4851	45,265	100-2940	45,265
	100-724-4851	11,316	100-2940	11,316
	100-812-4851	65,730	100-2940	65,730
	237-242-4851	60,000	237-2909	60,000
	450-424-4851	37,356	450-2940	37,356
	500-424-4851	124,176	500-2970	124,176
	100-116-4237	75,000	100-2940	75,000
	100-116-4237	50,000	100-2940	50,000
	263-2909	60,000	263-724-4851	60,000
	331-951-3447-15-3899	33,024	334-3999	33,024
	334-2934	33,024	331-951-3447-2-4800	33,024
	331-951-3447-15-3899	853,210	334-3999	853,210
	334-2931	853,210	331-951-3447-2-4800	853,210
	331-951-3447-15-3899	886,234	330-3899	886,234
	330-2931	886,234	331-951-3447-2-4800	886,234
	331-951-3488-15-3999	853,210	334-3899	853,210
	334-2931	853,210	331-951-3488-7-4800	853,210
	331-951-3488-15-3999	853,210	330-3999	853,210
	330-2931	853,210	331-951-3488-7-4800	853,210
Type of Change (For Fiscal Year 2023-2024)	From (Credit)		To (Debit)	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	100-2940	45,265	100-721-4851	45,265
	100-2940	11,316	100-724-4851	11,316
	100-2940	65,730	100-812-4851	65,730
	237-2909	60,000	237-242-4851	60,000
	450-2940	37,356	450-424-4851	37,356
	500-2970	124,176	500-424-4851	124,176
	100-2940	75,000	100-116-4237	75,000
	100-2940	50,000	100-116-4237	50,000

Recommendation:

1. Review the FY 2022-23 Quarterly Financial Status Report for the quarter ending June 30, 2023 (unaudited),
2. Approve budget amendments, and
3. Authorize an additional \$100,000 to the National Auto Fleet Cooperative Agreement blanket purchase order for vehicle carry-forward

BACKGROUND:

On June 7, 2022, the City Council adopted the Fiscal Year (FY) 2022-23 Operating Budget in the amount of \$207.8 million and the General Fund Budget in the amount of \$117.6 million. The City Council approved budget amendments that realigned revenue with updated projection and reduced personnel and non-personnel costs. The FY 2022-23 amended budget for General Fund revenue is \$124.0 million and expenditures is \$123.4 million. Consistent with the fiscal reporting policies, staff monitors and tracks revenues and expenditures for all funds with an emphasis on the General Fund and Enterprise Funds.

ANALYSIS:

This staff report provides the final quarterly update for FY 2022-23 on budget versus actual revenues and expenditures of the General, Water and Sewer Funds, based on unaudited financial reports as of June 30, 2023. Further, this staff report includes recommendations to close out the FY 2022-23 budget and implement the Council approved reserve policies.

Fourth Quarter Financial Status Report

The summary information below as well as the attachments provide an overview of the financial status for the General, Water, and Sewer funds for FY 2022-23 as of June 30, 2023, a variance analysis of budget versus actual revenues and expenditures for the fourth quarter of FY 2022-23. This information is preliminary and subject to year-end close and independent auditor review. The table below briefly summarizes the unaudited General Fund FY2022-23 revenues, expenditures, and surplus of \$9.5 million, which is primarily due to one-time revenue and expenditure savings.

General Fund (\$ million)	FY2022-23 Adopted Budget	FY2022-23 Amended Budget As of 02/15/23	Unaudited Actual As of 6/30/23	Budget Variance \$	Budget Variance %
Revenue *	\$117.6	\$124.0	\$128.0	\$4.0	3.2%
Expenditure	117.6	123.4	118.5	(4.9)	3.9%
Surplus/(Deficit)	0	0.6 **	9.5		

** Revenues for FY22-23 is net of 30% Excess ERAF Property Tax due to pending litigation.

* Primarily due to prior year encumbrances Pos and contracts

General Fund Revenues (Attachment 1)

For the twelve months ending June 30, 2023, the General Fund has received \$128.0 million in revenues (net Excess ERAF) or 103.2%, of the FY 22-23 amended operating budget of \$124.0 million, which includes operating transfers in. The variance is primarily due to one-time revenues related to property tax (\$3.2 million), sales and use tax (\$4.9 million). The amended budget of \$124.0 million is comprised of the \$117.6 million of the adopted budget plus the budget amendments of \$6.0 million and a grant carryover of \$0.3 million. A summary analysis on major revenue sources of unaudited figures is provided below.

General Fund Revenues	FY23	FY23	FY23	FY23
	Amended	Revenue	Revenue	Percentage
	Budget as of 2/15/2023	As of 6/30/23	Outstanding Favorable/ (Unfavorable)	of Amended Budget
Property Tax *	\$ 44,041,044	\$ 47,210,420	\$ 3,169,376	107.2%
Sales and Use Tax	29,263,446	31,259,802	\$ 1,996,356	106.8%
Sales and Use Tax - Measure F	6,955,000	7,215,906	\$ 260,906	103.8%
Licenses, Permits & Fines	9,984,759	8,259,590	\$ (1,725,169)	82.7%
Hotel/Motel Tax	10,475,622	11,189,758	\$ 714,136	106.8%
Operating Transfer In	7,168,627	7,168,628	\$ 1	100.0%
Charges for Services	6,674,294	6,599,113	\$ (75,181)	98.9%
Franchise Fees	5,538,665	5,689,722	\$ 151,057	102.7%
Intergovernmental	2,221,147	2,014,567	\$ (206,580)	90.7%
Other Taxes	1,067,452	1,044,357	\$ (23,095)	97.8%
Other Revenues	349,657	858,731	\$ 509,074	245.6%
Interest Income	264,000	634,276	\$ 370,276	240.3%
Total General Fund Revenue	\$ 124,003,714	\$ 129,144,870	\$ 5,141,156	104.1%
* Deduct 30% Excess ERAF (litigation)		\$ (1,141,415)	\$ (1,141,415)	
Total Gen Fund Revenues, net of Excess ERAF		\$ 128,003,455	\$ 3,999,741	103.2%

- **Property Taxes and Redevelopment Property Tax Trust Fund:** For the twelve months ending June 30, 2023, \$47.2 million, or 107.2%, of the \$44.0 million of the amended budget has been received. Revenues are 10.4% higher than last year at the same time, due to a higher Excess ERAF payment received. The restated property tax revenues, net of 30% Excess ERAF due to pending litigation is \$46.1 million or 104.8% of the \$44.0 million of amended budget. The City received \$3.8 million in comparison with \$2.1 million budgeted for Excess ERAF. This \$1.6 million of favorable Excess ERAF is one-time revenue and Santa Clara County continues to caution the City against relying upon this surplus in future year services. The court case may still be appealed, and this Excess ERAF revenue remains a contingency.
- **Sales & Use Tax:** For the twelve months ending June 30, 2023, \$31.3 million, or 106.8%, of the \$29.3 million amended budget has been received. Revenues are 11.3% greater than last year at the same time, however \$1 million is a one-time favorable variance due to the timing of retailer remittance between prior year and current year.
- **Sales & Use Tax - Measure F:** The district tax became operative April 1, 2021 and sunsets in eight years. For the quarter ending June 30, 2023, the City received \$7.2 million, or 103.8%, of the amended budget.
- **Franchise Fees:** For the twelve months ending June 30, 2023, \$5.7 million, or 102.7%, of the \$5.5 million amended budget has been received. Revenues are 9.7% greater than last year at the same time.
- **Hotel/Motel (TOT) Tax:** For the twelve months ending June 30, 2023, \$11.2 million, or 106.8%, of the \$10.5 million amended budget has been received. Revenues are 39.7% greater than last year at the

same time primarily due to the performance of the new hotel and several other hotels. Overall, the hotel operators did generate higher revenues than prior year; however most did not achieve the revenue level anticipated in the amended budget. At \$11.2 million, it remains 23% below historical high of \$14.5 million in FY2018-19.

- **License and Permits:** For the twelve months ending June 30, 2023, \$8.3 million, or 82.7%, of the \$10.0 million amended budget has been received. Revenues are 25.7% lower than last year at the same time. Building Permit was \$1.1 million below budget and Plan Check was \$0.4 million below budget.
- **Charges for Services:** For the twelve months ending June 30, 2023, \$6.6 million, or 98.9%, of the \$6.7 million amended budget has been received. Revenues are 16.0% greater than last year due to increased revenues in fire service charges and recreation fees.
- **Other Revenues –** For the twelve months ending June 30, 2023, \$0.9 million, or 245.6% of the \$0.4 million amended budget. This favorable revenue is due primarily to one-time receipts of utility penalties, which was prompted when the City resumed shut-off procedures including penalties.
- **Intergovernmental:** For the twelve months ending June 30, 2023, \$2.0 million, or 90.7%, of the \$2.2 million amended budget has been received. Revenues are 32.1% lower than last year primarily due to less fire mutual aid reimbursement. Intergovernmental revenues have offsetting expenditures.

General Fund Expenditures (Attachment 2)

For the twelve months ending June 30, 2023, the General Fund expenditures were \$118.5 million (including encumbrance of \$2.0 million), which is \$4.8 million (3.9%) less than the amended budget of \$123.4 million. The budget represents the adopted appropriation of \$117.6 million, plus \$1.6 million of prior year encumbrances, and \$4.1 million in amendments. As a result of general recruitment and/or competitive labor markets, staff vacancies primarily contributed to the expenditures savings. Consequently, it is prudent to deem this as one-time expenditure variance that provides additional fund balance resources, instead of on-going reductions of General Fund operating budget.

Unanticipated Expenditure Reserve

In accordance with the City Council approved Budget Guidelines, as part of the quarterly financial status reports, staff shall report on the use of the Unanticipated Expenditure Reserve for the 4th quarter.

Description	Amount
AG Witt, LLC	5,899
Baker Tilly US, LLP	23,300
Kiley & Associates	24,750
Liebert Cassidy Whitmore	21,697
JPMorgan Chase Bank	5,964
TOTAL for the Quarter Ending June 30, 2023	\$81,610

General Fund Reserve Policies Implementation and recommendation

For the fiscal year ended June 30, 2023, the City's General Fund unaudited net surplus is \$9.5 million (net 30% Excess ERAF), with revenues of \$128.0 million and expenditures of \$118.5 million. This net surplus is deemed one-time because the favorable revenue variances are primarily non-recurring and the expenditure savings are predominately due to staff vacancies.

Based on the General Fund unaudited FY 2022-23 operating expenditures of \$118.5, the reserve target for the Contingency Reserve and the Budget Stabilization Reserve (BSR) is set at \$19.8 million or 16.67% of approximately \$118.5 million. Consistent with the Council approved General Fund Reserve Policies (resolution no. 9167, dated June 7, 2022), staff allocated the FY 2022-23 General Fund surplus as illustrated in table below. Also important of note, due to the pending education relief augmentation fund (ERAF) litigation, the

proposed surplus allocation sets aside \$1.1 million for ERAF Litigation Contingency, which is based upon County contingency guidance of 30% of \$3.8 million FY23 ERAF revenues.

Policy Tiers	(in millions)	FY 2021-22 Reserve balance (as of 6/30/2022)	Recommended Allocation/ Per Council Policy	FY 2022-23 Reserve balance (as of 6/30/2023)	Reserve Target Per Fiscal Policies
1	Contingency Reserve	18.5	1.2	19.7	19.8
1	Budget Stabilization Reserve	18.5	1.2	19.7	19.8
	Future Deficit Reserve	1.5	-	1.5	N/A
2	CalPERS Rate Stabilization *	4.1	1.0	5.1	N/A
2	Artificial Turf Replacement	1.6	0.2	1.8	2.0
	Facilities Replacement Fund	7.0		7.0	10.0
Total General Fund Various Reserves		\$52.6	\$3.6	\$54.8	
	CalPERS Rate Stabilization	0.9	-	0.9	
3	General Government CIP (20%)	0.7	1.2	1.9	
3	Storm Drain (30%)	1.0	1.8	2.8	
3	Housing Community Benefit (10%)	0.4	0.6	1.0	
3	Transportation & Transit (10%)	0.4	0.6	1.0	
3	Technology Replacement Fund (15%)	2.7	0.9	3.6	5.0
3	SPAR (Strategic Property Acq. Rev) (10%)	-	0.6	0.6	
3	Gen Fund Unassigned (5%)	0.3	0.3	0.6	
	Subtotal	6.5	5.8	12.2	
Total Fund Balance Allocation		\$59.2	\$9.5	\$67.1	
ERAF Litigation Contingency		\$1.2	\$1.1	\$2.3	N/A
* Pension 115 Trust is presented separately					

Water Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2023, \$30.6 million of charges for services, or 92.5%, of the \$33.1 million budgeted has been received. Total revenue received amounts to \$31.3 million, or 93.4%, of the \$33.5 million budgeted.

Expenditures: For the twelve months ending June 30, 2023, \$28.1 million, or 88.8%, of the \$31.7 million amended budgeted has been spent.

Water Fund Expenditure Savings: For the fiscal year ended June 30, 2023, the Water Fund realized unaudited revenues of \$31.3 million and expenditures of \$29.0 million. This resulted in a one-time Water Fund expenditure savings of \$2.3 million.

Sewer Maintenance & Operation (M&O) Fund Financial Status (Attachment 3)

Revenues: For the twelve months ending June 30, 2023, \$24.7 million of charges for services, or 100.9%, of the \$24.5 million budgeted has been received. Total revenue received amounts to \$25.3 million, or 102.4%, of the \$24.7 million budgeted.

Expenditures: For the twelve months ending June 30, 2023, \$17.5 million, or 99.2%, of the \$17.6 million amended budgeted has been spent.

Sewer Fund Expenditure Savings: For the fiscal year ended June 30, 2023, the Sewer Fund realized unaudited revenues of \$25.3 million and expenditures of \$17.5 million. This resulted in a one-time Sewer Fund expenditure savings of \$7.8 million.

Budget Amendment Recommendations

Staff recommends for Council consideration and approval the following budget amendments to align appropriations to actual expenditures incurred, services rendered, and revenues received. The budget appropriation amendment recommendations are summarized below:

- a. Increase Police budget from Federal Asset Seizure Fund 263 fund balance by \$60,000 due to purchase of the Mobile Emergency Operations Center (MEOC) as budgeted in CP# 3464 Mobile Emergency Operations Center. This is due to the accounting requirement of posting costs within the Federal Asset Seizure Fund 263 versus the CP# 3464. This is not a request for additional budget appropriation.
- b. Appropriate the interest earned from Lease Revenue Bond by \$33,024 to increase the budget for CP# 3447 Fire Station No. 2 Replacement Project. This action will increase total budget amount by \$33,024, increase funding source in CP# 3447 Fire Station with Lease Revenue Bond Proceeds by \$853,210 and decrease General Government CIP funding source by \$853,210. This is to swap funding source between CP# 3447 and CP# 3488 Community and Senior Center Energy Resilience Project.
- c. Increase funding source in CP# 3488 Community and Senior Energy Resilience Project with General Government CIP by \$853,210 and decrease Lease Revenue Bond funding source by \$853,210. This is to swap funding source between CP# 3447 and CP# 3488 Community and Senior Center Energy Resilience Project, and this action will not change the total budget amount in CP# 3488.
- d. Budget carryforward for vehicles of \$343,834 to reduce budget in FY2022-23 and re-appropriate in FY2023-24. Due to supply chain inventory shortage, these vehicles could not be purchased in FY2022-23. Authorize an additional \$100,000 to the National Auto Fleet Cooperative Agreement blanket purchase order for this vehicle carry-forward
- e. Budget carryforward for Economic Development for Innovation District Consultant (\$75,000) and Property Asset Management Services (\$50,000) to reduce budget in FY2022-23 and re-appropriate in FY2023-24. Due to the unique nature of these services, vendor selection could not be finalized in FY2022-23.

POLICY ALTERNATIVE(S):

Alternative 1: Direct adherence to reserve policy without set aside for ERAF litigation contingency.

Pros: More resources may be allotted to other priorities.

Cons: ERAF litigation may be appealed and this matter may ultimately result in a negative outcome(s) for the City and resources may not be available for the potential financial obligation(s).

Reason not recommended: Staff recommends a conservative approach to this complex ERAF legal matter and to set aside FY2022-23 surplus until final litigation resolution, the Council may direct Staff to re-allocate these resources for future use should the matter prevail in the City's favor.

FISCAL IMPACT:

For the fiscal year ended June 30, 2023, the City's General Fund unaudited surplus of \$9.5 million, with revenues of \$128.0 million and expenditures of \$118.5 million. This result is primarily from one-time revenues and expenditure savings.

California Environmental Quality Act (CEQA):

This item is not a Project under CEQA exempt under CEQA Guideline 15378(b)(4) as it is a government fiscal activity that does not involve a commitment to any specific project which may result in a potentially significant physical impact on the environment.

RECOMMENDATION:

1. Review the FY 2022-23 Quarterly Financial Status Report for the Quarter Ending June 30, 2023, and
2. Approve budget amendments and
3. Authorize an additional \$100,000 to the National Auto Fleet Cooperative Agreement blanket purchase order for vehicle carry-forward.

Attachment(s):

1. FY 2022-2023 General Fund Revenues Report for Fiscal Year-To-Date June 30, 2023
2. FY 2022-2023 General Fund Expenditures by Department June 30, 2023
3. FY 2022-2023 Water and Sewer Funds Financial Status for Fiscal Year-To-Date June 30, 2023
4. Budget Change Form

☐ Check if City Council Approval required.

Meeting: September 19, 2023

Requested by:	Department Head: Lauren Lai	Date: September 19, 2023
Reviewed by:	Finance Director:	Date: September 19, 2023
Approved by:	Acting City Manager: Ned Thomas	Date: September 19, 2023
Date approved by City Council, if required:		Confirmed by:

FI/24786/V

Form 30-222 (Rev. 1/92)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute Amendment No. 1 to the Professional Services Agreement with Liebert Cassidy Whitmore for an Additional Agreement Amount of \$200,000.00, Subject to the Annual Appropriation of Funds (Staff Contact: Nick Raisch, Human Resources Director, 408-586-3086)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/19/2023
	<u>Recommendation:</u> Approve and authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with Liebert Cassidy Whitmore ("LCW") for an additional agreement amount of \$200,000.00, subject to the annual appropriation of funds.

BACKGROUND:

On April 1, 2023, the City entered into a Professional Services Agreement (the "Agreement") with Liebert Cassidy Whitmore ("LCW") in order to provide essential labor relations and other legal services to the City, including but not limited to negotiations, training, advice, investigations, and representation, in the amount of \$100,000, set to expire on June 30, 2024.

LCW is a premier labor, education, and employment law firm that specializes in providing services to hundreds of public agencies, educational institutions, and nonprofit organizations across the state of California.

ANALYSIS:

In 2020, the City utilized LCW's services for labor negotiations with the Milpitas Employees' Association (MEA). During FY22-23, staff recognized the need to engage in LCW's services for the next contract negotiation cycle as the City would benefit from direct, hands-on historical knowledge from 2020's negotiation.

LCW has also provided other essential legal services related to confidential investigations, and these needs are ongoing. Staff recommends amending the agreement to add an additional \$200,000 for ongoing legal services and through June 30, 2026.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve and authorize the City Manager to execute the amendment with LCW for two years.

Pros: There is no benefit to discontinuing LCW's services while the City is in active labor negotiations and investigations are still underway.

Cons: The City will not have adequate resources to assist with labor negotiations and investigations.

FISCAL IMPACT:

The first year of this contract will be paid from unanticipated expenditure reserve. The future years are subject to appropriations in the Human Resources and City Manager departmental budgets during the annual operating budget process.

California Environmental Quality Act (CEQA):

Approval of the recommendation is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the

environment and/or because the action is financial and/or administrative and does not directly impact the environment.

RECOMMENDATION:

Approve and Authorize the City Manager to Execute Amendment No. 1 to the Professional Services Agreement with Liebert Cassidy Whitmore ("LCW") for an additional agreement amount of \$200,000, subject to the annual appropriation of funds.

Attachment(s):

1. Original LCW Contract
2. Amendment to LCW's Professional Services Agreement

CITY OF MILPITAS PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of Apr-01-2023 (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **Liebert Cassidy Whitmore**, a corporation with its principal place of business at **135 Main Street, San Francisco, CA 94105** (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

LABOR CONTRACT NEGOTIATIONS AND OTHER LEGAL SERVICES
(hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **One Hundred Thousand Dollars and Zero Cents (\$100,000.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in

the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement term and for four (4) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be from **April 1, 2023** to **June 30, 2024**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any

attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any negligent acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to

comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. City Material Requirements. [Reserved]

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

17 Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the

Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

c. The Consultant understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Consultant's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

18. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

19. Organization

Consultant shall assign **Morin Jacob** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Steven G. McHarris, City Manager

CONSULTANT:

Liebert Cassidy Whitmore

135 Main Street, 7th floor

San Francisco, CA 94105

Attn: Richard Bolanos, Partner

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement.

Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

31. Wage Theft Prevention

a. Consultant, and any subconsultant it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

b. BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONSULTANT OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONSULTANT AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONSULTANT OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Consultant or a subconsultant it employs to perform work under this Agreement has violated any applicable wage and hour law, or Consultant learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Consultant shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Consultant or its subconsultant(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Consultant or its subconsultant is subject to a payment or other alternative plan, the Consultant or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

d. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

e. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

f. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[SIGNATURES ON FOLLOWING PAGE]

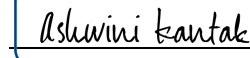
**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND LIEBERT CASSIDY WHITMORE**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

DocuSigned by:


Steven G. McHarris, City Manager
Apr-01-2023

Date

Approved As To Form:

DocuSigned by:


Michael M. Mitalipassi, City Attorney

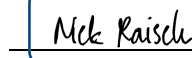
Approved:

DocuSigned by:


Lauren Lai, CPA, MPA
Finance Director/Risk Manager

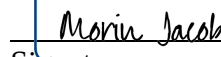
Approved As To Content:

DocuSigned by:


Nick Raisch, Human Resources Director

LIEBERT CASSIDY WHITMORE

DocuSigned by:


Signature
Morin Jacob

Name

Mj

Title

Mar-29-2023

Date

EXHIBIT A

Scope of Services

The Consultant offers the City a broad range of experienced labor relations and legal services including but not limited to negotiations, training, advice, investigations, and representation. The services offered by the Consultant are generally as follows, subject to the preferences of the City, which can and do bring about modifications to the Consultant's role.

The Consultants services shall include:

1. Meet with City staff and elected officials prior to commencement of negotiations in order to best understand (and perhaps formulate) the goals and objectives of the City in addressing the potential bargaining issues, and to be made aware of the financial/political limitations upon reaching those goals and objectives.
2. Provide leadership in formulating the strategies, which will be employed in meeting the goals and objectives at the bargaining table. (This may include asking that various City negotiation team members or resource personnel prepare budget presentations, detailed cost/revenue analyses or other financial data that may be discussed during negotiations).
3. Administer and/or oversee classification and compensation studies to gather the data necessary to formulate and present the agency's bargaining objectives and proposals.
4. Upon request and as needed, oversee administrative investigations, retain the appropriate outside investigators for the City, and advise the City based on the findings of the investigations.
5. Review and analyze all pertinent charter provisions, codes, ordinances, rules and regulations, and existing memoranda of understanding, in order to verify their impact upon the goals and objectives that are being pursued.
6. Act as principal spokesperson and strategist during the bargaining process.
7. Participate in closed sessions to provide guidance to and receive direction from elected officials.
8. Represent the City at impasse proceedings (including preparation and representation through the impasse process, preparation of press releases, supervising media relations, meeting with elected officials, and making those appearances provided for by the City employee relations ordinance, as requested by the City). The Consultant typically attempts to schedule meetings with various units back to back as to reduce travel time. The Consultant will also work carefully with City staff to ensure that negotiations with multiple units are coordinated to be consistent where necessary but different, where differing issues so require.

Labor Relations Consulting

In addition to conducting negotiations for public employers, the Consultant will continually work with the City's staff to do their own negotiations, if desired, and provide ongoing advice away from the table. This arrangement can involve all aspects of consultation and related services, including:

1. preparation of initial bargaining proposals
2. reviewing counter-proposals
3. providing training and advice concerning negotiating strategies

4. representation through impasse procedures
5. and giving general advice when problems arise.

These services include:

- a. MOU reviews/audits to identify issues for legal compliance, provide suggestions to increase clarity and reduce ambiguity by improving contract language, and offer suggestions/alternatives to be considered in contract negotiations.
- b. Training on costing labor contracts, compiling demographic data, preparing for impasse processes, and other training programs to develop skills for internal staff.
- c. Strategy development and advice on key areas including FLSA items, cost restructuring, pension issues, employee benefits, and discipline/appeal processes. Provide advice and consultation on the scope of meet and confer subjects and alternative approaches to manage meet and confer obligations.
- d. Drafting contract language compliant with legal parameters and consulting on the preparation and presentation of proposals.

Additional Services

As a best practice, the Consultant recommends completing an MOU audit prior to the start of negotiations if the City has not reviewed/updated the MOU for best practices, legal compliance and to ensure the elimination of ambiguous language since the last round of negotiations. An audit ensures that contract language accurately reflects changes in the law since the contract was last negotiated [e.g. new state laws regarding sick leave (AB1522), health insurance (ACA), retirement (PEPRA), unlawful discrimination, leave rights (Labor Code Section 230.4, pregnancy disability leave), arbitration and release time for union representatives.] It also ensures that contract language not only complies with state and federal laws, but that it maximizes the City's opportunity for cost effectiveness. The audit will reveal all the changes the Consultant suggests for legal compliance, to eliminate ambiguities and ensure best practices. The analysis also includes the identification of MOU language/provisions to target during the upcoming negotiations. Careful preparation allows the City to set the bargaining agenda, rather than being reactive as well as avoids the inefficiencies of an ad hoc approach where disputes and mistakes often occur. Audits are billed on an hourly basis and can be scheduled whether or not Consultant conducts the negotiations. Any other legal services provided by Consultant per the rate sheet attached.

EXHIBIT B**Schedule of Charges/Payments**

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials Agreement.

Rate and Service Structure

The Consultant bills in increments of one tenth of an hour. Invoices are payable upon receipt and due within 30 days. Consultant rates reflect the nature of our public sector work and take into consideration the inherent budgetary limitations of our public sector clients.

The Consultant evaluates its rates on an annual basis and occasionally makes modest rate increases. The Consultant understands the need to manage the cost of legal services and frequently work with clients to create budgets and cost strategies that suit them.

The Consultants practice is statewide, and they will share briefs, motions, points and authorities, research memos and opinion letters so that they do not research nuances in the law and issues that other members of the firm have recently worked on.

Pricing offered on a time-and-materials basis would be based on the standard hourly rates listed below:

Staff	Rate per Hour
Partner	\$425.00
Senior Counsel	\$355.00
Associate	\$240.00 - 335.00
Labor Relations/Human Resources Consultant	\$270.00
Paralegals	\$145.00
E-Discovery Specialists	\$145.00
Law Clerks	\$145.00 - \$185.00

Expenses

The Consultant utilizes the most up-to-date technology to aid in the delivery of legal services. For example, they utilize Sharefile, a document-sharing portal, for the secure and quick transmission of material. Documents are sent electronically, through Sharefile or email, unless specifically requested otherwise, or when electronic transmission is not an option.

Should the Consultant need to send a fax, these are billed at the rate of \$.25 per page for outgoing faxes. Likewise, if needed copying is charged at fifteen cents (\$.15) per page. Additional prints, postage and special deliveries (i.e. Fed-Ex, UPS, DHL, messenger service), and other hired deliveries completed at the request of the client or necessary to comply with court or other deadlines will also be billed to the client.

EXHIBIT C
Activity Schedule
[Reserved]

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):

 X 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:

____ Bid Bond
 ____ Performance Bond
 ____ 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.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

___ Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the

Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.



**AMENDMENT NO. 1 TO
PROFESSIONAL SERVICES AGREEMENT
WITH
LIEBERT CASSIDY WHITMORE
FOR
LABOR CONTRACT NEGOTIATIONS AND OTHER LEGAL SERVICES**

This Amendment No. 1 is entered into as of _____, (the “Effective Date”) by and between the City of Milpitas, a municipal corporation of the State of California (hereinafter referred to as “City”) and **Liebert Cassidy Whitmore**, a corporation (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Amendment No. 1.

RECITALS:

WHEREAS, on April 1, 2023, the Parties entered into a Professional Services Agreement (the “Agreement”) for labor contract negotiations and other legal services for the not-to-exceed compensation amount of One Hundred Thousand Dollars and Zero Cents (\$100,00.00), and with an initial term period from April 1, 2023 to June 30, 2024 (the Agreement); and

WHEREAS, the Parties now wish to amend the Agreement to increase the not-to-exceed total by two hundred thousand dollars and zero cents (\$200,000.00) for a new not-to-exceed total of three hundred thousand dollars and zero cents (\$300,000.00) and extend the term by two (2) years for a new term end date of June 30, 2026.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 2b Compensation. is hereby deleted in its entirety and replaced with:

In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Three Hundred Thousand Dollars and Zero Cents (\$300,000.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

2. Section 5. Term. is hereby deleted in its entirety and replaced with:

The term of this Agreement shall be from **April 1, 2023 through June 30, 2026**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant’s performance at the end of each year and cancel all or part of the Agreement.

3. All other provisions of the Agreement not amended by this Amendment No. 1 shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO AMENDMENT NO. 1
TO THE PROFESSIONAL SERVICES AGREEMENT
WITH LIEBERT CASSIDY WHITMORE
FOR LABOR NEGOTIATIONS AND OTHER LEGAL SERVICES**

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 as of the date first written above.

CITY OF MILPITAS

LIEBERT CASSIDY WHITMORE

Approved By:

Ned Thomas, Acting City Manager

Signature

Date

Name

Approved As To Form:

Michael Mutalipassi, City Attorney

Title

Approved:

Date

Lauren Lai, CPA, MPA
Finance Director/Risk Manager

Approved As to Content:

Nick Raisch, Human Resources Director



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving and Authorizing the City Manager to Execute an Agreement Amendment with Insight Public Sector Inc (Staff Contact: Nick Raisch, Human Resources Director, 408-586-3086)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/19/2023
	<u>Recommendation:</u> Approve and authorize the City Manager to execute an agreement amendment with Insight Public Sector Inc with additional funding in the amount of \$116,425.49, subject to the annual appropriation of funds, for a total agreement amount of \$300,441.49.

Background:

The City originally entered into a one-year agreement on July 25, 2019 with Insight Public Sector Inc. to provide software technology solutions to Human Resources via NEOGOV's applicant tracking system, Insights, e-forms, position control, onboarding and performance evaluation software (the "Agreement").

The City of Milpitas Municipal Code Section I-2-3.08 ("Cooperative Procurement") specifically authorizes the Purchasing Agent to make such purchases based on an agreement or cooperative purchasing program entered into by a public agency, as defined by Government Code Section 6500, regardless of whether the City is a named party to the agreement or an actual participant in such a program.

This contract has been automatically renewed annually consistent with the continued provision of services by the vendor and meeting of expectation and criteria outlined in the agreement.

At this time staff is requesting to continue the agreement with Insight Public Sector Inc., to extend the subscription period to provide continued software services for an additional two years.

Analysis:

In 2019, through Insight Public Sector Inc., the NEOGOV platform was selected to streamline the City's recruitment processes and to provide additional essential human resource tools. In addition to the applicant tracking, NEOGOV provides a suite of business solutions that the City can incorporate to enhance processes and increase efficiencies, including, but not limited to e-forms, position control, onboarding, and performance evaluations.

NEOGOV is an ubiquitous hiring tool utilized by public agencies throughout our region and the state. NEOGOV also has the capability to be customized to create a Realtime feed with all modern ERP systems. The implementation of NEOGOV has allowed the City to take an applicant from application to hiring in an expediated manner.

The applicant tracking and engagement software, eforms, and onboard have already been implemented with the performance module next in line for full utilization.

Policy Alternatives:

Alternative 1: Approve and authorize the City Manager to execute an agreement with Insight Public Sector Inc., to cover costs incurred thus far and to allow work to be continued through July 31, 2023. The cost would be \$56,425.49.

Pros: The City will be able to maintain its current applicant tracking system module and it will provide the ability to implement the remaining modules.

Cons: The City could potentially lose access to its current applicant tracking and onboarding systems, putting us at a disadvantage when recruiting talent, while searching for a replacement software system.

Alternative 2: Do not approve and authorize the City Manager to execute the agreement with Insight Public Sector Inc.

Pros: There is no benefit to discontinuing the Agreement. The monetary savings from not having an agreement in place would set back the City's hiring processes, resulting in huge losses in efficiency.

Cons: The City would still be required to pay for the services received thus far. Without the NEOGOV applicant tracking system, the City would be required to revert back to antiquated methods for its recruitment activities.

Fiscal Impact:

The additional contractual amount is \$116,425.49 of which \$77,000 is included in the Council adopted FY 2023-24 budget. The remaining amount of \$39,425 will be reviewed at FY 2023-24 mid-year to determine if vacancy savings may absorb this cost or if additional appropriation may be required.

California Environmental Quality Act:

Approval of the recommendation is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

Recommendation:

Approve and authorize the City Manager to execute an agreement amendment with Insight Public Sector Inc with additional funding in the amount of \$116,425.49, subject to the annual appropriation of funds, for a total agreement amount of \$300,441.49.

Attachments:

1. Cooperative Purchase of Software and Software Services Agreement with Insight Public Sector Inc.
2. Amendment No. 2 to Cooperative Agreement with Insight Public Sector, Inc.
3. Amendment No. 3 to Cooperative Agreement with Insight Public Sector, Inc.



**AMENDMENT NO. 2 TO
COOPERATIVE AGREEMENT
WITH
INSIGHT PUBLIC SECTOR, INC.
FOR
SOFTWARE AND SOFTWARE SERVICES**

This Amendment No. 2 is entered into as of Jun-24-2021, (the “Effective Date”) by and between the City of Milpitas, a municipal corporation of the State of California (hereinafter referred to as “City”) and Insight Public Sector, Inc., an Illinois corporation (hereinafter referred to as “Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Amendment No. 2.

RECITALS:

WHEREAS, on July 25, 2019, the Parties entered into a Cooperative Purchase of Software and Software Services Agreement (the “Agreement”) for the City’s purchase of certain NeoGov branded software and software support services sold by Contractor as set forth in the Agreement; and.

WHEREAS, on October 27, 2020, the Parties entered into Amendment No. 1 to amend the Agreement in order to provide for two (2) additional years of NeoGov Software Services; and

WHEREAS, the Parties now wish to amend the Agreement to include a purchase of the NeoGov New Hire Integration Setup Subscription for a period of June 1, 2021 to July 24, 2022, , which will increase the total Agreement compensation amount by \$5,114.00.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. **Purchase.** The City desires to purchase, and Contractor agrees to provide the Professional Services for the “New Hire Integration Setup” set forth in that certain NeoGov Quotation dated 5/14/21. The City also desires to purchase, and Contractor agrees to provide the Subscription Service for the “New Hire Integration Setup” service as set forth in that certain Insight Public Sector Quotation Number 223724941, dated 27-May-2021. Both Quotations are attached hereto as **Exhibit A-2** and incorporated into the Agreement by this reference.
2. Section 2 of the Agreement entitled “Payment Limits” is hereby amended to read as follows: **“Section 2. Payment Limits**
 - a. City’s total payments under this Agreement shall not exceed One Hundred Eighty-Four Thousand Sixteen Dollars and Zero Cents (\$184,016). Payments shall be made in accordance with the Software

Order(s). City shall deliver payment to Contractor in consideration for Contractor's services under the Agreement."

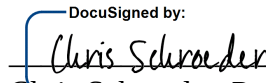
3. All other provisions of the Agreement not amended by this Amendment No. 2 shall remain in full force and effect.

This Amendment No. 2 is executed as of the date first written above.

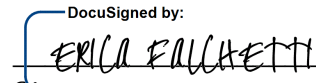
CITY OF MILPITAS

INSIGHT PUBLIC SECTOR, INC.

Approved By:

DocuSigned by:

 Chris Schroeder, Purchasing Agent
 Jun-24-2021

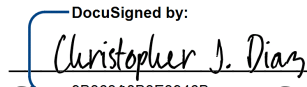
Date

DocuSigned by:
 | Senior SLED Capture Manager
 Signature

ERICA FALCHETTI | Senior SLED Capture Manager

Name

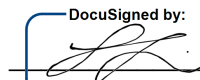
Approved As To Form:

DocuSigned by:

 Christopher J. Diaz, City Attorney

Capture Manager

Title

Approved:

DocuSigned by:

 Lauren Lai, CPA, MPA
 Finance Director/Risk Manager

Jun-23-2021

Date

Approved As to Content:

DocuSigned by:

 Mike Luu, Director of Information Technology

EXHIBIT A-2
PURCHASE QUOTATIONS

[ATTACHED BEHIND THIS PAGE]

NEOGOV ORDER FORM

NEOGOV:		Customer Name & Address:	
Governmentjobs.com, Inc. (dba "NEOGOV") 300 Continental Blvd., Suite 565 El Segundo, CA 90245 billing@neogov.com		City of Milpitas 1265 N Milpitas Blvd Milpitas, CA 95035	
Quote Creation Date:	5/14/21	Contact Name:	Mike Luu
Quote Expiration Date:	6/30/21	Contact Email:	mluu@ci.milpitas.ca.gov
Payment Terms:	Annual. Net 30 from NEOGOV invoice.		
Employee Count:			
Fee Summary			
Service Description	Term	Term Fees	
New Hire Integration Setup		\$3,000.00	
	Total:	\$3,000.00	

A. Terms and Conditions

1. Agreement. This Ordering Document and the Services purchased herein are expressly conditioned upon the acceptance by Customer of the terms of the NEOGOV Services Agreement either affixed hereto or the version most recently published prior to execution of this Ordering Form available at <https://www.neogov.com/service-specifications>. Unless otherwise stated, all capitalized terms used but not defined in this Order Form shall have the meanings given to them in the NEOGOV Services Agreement.
2. Effectiveness & Modification. Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative (the "Effective Date"). Unless otherwise stated, all SaaS Subscriptions shall commence on the Effective Date. This Order Form may not be modified or amended except through a written instrument signed by the parties.
3. Summary of Fees. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
4. Order of Precedence. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement, applicable Schedules, and Service Specifications.

B. Special Conditions (if any).

Initial Term: 6/1/21 – 7/24/22

NEOGOV ORDER FORM			
NEOGOV:		Customer Name & Address:	
Governmentjobs.com, Inc. (dba "NEOGOV") 300 Continental Blvd., Suite 565 El Segundo, CA 90245 billing@neogov.com		Paid via Insight Public Sector for: City of Milpitas 1265 N Milpitas Blvd Milpitas, CA 95035	
Quote Creation Date:	5/14/21	Contact Name:	Chris Robertson
Quote Expiration Date:		Contact Email:	chris.robertson@insight.com
Payment Terms:	Annual. Net 30 from NEOGOV invoice.		
Employee Count:			
Fee Summary			
Service Description	Term	Term Fees	
New Hire Integration License	6/1/21 – 7/24/22	\$2,0008.90	
	Total:	\$2,008.90 Paid by Insight Public Sector	

A. Terms and Conditions

1. Agreement. This Ordering Document and the Services purchased herein are expressly conditioned upon the acceptance by Customer of the terms of the NEOGOV Services Agreement either affixed hereto or the version most recently published prior to execution of this Ordering Form available at <https://www.neogov.com/service-specifications>. Unless otherwise stated, all capitalized terms used but not defined in this Order Form shall have the meanings given to them in the NEOGOV Services Agreement.
2. Effectiveness & Modification. Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative (the "Effective Date"). Unless otherwise stated, all SaaS Subscriptions shall commence on the Effective Date. This Order Form may not be modified or amended except through a written instrument signed by the parties.
3. Summary of Fees. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
4. Order of Precedence. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement, applicable Schedules, and Service Specifications.

B. Special Conditions (if any).

Initial Term: 6/1/21 – 7/24/22



COOPERATIVE PURCHASE OF SOFTWARE AND SOFTWARE SERVICES AGREEMENT

This Cooperative Purchase of Software and Software Services Agreement ("Agreement") is made and entered into as of the 25th day of July, 2019 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 Insight **Public Sector Inc.**, a corporation with its principal place of business at **6820 S Harl Ave. Tempe, AZ 85283** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

1. Background.

a. This Agreement is made and entered into in reference to the competitively solicited OMNIA Partners (formerly U.S. Communities) IT Products, Services and Solutions Contract No. 4400006644 with Contractor).

b. The City desires to order and purchase hardware, software and/or third party branded software services and support sold through Contractor as set forth in the Insight Public Sector Quotation No. 221256309 ("Software Order") attached hereto as Exhibit A.

c. As the provider of third party software services and support, Contractor desires to perform and assume responsibility for the provision of said software services on the terms and conditions set forth in this Agreement.

d. City desires to engage Contractor to render such software services as set forth in this Agreement.

e. The Parties agree that, as between the Parties, this Agreement shall prevail over any terms of sale established by Contractor.

2. Payment Limits.

a. City's total payments under this Agreement shall not exceed: **Seventy-Two Thousand Nine Hundred Eighty-Seven Dollars and Zero Cents (\$72,987.00)**. Payments shall be made in accordance with the Software Order. City shall deliver payment to Contractor in consideration for Contractor's services under this Agreement.

3. Contractor's Obligations.

a. Upon full payment of the software subscription fees (excluding annual maintenance/support fees and professional service fees), Contractor grants to City a personal, non-transferable, non-exclusive subscription to use, in accordance with the terms and conditions of this Agreement, all software described in Exhibit A (the "Software").

b. Contractor agrees to the Terms and Conditions attached hereto as Exhibit B. 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 C ("Insurance Requirements").

c. Contractor shall deliver the Software included in Exhibit A, and provide the software configuration, support, training and other services as set forth in NeoGov Order Form And Terms And Conditions ("Vendor Terms") attached hereto as Exhibit D.

4. Exhibits; Order of Precedence.

a. The following Exhibits attached hereto and listed below are hereby incorporated by reference:

a. **Exhibit A** – Software Order

b. **Exhibit B** – Terms and Conditions

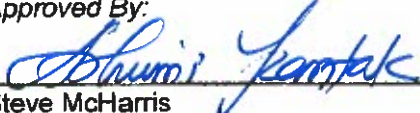
- c. **Exhibit C** - Insurance Requirements
 - d. **Exhibit D** – Vendor Terms
 - e. **Exhibit E** – Notice of Exercise of Option to Renew or Extend Software Subscription or Software Support Term
- b. In the event of any conflict between this Agreement and any exhibit or attachment to the Agreement, the order of precedence shall be: (1) the Agreement without exhibits; (2) Exhibit B - Terms and Conditions; (3) Exhibit C – Insurance Requirements; (4) Exhibit A – Software Order; (5) Exhibit D – Vendor Terms.

5. **Signatures.** These signatures attest the Parties' agreement hereto:

[SIGNATURES ON FOLLOWING PAGE]

CITY OF MILPITAS

Approved By:



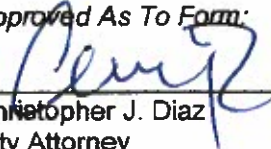
Steve McHarris

Interim City Manager

7/24/19

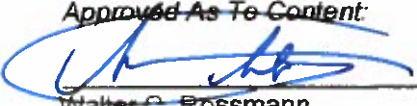
Date

Approved As To Form:



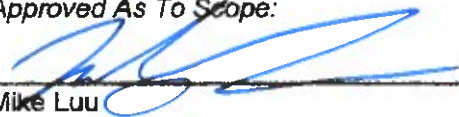
Christopher J. Diaz
City Attorney

Approved As To Content:



Walter G. Rossmann
Director of Financial Services

Approved As To Scope:



Mike Luu
Director of Information Services

INSIGHT PUBLIC SECTOR



Signature

David Cristal

Name

VP-General Manager

Title

7/16/2019

Date

EXHIBIT A
SOFTWARE ORDER

Attached Behind This Page



INSIGHT PUBLIC SECTOR SLED
6820 S HARL AVE
TEMPE AZ 85283-4318
Tel: 800-467-4448

SOLD-TO PARTY 10334506
CITY OF MILPITAS
455 E CALAVERAS BLVD
MILPITAS CA 95035-5411

SHIP-TO PARTY
CITY OF MILPITAS
MIKE LUU
455 E CALAVERAS BLVD
MILPITAS CA 95035-5411

Quotation

Quotation Number: 221256309
Document Date: 05-JUN-2019
PO Number:
PO Release:
Sales Rep: Chris Robertson
Email: CHRIS.ROBERTSON@INSIGHT.COM
Telephone: 4804096775

We deliver according to the following terms:

Payment Terms: Net 45 days
Ship Via: Electronic Delivery
Terms of Delivery: FOB DESTINATION
Currency: USD

In order for Insight to accept Purchase Orders against this contract and honor the prices on this quote, your agency must be registered with OMNIA Partners Public Sector (formerly U.S. Communities). Our sales teams would be happy to assist you with your registration. Please contact them for assistance -- the registration process takes less than five minutes.

Material	Material Description	Quantity	Unit Price	Extended Price
<u>NG-IN-1YR-CM</u>	NEOGOV INSIGHT ENTERPRISE EDITION (IN) 1YR Coverage Dates: 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	11,614.00	11,614.00
<u>NG-GJC-1YR-CM</u>	NEOGOV GOVERNMENTJOBS.COM JOB POSTING SUBSCRIPTION (GJC) 1YR Coverage Dates: 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	1,500.00	1,500.00
<u>NG-PM-1YR-CM</u>	NEOGOV POSITION MANAGEMENT (PM) 1YR Coverage Dates: 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0.00	0.00
<u>NG-PE-UL-CM</u>	NEOGOV PERFORM (PE) 1YR Coverage Dates: 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	16,549.00	16,549.00
<u>NG-ON-1YR-CM</u>	NEOGOV ONBOARD (ON) - BUNDLE LIC 1YR Coverage Dates: 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	8,130.00	8,130.00
<u>NG-EF-1YR-CM</u>	NEOGOV EFORMS (EF) - BUNDLE LIC 1YR Coverage Dates: 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	12,194.00	12,194.00
<u>NEOGOV-I-MAINT-CM</u>	NEOGOV INTEGRATION MAINTENANCE (EMPLOYEE ONGOING IMPORT) Coverage Dates: 05-JUN-2019 - 05-JUN-2020 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0.00	0.00

<u>NG-IN-SI-CM</u>	NEGOV INSIGHT (IN) SETUP AND IMPLEMENTATION Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	3,500.00	3,500.00
<u>NG-INT-CM</u>	NEGOV INSIGHT (IN) TRAINING Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,500.00	2,500.00
<u>NG-PM-SI-CM</u>	NEGOV POSITION MANAGEMENT (PM) SETUP AND IMPLEMENTATION Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	1,000.00	1,000.00
<u>NG-PMT-CM</u>	NEGOV POSITION MANAGEMENT (PM) TRAINING Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	1,000.00	1,000.00
<u>NG-PE-SI-CM</u>	NEGOV PERFORM (PE) SETUP AND IMPLEMENTATION Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	3,500.00	3,500.00
<u>NG-PET-CM</u>	NEGOV PERFORM (PE) TRAINING Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,500.00	2,500.00
<u>NG-ON-SI-CM</u>	NEGOV ONBOARD (ON) SETUP AND IMPLEMENTATION Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,000.00	2,000.00
<u>NG-ONT-CM</u>	NEGOV ONBOARD (ON) TRAINING Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,000.00	2,000.00
<u>NG-EF-SI-CM</u>	NEGOV EFORMS (EF) SETUP AND IMPLEMENTATION Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,500.00	2,500.00
<u>NG-EFT-CM</u>	NEGOV EFORMS (EF) TRAINING Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	2,500.00	2,500.00
<u>NG-NGI-SC-CM</u>	NEGOV INTEGRATIONS SETUP AND CONFIGURATION (EMPLOYEE ONGOING IMPORT) Coverage Dates: 05-JUN-2019 - 05-JUL-2019 OMNIA PARTNERS IT PRODUCTS & SERVICES(# 4400006644)	1	0.00	0.00
			Product Subtotal	72,987.00
			TAX	0.00
			Total	72,987.00

Thank you for considering Insight. Please contact us with any questions or for additional information about Insight's complete IT solution offering.

Sincerely,

Chris Robertson
4804096775
CHRIS.ROBERTSON@INSIGHT.COM
Fax 4807608532

OMNIA Partners (formerly U.S. Communities) IT Products, Services and Solutions Contract No. 4400006644

Insight Public Sector (IPS) is proud to be a contract holder for the OMNIA Partners Technology Products, Services <(>&<)> Solutions Contract.

This competitively solicited contract is available to participating agencies of OMNIA Partners. OMNIA Partners assists local and state government agencies, school districts (K-12), higher education, and nonprofits in reducing the cost of purchased goods by pooling the purchasing power of public agencies nationwide. This is an optional use program with no minimum volume requirements and no cost to agencies to participate.

Regarding tariff impacts on IPS contract quotes, Insight is communicating with the contracting officials on the contracts held by Insight to minimize the impact of tariffs to our clients.

Thanks for choosing Insight!

Insight Global Finance has a wide variety of flexible financing options and technology refresh solutions. Contact your Insight representative for an innovative approach to maximizing your technology and developing a strategy to manage your financial options.

The U.S. government has imposed tariffs on technology-related goods. Many of Insight's OEM and distribution partners have notified Insight that these tariffs will result in frequent and significant price increases. Some of our major partners have already provided Insight with cost increases, in some instances multiple times per day, while other providers are still assessing their situations. Due to the situation it is possible this quote may be subject to cost changes for Insight which will necessitate changes to the quoted pricing, or withdrawal of the quote. This purchase is subject to Insight's online Terms of Sale unless you have a separate purchase agreement signed by both your company and Insight, in which case, that separate agreement will govern. Insight's online Terms of Sale can be found at: http://www.insight.com/en_US/help/terms-of-sale-products-ips.html



Quotation
Sales Doc : 221256309
Document Date : 05-JUN-2019



Exhibit B

TERMS AND CONDITIONS

1. Anti-Discrimination. Contractor agrees to observe the provisions of the City of Milpitas Standard Operating Procedure 16.8 "Anti-Discrimination Policy" and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Milpitas for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor.
2. 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. Business License. Pursuant to the City of Milpitas Municipal Code, Title III Business and Professions, Section 1-4.01 Requirement and Special Exemptions, it shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Milpitas without first having procured a license from said City.
4. Confidentiality.
 - a. Confidential Information. "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations. In connection with this Agreement each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party").
 - b. Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was or is independently developed by the Receiving Party without reference or use of

any Confidential Information; (d) was or is subject to disclosure pursuant to public sunshine laws including the California Public Records Act.

- c. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:
 - i. not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
 - ii. not disclose or permit access to Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section; and (iii) are bound by written confidentiality or restricted use obligations at least as protective of the Confidential Information as the terms in this Section;
 - iii. safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care;
 - iv. ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section.
- d. Compelled Disclosures. If the either Party is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by law, that Party shall: (a) promptly, and prior to such disclosure, notify the other Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy; and (b) provide reasonable assistance to the Disclosing Party at the Disclosing Party's expense in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

5. Security.

- a. Contractor will implement commercially reasonable administrative, technical, organizational and physical safeguards designed to ensure the security and confidentiality of City data, protect against anticipated threats or hazards to the security or integrity of City data, and protect against unauthorized access or use of City data or its accidental loss, destruction or damage. The Contractor will review and test such safeguards on no less than an annual basis.
- b. If a breach of security or confidentiality of personal data or personal information occurs, and it requires notification to the City's users/customers under any state or federal law, then the City shall have sole control over the timing, content, and method of such notification provided that Contractor is given notice as soon as commercially reasonable and prior to any Contractor notification to users in order to take any steps related to mitigation. If

Contractor or its subcontractors is responsible for the breach, then Contractor shall reimburse the City for its reasonable costs in providing the notification.

6. 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 warrants that all employees and subcontractors shall have sufficient skill and experience to perform the services assigned to them. 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, and that such licenses and approvals shall be maintained throughout the term 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 services under the Agreement, 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 all work under the Agreement by Contractor and shall not be re-employed to perform any of the services under this Agreement.
7. 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 Agreement, 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 hereunder. 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.
8. Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the services or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees,

agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, employees, agents or volunteers. The indemnification obligations under this Section shall survive any expiration or termination of this Agreement.

9. Independent Contractor. It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353, under the control of the City as to the result of his work only but not as to the means by which such result is accomplished. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any assistants used by Contractor in providing said services.

10. Termination.

- a. Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been fully and adequately rendered to City through the effective date of the termination, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.
- b. Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to return all City data 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.

11. Choice of Law and Venue. Any dispute under, or related to, this Agreement shall be decided in accordance with the laws of the State of California and any action brought relating to this Agreement shall be held in the appropriate state court of Santa Clara County, California. Such actions shall neither be commenced in nor removed to federal court.

12. 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 director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

13. 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.

14. Non-Appropriation. Contractor acknowledges that the City is a municipal corporation and is precluded by the California Constitution and other laws from entering into obligations that financially bind future governing bodies. Nothing in this Agreement shall constitute an obligation of future governing bodies to appropriate funds for the purposes of this Agreement. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated.
15. Entire Agreement & Modification. This Agreement constitutes the entire agreement between the parties and supersede any prior agreements or representations, whether oral or written. No change to or modification of this Agreement shall be binding upon either party unless agreed to in a written instrument specifically referencing this Agreement and signed by an authorized representative of each party.
16. 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:

City:	Contractor:
City of Milpitas	Insight Public Sector Inc.
1265 N. Milpitas Boulevard	6820 S Harl Ave.
Milpitas, California 95035	Tempe, AZ 85283
Attn: Mike Luu, Information Services	Attn: Chris Robertson

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.

17. 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.
18. Attorneys' Fees. If either Party to this Agreement commences any legal action against the other Party arising out of this Agreement, the prevailing Party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.
19. Assignment and Subcontracting. The Parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Contractor. Assignments of any or all rights, duties or obligations of Contractor under this Agreement will be permitted only with the City's express consent. Contractor shall not subcontract any portion of the services

to be performed under this Agreement without City's written authorization. If City consents to such subcontract, Contractor shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as is otherwise required by law.

20. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Contractor.
21. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, as and assigns of each Party to this Agreement. However, Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.
22. Time of Essence. Time is of the essence for each and every provision of this Agreement.



EXHIBIT C INSURANCE REQUIREMENTS - GENERAL

Definition:

For purposes of this Agreement, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Agreement unless there is in effect insurance required by the Agreement and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of his employees.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as:*

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- () Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.
- () Architects' and Engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance:

Contractor must maintain limits no less than:

- | | |
|---|--|
| <p>1. General Liability:
(Including operations, products and completed operations, as applicable.)</p> | <p>\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.</p> |
| <p>2. Automobile Liability:</p> | <p>\$1,000,000 per accident for bodily injury and property damage.</p> |

- | | |
|--|---|
| 3. Workers' Compensation Employer's Liability: | Statutory
\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |
| 4. Cyber Liability and/or Errors & Omissions Liability: | \$1,000,000 each occurrence
\$1,000,000 policy aggregate |

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Contractor's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

Subcontractors:

Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement

EXHIBIT D

NEOGOV™

NEOGOV SERVICES AGREEMENT

You agree that by placing an order through a NEOGOV standard ordering document (the "Order" or "Ordering Document") you agree to follow and be bound by the terms and conditions set forth herein. "Governmentjobs.com", "NEOGOV", "we", and "our" means Governmentjobs.com, Inc. (dba "NEOGOV") and, where applicable, its affiliates. "Customer", "you", "your" means the Governmentjobs.com client, customer, or subscriber identified in the Ordering Document.

If you are placing such an Order on behalf of a legal entity, you represent that you have the authority to bind such entity to the terms and conditions of the Ordering Document and these terms and, in such event, "you" and "your" as used in these agreement terms shall refer to such entity. "Agreement" shall be used to collectively refer to this NEOGOV Services Agreement (the "Services Agreement"), documents incorporated herein including the applicable Ordering Document and Schedule(s), and Special Conditions (if any).

1. **Provision of Services.** Subject to the terms of this Agreement NEOGOV hereby agrees to provide Customer with, and/or access its SaaS Applications, Integrations, and Professional Services (each defined below) included or ordered by Customer in the applicable Ordering Document (collectively referred to as the "Services"). Customer hereby acknowledges and agrees that NEOGOV's provision and performance of, and Customer's access to, the Services is dependent and conditioned upon Customer's full performance of its duties, obligations and responsibilities hereunder. This Agreement entered into as of the date of your signature on an applicable Ordering Document (the "Effective Date").
2. **SaaS Subscription Grant.**
 - a) **SaaS Subscription.** "SaaS Applications" means each proprietary NEOGOV web-based software-as-a-service application that may be set forth on an Order and subsequently made available by NEOGOV to customer, and associated components as described in the Service Specifications made available to Customer by NEOGOV in connection with the provision of SaaS Applications. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, NEOGOV hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (a) access and use, and to permit Authorized Users to access and use, the SaaS Applications specified in the Order solely for Customer's internal purposes; (b) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (c) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the "SaaS Subscription"). "Authorized Users" means (i) Customer employees and (ii) Customer agents, contractors, consultants, and their respective employees, all of which are pre-approved by NEOGOV.
 - b) **Delivery and Subscription Term.** NEOGOV delivers each SaaS Application by providing Customer with online access. When you access NEOGOV SaaS Applications, you are accepting it for use in accordance with this Agreement. Unless otherwise specified in an applicable Ordering Document, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months, unless terminated earlier in accordance with this Agreement (the "Initial Term"). Thereafter, SaaS Subscriptions shall automatically renew for successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term") unless a party delivers to the other party, at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party's intention to not renew this Agreement, or unless terminated earlier in accordance with this Agreement. NEOGOV shall provide Customer access to the SaaS Applications within a reasonable time following the Effective Date unless otherwise agreed.
 - c) **Content License.** Should Customer purchase access to SaaS Applications containing audio-visual content ("Licensed Content"), NEOGOV grants to Customer a non-exclusive, non-transferable, and non-sublicensable license, during the applicable Term, for Authorized Users to access and view the Licensed Content within the SaaS Application. Customer shall not permit the Licensed Content to be, or appear to be, reproduced, performed, displayed, or distributed on, as part of or in connection with any website or other online area other than the SaaS Application. Customer shall not edit, alter, modify, combine with other content, or create any derivative works of the Licensed Content.
 - d) **Program Documentation.** Program Documentation shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOGOV to Customer in connection with the Services. NEOGOV hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via nonpublic platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.
 - e) **Prohibited Access.** You may not access the SaaS Applications if you are a direct competitor of NEOGOV or its affiliates. In addition, you may not access the SaaS Applications for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes.

3. **Professional Services.** "Professional Services" shall mean professional consulting services purchased by Customer in an applicable Ordering Document or NEOGOV Scope of Work (SOW) relating to assistance, training, deployment, usage, customizations, accessory data processing, and best practices of and concerning the SaaS Applications. NEOGOV shall provide the Professional Services purchased in the applicable Order Form or SOW, as the case may be. Professional Services may be ordered by Customer pursuant to a SOW and Service Specifications describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Order Forms or SOWs must be signed by both parties before NEOGOV shall commence work. If the parties do not execute a separate Statement of Work, the Services shall be provided as stated on the Order Form and this Agreement and documents incorporated herein shall control.
4. **Segmentation.** The purchase of any Service is separate from any other order for any other Service. Customer may purchase certain Services independently of other Services. Your obligation to pay for any Service is not contingent on performance of any other Service or delivery of any other Service.
5. **Payment Terms.** Unless otherwise stated in an Ordering Document, Customer shall pay all Subscription fees ("Subscription Fees") and Professional Service fees ("Professional Service Fees", collectively the "Fees") within thirty (30) days of Customer's receipt of NEOGOV's invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term. Invoices shall be delivered to the stated "Bill To" party on the Ordering Document. Unless explicitly provided otherwise, once placed the Ordering Document is non-cancellable and sums paid nonrefundable. Subscription Fees are based upon the Customer's employee count and the amount of Customer Data NEOGOV maintains in its systems for Customer. Customer shall not exceed the employee amount its Subscription Fees are based off of unless applicable supplemental Subscription Fees are paid. The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule. If Customer issues a purchase order, then it shall be for the full amount set forth in the applicable NEOGOV invoice or Ordering Document. Failure to provide NEOGOV with a corresponding purchase order shall not relieve Customer of its payment obligations. Except as otherwise specifically stated in the Ordering Document, NEOGOV may change the charges for the Services with effect from the start of each Renewal Term by giving Customer at least thirty (30) day notice prior to commencement of a Renewal Term.
6. **Term and Termination.**
 - a) **Term.** Unless otherwise specified in an applicable Ordering Document, this Agreement shall commence on the Effective Date. This Agreement shall remain in effect until all SaaS Subscriptions have expired and/or both parties have achieved full performance of Professional Services or other services detailed in a SOW, unless it is terminated earlier in accordance with this Agreement.
 - b) **Termination for Cause.** Either Party may terminate this Agreement immediately if the other is in material breach of this Agreement and such breach is not cured within thirty (30) days following non-breaching party's written specification of the breach. NEOGOV may suspend the Services or terminate this Agreement immediately in the event the Services or Customer's use of the Services provided hereunder become illegal or contrary to any applicable law, rule, regulation, or public policy.
 - c) **Effect of Termination.** Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV intellectual property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts due and unpaid to NEOGOV under this Agreement. Unless otherwise specified, after expiration or termination of this Agreement NEOGOV may remove Customer Data from NEOGOV Services and without Customer consent or notice.
7. **Service Specifications.** "Service Specifications" means the following documents, as applicable to the Services under your Order: Program Documentation, Service Schedules, Terms of Use, Security Statements, Retention, Cookie, and Privacy Policies. The Service Specifications describe and govern the Services. Online Service Specifications may be made available at <https://www.neogov.com/service-specifications> or provided upon Customer request. All applicable Service Specifications are incorporated into this Agreement. Excluding Service Schedules, NEOGOV may update the Service Specifications to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, Updates and Upgrades, and availability of third-party services.
8. **Maintenance, Modifications and Support Services.**
 - a) **Maintenance.** NEOGOV maintains NEOGOV's hardware and software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation, software delivery, NEOGOV database security, and integrity of Customer Data stored in the NEOGOV database. Preventive system maintenance is conducted by NEOGOV from time to time and is addressed in a variety of methods including scalable architecture and infrastructure, log checking, performance maintenance, and other preventative tasks.
 - b) **Modifications, Updates, and Upgrades.** NEOGOV may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost to Customer. "Upgrade" means any update of the Services or underlying NEOGOV software such as platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available. NEOGOV shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOGOV shall have no liability for, or any obligations to, investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.

- c) **Training Materials.** Primary training of NEOGOV Services is conducted by self-review of online materials. NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials"). The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.
 - d) **Implementation.** For Services requiring implementation, NEOGOV implementation supplements the Training Materials and is conducted off-site, unless otherwise agreed in the Ordering Document. NEOGOV personnel will provide dedicated consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and ensure Personnel grasp the system.
 - e) **Support.** Phone support for the Services is available to Customer between the hours of 6:00AM and 6:00PM, Pacific Time, Monday through Friday, excluding NEOGOV holidays. Online support for the Services is available 24 hours a day, seven days a week. The length of time for a resolution of any problem is fully dependent on the type of case (i.e., High/Medium/Low priority, question, enhancement request).
 - f) **Limitations.** Unless otherwise specified in the Ordering Document, this Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.
9. **NEOGOV Intellectual Property.** NEOGOV shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOGOV including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto. Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOGOV and all proprietary rights embodied therein (collectively, the "NEOGOV Intellectual Property"). This Agreement does not convey or transfer title or ownership of the NEOGOV Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOGOV. Other than recommendation use or as required by law, all use of NEOGOV Trademarks must be pre-approved by NEOGOV prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.
10. **Data Processing and Privacy.**
- a) **Customer Data.** "Customer Data" shall mean all data that is owned or developed by Customer, whether provided to NEOGOV by Customer or provided by a third party to NEOGOV in connection with NEOGOV's provision of Services to Customer, including Personnel or Job Seeker Profile Data collected, loaded into, or located in Customer data files maintained by NEOGOV. NEOGOV intellectual property, including but not limited to the Services and all derivative works thereof, NEOGOV Confidential Information, and Platform Data do not fall within the meaning of the term "Customer Data". Customer exclusively own all right, title, and interest in and to all Customer Data. Customer grants NEOGOV a license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services.
 - b) **Platform Data.** "Platform Data" shall mean any data reflecting the access or use of the Services by or on behalf of Customer or any Authorized User, including any end user visit, session, impression, clickthrough or click stream data, non-personal Usage Data, Account, Log, Device, Publication, Tracking, and Transaction Data as defined in NEOGOV's Privacy Policy, and any statistical or other analysis, information, or data based on or derived from any of the foregoing. NEOGOV shall exclusively own all right, title and interest in and to all Platform Data. NEOGOV grants to Customer a limited, non-perpetual, non-exclusive, non-transferable, and non-sublicensable license during the Term to use and access, and to permit Authorized Users to use and access, Platform Data of which NEOGOV makes available through the SaaS Applications solely for Customer's internal purposes
 - c) **Privacy.** NEOGOV shall process all data in accord with the NEOGOV Privacy Policy available at <https://www.neogov.com/privacy-policy>. The defined terms in the NEOGOV Privacy Policy shall have the same meaning in this Agreement unless otherwise specified herein.
 - d) **Data Responsibilities.** NEOGOV will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services. Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (ii) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (iii) the collection, use, modification, alteration, extraction, retention, copying, storage, security, disclosure, transfer, disposal, and other processing of any Customer Data inside and outside the Services (including any personally identifiable information), and (iv) Customer database(s). NEOGOV is not responsible for lost data caused by the action or inaction of Customer or Authorized Users. NEOGOV recommends Customer backup their Customer Data outside the Services if necessary. Unless vital to provide the Services or otherwise mutually agreed in writing, Customer shall not maintain any health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services.
 - e) **Service Usage.** NEOGOV may set forth Fees for designated levels of usage and data storage within each SaaS Application (each a "Storage Quota"), beginning with the Fees payable by Customer for the levels of usage and data storage in effect as of the Effective Date. NEOGOV will use commercially reasonable efforts to notify Customer in writing if Customer has reached 80 percent of its then current Storage Quota and Customer may increase its Storage Quota and corresponding Fee obligations in accordance with NEOGOV's then current usage price tiers. Customer acknowledges that exceeding its then-current Service Allocation may result in service degradation for Customer and other NEOGOV customers and agrees that (i) NEOGOV has no obligation to permit Customer to exceed its then-current Storage Quota and (ii) Customer is not entitled to any Service Level Credit for periods during which Customer exceeds its then-current Storage Quota, regardless of whether the Services fail to meet any availability requirement during such period.
 - f) **External Breach.** In the event of a security breach, as defined by applicable law, by anyone other than your employee, contractor, or agent, upon discovery of such breach, NEOGOV will: (a) initiate remedial actions that are in compliance with applicable law and consistent with

industry standards; and (h) notify you of the security breach, its nature and scope, and the remedial actions NEOGOV will undertake as determined solely by NEOGOV.

- g) Internal Breach. In the event of a security breach, as defined by applicable law, by your Personnel, Authorized, or unauthorized user, contractor or agent, you shall have sole responsibility for initiating remedial actions and you shall notify NEOGOV immediately of the breach and steps you will take to remedy the breach.

11. Nondisclosure. Through exercise of each party's rights under this Agreement, each party may be exposed to the other party's technical, financial, business, marketing, planning, and other information and data in written, oral, electronic, magnetic, photographic, and/or other forms, including, but not limited to (a) oral and written communications of one party with the officers and staff of the other party which are marked or identified as confidential or secret or similarly marked or identified, (b) other communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret, and (c) trade secrets (collectively, "Confidential Information"). In recognition of the other party's need to protect its legitimate business interests, each party hereby covenants and agrees that it shall regard and treat each item of information or data constituting Confidential Information of the other party as strictly confidential and wholly owned by such other party and that it will not, (x) without the express prior written consent of the other party, (y) except as permitted or authorized herein or, (z) except as required by law including the Public Records Act of the Customer's State, redistribute, market, publish, disclose, or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other party's Confidential Information during the Term and for a period of three (3) years thereafter or, if later, from the last date Services (including any warranty work) are performed by the disclosing party hereunder; and (ii) any of the other party's trade secrets at any time during which such information shall constitute a trade secret under applicable law. In association with NEOGOV's concern for the protection of trade secrets, Confidential Information, and fair market competition, Customer acknowledges all photos, "screen captures", videos, or related media of NEOGOV products, pages, and related documentation shall be approved by NEOGOV prior to any publicly accessible disclosure of such media.

12. Representations, Warranties, and Disclaimers.

- a) Service Performance Warranty. NEOGOV warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof.
- b) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.
- c) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.
- d) Configurable Services. The Services can be used in ways that do not comply with applicable laws and it is Customer's sole responsibility to monitor the use of the Services to ensure that such use complies with and is in accordance with applicable law. In no event shall NEOGOV be responsible or liable for Customer failure to comply with applicable law in connection with your use of the Services. NEOGOV is not responsible for any harm caused by users who were not authorized to have access to the Services but who were able to gain access because usernames, passwords, or accounts were not terminated on a timely basis by Customer.
- e) Services Do Not Constitute Advice or Credit Reporting. NEOGOV does not provide its customers with legal advice regarding compliance, data privacy, or other relevant applicable laws in the jurisdictions in which you use the Services. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES PROVIDED HEREUNDER ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON BY YOU AS EITHER LEGAL, FINANCIAL, INSURANCE, OR TAX ADVICE. TO THE EXTENT YOU REQUIRE ANY SUCH ADVICE, YOU REPRESENT THAT YOU WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, ACCOUNTING, OR OTHER PROFESSIONALS. YOU SHOULD REVIEW APPLICABLE LAW IN ALL JURISDICTIONS WHERE YOU OPERATE AND HAVE EMPLOYEES AND CONSULT EXPERIENCED COUNSEL FOR LEGAL ADVICE. YOU ACKNOWLEDGE THAT NEOGOV IS NOT A "CONSUMER REPORTING AGENCY" AS THAT TERM IS DEFINED IN THE FAIR CREDIT REPORTING ACT AS AMENDED.
- f) No Control of HR Practices. You acknowledge that NEOGOV exercises no control over your specific human resource practices implemented using the Service or your decisions as to employment, promotion, termination, or compensation of any Personnel or Authorized User of the Service. You further agree and acknowledge that NEOGOV does not have a direct relationship with your employees and that you are responsible for all contact, questions, Customer Data updates and collection, with your employees. In addition, you are responsible for the privacy (including your own privacy policies governing your processing of Customer Data), collection, use, retention and processing of your

Customer Data, and providing any and all notices and information to your employees regarding the foregoing, in compliance with all applicable laws. NEOGOV hereby disclaims all liability arising from your decisions and from harmful data or code uploaded to the Service by you and/or your employees, contractors or agents.

- g) **Customer Compliance.** Customer shall be responsible for ensuring that Customer's use of the Services and the performance of Customer's other obligations hereunder comply with all applicable rules, regulations, laws, codes, and ordinances. Customer is responsible for Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services equipment and facilities required to access the Services. Customer shall be responsible for procuring all licenses of third-party software necessary for Customer's use of the Services. Customer is responsible and liable for all uses of the Services, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. All users of the Services are obligated to abide by the Terms of Use available at <https://www.neogov.com/terms-of-use>. Customer shall take reasonable efforts to make all users, whether Authorized or unauthorized, aware of this Agreement's provisions as applicable to such user's use of the Services and shall cause users to comply with such provisions.

13. Indemnification.

- a) **Indemnity.** Subject to subsections (b) through (d) of this Section, if a third party makes a claim against Customer that any NEOGOV intellectual property furnished by NEOGOV and used by Customer infringes a third party's intellectual property rights, NEOGOV will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOGOV, if Customer does the following:
- i. Notifies NEOGOV promptly in writing, not later than thirty (30) days after Customer receives notice of the claim (or sooner if required by applicable law);
 - ii. Gives NEOGOV sole control of the defense and any settlement negotiations; and
 - iii. Gives NEOGOV the information, authority, and assistance NEOGOV needs to defend against or settle the claim.
- b) **Alternative Resolution.** If NEOGOV believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOGOV may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOGOV may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.
- c) **No Duty to Indemnify.** NEOGOV will not indemnify Customer if Customer alters the Service or Service Specifications, or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOGOV will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOGOV. NEOGOV will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOGOV. NEOGOV will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights. NEOGOV will not indemnify Customer for any intellectual property infringement claim(s) known to Customer at the time subscription rights are obtained.
- d) **Exclusive Remedy.** This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOGOV.

14. Limitations of Liability.

- a) **Waiver.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PERSON OR ENTITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CUSTOMER'S USE OR, OR INABILITY TO USE, THE SERVICES, UNDER ANY CIRCUMSTANCE, CAUSE OF ACTION OR THEORY OF LIABILITY, OR DUE TO ANY EVENT WHATSOEVER, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, LOSS OF USE, LOSS OF GOODWILL OR BUSINESS STOPPAGE, EVEN IF A PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- b) **Limitation.** WITHOUT LIMITATION OF THE PREVIOUS SECTION, EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY ARISING OUT OF NEOGOV'S INDEMNIFICATION OBLIGATIONS, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF NEOGOV INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER DURING THE RELEVANT YEAR OF THIS AGREEMENT DURING WHICH THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY

NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

- c) **Independent Allocations of Risk.** Each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks of this Agreement between the Parties. This allocation is reflected in the pricing offered by NEOGOV to Customer. Each of these provisions is severable and independent of all other provisions of this Agreement.
15. **Trial and Beta Services; Integrations.** To the extent Customer utilizes Trial, Beta, or NEOGOV Integration Services, the Schedules relevant to such Services found at <https://www.neogov.com/service-specifications> are incorporated herein and shall supplement the Services Agreement.
16. **E-Signatures.**
- a) **E-Signature Provisioning & Consent.** NEOGOV E-Forms and other electronically signed services ("E-Signatures") are provided by NEOGOV for two counterparties (generally a government employer (the "sending party") subscribing to NEOGOV Services and Personnel or Job Seekers) to electronically sign documents. If you use E-Signatures offered by NEOGOV, you agree to the statements set forth in this Section. Whenever you sign a document using E-Signatures you affirmatively consent to using electronic signatures via the E-Signatures and consent to conducting electronic business transactions. You also confirm that you are able to access the E-Signatures and the document you are signing electronically. When using E-Signatures for a document, your consent applies only to the matter(s) covered by that particular document.
 - b) **Right to Opt-Out of E-Signatures.** You are not required to use E-Signatures or accept electronic documents provided thereby. Personnel and Job Seekers can choose to not use E-Signatures and may sign the document manually instead by notifying the sending party they are choosing to do so and by obtaining a non-electronic copy of the document. NEOGOV assumes no responsibility for providing non-electronic documents. In the event a non-sending party elects to sign the document manually, do not use E-Signatures to sign the document.
 - c) **Electronic Download.** If you have signed a document electronically using E-Signatures and transmitted it back to the sending party, NEOGOV provides the opportunity to download and print a paper copy of the document at no charge. If you later withdrawn your consent to using E-Signatures, please notify the sending party and stop using E-Signatures. Note that the decision to stop using E-Signatures after you have already used it does not change the legality of the documents you have previously signed using an electronic signature.
 - d) **E-Signature Validity.** PLEASE NOTE THAT NEOGOV'S STATEMENTS CONTAINED HEREIN OR ELSEWHERE CONCERNING THE VALIDITY OF ELECTRONIC DOCUMENTS AND/OR THE SIGNATURE LINES OF DOCUMENTS THAT ARE ELECTRONICALLY SIGNED ARE FOR INFORMATIONAL PURPOSES ONLY; THEY SHOULD NOT BE CONSTRUED AS LEGAL ADVICE. UNDER FEDERAL AND STATE LAWS GOVERNING ELECTRONIC SIGNATURES, ELECTRONIC SIGNATURES ON CERTAIN TYPES OF AGREEMENTS ARE NOT ENFORCEABLE. NEOGOV HEREBY DISCLAIMS ANY RESPONSIBILITY FOR ENSURING THAT DOCUMENTS ELECTRONICALLY SIGNED THROUGH E-SIGNATURE'S ARE VALID OR ENFORCEABLE UNDER THE LAWS OF THE UNITED STATES OF AMERICA, ANY PARTICULAR STATE, OR ANY OTHER LEGAL JURISDICTION. YOU SHOULD CONSULT WITH LEGAL COUNSEL CONCERNING THE VALIDITY OR ENFORCEABILITY OF ANY DOCUMENT YOU MAY SIGN ELECTRONICALLY USING NEOGOV'S E-SIGNATURE'S.
17. **Relay of Content.** NEOGOV relays content including, but not limited to, resumes, cover letters, applications, messages, questionnaire answers, responses, offer letters, and other materials. You acknowledge that you are asking NEOGOV to send this content on your behalf. We process, monitor, review, store, and analyze such content for data analysis, quality control, enforcement of the Terms of Use, security, content moderation, and to improve the SaaS Applications. As a result, or due to technical malfunction, in certain circumstances such content may be delayed or may not be delivered to the intended recipient. NEOGOV may notify you in such an event.
18. **Text Message Communications.** NEOGOV may offer Job Seekers and Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those providers. NEOGOV may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. NEOGOV cannot vouch for the technical capabilities of any third parties to receive such text messages. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.
19. **Taxes.** Customer will pay all taxes, duties and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV's net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption with ten (10) days of NEOGOV's request therefor.

20. **Cooperative Agreement.** As permitted by law, it is understood and agreed by Customer and NEOGOV that any government entity other than Customer (the "New Entity") may purchase the services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each New Entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the New Entity and NEOGOV. With respect to any purchases by a New Entity pursuant to this Section, Customer: (i) shall not be construed as a dealer, re-marketer, representative, partner or agent of any type of NEOGOV, or such New Entity; (ii) shall not be obligated, liable or responsible for any order made by New Entities or any employee thereof under the agreement or for any payment required to be made with respect to such order; and (iii) shall not be obliged, liable or responsible for any failure by any New Entity to comply with procedures or requirements of applicable law or to obtain the due authorization and approval necessary to purchase under the agreement. Termination of this Agreement shall in no way limit NEOGOV from soliciting, entering into, or continuing a contractual relationship with any New Entity.
21. **Publicity.** Each party hereto may advertise, disclose, and publish its relationship with the other party under this Agreement.
22. **Authority.** Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement, and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.
23. **Force Majeure.** NEOGOV shall not be liable for any damages, costs, expenses or other consequences incurred by Customer or by any other person or entity as a result of delay in or inability to deliver any Services due to circumstances or events beyond NEOGOV's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, military action or usurped power; or (h) actions or failures to act on the part of a governmental authority.
24. **Assignment.** Customer may not assign this Agreement without the express written approval of NEOGOV and any attempt at assignment in violation of this Section shall be null and void.
25. **Entire Agreement; Amendment.** This Services Agreement and documents incorporated herein (including all Service Specifications and Schedules), the applicable Ordering Document, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. "Special Conditions" means individually negotiated variations, amendments and/or additions to this Service Agreement of which are either drafted, or incorporated by reference, into the Ordering Document. Any Customer proposal for additional or different terms, or Customer attempt to vary in any degree any of the terms of this Agreement is hereby objected to and rejected but such proposal shall not operate as a rejection of this Service Agreement and Ordering Document unless such variances are in the terms of the description, quantity, or price but shall be deemed a material alteration thereof, and this Service Agreement and the applicable Ordering Document shall be deemed accepted by the Customer without said additional or different terms. It is expressly agreed that the terms of this Agreement and any NEOGOV Ordering Document shall supersede the terms in any non-NEOGOV purchase order or other ordering document. Notwithstanding the foregoing, any conflict of terms shall be resolved by giving priority in accordance with the following order: 1) Special Conditions (if any), 2) NEOGOV Ordering Document, 3) the applicable NEOGOV Services Agreement, Service Specifications, Schedules, and other incorporated documents, 4) Customer terms and conditions (if any). This Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Services. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the party to be bound.
26. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Customer's State of residence, without giving effect to conflict of law rules.
27. **Severability.** If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect.
28. **Survival.** Provisions that survive termination or expiration are those relating to limitation of liability, payment, and others which by their nature are intended to survive.
29. **Independent Contractor; Third Party Agreements.** The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.
30. **Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Ordering Document and (ii) NEOGOV at 300 Continental Blvd., Suite 565, El Segundo, CA 90245.
31. **Waiver.** The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.

32. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.

EXHIBIT E - NOTICE OF EXERCISE OF OPTION TO RENEW OR EXTEND SOFTWARE SUBSCRIPTION OR SOFTWARE SUPPORT TERM

AGREEMENT TITLE and DATE:	
CONTRACTOR Name and Address:	
DATE OF OPTION:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to the Terms and Conditions of the Agreement referenced above, the City of Milpitas hereby exercises its option to renew or extend the software subscription or software maintenance/support services under the following provisions:

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin date:	
End date:	

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed \$_____ and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF MILPITAS a municipal corporation By _____ Name: Chris Schroeder Title: Purchasing Agent	CONTRACTOR NAME a _____ corporation By _____ Name: Title:
--	--



**AMENDMENT NO. 3 TO
COOPERATIVE AGREEMENT
WITH
INSIGHT PUBLIC SECTOR, INC.
FOR
SOFTWARE AND SOFTWARE SERVICES**

This Amendment No. 3 is entered into as of _____, (the “Effective Date”) by and between the City of Milpitas, a municipal corporation of the State of California (hereinafter referred to as “City”) and Insight Public Sector, Inc., an Illinois corporation (hereinafter referred to as “Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Amendment No. 3.

RECITALS:

WHEREAS, on July 25, 2019, the Parties entered into an automatic renewal Cooperative Purchase of Software and Software Services Agreement (the “Agreement”) for the City’s purchase of certain NeoGov branded software and software support services sold by Contractor as set forth in the Agreement; and,

WHEREAS, on October 27, 2020, the Parties entered into Amendment No. 1 to amend the Agreement in order to provide for two (2) additional years of NeoGov Software Services; and

WHEREAS, on June 24, 2021, the Parties entered into Amendment No. 2 to include a purchase of the NeoGov New Hire Integration Setup Subscription for a period of June 1, 2021 to July 24, 2022, which increased the total Agreement compensation amount by \$5,114.00 and a new not-to-exceed of One Hundred Eighty-Four Thousand Sixteen Dollars and Zero cents (\$184,016.00); and

WHEREAS, the Parties now desire to amend the Agreement in order to provide for two (2) additional years of NeoGov software services.

WHEREAS, the Parties now wish to amend the total not-to-exceed amount by One Hundred Sixteen Thousand Four Hundred Twenty-Five Dollars and Forty-Nine Cents (\$116,425.49) for a new not-to-exceed of Three Hundred Thousand Four Hundred Forty-One Dollars and Forty-Nine Cents (\$300,441.49); and

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 1 “Purchase” is hereby amended and restated as follows:

The City desires to purchase, and Contractor agrees to provide the software services set forth in NEOGOV Invoice number INV-26542, attached hereto as Exhibit A-2 and incorporated herein by this reference.

2. Section 2 “Payment Limits” is hereby amended and restated as follows:

- a. City’s total payments under this Agreement shall not exceed **Three Hundred Thousand Four Hundred Forty-One Dollars and Forty-Nine Cents (\$300,441.49)**. Payments shall be made in accordance with the Software Order(s). City shall deliver payment to Contractor in consideration for Contractor’s services under the Agreement.”
2. All other provisions of the Agreement not amended by this Amendment No. 3 shall remain in full force and effect.

This Amendment No. 3 is executed as of the date first written above.

CITY OF MILPITAS

INSIGHT PUBLIC SECTOR, INC.

Approved By:

Ned Thomas, Acting City Manager

Signature

Date

Name

Approved As To Form:

Michael Mutalipassi, City Attorney

Title

Approved:

Date

Lauren Lai, CPA, MPA
Finance Director/Risk Manager

Approved As to Content:

Daniel Nam, Director of Information
Technology

Invoice #INV-26542

From

Governmentjobs.com, Inc. DBA NEOGOV
2120 Park Pl,
Suite 100
El Segundo, CA 90245

Bill To

Milpitas, City of (CA)
Insight Public Sector, Inc.
PO Box 3083
Orem, UT 84059
USA

Invoice Summary

Invoice Number	INV-26542
Date	06/25/2022
Terms	Net 30
Due Date	07/25/2022
Amount Due (USD)	\$ 54,587.99

Item / Description	Quantity	Rate	Total
Insight This is your subscription fee for Insight for the term starting 07/25/2022 and ending 07/24/2023.	1	12,606.76000	12,606.76
Governmentjobs.com - IN This is your subscription fee for Governmentjobs.com - IN for the term starting 07/25/2022 and ending 07/24/2023.	1	1,651.33000	1,651.33
Perform This is your subscription fee for Perform for the term starting 07/25/2022 and ending 07/24/2023.	1	17,963.37000	17,963.37
Onboard This is your subscription fee for Onboard for the term starting 07/25/2022 and ending 07/24/2023.	1	8,947.55000	8,947.55
eForms This is your subscription fee for eForms for the term starting 07/25/2022 and ending 07/24/2023.	1	13,418.98000	13,418.98
Position Management This is your subscription fee for Position Management for the term starting 07/25/2022 and ending 07/24/2023.	1	0.00000	0.00
Custom Employee Integration This is your subscription fee for Custom Employee Integration for the term starting 07/25/2022 and ending 07/24/2023.	1	0.00000	0.00
Amount Due (USD)			\$ 54,587.99

Thank you for your business!

For questions, or pay by credit card, please reply to this email or reach out to billing@neogov.com. For questions on a renewals invoice, please reach out to renewals@neogov.com.

Please make checks payable to:

Governmentjobs.com, Inc
DEPT LA 25067
Pasadena, CA 91185-5067

For a copy of our W9, please click on "Download W9" above.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve an Amendment of the Master Services and Purchasing Agreement with Axon Enterprise, Inc. by Increasing the Total Not-to-Exceed Amount from \$913,178.60 to \$1,026,887.82 Over the Five-Year Term (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406; and Frank Morales, Assistant Chief of Police, 408-586-2521)
Category:	Consent Calendar-Public Safety
Meeting Date:	9/19/2023
Recommendation:	Approve an amendment of the Master Services and Purchasing Agreement with Axon Enterprise, Inc. by increasing the total not-to-exceed amount from \$913,178.60 to \$1,026,887.82 over the five-year term.

BACKGROUND:

The Milpitas Police Department currently issues body worn cameras and conducted energy devices (tasers) developed and sold by Axon Enterprise, Inc. (Axon), to all sworn personnel. In addition, the department subscribes to a cloud-based digital evidence management system by Axon to store all body worn camera footage and conducted energy device data, allowing for the storage, preservation, and secured sharing of files, both internally and externally.

Axon provides the Milpitas Police Department an “Officer Safety Plan” which includes special pricing for the collective purchase of body worn cameras, tasers, service agreement, warranty of all products, and Evidence.com. The Santa Clara County District Attorney’s Office is also a subscribing customer of Evidence.com, which enables the Police Department to securely transfer digital evidence to the District Attorney’s Office as needed. In addition, Axon offers an interview room hardware/software system that fully integrates into Evidence.com and allows for seamless access by the District Attorney’s Office, but to which the City does not currently subscribe.

On June 7, 2022, the City Council approved the sole source purchase of body worn cameras, conducted energy devices (tasers), associated equipment, and Evidence.com (cloud-based data storage solution) subscription by way of Master Services and Purchasing Agreement with Axon Enterprises, Inc. for a contract term of five-years and a total not-to-exceed amount of \$913,178.60.

The Police Department now wishes to amend the current Master Services and Purchasing Agreement with Axon by adding “Axon Interview Solution” equipment for the remaining four years of the original agreement.

ANALYSIS:

The Police Department requests to amend the current Master Services and Purchasing Agreement with Axon to add “Axon Interview Solution” equipment/software to replace the Police Department’s existing system. The total cost of the proposed amendment for the addition of this equipment is \$113,709.22 over the remaining four years of the original agreement (approximately \$28,427.36 annually), with no price escalation.

The Police Department utilizes interview room recording equipment to gather information leading to the conviction of criminals and for the safety and protection of subjects, witnesses, and police department staff. The department currently uses VideOversight by Microception, Inc., for recording interview room activities. This technology has been in place since 2007 and is nearing the end of its useful life. Furthermore, VideOversight occasionally suffers from software crashes, has poor audio quality, and creates added work for our evidence technicians, who must transfer video files to a shared server with the District Attorney’s Office for access.

Police Department staff reviewed multiple options to replace the current system, and their conclusion is that “Axon Interview Room” will best meet the current and future needs of the Police Department. Specifically, the combined software and hardware system fully integrates into the department’s existing body worn camera system and Evidence.com cloud-based data storage, and the proposed system also includes the features needed to obtain accurate recordings and maintain chain-of-custody.

Section I-2-3.06 of the Milpitas Municipal Code authorizes the Purchasing Agent to award contracts without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment or general service, or there is a compelling reason for using only one source (see attached Sole Source Justification form). Axon manufactures and maintains the Department’s current camera and evidence management system. In addition, Axon’s “Interview Solution” equipment/software is the only product that will integrate with the systems that the Department already has in place. The Purchasing Agent has determined that this integration is a compelling reason for pursuing sole-source procurement.

POLICY ALTERNATIVE(S):

Alternative 1: Do not amend the Master Services and Purchasing Agreement with Axon Enterprise, Inc.

Pros: The City would not incur the additional cost of \$113,709.22 for interview room equipment over the five-year term of the agreement.

Cons: The current interview room equipment system is nearing the end of its useful life. Without the recommended amendment, Police Department staff would be working without an up-to-date and fully integrated interview room equipment system, an integral tool needed to support accountability and transparency in department operations.

Reason for Not Recommending: This equipment is required for the regular operation of the police department; the use of this equipment ensures proper gathering of evidence in criminal and civil cases, as required by law.

FISCAL IMPACT:

The total additional not-to-exceed amount for the remaining four years of the original contract is \$113,709.22, subject to annual appropriations. The FY2023-24 fiscal impact is \$28,427.35, to be funded by the Police Department’s 2022 COPS grant which is included in the FY2023-24 adopted budget. The remaining contract amount of \$85,281.95 will be incorporated in the future annual operating budget development for funding.

California Environmental Quality Act (CEQA):

The action being requested is not a project as defined by CEQA (CEQA Guidelines exemption 15378(b)(2)).

RECOMMENDATION:

1. Approve an Amendment of the Master Services and Purchasing Agreement with Axon Enterprise, Inc. by Increasing the Total Not-to-Exceed Amount from \$913,178.60 to \$1,026,887.82 Over the Original Five-Year Term

ATTACHMENTS:

1. Axon Quotation and Statement of Work
2. Axon Master Services and Purchasing Agreement
3. First Amendment to the Axon Master Services and Purchasing Agreement



Axon Enterprise, Inc.
 17800 N 85th St.
 Scottsdale, Arizona 85255
 United States
 VAT: 86-0741227
 Domestic: (800) 978-2737
 International: +1.800.978.2737

Q-410635-4 Item # C15.

Issued: 08/22/2023

Quote Expiration: 09/15/2023

Estimated Contract Start Date: 10/01/2023

Account Number: 105711

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Delivery;Invoice-1275 N Milpitas Blvd 1275 N Milpitas Blvd Milpitas, CA 95035-3153 USA	Milpitas Police Dept. - CA 1275 N Milpitas Blvd Milpitas CA 95035-3153 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Kyle Panasewicz Phone: +1 4803294734 Email: kylep@axon.com Fax: (480) 905-2071	Francisco Sanchez Phone: 408-586-2506 Email: fsanchez@milpitas.gov Fax: (408) 586-2488

Quote Summary

Program Length	45.4516 Months
TOTAL COST	\$109,783.56
ESTIMATED TOTAL W/ TAX	\$113,709.22

Discount Summary

Average Savings Per Year	\$12,612.75
TOTAL SAVINGS	\$47,772.48

Payment Summary

Date	Subtotal	Tax	Total
Sep 2023	\$27,445.94	\$981.41	\$28,427.35
Oct 2023	(\$0.23)	\$0.00	(\$0.23)
Jun 2024	\$27,445.95	\$981.41	\$28,427.36
Jun 2025	\$27,445.95	\$981.41	\$28,427.36
Jun 2026	\$27,445.95	\$981.43	\$28,427.38
Total	\$109,783.56	\$3,925.66	\$113,709.22

Quote Unbundled Price:
Quote List Price:
Quote Subtotal:

Item # C15.

\$119,625.99
\$109,783.56

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
Program									
IR1CB	Interview Room 1 Camera Essential	5	45	\$426.23	\$310.42	\$247.22	\$55,623.98	\$2,189.56	\$57,813.54
IR1CB	Interview Room 1 Camera Essential	1	45	\$408.92	\$390.68	\$444.05	\$19,982.09	\$627.97	\$20,610.06
IR1CB	Interview Room 1 Camera Essential	2	45	\$463.58	\$340.78	\$379.75	\$34,177.49	\$1,108.13	\$35,285.62
A la Carte Hardware									
50364	INTERVIEW - MIC - LINE POWERED	7			\$218.67	\$0.00	\$0.00	\$0.00	\$0.00
Total							\$109,783.56	\$3,925.66	\$113,709.22

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
Interview Room 1 Camera Essential	50114	INTERVIEW - CAMERA - COVERT SENSOR	1	09/01/2023
Interview Room 1 Camera Essential	50118	INTERVIEW - MIC - WIRED (STANDARD MIC)	1	09/01/2023
Interview Room 1 Camera Essential	50218	INTERVIEW - CAMERA - COVERT MAIN UNIT	1	09/01/2023
Interview Room 1 Camera Essential	50298	INTERVIEW - CAMERA - OVERT DOME	5	09/01/2023
Interview Room 1 Camera Essential	50298	INTERVIEW - CAMERA - OVERT DOME	2	09/01/2023
Interview Room 1 Camera Essential	50322	INTERVIEW - TOUCH PANEL PRO	5	09/01/2023
Interview Room 1 Camera Essential	50322	INTERVIEW - TOUCH PANEL PRO	2	09/01/2023
Interview Room 1 Camera Essential	50322	INTERVIEW - TOUCH PANEL PRO	1	09/01/2023
Interview Room 1 Camera Essential	74056	INTERVIEW - TOUCH PANEL WALL MOUNT	5	09/01/2023
Interview Room 1 Camera Essential	74056	INTERVIEW - TOUCH PANEL WALL MOUNT	1	09/01/2023
Interview Room 1 Camera Essential	74056	INTERVIEW - TOUCH PANEL WALL MOUNT	2	09/01/2023
Interview Room 1 Camera Essential	74059	INTERVIEW - ENCLOSURE - MOTION SENSOR	1	09/01/2023
A la Carte	50364	INTERVIEW - MIC - LINE POWERED	7	09/01/2023

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Interview Room 1 Camera Essential	50037	INTERVIEW - SOFTWARE - CLIENT (PER TOUCH PANEL-PC)	5	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50037	INTERVIEW - SOFTWARE - CLIENT (PER TOUCH PANEL-PC)	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50037	INTERVIEW - SOFTWARE - CLIENT (PER TOUCH PANEL-PC)	1	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50039	INTERVIEW - SOFTWARE - CLIENT MAINTENANCE (PER TOUCH PANEL-P	5	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50039	INTERVIEW - SOFTWARE - CLIENT MAINTENANCE (PER TOUCH PANEL-P	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50039	INTERVIEW - SOFTWARE - CLIENT MAINTENANCE (PER TOUCH PANEL-P	1	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50041	INTERVIEW - SOFTWARE - STREAMING SERVER LICENSE (PER SERVER)	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50041	INTERVIEW - SOFTWARE - STREAMING SERVER LICENSE (PER SERVER)	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50043	INTERVIEW - SOFTWARE - STREAMING SERVER MAINTENANCE (PER SER	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50043	INTERVIEW - SOFTWARE - STREAMING SERVER MAINTENANCE (PER SER	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50045	UNLIMITED INTERVIEW ROOM CLOUD STORAGE	5	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50045	UNLIMITED INTERVIEW ROOM CLOUD STORAGE	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50045	UNLIMITED INTERVIEW ROOM CLOUD STORAGE	1	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	73840	EVIDENCE.COM BASIC ACCESS LICENSE	1	10/01/2023	07/14/2027

Services

Item # C15.

Bundle	Item	Description	QTY
Interview Room 1 Camera Essential	85170	INTERVIEW - SERVICE - STANDARD INSTALL AND SETUP (PER ROOM)	5
Interview Room 1 Camera Essential	85170	INTERVIEW - SERVICE - STANDARD INSTALL AND SETUP (PER ROOM)	1
Interview Room 1 Camera Essential	85170	INTERVIEW - SERVICE - STANDARD INSTALL AND SETUP (PER ROOM)	2

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Interview Room 1 Camera Essential	50448	EXT WARRANTY, INTERVIEW ROOM	5	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50448	EXT WARRANTY, INTERVIEW ROOM	1	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50448	EXT WARRANTY, INTERVIEW ROOM	2	10/01/2023	07/14/2027

Payment Details

Item # C15.

Sep 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	50364	INTERVIEW - MIC - LINE POWERED	7	\$0.00	\$0.00	\$0.00
Year 1	IR1CB	Interview Room 1 Camera Essential	5	\$13,905.98	\$547.38	\$14,453.36
Year 1	IR1CB	Interview Room 1 Camera Essential	2	\$8,544.44	\$277.03	\$8,821.47
Year 1	IR1CB	Interview Room 1 Camera Essential	1	\$4,995.52	\$157.00	\$5,152.52
Total				\$27,445.94	\$981.41	\$28,427.35

Oct 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Invoice Upon Fulfillment	IR1CB	Interview Room 1 Camera Essential	2	(\$0.23)	\$0.00	(\$0.23)
Total				(\$0.23)	\$0.00	(\$0.23)

Jun 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	50364	INTERVIEW - MIC - LINE POWERED	7	\$0.00	\$0.00	\$0.00
Year 2	IR1CB	Interview Room 1 Camera Essential	5	\$13,905.99	\$547.38	\$14,453.37
Year 2	IR1CB	Interview Room 1 Camera Essential	2	\$8,544.44	\$277.03	\$8,821.47
Year 2	IR1CB	Interview Room 1 Camera Essential	1	\$4,995.52	\$157.00	\$5,152.52
Total				\$27,445.95	\$981.41	\$28,427.36

Jun 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	50364	INTERVIEW - MIC - LINE POWERED	7	\$0.00	\$0.00	\$0.00
Year 3	IR1CB	Interview Room 1 Camera Essential	5	\$13,905.99	\$547.38	\$14,453.37
Year 3	IR1CB	Interview Room 1 Camera Essential	2	\$8,544.44	\$277.03	\$8,821.47
Year 3	IR1CB	Interview Room 1 Camera Essential	1	\$4,995.52	\$157.00	\$5,152.52
Total				\$27,445.95	\$981.41	\$28,427.36

Jun 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	50364	INTERVIEW - MIC - LINE POWERED	7	\$0.00	\$0.00	\$0.00
Year 4	IR1CB	Interview Room 1 Camera Essential	5	\$13,905.99	\$547.42	\$14,453.41
Year 4	IR1CB	Interview Room 1 Camera Essential	1	\$4,995.52	\$156.97	\$5,152.49
Year 4	IR1CB	Interview Room 1 Camera Essential	2	\$8,544.44	\$277.04	\$8,821.48
Total				\$27,445.95	\$981.43	\$28,427.38

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is governed by the Master Services and Purchasing Agreement executed between Milpitas Police Department and Axon Enterprise Inc. (formerly TASER International, Inc.) dated June 16, 2022 (Agreement) as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

8/22/2023



FLEET STATEMENT OF WORK BETWEEN AXON ENTERPRISE AND AGENCY

Introduction

This Statement of Work ("SOW") has been made and entered into by and between Axon Enterprise, Inc. ("AXON"), and Milpitas Police Dept. - CA the ("AGENCY") for the purchase of the Axon Fleet in-car video solution ("FLEET") and its supporting information, services and training. (AXON Technical Project Manager/The AXON installer)

Purpose and Intent

AGENCY states, and AXON understands and agrees, that Agency's purpose and intent for entering into this SOW is for the AGENCY to obtain from AXON deliverables, which used solely in conjunction with AGENCY's existing systems and equipment, which AGENCY specifically agrees to purchase or provide pursuant to the terms of this SOW.

This SOW contains the entire agreement between the parties. There are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in the SOW.

Acceptance

Upon completion of the services outlined in this SOW, AGENCY will be provided a professional services acceptance form ("Acceptance Form"). AGENCY will sign the Acceptance Form acknowledging that services have been completed in substantial conformance with this SOW and the Agreement. If AGENCY reasonably believes AXON did not complete the professional services in conformance with this SOW, AGENCY must notify AXON in writing of the specific reasons within seven (7) calendar days from delivery of the Acceptance Form. AXON will remedy the issues to conform with this SOW and re-present the Acceptance Form for signature. If AXON does not receive the signed Acceptance Form or written notification of the reasons for rejection within 7 calendar days of the delivery of the Acceptance Form, AGENCY will be deemed to have accepted the services in accordance to this SOW.

Force Majeure

Neither party hereto shall be liable for delays or failure to perform with respect to this SOW due to causes beyond the party's reasonable control and not avoidable by diligence.

Schedule Change

Each party shall notify the other as soon as possible regarding any changes to agreed upon dates and times of Axon Fleet in-car Solution installation-to be performed pursuant of this Statement of Work.

Axon Fleet Deliverables

Typically, within (30) days of receiving this fully executed SOW, an AXON Technical Project Manager will deliver to AGENCY's primary point of contact via electronic media, controlled documentation, guides, instructions and videos followed by available dates for the initial project review and customer readiness validation. Unless otherwise agreed upon by AXON, AGENCY may print and reproduce said documents for use by its employees only.

Security Clearance and Access

Upon AGENCY's request, AXON will provide the AGENCY a list of AXON employees, agents, installers or representatives which require access to the AGENCY's facilities in order to perform Work pursuant of this Statement of Work. AXON will ensure that each employee, agent or representative has been informed or and consented to a criminal background investigation by AGENCY for the purposes of being allowed access to AGENCY's facilities. AGENCY is responsible for providing AXON with all required instructions and documentation accompanying the security background check's requirements.

Training

AXON will provide training applicable to Axon Evidence, Cradlepoint NetCloud Manager and Axon Fleet application in a train-the-trainer style method unless otherwise agreed upon between the AGENCY and AXON.

Local Computer

AGENCY is responsible for providing a mobile data computer (MDC) with the same software, hardware, and configuration that AGENCY personnel will use with the AXON system being installed. AGENCY is responsible for making certain that any and all security settings (port openings, firewall settings, antivirus software, virtual private network, routing, etc.) are made prior to the installation, configuration and testing of the aforementioned deliverables.

Network

AGENCY is responsible for making certain that any and all network(s) route traffic to appropriate endpoints and AXON is not liable for network breach, data interception, or loss of data due to misconfigured firewall settings or virus infection, except to the extent that such virus or infection is caused, in whole or in part, by defects in the deliverables.

Cradlepoint Router

When applicable, AGENCY must provide AXON Installers with temporary administrative access to Cradlepoint's [NetCloud Manager](#) to the extent necessary to perform Work pursuant of this Statement of Work.

Evidence.com

AGENCY must provide AXON Installers with temporary administrative access to Axon Evidence.com to the extent necessary to perform Work pursuant of this SOW.

Wireless Upload System

If purchased by the AGENCY, on such dates and times mutually agreed upon by the parties, AXON will install and configure into AGENCY's existing network a wireless network infrastructure as identified in the AGENCY's binding quote based on conditions of the sale.

VEHICLE INSTALLATION

Preparedness

On such dates and times mutually agreed upon by the parties, the AGENCY will deliver all vehicles to an AXON Installer less weapons and items of evidence. Vehicle(s) will be deemed 'out of service' to the extent necessary to perform Work pursuant of this SOW.

Existing Mobile Video Camera System Removal

On such dates and times mutually agreed upon by the parties, the AGENCY will deliver all vehicles to an AXON Installer which will remove from said vehicles all components of the existing mobile video camera system unless otherwise agreed upon by the AGENCY.

Major components will be salvaged by the AXON Installer for auction by the AGENCY. Wires and cables are not considered expendable and will not be salvaged. Salvaged components will be placed in a designated area by the AGENCY within close proximity of the vehicle in an accessible work space.

Prior to removing the existing mobile video camera systems, it is both the responsibility of the AGENCY and the AXON Installer to test the vehicle's systems' operation to identify and operate, documenting any existing component or system failures and in detail, identify which components of the existing mobile video camera system will be removed by the AXON Installer.

In-Car Hardware/Software Delivery and Installation

On such dates and times mutually agreed upon by the parties, the AGENCY will deliver all vehicles to an AXON Installer, who will install and configure in each vehicle in accordance with the specifications detailed in the system's installation manual and its relevant addendum(s). Applicable in-car hardware will be installed and configured as defined and validated by the AGENCY during the pre-deployment discovery process.

If a specified vehicle is unavailable on the date and time agreed upon by the parties, AGENCY will provide a similar vehicle for the installation process. Delays due to a vehicle, or substitute vehicle, not being available at agreed upon dates and times may result in additional fees to the AGENCY. If the AXON Installer determines that a vehicle is not properly prepared for installation ("Not Fleet Ready"), such as a battery not being properly charged or properly up-fit for in-service, field operations, the issue shall be reported immediately to the AGENCY for resolution and a date and time for the future installation shall be agreed upon by the parties.

Upon completion of installation and configuration, AXON will systematically test all installed and configured in-car hardware and software to ensure that ALL functions of the hardware and software are fully operational and that any deficiencies are corrected unless otherwise agreed upon by the AGENCY, installation, configuration, test and the correct of any deficiencies will be completed in each vehicle accepted for installation.

Prior to installing the Axon Fleet camera systems, it is both the responsibility of the AGENCY and the AXON Installer to test the vehicle's existing systems' operation to identify, document any existing component or vehicle systems' failures. Prior to any vehicle up-fitting the AXON Installer will introduce the system's components, basic functions, integrations and systems overview along with reference to AXON approved, AGENCY manuals, guides, portals and videos. It is both the responsibility of the AGENCY and the AXON Installer to agree on placement of each components, the antenna(s), integration recording trigger sources and customer preferred power, ground and ignition sources prior to permanent or temporary installation of an Axon Fleet camera solution in each vehicle type. Agreed placement will be documented by the AXON Installer.

AXON welcomes up to 5 persons per system operation training session per day, and unless otherwise agreed upon by the AGENCY, the first vehicle will be used for an installation training demonstration. The second vehicle will be used for an assisted installation training demonstration. The installation training session is customary to any AXON Fleet installation service regardless of who performs the continued Axon Fleet system installations.

The customary training session does not 'certify' a non-AXON Installer, customer-employed Installer or customer 3rd party Installer, since the AXON Fleet products does not offer an Installer certification program. Any work performed by non-AXON Installer, customer-employed Installer or customer 3rd party Installer is not warranted by AXON, and AXON is not liable for any damage to the vehicle and its existing systems and AXON Fleet hardware.



This Master Services and Purchasing Agreement (“**Agreement**”) is between Axon Enterprise, Inc., a Delaware corporation (“**Axon**”), and the agency listed below or, if no agency is listed below, the agency on the Quote attached hereto (“**Agency**”). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote (“**Effective Date**”). Axon and Agency are each a “**Party**” and collectively “**Parties**”. This Agreement governs Agency’s purchase and use of the Axon Devices and Services detailed in the Quote Appendix (“**Quote**”). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

1. **Definitions.**

- 1.1. “**Axon Cloud Services**” means Axon’s web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.
- 1.2. “**Axon Device**” means all hardware provided by Axon under this Agreement.
- 1.3. “**Quote**” means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency’s purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.
- 1.4. “**Services**” means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2. **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated (“**Term**”).

- 2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote (“**Subscription Term**”).
- 2.2. Reserved.

3. **Payment.** Axon invoices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable.

4. **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5. **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Agency upon Axon’s delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6. **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7. **Warranty.**

- 7.1. **Limited Warranty; Disclaimer.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency’s receipt, except Signal Sidearm and Axon-manufactured accessories, which Axon warrants for 30 months and 90 days, respectively, from the date of Agency’s receipt. Used conducted energy weapon (“**CEW**”) cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. **All software and Axon Cloud Services, are provided “AS IS,” without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Axon Devices, software, and services that are not manufactured, published or performed by Axon (“Third-Party Products”) are not covered by Axon’s warranty and are only subject to the warranties of the third-party provider or manufacturer.**
- 7.2. **Claims.** If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon’s sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon’s option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon Manufactured Device or (b) 90-days from the date of repair or replacement.

7.2.1. If Agency exchanges a device or part, the replacement item becomes Agency’s property, and the



replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Agency must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.

- 7.3. **Spare Axon Devices.** At Axon's reasonable discretion, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.
- 7.4. **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Agency resells Axon Devices.
 - 7.4.1. To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.
 - 7.4.2. Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.
- 7.5. **Online Support Platforms.** Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at www.axon.com/sales-terms-and-conditions.
- 7.6. **Third-Party Software and Services.** Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Agency and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at www.axon.com/sales-terms-and-conditions, if any.
- 7.7. **Axon Aid.** Upon mutual agreement between Axon and Agency, Axon may provide certain products and services to Agency, as a charitable donation under the Axon Aid program. In such event, Agency expressly waives and releases any and all claims, now known or hereafter known, against Axon, and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "Releasees"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of Axon or any Releasees or otherwise. Agency agrees not to make or bring any such claim against Axon or any other Releasee, and forever release and discharge Axon and all other Releasees from liability under such claims. Agency expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately upon notice to the Agency.
8. **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.
9. **Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.
10. **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
11. **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.



12. **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
13. **IP Rights.** Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
14. **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon-manufactured Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon-manufactured Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
15. **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.
16. **Termination.**
 - 16.1. **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
 - 16.2. **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
 - 16.3. **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
17. **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for 5 years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Agency receives a public records request to disclose Axon Confidential Information, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.
18. **General.**
 - 18.1. **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
 - 18.2. **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
 - 18.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
 - 18.4. **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.



Master Services and Purchasing Agreement for Agency

Item # C15.

- 18.5. **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 18.7. **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8. **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9. **Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 18.10. **Governing Law.** The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 18.11. **Notices.** All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
 Attn: Legal
 17800 N. 85th Street
 Scottsdale, Arizona 85255
legal@axon.com

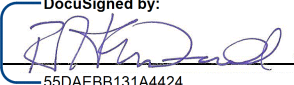
Agency: Milpitas Police Department
 Attn:
 Street Address: 1275 N Milpitas Blvd
 City, State, Zip: Milpitas, CA 95035
 Email:

- 18.12 **Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

AXON:

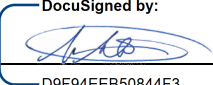
Axon Enterprise, Inc.

DocuSigned by:
 Signature: 
 55DAEBB131A4424...
 Name: Bobby Driscoll

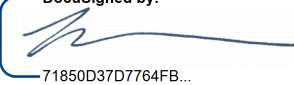
Title: VP, Associate General Counsel
 Jun-13-2022
 Date:

AGENCY:

Milpitas Police Department

DocuSigned by:
 Signature: 
 D9F94EEB50844F3...
 Name: Walter C. Rossmann

Title: Deputy City Manager
 Jun-16-2022
 Date:

DocuSigned by:

 71850D37D7764FB...
 Michael Matalipassi

City Attorney

Jun-15-2022



Master Services and Purchasing Agreement for Agency

Axon Cloud Services Terms of Use Appendix

1. **Definitions.**

- 1.1. **"Agency Content"** is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.
- 1.2. **"Evidence"** is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.
- 1.3. **"Non-Content Data"** is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.
- 1.4. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2. **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.

3. **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

5. **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

- 5.1. Agency will also maintain the security of end usernames and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

- 5.2. To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

6. **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.



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7. **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
8. **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
9. **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
10. **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
11. **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
12. **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, if any, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.
 - 12.1. The Axon Records Subscription Term will end upon the competition of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon competition of the OSP 7 Term ("**Axon Records Subscription**")
 - 12.2. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.
 - 12.3. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.
 - 12.4. Users of Axon Records at the agency may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon may limit usage should the Agency exceed an average rate of 100 GB per user per year of uploaded files. Axon will not bill for overages.
13. **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
 - 13.1. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 13.2. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;

**Master Services and Purchasing Agreement for Agency**

- 13.3. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
- 13.4. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
- 13.5. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
- 13.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
- 13.7. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
14. **After Termination.** Axon will not delete Agency Content for 90 days following termination. There will be no functionality of Axon Cloud Services during these 90 days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
15. **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
16. **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.
17. **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Privacy, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.



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Axon Customer Experience Improvement Program Appendix

1. Axon Customer Experience Improvement Program (ACEIP). The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers, to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.
2. ACEIP Tier 1.
 - 2.1. When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1¹. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Agency Content or ACEIP Content ("Use Case"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) ("**New Use Case**").
 - 2.2. **Expiration of ACEIP Tier 1**. Agency consent granted herein, will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency.
3. ACEIP Tier 2. In addition to ACEIP Tier 1, if Agency wants to help further improve Axon's services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Agency

¹ For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.

**Master Services and Purchasing Agreement for Agency**

Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed or de-identified data.

☐ Check this box if Agency wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Agency into ACEIP Tier 2 until Axon and Agency agree to terms in writing providing for such participation in ACEIP Tier 2.



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Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year hardware limited warranty.
2. **Officer Safety Plan.** If Agency purchases an Officer Safety Plan ("OSP"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
3. **OSP 7 Term.** OSP 7 begins on the date specified in the Quote ("**OSP 7 Term**").
4. **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("**BWC Upgrade**") as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
5. **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("**Dock Upgrade**"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.
6. **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.
7. **Upgrade Change.** If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
8. **Return of Original Axon Device.** Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
9. **Termination.** If Agency's payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
 - 9.2. Axon will not and has no obligation to provide the Upgrade Models.
 - 9.3. Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.



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TASER 7 Appendix

This TASER 7 Appendix applies to Agency's TASER 7, OSP 7, or OSP 7 Plus purchase from Axon, if applicable.

1. **Duty Cartridge Replenishment Plan.** If the Quote includes "Duty Cartridge Replenishment Plan", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. **Training.** If the Quote includes a training voucher, Agency must use the voucher within 1 year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "Training Content"), Agency may access Training Content. Axon will deliver all Training Content electronically.
3. **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a 5-year term, which includes the hardware manufacturer's warranty plus the 4-year extended term.
4. **Trade-in.** If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

<u>Agency Size</u>	<u>Days to Return from Start Date of TASER 7 Subscription</u>
Less than 100 officers	30 days
100 to 499 officers	90 days
500+ officers	180 days

5. **TASER 7 Subscription Term.** The TASER 7 Subscription Term for a standalone TASER 7 purchase begins on shipment of the TASER 7 hardware. The TASER 7 Subscription Term for OSP 7 begins on the OSP 7 Start date.
6. **Access Rights.** Upon Axon granting Agency a TASER 7 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 7 CEW devices during the TASER 7 Subscription Term. Agency may not exceed the number of end users than the Quote specifies.
7. **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body.
8. **Termination.** If payment for TASER 7 is more than 30 days past due, Axon may terminate Agency's TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the date of termination:
 - 8.1. TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.
 - 8.2. Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within 30 days of the date of termination.
 - 8.3. Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.



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Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency. If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.
2. **Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.
3. **Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.
4. **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.
5. **Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.
 - 5.1. With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.
6. **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.



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Additional Terms Appendix

Wage Theft Prevention

Compliance with Wage and Hour Laws: 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.

Final Judgments, Decisions, and Orders: 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 of Milpitas, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against Contractor and/or its Subcontractors: 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(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR) 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) 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.

Judgments or Decisions During Term of Contract: 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 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 Contract demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

Material Breach: 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.

Notice to City Related to Wage Theft Prevention: Notice provided to the City shall be addressed to: Attention:

Title: Master Services and Purchasing Agreement for Agency
 Department: Legal
 Version: 14.0
 Release Date: 3/10/2022

**Master Services and Purchasing Agreement for Agency**

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.



Master Services and Purchasing Agreement for Agency

INSURANCE REQUIREMENTS EXHIBIT

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 . The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

☐ Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

☒ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

☐ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

☒ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 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

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Department: Legal

Version: 14.0

Release Date: 3/10/2022



Master Services and Purchasing Agreement for Agency

and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

____ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

____ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

____ Insurance appropriates to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The 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

X 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



Master Services and Purchasing Agreement for Agency

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:

☐ Bid Bond
☐ Performance Bond
☐ 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.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

**Master Services and Purchasing Agreement for Agency****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.

**Master Services and Purchasing Agreement for Agency**

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:

Title: Master Services and Purchasing Agreement for Agency
Department: Legal
Version: 14.0
Release Date: 3/10/2022

**Master Services and Purchasing Agreement for Agency**

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.



First Amendment to the Master Services and Purchasing Agreement

This First Amendment (“**Amendment**”) is between Axon Enterprise, Inc., a Delaware corporation (“**Axon**”), and the City of Milpitas (“**Agency**”). This Amendment is effective as of the last signature date on this Amendment (“**Effective Date**”). Axon and Agency are each a “**Party**” and collectively “**Parties**”.

Axon and Agency are parties to the Master Services and Purchasing Agreement by and between the Parties dated June 16, 2022 (“**Agreement**”).

The Parties wish to incorporate further changes into the Agreement in order to add additional products and services.

The Parties therefore agree as follows:

1. The attached documents are hereby incorporated into the Agreement:
 - a. Quote Q-410635-45160.617KP as Attachment A to this Amendment.
2. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

Each representative identified below declares that the representative is authorized to execute this Amendment as of the date of signature.

Axon Enterprise, Inc.

Agency

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



**First Amendment to the Master
Services and Purchasing Agreement**

Attachment A – Axon Quote

See next page



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-410635-4

Item # C15.

Issued: 08/22/2023

Quote Expiration: 09/15/2023

Estimated Contract Start Date: 10/01/2023

Account Number: 105711

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Delivery;Invoice-1275 N Milpitas Blvd 1275 N Milpitas Blvd Milpitas, CA 95035-3153 USA	Milpitas Police Dept. - CA 1275 N Milpitas Blvd Milpitas CA 95035-3153 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Kyle Panasewicz Phone: +1 4803294734 Email: kylep@axon.com Fax: (480) 905-2071	Francisco Sanchez Phone: 408-586-2506 Email: fsanchez@milpitas.gov Fax: (408) 586-2488

Quote Summary

Program Length	45.4516 Months
TOTAL COST	\$109,783.56
ESTIMATED TOTAL W/ TAX	\$113,709.22

Discount Summary

Average Savings Per Year	\$12,612.75
TOTAL SAVINGS	\$47,772.48

Payment Summary

Date	Subtotal	Tax	Total
Sep 2023	\$27,445.94	\$981.41	\$28,427.35
Oct 2023	(\$0.23)	\$0.00	(\$0.23)
Jun 2024	\$27,445.95	\$981.41	\$28,427.36
Jun 2025	\$27,445.95	\$981.41	\$28,427.36
Jun 2026	\$27,445.95	\$981.43	\$28,427.38
Total	\$109,783.56	\$3,925.66	\$113,709.22

Quote Unbundled Price:
 Quote List Price:
 Quote Subtotal:

Item # C15.
\$119,625.99
\$109,783.56

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
Program									
IR1CB	Interview Room 1 Camera Essential	5	45	\$426.23	\$310.42	\$247.22	\$55,623.98	\$2,189.56	\$57,813.54
IR1CB	Interview Room 1 Camera Essential	1	45	\$408.92	\$390.68	\$444.05	\$19,982.09	\$627.97	\$20,610.06
IR1CB	Interview Room 1 Camera Essential	2	45	\$463.58	\$340.78	\$379.75	\$34,177.49	\$1,108.13	\$35,285.62
A la Carte Hardware									
50364	INTERVIEW - MIC - LINE POWERED	7			\$218.67	\$0.00	\$0.00	\$0.00	\$0.00
Total							\$109,783.56	\$3,925.66	\$113,709.22

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
Interview Room 1 Camera Essential	50114	INTERVIEW - CAMERA - COVERT SENSOR	1	09/01/2023
Interview Room 1 Camera Essential	50118	INTERVIEW - MIC - WIRED (STANDARD MIC)	1	09/01/2023
Interview Room 1 Camera Essential	50218	INTERVIEW - CAMERA - COVERT MAIN UNIT	1	09/01/2023
Interview Room 1 Camera Essential	50298	INTERVIEW - CAMERA - OVERT DOME	5	09/01/2023
Interview Room 1 Camera Essential	50298	INTERVIEW - CAMERA - OVERT DOME	2	09/01/2023
Interview Room 1 Camera Essential	50322	INTERVIEW - TOUCH PANEL PRO	5	09/01/2023
Interview Room 1 Camera Essential	50322	INTERVIEW - TOUCH PANEL PRO	2	09/01/2023
Interview Room 1 Camera Essential	50322	INTERVIEW - TOUCH PANEL PRO	1	09/01/2023
Interview Room 1 Camera Essential	74056	INTERVIEW - TOUCH PANEL WALL MOUNT	5	09/01/2023
Interview Room 1 Camera Essential	74056	INTERVIEW - TOUCH PANEL WALL MOUNT	1	09/01/2023
Interview Room 1 Camera Essential	74056	INTERVIEW - TOUCH PANEL WALL MOUNT	2	09/01/2023
Interview Room 1 Camera Essential	74059	INTERVIEW - ENCLOSURE - MOTION SENSOR	1	09/01/2023
A la Carte	50364	INTERVIEW - MIC - LINE POWERED	7	09/01/2023

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Interview Room 1 Camera Essential	50037	INTERVIEW - SOFTWARE - CLIENT (PER TOUCH PANEL-PC)	5	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50037	INTERVIEW - SOFTWARE - CLIENT (PER TOUCH PANEL-PC)	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50037	INTERVIEW - SOFTWARE - CLIENT (PER TOUCH PANEL-PC)	1	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50039	INTERVIEW - SOFTWARE - CLIENT MAINTENANCE (PER TOUCH PANEL-P	5	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50039	INTERVIEW - SOFTWARE - CLIENT MAINTENANCE (PER TOUCH PANEL-P	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50039	INTERVIEW - SOFTWARE - CLIENT MAINTENANCE (PER TOUCH PANEL-P	1	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50041	INTERVIEW - SOFTWARE - STREAMING SERVER LICENSE (PER SERVER)	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50041	INTERVIEW - SOFTWARE - STREAMING SERVER LICENSE (PER SERVER)	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50043	INTERVIEW - SOFTWARE - STREAMING SERVER MAINTENANCE (PER SER	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50043	INTERVIEW - SOFTWARE - STREAMING SERVER MAINTENANCE (PER SER	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50045	UNLIMITED INTERVIEW ROOM CLOUD STORAGE	5	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50045	UNLIMITED INTERVIEW ROOM CLOUD STORAGE	2	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50045	UNLIMITED INTERVIEW ROOM CLOUD STORAGE	1	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	73840	EVIDENCE.COM BASIC ACCESS LICENSE	1	10/01/2023	07/14/2027

Services

Item # C15.

Bundle	Item	Description	QTY
Interview Room 1 Camera Essential	85170	INTERVIEW - SERVICE - STANDARD INSTALL AND SETUP (PER ROOM)	5
Interview Room 1 Camera Essential	85170	INTERVIEW - SERVICE - STANDARD INSTALL AND SETUP (PER ROOM)	1
Interview Room 1 Camera Essential	85170	INTERVIEW - SERVICE - STANDARD INSTALL AND SETUP (PER ROOM)	2

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Interview Room 1 Camera Essential	50448	EXT WARRANTY, INTERVIEW ROOM	5	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50448	EXT WARRANTY, INTERVIEW ROOM	1	10/01/2023	07/14/2027
Interview Room 1 Camera Essential	50448	EXT WARRANTY, INTERVIEW ROOM	2	10/01/2023	07/14/2027

Payment Details

Item # C15.

Sep 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	50364	INTERVIEW - MIC - LINE POWERED	7	\$0.00	\$0.00	\$0.00
Year 1	IR1CB	Interview Room 1 Camera Essential	5	\$13,905.98	\$547.38	\$14,453.36
Year 1	IR1CB	Interview Room 1 Camera Essential	2	\$8,544.44	\$277.03	\$8,821.47
Year 1	IR1CB	Interview Room 1 Camera Essential	1	\$4,995.52	\$157.00	\$5,152.52
Total				\$27,445.94	\$981.41	\$28,427.35

Oct 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Invoice Upon Fulfillment	IR1CB	Interview Room 1 Camera Essential	2	(\$0.23)	\$0.00	(\$0.23)
Total				(\$0.23)	\$0.00	(\$0.23)

Jun 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	50364	INTERVIEW - MIC - LINE POWERED	7	\$0.00	\$0.00	\$0.00
Year 2	IR1CB	Interview Room 1 Camera Essential	5	\$13,905.99	\$547.38	\$14,453.37
Year 2	IR1CB	Interview Room 1 Camera Essential	2	\$8,544.44	\$277.03	\$8,821.47
Year 2	IR1CB	Interview Room 1 Camera Essential	1	\$4,995.52	\$157.00	\$5,152.52
Total				\$27,445.95	\$981.41	\$28,427.36

Jun 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	50364	INTERVIEW - MIC - LINE POWERED	7	\$0.00	\$0.00	\$0.00
Year 3	IR1CB	Interview Room 1 Camera Essential	5	\$13,905.99	\$547.38	\$14,453.37
Year 3	IR1CB	Interview Room 1 Camera Essential	2	\$8,544.44	\$277.03	\$8,821.47
Year 3	IR1CB	Interview Room 1 Camera Essential	1	\$4,995.52	\$157.00	\$5,152.52
Total				\$27,445.95	\$981.41	\$28,427.36

Jun 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	50364	INTERVIEW - MIC - LINE POWERED	7	\$0.00	\$0.00	\$0.00
Year 4	IR1CB	Interview Room 1 Camera Essential	5	\$13,905.99	\$547.42	\$14,453.41
Year 4	IR1CB	Interview Room 1 Camera Essential	1	\$4,995.52	\$156.97	\$5,152.49
Year 4	IR1CB	Interview Room 1 Camera Essential	2	\$8,544.44	\$277.04	\$8,821.48
Total				\$27,445.95	\$981.43	\$28,427.38

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

8/22/2023



FLEET STATEMENT OF WORK BETWEEN AXON ENTERPRISE AND AGENCY

Introduction

This Statement of Work ("SOW") has been made and entered into by and between Axon Enterprise, Inc. ("AXON"), and Milpitas Police Dept. - CA the ("AGENCY") for the purchase of the Axon Fleet in-car video solution ("FLEET") and its supporting information, services and training. (AXON Technical Project Manager/The AXON installer)

Purpose and Intent

AGENCY states, and AXON understands and agrees, that Agency's purpose and intent for entering into this SOW is for the AGENCY to obtain from AXON deliverables, which used solely in conjunction with AGENCY's existing systems and equipment, which AGENCY specifically agrees to purchase or provide pursuant to the terms of this SOW.

This SOW contains the entire agreement between the parties. There are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in the SOW.

Acceptance

Upon completion of the services outlined in this SOW, AGENCY will be provided a professional services acceptance form ("Acceptance Form"). AGENCY will sign the Acceptance Form acknowledging that services have been completed in substantial conformance with this SOW and the Agreement. If AGENCY reasonably believes AXON did not complete the professional services in conformance with this SOW, AGENCY must notify AXON in writing of the specific reasons within seven (7) calendar days from delivery of the Acceptance Form. AXON will remedy the issues to conform with this SOW and re-present the Acceptance Form for signature. If AXON does not receive the signed Acceptance Form or written notification of the reasons for rejection within 7 calendar days of the delivery of the Acceptance Form, AGENCY will be deemed to have accepted the services in accordance to this SOW.

Force Majeure

Neither party hereto shall be liable for delays or failure to perform with respect to this SOW due to causes beyond the party's reasonable control and not avoidable by diligence.

Schedule Change

Each party shall notify the other as soon as possible regarding any changes to agreed upon dates and times of Axon Fleet in-car Solution installation-to be performed pursuant of this Statement of Work.

Axon Fleet Deliverables

Typically, within (30) days of receiving this fully executed SOW, an AXON Technical Project Manager will deliver to AGENCY's primary point of contact via electronic media, controlled documentation, guides, instructions and videos followed by available dates for the initial project review and customer readiness validation. Unless otherwise agreed upon by AXON, AGENCY may print and reproduce said documents for use by its employees only.

Security Clearance and Access

Upon AGENCY's request, AXON will provide the AGENCY a list of AXON employees, agents, installers or representatives which require access to the AGENCY's facilities in order to perform Work pursuant of this Statement of Work. AXON will ensure that each employee, agent or representative has been informed or and consented to a criminal background investigation by AGENCY for the purposes of being allowed access to AGENCY's facilities. AGENCY is responsible for providing AXON with all required instructions and documentation accompanying the security background check's requirements.

Training

AXON will provide training applicable to Axon Evidence, Cradlepoint NetCloud Manager and Axon Fleet application in a train-the-trainer style method unless otherwise agreed upon between the AGENCY and AXON.

Local Computer

AGENCY is responsible for providing a mobile data computer (MDC) with the same software, hardware, and configuration that AGENCY personnel will use with the AXON system being installed. AGENCY is responsible for making certain that any and all security settings (port openings, firewall settings, antivirus software, virtual private network, routing, etc.) are made prior to the installation, configuration and testing of the aforementioned deliverables.

Network

AGENCY is responsible for making certain that any and all network(s) route traffic to appropriate endpoints and AXON is not liable for network breach, data interception, or loss of data due to misconfigured firewall settings or virus infection, except to the extent that such virus or infection is caused, in whole or in part, by defects in the deliverables.

Cradlepoint Router

When applicable, AGENCY must provide AXON Installers with temporary administrative access to Cradlepoint's [NetCloud Manager](#) to the extent necessary to perform Work pursuant of this Statement of Work.

Evidence.com

AGENCY must provide AXON Installers with temporary administrative access to Axon Evidence.com to the extent necessary to perform Work pursuant of this SOW.

Wireless Upload System

If purchased by the AGENCY, on such dates and times mutually agreed upon by the parties, AXON will install and configure into AGENCY's existing network a wireless network infrastructure as identified in the AGENCY's binding quote based on conditions of the sale.

VEHICLE INSTALLATION

Preparedness

On such dates and times mutually agreed upon by the parties, the AGENCY will deliver all vehicles to an AXON Installer less weapons and items of evidence. Vehicle(s) will be deemed 'out of service' to the extent necessary to perform Work pursuant of this SOW.

Existing Mobile Video Camera System Removal

On such dates and times mutually agreed upon by the parties, the AGENCY will deliver all vehicles to an AXON Installer which will remove from said vehicles all components of the existing mobile video camera system unless otherwise agreed upon by the AGENCY.

Major components will be salvaged by the AXON Installer for auction by the AGENCY. Wires and cables are not considered expendable and will not be salvaged. Salvaged components will be placed in a designated area by the AGENCY within close proximity of the vehicle in an accessible work space.

Prior to removing the existing mobile video camera systems, it is both the responsibility of the AGENCY and the AXON Installer to test the vehicle's systems' operation to identify and operate, documenting any existing component or system failures and in detail, identify which components of the existing mobile video camera system will be removed by the AXON Installer.

In-Car Hardware/Software Delivery and Installation

On such dates and times mutually agreed upon by the parties, the AGENCY will deliver all vehicles to an AXON Installer, who will install and configure in each vehicle in accordance with the specifications detailed in the system's installation manual and its relevant addendum(s). Applicable in-car hardware will be installed and configured as defined and validated by the AGENCY during the pre-deployment discovery process.

If a specified vehicle is unavailable on the date and time agreed upon by the parties, AGENCY will provide a similar vehicle for the installation process. Delays due to a vehicle, or substitute vehicle, not being available at agreed upon dates and times may result in additional fees to the AGENCY. If the AXON Installer determines that a vehicle is not properly prepared for installation ("Not Fleet Ready"), such as a battery not being properly charged or properly up-fit for in-service, field operations, the issue shall be reported immediately to the AGENCY for resolution and a date and time for the future installation shall be agreed upon by the parties.

Upon completion of installation and configuration, AXON will systematically test all installed and configured in-car hardware and software to ensure that ALL functions of the hardware and software are fully operational and that any deficiencies are corrected unless otherwise agreed upon by the AGENCY, installation, configuration, test and the correct of any deficiencies will be completed in each vehicle accepted for installation.

Prior to installing the Axon Fleet camera systems, it is both the responsibility of the AGENCY and the AXON Installer to test the vehicle's existing systems' operation to identify, document any existing component or vehicle systems' failures. Prior to any vehicle up-fitting the AXON Installer will introduce the system's components, basic functions, integrations and systems overview along with reference to AXON approved, AGENCY manuals, guides, portals and videos. It is both the responsibility of the AGENCY and the AXON Installer to agree on placement of each components, the antenna(s), integration recording trigger sources and customer preferred power, ground and ignition sources prior to permanent or temporary installation of an Axon Fleet camera solution in each vehicle type. Agreed placement will be documented by the AXON Installer.

AXON welcomes up to 5 persons per system operation training session per day, and unless otherwise agreed upon by the AGENCY, the first vehicle will be used for an installation training demonstration. The second vehicle will be used for an assisted installation training demonstration. The installation training session is customary to any AXON Fleet installation service regardless of who performs the continued Axon Fleet system installations.

The customary training session does not 'certify' a non-AXON Installer, customer-employed Installer or customer 3rd party Installer, since the AXON Fleet products does not offer an Installer certification program. Any work performed by non-AXON Installer, customer-employed Installer or customer 3rd party Installer is not warranted by AXON, and AXON is not liable for any damage to the vehicle and its existing systems and AXON Fleet hardware.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	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)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	9/19/2023
	<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.

Current Status:

City Hall

The scope of work authorized repairs to the boiler, air handlers, and variable air volume (VAV) boxes to the City Hall building.

The new boilers have been delivered and removal of the existing boiler and other preparation work in anticipation of the boiler installation commenced on September 11, 2023. Staff anticipates the work to be completed by the end of September/early October and on time so that the building will have heat for the upcoming winter season. Staff has also begun discussions with the contractor for the design of the new air handlers and assessment of the VAV boxes but are currently focusing all resources on the installation of the boiler.

Public Works/Information Technology/Police Departments

At this facility, the Building Management System (BMS), boiler pumps and VAV boxes were identified in need of emergency repairs.

The new boiler and chiller pumps were received by the contractor and scheduled for installation in the coming weeks. Assessment of the VAV boxes continues in preparation for the update to the BMS system.

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 facility.
2. Determine by a four-fifths vote that the condition continues to constitute an emergency.

Attachment:

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Accept the FY 2022-23 Commissioners Annual Report for Six (6) Commissions and Approve Six (6) Commission Work Plans for FY 2023-24 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	9/19/2023
Recommendation:	1. Accept the FY 2022-23 Commissioners Annual Report 2. Approve proposed FY 2023-24 Work Plans for: a. Arts Commission (including two requested workplan additions detailed in the report) b. Library and Education Commission c. Parks, Recreation and Cultural Resources Commission d. Senior Advisory Commission e. Veterans Commission f. Youth Advisory Commission

BACKGROUND:

The City of Milpitas has 13 Commissions, including the Measure F Oversight Committee, appointed by the Mayor and City Council. On April 16, 2019, the City Council approved the City of Milpitas Standard Commission By-Laws (By-Laws). Per Section 1, titled "Purpose" of the By-Laws, "A Commission serves as an active advisory group to the City Council on a variety of topics as directed by the City Council." Therefore, annually, City Commissions develop and recommend a work plan to outline tasks, goals, and or projects related to their advisory area. Staff work with commissions to develop their respective workplans and takes them to Council for review and approval.

ANALYSIS:

The Arts Commission, Library and Education Commission, Parks, Recreation and Cultural Resources Commission, Senior Advisory Commission, Veterans Commission and Youth Advisory Commission (Commissions) meet at different frequencies such as monthly, bi-monthly, or specially designated months as determined by their By-Law addenda. Commissions began meeting and discussing their FY 2023-24 workplans and have prepared new work plans that may include items from the previous year's plan that were unaccomplished. All Commissions identified work plan items in their FY 2022-23 work plans they would like to carry forward to their FY 2023-24 work plans. Each Commission reviewed tasks from their 2022-23 Work Plans and categorized them as either "Accomplished" or "Carryover." Those tasks are reported in the Commissioners Annual Report Information Memorandum, which is included as an attachment for this item. Carryover tasks in the Annual Report are included in each Commission's proposed 2023-24 Work Plans.

At the September 5, 2023, City Council meeting, consensus was received to address two items related to the Arts Commission Work Plan:

1. Addition of new Public Art Project for the City Hall Lobby
2. Milpitas Arts and Culture In-Kind Grant Program Review and Approval Process

Staff is proposing the Arts Commission FY2023-24 Draft Work Plan be amended to include the following two tasks/projects:

Addition of new Public Art Project for the City Hall Lobby

The addition of a new Public Art Project for the City Hall Lobby (Lobby) would be added to the Arts Commission's FY 2023-24 Work Plan. The addition of this project would indicate the desire for the initiation of the development and distribution of a new public art project RFP for artists to respond and propose art design

for space(s) in the Lobby. Staff will return to the City Council as part of the City Council Prioritization process in October 2023 to receive direction on how to prioritize this new project request.

Milpitas Arts and Culture In-Kind Grant Program Review and Approval Process

The addition of a new Work Plan task to update the Milpitas Arts and Culture In-Kind Grant Program process so that recommended grant applications receive final City Council approval would be added to the Arts Commissions FY 2023-24 Work Plan. The addition of this task would initiate City staff and Arts Commission review of all program related documents and associated application deadlines culminating in the implementation of a more streamlined grant application process that concludes with City Council review and final approval of grant awards and their associated in-kind grant award value. Upon approval of adding this task to the Arts Commission's Work Plan, staff would return to City Council with grant applications for review prior to any future grant awards.

Following the City Council approval of either or both the proposed amendments, the draft Arts Commission Work Plan will be updated to reflect those changes and implemented as the Final Work Plan.

FISCAL IMPACT:

Each Commission is allocated \$1,000 annually by the City Council in the adopted budget. These funds are budgeted and approved as part of the FY 2023-24 budget and are to be used towards City Council approved tasks and projects, and administrative costs related to the Commission. No Commission, with the exception of the Arts Commission, has identified additional funds needed to accomplish their work plan. The Arts Commission work plan includes Public Art projects which are funded by the City of Milpitas' Public Art Fund. The Public Art Fund estimated available fund balance as of 6/30/2023 is \$951,000. The Arts Commission will return separately to the City Council for public art project budget approval for those proposed projects.

California Environmental Quality Act (CEQA):

By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA.

RECOMMENDATION:

1. Accept the 2022-23 Commissioners Annual Report
2. Approve proposed Fiscal Year 2023-24 Work Plans for:
 - a. Arts Commission (including two requested workplan additions detailed in the report)
 - b. Library and Education Commission
 - c. Parks, Recreation and Cultural Resources Commission
 - d. Senior Advisory Commission
 - e. Veterans Commission
 - f. Youth Advisory Commission

Attachment(s):

1. Arts Commission Work Plan
2. Library and Education Commission Work Plan
3. Parks, Recreation and Cultural Resources Commission Work Plan
4. Senior Advisory Commission Work Plan
5. Veterans Commission Work Plan
6. Youth Advisory Commission Work Plan

Arts Commission FY 2023-24 Work Plan

Item # C17.

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
Public Art Master Plan	Assist with outreach and development of Public Art Master Plan	Consultant, Commission, Staff	Fall 2023
Placemaking through Arts	Assist with ARPA-funded Art Walk event	Commission	Fall 2023
	Work with staff and consultants to incorporate art placemaking opportunities into Main Street and Milpitas Metro development activities	Commission, staff	Ongoing
	Work with staff to incorporate art placemaking into selected City events	Commission, staff	Ongoing
Public Art Installations	Conduct Call for Artists for public art park historical markers, jointly with PRCRC (\$90,000)	Commission, Staff	Summer 2023
	Select and Commission Artists for public art park historical markers, jointly with PRCRC	Commission, Staff	Fall 2023
	Conduct Invitational Call for Dixon Landing Park artwork (\$30,000)	Commission, Staff	Summer 2023
	Support Mural Program – Utility Box graffiti abatement projects (\$1800 per box)	Commission, Staff	Ongoing
	Conduct Invitational Call for Artists for VTA Overpass Mural Project (\$TBD)	Commission, Staff	Winter 2024
City Public Art Collection	Following conservator evaluation, recommend maintenance schedule for City-owned public art.	Commission, Staff	Spring 2024
Milpitas Arts	Support performing arts in Milpitas.	Commission, Staff	Ongoing
	Support Phantom Art Gallery exhibits. Review and approve applications.	Commission, Staff	Ongoing
	Promote public awareness of Milpitas Arts and Culture Grants to encourage applications for events. Review and approve up to in-kind value of \$10,000.	Commission, Staff	Ongoing

City of Milpitas
Library and Education Advisory Commission
FY 2023-2024 Work Plan

Item # C17.

Work Plan Summary

- Advise and make recommendations on Library operations
- Support greater awareness within the Milpitas community regarding library resources, literacy activities and amenities
- Partner to broaden and enhance literacy and education initiatives based out of the Milpitas Library
- Advise on support of diverse Library initiatives, programs and events

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
County Commissions Forum	Attend County Commissions Forum and report back	Commission, County Library	February 2024
Essay Contest/Special Projects ** April (Arts, Math and Poetry focus)	Conduct Annual Youth Essay Contest – arrange judging and awards. In recognition of the growing annual contest, dedicate up to \$5,000 from LEAC account for participant awards Special Projects: coordinate special projects including event preparation, marketing, etc.	Commission, Community Partners, City Staff	Spring 2024
Attend Local Library Conference	Attend local Library Conference to gain continued library knowledge	Commission	April 2024
National Library Week	Promote program citywide via City of Milpitas Youth Programs, Milpitas Senior Center, general public, etc.	Commission, County Library	April 2024
Summer Reading Program	Promote program citywide via City of Milpitas Youth Programs, Milpitas Senior Center, general public, etc.	Commission, County Library, City Staff	May-August 2023/24
City Events	Attend City Events and promote Literacy and Library Services	Commission, City Staff	FY 2023/24
Service Levels for Growing Populations	Understand potential service level needs in response to the increases in Milpitas Population in recent years	Commission, County Library, City Staff	FY 2023/24
Milpitas Author's Day	Explore opportunities to recognize local Milpitas Authors	Commission, City Staff	FY 2023/24

City of Milpitas
Parks, Recreation and Cultural Resources Commission
Work Plan FY 2023-2024

Item # C17.

Work Plan Goals:

Advise City Council on recreation, park, and historic preservation activities; review and recommend planning and development of new and existing parks and recreation facilities; recommend protecting and enhancing special aspects of the City's heritage

<u>Topic/Advisory Area</u>	<u>Tasks</u>	<u>Required Resources</u>	<u>Deadline</u>
Park Name History Project Phase II	1.Create online webpage (Comm & Dept.)	Commission, Staff, Grants	Ongoing
	2. Seek CC approval	Historical Society	
	3. Marker Development & Installation		
Annual Park/Facility Tour	1. Determine theme for tour	Commission , Staff	Annually - June
	2. Confirm location(s)		
	3. Conduct Tour		
Quarterly Reports	1. Receive Quarterly Reports from Recreation	Staff	Quarterly
	2. Staff on: Community Garden, Program areas		
	3. Allocations, Recreation, Trends, CIP, Special Events		
Review Historic and Cultural Resources Master Plan Update	1. Receive project updates	Commission, Staff,	Jun-24
	2. Promote Online component for historic/cultural sites	County, Historical Society	
	3. Work with Historical Society on Annual Tour		
Bicycle & Pedestrian Trails	1. Family Bike Day Event	Commission, Staff	May-24
	2. Consider City wide bike event		
	3. Bike repair clinic		
Ongoing Review	1. Private Development Projects including open space	Commission, Staff	Ongoing/Per project
	2. Make recommendation on Annual CIP Park Improvement Projects & Priorities		
Sister Cities	1. Outreach to community groups and schools	Commission, Staff	Ongoing
	2. Maintain existing relationships		

City of Milpitas
Parks, Recreation and Cultural Resources Commission
Work Plan FY 2023-2024

Item # C17.

		3. Support current community relationships			
Community Gardens		1. Review Garden Rules & Program		Commission, Staff	Ongoing
		2. Recommend any updates, changes			

City of Milpitas
Parks, Recreation and Cultural Resources Commission
Work Plan FY 2023-2024

Item # C17.

**City of Milpitas
Senior Advisory Commission
FY 2023-2024 Work Plan**

Work Plan Summary

- Establish Wellness & Resources action plan with a focus on senior's health, wellness & mental wellbeing activities
- Establish Senior's Events action plan with a focus on the annual Resource Fair and Open House Event
- Sponsor Senior Center-based events and support "Age-Friendly," Milpitas HOPE and Seniors' Agenda activities

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
During the year, host the Senior Center's annual Open House event and/or Resource Fair	Determine event components needed, delegate tasks equitably, and assist staff with marketing and promotion ahead of the event's date.	Commission, Community Partners, City Staff	One month prior to event date
Promote the Senior Center Resource Area , various health and wellbeing presentations , and social services-related projects throughout the year including Milpitas HOPE activities	Assist the Social Services Coordinator in overseeing the Resource Area and helping promote its benefits to our members. Assist with the promotion of various social services-type projects such as Milpitas HOPE, Dementia Friends, etc.	Commission, Community Partners, City Staff	Ongoing
Support Technology for Seniors program that helps bridge the digital divide and counter social isolation	Help promote the program and its benefits to Milpitas Seniors. Contribute \$150 each college semester for two semesters (\$300 total) from the Senior Advisory Commission account for 1 college intern equivalent to lead the program and provide tech support to participants.	Commission, Community Partners, City Staff	Ongoing
Sponsor and support Senior Center events and activities	Sponsor and promote: Birthday Celebrations, Themed Dances, Holiday Events, etc. Research and consider various transportation and language translation opportunities to accommodate the broader Milpitas senior adult community.	Commission, City Staff	Ongoing
Support/Participate in "Age-Friendly" Initiatives	Promote and participate in Age-Friendly Initiatives and Santa Clara County Seniors' Agenda activities.	Commission, Community Partners, City Staff	Ongoing

Veterans Advisory Commission

FY 2023-24 Work Plan

Item # C17.

Topic/Advisory Area	Tasks	Required Resources	Goal Deadline
Serve as Knowledge base for Veterans/Local Resources and Assistance by hosting a Resource Fair in 2023/2024	Work with Veterans Service Office on all events that are sponsored/co-sponsored by the Commission. Maintain and update the Veterans webpage for the City, to include items such as policies, burial benefits, shelter, hospitals, programs, resources, and events.	Commission, Staff, and Other Veteran Agencies	FY 2023-2024
Assist with planning of Veteran based City Sponsored Events	Work with City Staff to incorporate items to the Annual Veterans Day and Memorial Day ceremonies.	Commission, Staff	FY 2023-2024 Event Calendar Dates 11/11/23 & 5/27/2024
Annual Veterans Recognition Lunch	Work with City staff to host the Annual Recognition Lunch, decide on menu, decorations, entertainment, speaker, fundraising and recognition of the Veteran of the Year etc.	Commission, Staff	Nov 2023
Say Hi to a Hero	Work with Milpitas schools and the City of Milpitas Recreation and Community Services after-school programs to teach students on how to properly raise and lower the flag: provide education sessions for elementary-age students; work directly with the Milpitas High School NJROTC on mentorship and involvement with special events.	Commission, MUSD, Staff	FY 2023-2024
Honoring Milpitas Veterans Memorial	Work with Milpitas staff to research the implementation of a permanent Memorial honoring Milpitas Veterans in the form of bricks in the Veterans Plaza Area.	Commission, Staff	FY 2023-2024
Veteran of the Year	Work with the Milpitas community to nominate veterans for the Veteran of the Year award	Commission	FY 2023-2024
Locating Milpitas Veterans	Work with City Staff to provide additional resources for locating Milpitas Veterans.	Commission, Staff	Ongoing

City of Milpitas
Youth Advisory Commission
Work Plan FY 2023-2024

Item # C17.

Work Plan Goals:

Plan and implement at least four youth/teen events for community

Assist with increasing Teen Center participation through program promotion and partnerships

Increase youth and teen engagement through volunteering

Topics/Advisory Area	Tasks	Required Resources	Deadline
Volunteerism	1. Identify events in need of service	Commission, Staff	On Going
	2. Establish subcommittees	Commission	On Going
	3. Tree Lighting	Commission	12/1/2023
	4. Charity Coat Drive	Commission	12/1/23-12/8/23
	5. Earth Day - Thrifting Event	Commission, Staff, Outside Agency	4/20/2023
	6. Youth-Commission Advocacy	Commission	On Going
Teen Center	1. Programming and engagement for teens	Commission, Staff	On Going
	2. Teen Center promotion	Commission, Staff	On Going
Engage Youth and Teens	1. Basketball Tournament	Commission, Staff	2/9/2023
	2. Spelling Bee	Commission, Staff	3/29/2023
	3. Promotion of Milpitas Youth Force	Commission, Staff	On Going



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Proposed Project Locations Pertaining to Project No. 4299 Bicycle Improvement Project to be Funded by Caltrans 2022 Priority Legislative Budget Project (PLPB) Earmarks (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Acting Transportation and Traffic Manager, 408-586-3316)
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	9/19/2023
Recommendation:	Approve proposed project locations pertaining to Project No. 4299 Bicycle Improvement Project to be funded by Caltrans 2022 Priority Legislative Budget Project (PLPB) Earmarks.

BACKGROUND:

The City received a State allocation of a One-time State Funding Grant for bicycle facility improvements in FY22-23. The Milpitas Bike Lane Facilities Enhancements project is funded with \$1 million from the State Budget Act of 2022. The project goal is to improve bicyclist safety, reduce traffic stress for bicycle users, and promote bicycle use by eliminating bicycle facility gaps and upgrading existing bicycle facilities in the City. The project streets include Abel Street, Main Street, and Milpitas Boulevard corridors. These streets are identified as high priority routes by the Master Plan that connect to historical downtown on Main Street, schools, and a key route that crosses railroad tracks and creek.

ANALYSIS:

The recently adopted (2024-2028) 5-year Capital Improvement Program includes Project No. 4299 Bicycle Improvement Project 2024-2025, the "Project".

The existing bicycle network in the City of Milpitas includes approximately 50 miles of bicycle lanes, buffered bicycle lanes, designated bicycle routes, and paved shared use paths. Over 30 miles of the bicycle facilities are on-street bikeways and are primarily located along major roadways with higher posted travel speeds and significant traffic volumes.

The City's Trail, Pedestrian, and Bicycle Master Plan adopted by City Council in 2022 proposed to expand and enhance the bicycle facilities with a complete and connected low-stress bicycle network that supports travel to, from, and around major destinations in Milpitas.

This projects' goals are to install and improve existing bicycle facilities in the City and provide safer bicycle routes and promote alternative methods of transportation to reduce greenhouse gas emissions. The bike enhancements proposed for the project include Class IIB: Buffered Bike Lane, Class IV: Cycle Track, Class III: Bike Route, and Green Bike Lane at bicycle and vehicular conflict zones. These enhancements will be installed at the following locations as part of this project:

- Abel Street from Milpitas Blvd to Redwood Avenue
- Abel Street from Redwood Avenue to Marylinn Drive
- Marylinn Drive from Abel Street to Weller Lane
- Main Street from Weller Lane to Carlo Street
- Main Street from Carlo Street to Great Mall Parkway
- Milpitas Blvd from Abel Street to Calaveras Blvd

The Project is to be funded using \$1M in Caltrans Priority Legislative Budget Project (PLPB) Earmarked funds. Upon approval of the project location list by City Council, the project will be submitted to Caltrans for their review and approval of the scope, schedule and fee. Once the project has been approved by Caltrans, the City and Caltrans will enter into a Fund Transfer Agreement in order for the City to obtain the funds. The design of the approved scope would commence in Spring 2024 and the project is proposed to be in construction summer of 2025.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve Project No. 4299 Bicycle Improvement Project 2024-2025 is to be funded by Caltrans 2022 PLPB Earmarked funds.

Pros: Staff time would be freed up to work on other priority projects in the City.

Cons: These critical bicycle lane improvement projects would not be implemented and the City would not be able to utilize the \$1.0M PLPB Earmark funds from the State of California.

Reason not Recommended: The PLPB Earmark fund is needed to pay for the proposed bicycle lane improvements and these improvements are critical to the continued development of a safe and reliable bicycle transportation network in the City of Milpitas.

FISCAL IMPACT:

The receipt of the PLPB Earmark fund for use in the City's bicycle lane enhancement project is needed to help offset the City costs and will reduce the need for funding from other City sources such as the General Fund. It is anticipated the City will receive \$1M in PLPB Earmark funds to be used in Project No. 4299 Bicycle Improvement Project 2024-2025. The \$1m has been appropriated in the project during the adoption of Capital Improvement Program for Fiscal year 2024-2028.

California Environmental Quality Act (CEQA):

The project is categorically exempt under Section 15301 of the California Environmental Quality Act guidelines for maintenance of existing facilities.

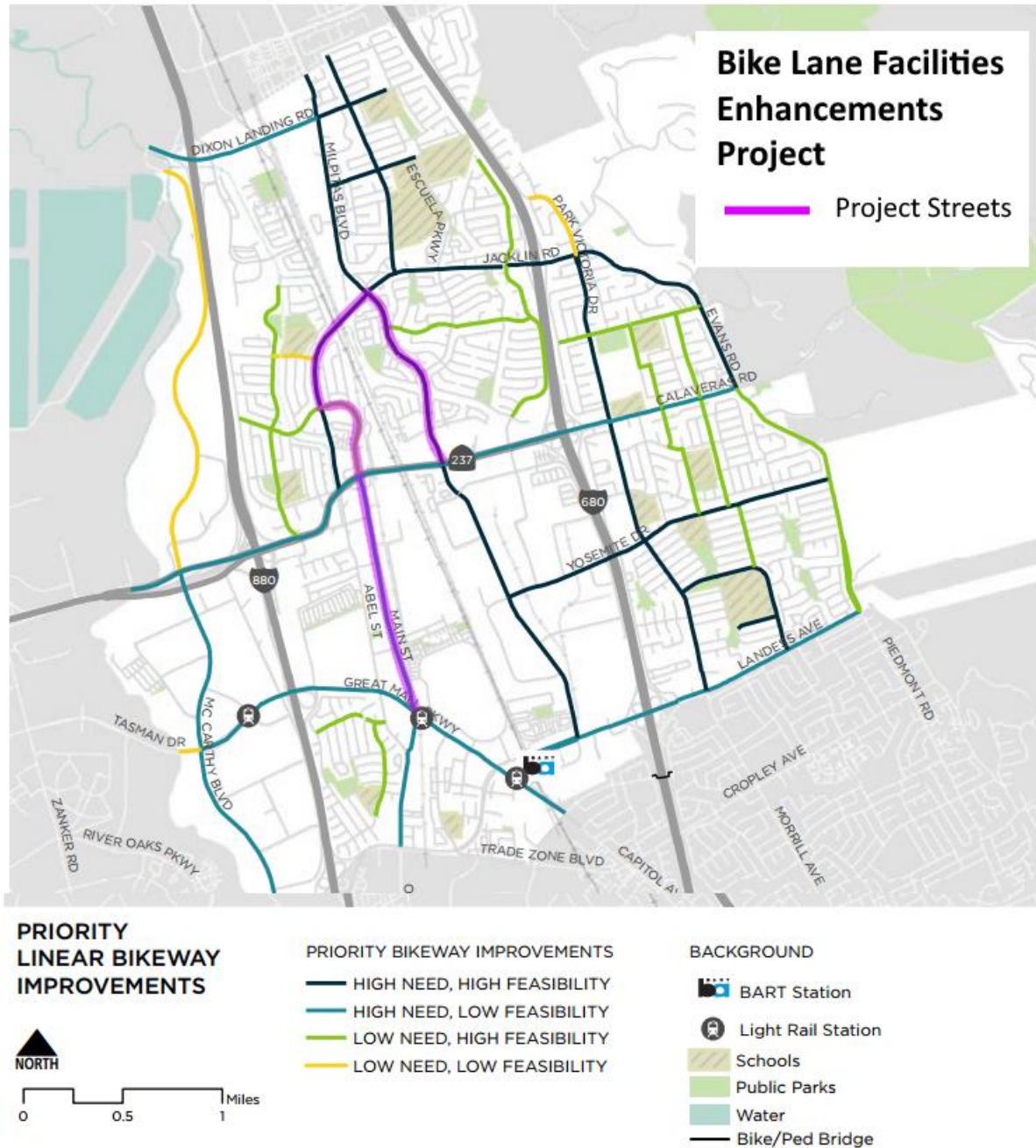
RECOMMENDATION:

Approve proposed project locations pertaining to Project No. 4299 Bicycle Improvement Project to be Funded by Caltrans 2022 Priority Legislative Budget Project (PLPB) Earmarks.

Attachment(s):

1. Project Locations Map

Project Locations Map



Proposed Locations

- Abel Street from Milpitas Blvd to Redwood Avenue
- Abel Street from Redwood Avenue to Marylinn Drive
- Marylinn Drive from Abel Street to Weller Lane
- Main Street from Weller Lane to Carlo Street
- Main Street from Carlo Street to Great Mall Parkway
- Milpitas Blvd from Abel Street to Calaveras Blvd



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Historical Park Marker Project at Various City Parks and Appropriate Funds of \$90,000 to CIP No. 3489 (Staff Contact: Tegan McLane, Community Engagement and Inclusion Administrator, 408-586-3212)
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	9/19/2023
	<u>Recommendation:</u> Approve Historical Park Marker Project concept at Bob McGuire, Frederick Creighton, Peter B. Gill, Jose Higuera Adobe, Murphy, Sunnyhills Albert Augustine Jr. Memorial, and Delano Manongs parks and appropriate \$90,000 to Public Art CIP No. 3489.

BACKGROUND:

As part of their City Council approved FY2020-21 Workplans, the Arts Commission and Parks Recreation and Cultural Resources Commission (PRCRC) were directed to collaborate on a project to develop historical park markers that would be public art pieces, honoring park namesakes. With the recent addition of Delano Manongs Park, Milpitas has 20 parks named for people and/or cultural groups.

A joint subcommittee of the Arts Commission and PRCRC convened in May 2021 to develop a plan for a Historical Park Marker Project. The Park Marker Subcommittee (Subcommittee) consisting of two Arts Commissioners and three PRCRC Commissioners, one of which also represented the Milpitas Historical Society, was convened in May 2021. After meeting sporadically through most of 2022 due to COVID-19, the Subcommittee finalized its recommendations in September 2022.

ANALYSIS:

The Historical Park Marker Subcommittee recommended that artist-designed “kiosks” should include full-color interpretive panels about the parks’ namesakes, community artwork, and optional historical information about the site including but not limited to and any heritage trees, as well as nature interpretation about native flora and fauna. Interpretive text and photos would be developed in-house with assistance from the Milpitas Historical Society. Signage would include QR codes linking to more historical information available online. Kiosks would not exceed seven feet in height and would be designed to affix to existing or poured cement pads. They would likely be fabricated out of Corten steel for durability.

Due to the number of parks named after people and/or cultural groups, the Subcommittee recommended a phased approach to design, fabrication and installation with a Phase I budget up to \$90,000 to cover design and engineering of a kiosk structure and fabrication and installation of six markers. The subcommittee initially recommended the following parks: Bob McGuire, Frederick Creighton, Peter B. Gill, Hall, Jose Higuera Adobe, and Murphy parks. These parks were selected to ensure that the markers were distributed throughout the community, rather than concentrated on one side of the City. Other factors influencing the selection of sites were the availability of historical resources to draw upon for a sign and the park’s proximity to bike routes, since the Subcommittee would like to eventually publish a self-guided bike tour that would enable residents to learn about Milpitas historical figures.

Historical Park Marker recommendations were presented to the PRCRC on November 7, 2022. The PRCRC voted unanimously to recommend to City Council the concept, with an amendment to the Phase I locations, removing Hall Park and adding Sunnyhills Albert Augustine Jr. Memorial Park. Staff

noted that the City Council specifically called for a historical park marker at Sunnyhills Albert Augustine Jr. Memorial Park at their February 4, 2020, meeting when the park name was updated.

The Subcommittee and PRCRC's recommendations were presented to the Arts Commission on November 21, 2022. The Arts Commission also voted unanimously to recommend to City Council the Subcommittee Park Historical Marker concept, the PRCRC Phase I locations, and allocate a budget of \$90,000 from the Public Art Fund for Phase I, with a plan to seek additional outside funding for future phases.

Staff recommends City Council also consider adding Delano Manongs Park to the Historical Park Marker Phase 1 location list, given that it is the newest park in the system and will be a regional destination location. As part of the parks grand opening celebration in October, research and history on the park name have been conducted by staff. This park had not yet been named when the Subcommittee and Commissions were considering locations, so they did not have an opportunity to consider Delano Manongs Park. The addition of Delano Manongs is expected to add \$10,000-\$15,000 in fabrication and installation costs and increase staff time for the project, but those costs would be covered by the Delano Manong Park project budget, rather than the Public Art Fund

POLICY ALTERNATIVE(S):

Alternative 1: Not approve the Park Historic Marker concept, Phase I locations, and budget of \$90,000 to be transferred from the Public Art Fund.

Pros: City staff will be able to continue to address current projects and tasks and not work on additional public art projects.

Cons: The Park Historical Marker project is a Council approved work plan item for two (2) City Commissions and the proposed concept would be unique to Milpitas and allow for inclusion of historical information and public involvement in the art design process. Selected parks are throughout the City, so all areas of town are included.

Reason for Not Recommending: The Park Historical Marker project is a Council approved work plan item for two (2) City Commissions and the proposed concept would be unique to Milpitas and allow for inclusion of historical information and public involvement in the art design process. Selected parks are throughout the City, so all areas of town are included.

Alternative 2: Approve the Park Historic Marker concept with any desired changes to the locations in Phase 1.

Pros: This option could allow City Council to swap or delete named parks as desired. Six was the preferred number of park markers to be incorporated in staff workload. Removing one park could return to originally planned staff workload and potentially reduce the impact on the Public Art Fund.

Cons: Historical information may not be readily available for some parks. Selection of different parks for Phase 1 could result in a disproportionate number of markers concentrated in one area of the city, to the exclusion of other areas. Selection of any parks slated for major improvements in the future could result in added expense if the artwork needs to be relocated during future construction.

Reason for Not Recommending: Historical information may not be readily available for some parks. Selection of different parks for Phase 1 could result in a disproportionate number of markers concentrated in one area of the city, to the exclusion of other areas. Selection of any parks slated for major improvements in the future could result in added expense if the artwork needs to be relocated during future construction.

FISCAL IMPACT:

Appropriate \$90,000 to Public Art Project CIP No. 3489 from the Public Art Fund. The current fund balance in the Public Art Fund is sufficient to support the \$90,000 appropriation to CIP No. 3489. There are also sufficient funds in CIP No. 5102 for the fabrication and installation of an additional Historical Park Marker at Delano Manongs Park.

California Environmental Quality Act (CEQA):

The project has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378.

RECOMMENDATION:

Approve Historical Park Marker Project concept at Bob McGuire, Frederick Creighton, Peter B. Gill, Jose Higuera Adobe, Leo Murphy, and Sunnyhills Albert Augustine Jr. Memorial parks and appropriate \$90,000 to Public Art CIP No. 3489.

Attachment(s):

1. Budget Change Form

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From (Credit)		To (Debit)	
	Account	Amount	Account	Amount
Check one:				
☒ Budget Appropriation	213-2909	\$90,000	213-3952	\$90,000
☐ Budget Transfer	331-951348993833	\$90,000	331-951348974800	\$90,000

Recommendation: Approve Historical Park Marker Project concept at Bob McGuire, Frederick Creighton, Peter B. Gill, Jose Higuera Adobe, Murphy, and Sunnyhills Albert Augustine Jr. Memorial parks and appropriate \$90,000 to Public Art CIP No. 3489.

BACKGROUND:

As part of their City Council approved FY2020-21 Workplans, the Arts Commission and Parks Recreation and Cultural Resources Commission (PRCRC) were directed to collaborate on a project to develop historical park markers that would be public art pieces, honoring park namesakes. With the recent addition of Delano Manongs Park, Milpitas has 20 parks names for people and/or cultural groups.

A joint subcommittee of the Arts Commission and PRCRC was convened in May 2021 to develop a plan for a Historical Park Marker Project. The Park Marker Subcommittee (Subcommittee) consisting of two Arts Commissioners and three PRCRC Commissioners, one of which also represented the Milpitas Historical Society, was convened in May 2021. Recommendations from the Subcommittee would go to the two advisory bodies and parks and arts for final recommendations to be presented to the City Council.

ANALYSIS:

The Historical Park Marker Subcommittee convened in May 2021 to develop recommendations for a Historical Park Marker Project. The Subcommittee consisted of two Arts Commissioners and three PRCRC Commissioners, one of which also represented the Milpitas Historical Society.. After meeting sporadically through most of 2022 due to COVID-19, the Subcommittee finalized its recommendations in September 2022.

Subcommittee recommendations were for artist-designed “kiosks” that would include full-color interpretive panels about the parks’ namesakes, community artwork, and optional historical information about the site including but not limited to and any heritage trees, as well as nature interpretation about native flora and fauna. Interpretive text and photos would be developed in-house with assistance from the Milpitas Historical Society. Signage would include QR codes linking to more historical information available online. Kiosks would not exceed seven (7) feet in height and would be designed to affix to existing or poured cement pads. They would likely be fabricated out of Corten steel for durability.

Due to the number of parks named after people and/or cultural groups, the Subcommittee recommended a phased approach to design, fabrication and installation with a Phase I budget up to \$90,000 to cover design and engineering of a kiosk structure and fabrication and installation of six markers. The subcommittee initially recommended the following parks: Bob McGuire, Frederick Creighton, Peter B. Gill, Hall, Jose Higuera Adobe, and Murphy parks. Those parks were selected to ensure that the markers were distributed throughout the community, rather than concentrated on one side of town. Other factors that played into the choices were the availability of historical resources to draw upon for a sign and the parks proximity to bike routes, since the Subcommittee was keen on the possibility of eventually publishing a self-guided bike tour that would enable residents to learn about Milpitas historical figures.

Historical Park Marker recommendations were presented to PRCRC on November 7, 2022. PRCRC voted unanimously to recommend to City Council the concept, with an amendment to the Phase I locations, removing Hall Park and adding Sunnyhills Albert August Jr. Memorial Park. Staff noted that the City Council specifically

called for a historical park marker at Sunnyhills Albert Augustine Jr. Memorial Park at their February 4, 2020, meeting when the park name was updated.

The Subcommittee and PRCRC's recommendations were presented to the Arts Commission on November 21, 2022. The Arts Commission also voted unanimously to recommend to City Council the Subcommittee Park Historical Marker concept, the PRCRC Phase I locations, and allocate a budget of \$90,000 from the Public Art Fund for Phase I, with a plan to seek additional outside funding for future phases.

POLICY ALTERNATIVE(S):

Alternative 1: Not approve the Park Historic Marker concept, Phase I locations, and budget of \$90,000 to be transferred from the Public Art Fund.

Pros: City staff will be able to continue to address current projects and tasks and not work on additional public art projects.

Cons: The Park Historical Marker project is a Council approved work plan item for two (2) City Commissions and the proposed concept would be unique to Milpitas and allow for inclusion of historical information and public involvement in the art design process. Selected parks are throughout the City, so all areas of town are included.

Reason for Not Recommending: The Park Historical Marker project is a Council approved work plan item for two (2) City Commissions and the proposed concept would be unique to Milpitas and allow for inclusion of historical information and public involvement in the art design process. Selected parks are throughout the City, so all areas of town are included.

Alternative 2: Approve the Park Historic Marker concept, with any desired changes to the locations in Phase 1.

Pros: This option could allow City Council to add a park marker for Delano Manongs Park. That park was not originally considered because at the time of consideration it had not yet been officially named.

Cons: Historical information may not be readily available for some parks. Selection of different parks for Phase 1 could result in a disproportionate number of markers concentrated in one area of the city, to the exclusion of other areas. Selection of any parks slated for major improvements in the future could result in added expense if the artwork needs to be relocated during future construction. Any changes would necessitate removing another park from the list. Six is the maximum that can reasonably be incorporated into staff workload this fiscal year.

Reason for Not Recommending: The Park Markers Subcommittee and two commissions (PRCRC and Arts) have invested much care into the selection of the park markers.

FISCAL IMPACT:

Appropriate \$90,000 to Public Art Project CIP No. 3489 from the Public Art Fund. The current fund balance in the Public Art Fund is sufficient to support the \$90,000 appropriation to CIP No. 3489.

California Environmental Quality Act (CEQA):

The project has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378.

RECOMMENDATION:

Approve Historical Park Marker Project concept at Bob McGuire, Frederick Creighton, Peter B. Gill, Jose Higuera Adobe, Leo Murphy, and Sunnyhills Albert Augustine Jr. Memorial parks and appropriate \$90,000 to Public Art CIP No. 3489.

☐ Check if City Council Approval required.

Meeting: September 19, 2023

Requested by:	Department Head: Renee Lorentzen	Date: September 19, 2023
Reviewed by:	Finance Director: Lauren Lai	Date: September 19, 2023
Approved by:	Acting City Manager: Ned Thomas	Date: September 19, 2023
Date approved by City Council, if required:		Confirmed by:

FI/24786/V

Form 30-222 (Rev. 1/92)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Provide Feedback Regarding Potential Amendments to Title V, Chapter 9, Section 4.05 of the Milpitas Municipal Code Related to Use of Noise-Amplifying Devices at Gill Park (Staff Contact: Michael Mutalipassi, City Attorney, 408-858-3040)
Category:	Leadership and Support Services
Meeting Date:	9/19/2023
Recommendation:	Provide feedback regarding potential amendments to Title V, Chapter 9, Section 4.05 of the Milpitas Municipal Code Related to use of noise-amplifying devices at Gill Park and direct the City Attorney to prepare a clarifying amendment consistent with the Council's policy.

BACKGROUND:

Peter T. Gill Memorial Park is an 8.16-acre park located at Paseo Refugio Road and Santa Rita Drive. It includes a lighted ball diamond, 3 tennis courts 2 handball courts (with one used primarily for pickleball), a basketball court, 4 barbeques, 8 tables, playground equipment, restrooms, and parking for 20 vehicles. Residents can reserve two picnic areas within Gill Park for events. Gill Park serves as the beginning of the Hetch Hetchy trail. In 1996 and 1997, the Milpitas Skate Park was located in Gill Park.

Prior to November 2006, Gill Park was subject to the same noise regulations as any other park in the City which, as indicated in Section V-9-4.05 of the Milpitas Municipal Code, allows for the use of loudspeakers in parks with an appropriate City permit. In October of 2006, residents of Milpitas presented the City Council with a petition not to issue permits for amplified sound in Gill Park. Homeowners around Gill Park indicated that they believed the noise at Gill Park was so excessive that it created a public nuisance and infringed on the homeowners' rights to quiet enjoyment of their property. On October 17, 2006, the City Council acted by introducing an ordinance amending Milpitas Municipal Code title V, chapter 9, section 4.05 regarding amplified noise in parks ("Ordinance 196.8"). The express purpose of Ordinance 196.8 is to prohibit the City Manager from issuing permits for amplified sound in Gill Park. In order to do this, Ordinance 196.8 added the language "The issuance of a written permit from the City Manager or his authorized agent for the use of any loudspeaker or other noise-amplifying device referred to in Section V-9-4.00 shall not apply to Gill Park." Milpitas Municipal Code ("MMC") section V-9-4.05. The Council unanimously adopted Ordinance 196.7 on November 17, 2006. Every other park in the City of Milpitas is allowed to have loudspeakers with an appropriate City permit.

On August 29, 2023, the Milpitas Police Department received a call regarding amplified music at Gill Park. The officer reviewed MMC section V-9-4.05 and determined that it is vague and ambiguous in a manner that renders it unenforceable. The language added by Ordinance 196.8 can be reasonably interpreted in a manner as excluding Gill Park from the permit process thereby either allowing amplified sound in Gill Park without a permit or disallowing amplified sound in Gill Park entirely. Ordinances may be deemed void as a result of vagueness in accordance with the Due Process Clauses of the U.S. Constitution.

ANALYSIS:

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 108.) The law assumes that a "man is free to steer between lawful and unlawful conduct, [courts] insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." (*Id.*) An ordinance "may" be unconstitutionally vague when (1) it does not 'give the person of ordinary intelligence a reasonable opportunity

to know what is prohibited' or (2) it encourages or invites 'arbitrary and discriminatory enforcement.'" (*Flores v. Bennett* (E.D. Cal. 2022) 635 F.Supp.3d 1020, 1042, aff'd (9th Cir., Aug. 3, 2023, No. 22-16762) 2023 WL 4946605.) MMC section V-9-4.05 suffers from the sort of constitutional vagueness identified in *Grayned* and *Flores*. A person of ordinary intelligence would not be able to discern whether the language regarding Gill Park in section V-9-4.05 prohibits the use of all amplified sound in Gill Park or exempts Gill Park from requiring a permit for amplified sound. This ambiguity is likely, in turn, to lead to arbitrary enforcement as one officer responding to a noise complaint in Gill Park may interpret MMC section V-9-4.05 differently from another officer responding to the same sort of complaint. This vagueness renders section V-9-4.05 void under the constitutional principle of due process. (*Grayned, supra*, 409 U.S. at 108.)

Staff recommends that the Council direct the City Attorney to prepare a clarifying amendment to Ordinance 196.8 that will allow for enforcement of section V-9-4.05 in a manner consistent with the policies of the Council.

Sidewalk Vendors

SB 946 amended the California Government Code to include Chapter 6.2, sections 51036 to 51039, regulating sidewalk vendors. Section 51038 allows local authorities to adopt a program to regulate sidewalk vendors so long as the program complies with the requirements of the section. Section 51038 prohibits local authorities from requiring sidewalk vendors from operating within specific parts of the City or specific parts of the public right of way, except when those restrictions are directly related to objective health, safety, or welfare concerns. It prevents a local authority from prohibiting sidewalk vendors from selling food or merchandise in a park owned or operated by the local authority unless the prohibition is directly related to objective health, safety, or welfare concerns; necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities; or necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park. The local authority cannot require any sidewalk vendor to obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise, including the consent of brick and mortar businesses. A local authority cannot restrict the neighborhoods sidewalk vendors may operate in, except the local authority may ban stationary sidewalk vendors in areas that are zoned exclusively residential (but cannot ban roaming sidewalk vendors from those areas.) A local authority cannot restrict the overall number of sidewalk vendors within its jurisdiction unless the restriction is directly related to objective health, safety, or welfare concerns.

Local authorities may adopt requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns. Limitations on hours of operation may not be unduly restrictive, and in nonresidential areas, any limitations on hours of operations for sidewalk vendors cannot be more restrictive than the hours of operations for any other businesses on the same street. Local authorities can require sidewalk vendors to maintain sanitary conditions; make requirements that ensure ADA compliance; obtain from the City a valid business license; require sidewalk vendors possess a valid California seller's permit; require additional licenses from other state or local agencies to the extent required by law; require compliance with other generally applicable laws; and require a sidewalk vendor to submit certain information regarding his or her operations.

Staff recommends that the Council direct the City Attorney to prepare a SB 946 compliant ordinance creating a program to regulate sidewalk vendors and to amend or delete MMC section V-9-4.01 in conformity with that program.

POLICY ALTERNATIVE(S):

Alternative 1: Direct the City Attorney to prepare an amendment to Ordinance 196.8 that prohibits the use of all amplified sound in Gill Park.

Pros: This appears to be the original intent of the City Council when it adopted the ordinance in 2006 and addresses the issues brought forward at that time.

Cons: Gill Park will have different rules than all other parks. The use of the picnic areas in Gill Park will be less desirable for event planners as they will not be able to obtain an amplified sound permit.

Alternative 2: Direct the City Attorney to prepare an amendment to Ordinance 196.8 that allows residents to obtain an amplified sound permit for Gill Park.

Pros: Gill Park will have the same rules as all other parks. The users of the reserved picnic areas in Gill Park will have the same opportunity with regard to obtaining a permit for amplified sound as users of other parks.

Cons: The Council will not be addressing the issues brought to it in 2006 by residents of homes adjacent to Gill Park.

Alternative 3: Do not take action to amend Ordinance 196.9.

Pros: Staff will not expend time preparing an amendment.

Cons: MMC section V-9-4.05 as it pertains to Gill Park will be void as a result of vagueness. No prohibition on amplified sound in Gill Park will be enforceable.

FISCAL IMPACT:

There is a *de minimis* fiscal impact associated with the adoption of a clarifying amendment. Public works will have to update the sign in Gill Park to conform with the Council's adopted policy.

California Environmental Quality Act (CEQA):

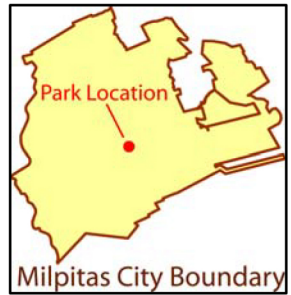
The action has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is not a project pursuant to Pub. Resources Code, § 21065 and Cal. Code Regs., tit. 14, § 15378.

RECOMMENDATION:

Provide feedback regarding potential amendments to title V, chapter 9, section 4.05 of the Milpitas Municipal Code Related to use of noise-amplifying devices at Gill Park and direct the City Attorney to prepare a clarifying amendment consistent with the Council's policy.

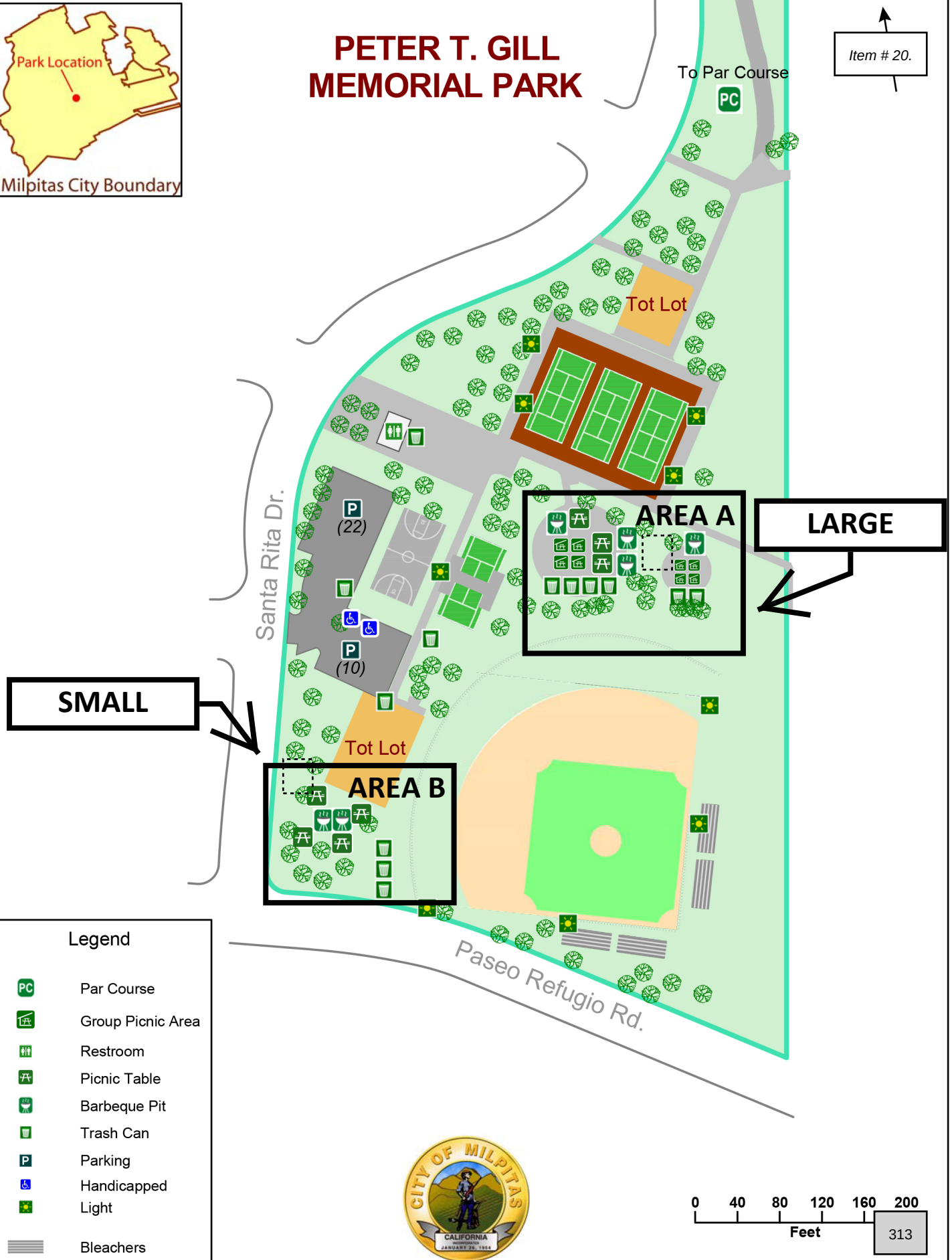
Attachment(s):

1. Gill Park Map
2. Minutes of Regular Meeting of Milpitas City Council, October 17, 2006
3. Ordinance Number 196.8
4. Email from constituent Jennifer Ting and attachments



PETER T. GILL MEMORIAL PARK

Item # 20.



Legend

- PC Par Course
- Group Picnic Area
- Restroom
- Picnic Table
- Barbeque Pit
- Trash Can
- P Parking
- Handicapped
- Light
- Bleachers

0 40 80 120 160 200
Feet
313

MEETING MINUTES CITY OF MILPITAS

Minutes of:	Regular Meeting of Milpitas City Council
Date:	Tuesday, October 17, 2006
Time:	7:00 PM
Location:	Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 7:00 PM.

PRESENT: Mayor Esteves, Vice Mayor Gomez, Councilmembers Giordano and Polanski

ABSENT: Councilmember Livengood

PLEDGE

Boy Scouts Troop No. 92 Color Guard led the Pledge of Allegiance.

INVOCATION

Mayor Esteves offered a prayer for all gathered.

MINUTES

MOTION: approve minutes of the October 3 City Council meeting and minutes of the Public Financing Authority meeting of October 3, 2006

Motion/Second: Vice Mayor Gomez/Councilmember Giordano

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Livengood)

SCHEDULE OF MEETINGS

MOTION: to approve the Schedule of Meetings, as amended

Councilmember Giordano noted that the City Council's City Attorney Subcommittee meeting scheduled on Friday, October 13 was canceled.

Motion/Second: Councilmember Polanski/Councilmember Giordano

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Livengood)

PRESENTATION

Mayor Esteves presented a Commendation to Girl Scout Nicole Nguyen, who was awarded the Girl Scouts of America "Gold Award." She graciously accepted the commendation and thanked her family and friends who helped her accomplish her goal. The Mayor recognized and thanked her parents, also.

PUBLIC FORUM

Frank DeSmidt, of the Milpitas Chamber of Commerce, invited everyone to the "Candidates Forum" event on Thursday, October 19 at 7:00 PM, which was to be live broadcast and webcast.

ANNOUNCEMENTS

Vice Mayor Gomez announced as part of the Safe Streets program, on Halloween evening, glow sticks would be distributed to Milpitas children for trick-or-treating safely in the City.

Mayor Esteves noted the new Milpitas business offices of Dr. Pham and Dr. Liu. He thanked staff Diana Whitecar and the Economic Development Commission, for the recent City-sponsored Small Business workshop and fair. Varied resources were available to help small businesses get started and grow in Milpitas.

Transportation Engineer Jaime Rodriguez announced the installation of two new blue-lighted LED street signs - seen at the intersection of Milpitas and Calaveras Boulevards. These styles are on display, and residents can vote their choice by going to the City's website. Upon review of community responses, new signs will be installed on Abel St. as part of downtown renewal.

Mr. Rodriguez also noted that the U.S. Environmental Protection Agency honored the City of Milpitas as one of the "Best Workplaces for Commuters." The recognition was a national award given to the City, and he highlighted some program successes in our City.

City Clerk Mary Lavelle announced the deadline to register to vote for the November 7 election was Monday, October 23.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Polanski/Vice Mayor Gomez

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Livengood)

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted by an *asterisk), as amended

Vice Mayor Gomez asked to place Item No. 3 on the consent calendar.

Councilmember Giordano asked to remove Item No. 4 for discussion.

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Livengood)

* 2. Approve Mayor's Recommendations for Commission Re-appointments

Approved the following appointments and re-appointments of Commissioners:

Arts Commission

Re-appointed Donine Ettinger to a 3-year term that expires October 2009.

Re-appointed Harriett McGuire to a 3-year term that expires October 2009.

Community Advisory Commission

Appointed Nelson Villegas as a voting member, to a term that expires January 2007.

Recycling and Source Reduction Advisory Commission

Re-appointed John Cimino as Alternate No. 2 to a term that expires October 2008.

Telecommunications Commission

Appointed Syed Bilgrami to a voting member vacancy, to a term that expires Jan. 2008.

Appointed Roger Shaw as Alternate No. 1 to a term that expires January 2007.

Appointed Hai Tran to Alternate No. 2 to a term that expires January 2008.

* 3. 2006-2007 Special Events Calendar and July 4th Update

Approved the 2006-2007 City of Milpitas Special Events Calendar and received update on the Fourth of July activities.

* 5. Youth Sports Assistance Fund Grant

Approved one Organizational Youth Sports Grant for the Milpitas National Little League South for \$1,000, leaving a balance of \$2,000 for the remainder of the fiscal year.

* 7. Adopt Ordinance No. 41.11

1. Waived the second reading.
2. Adopted Ordinance No. 41.11, an Ordinance of the City Council of the City of Milpitas amending Milpitas Municipal Code Sections I-500-1.01 and 1.05. regarding the appointment of Planning Commissioners.

* 8. Acceptance of Certain Public Improvements for Parc Metropolitan, Project No. 3061

Adopted City Council Resolution No. 7633 granting:

- 1) Final acceptance of Curtis Avenue Public improvement as well as West and Middle Parks.
- 2) Initial Acceptance of East Park and on-site public water and sewer facilities subject to the one-year warranty period.
- 2) Reduction of Faithful Performance Bond to \$193,475.
- 3) Release of Labor and Material Bond, if no claims are filed with the City Clerk's office after six months of this initial acceptance.

* 9. Waiver of Solid Waste Service for Specified Spring Valley Heights Addresses

Adopted City Council Resolution No. 7634 granting a waiver of solid waste service for eight specified Spring Valley Heights addresses, subject to the City Attorney's approval as to form. Waivers would be accomplished via Memorandums of Understanding, approved by this action as well.

* 10. Approve contract with Magic Wave Productions for Community TV Studio

Approved contract with Magic Wave Productions for the installation and integration of equipment for the Milpitas Community Television Studio, Project No. 3398, subject to approval as to form by the City Attorney.

* 11. Purchase of Four Police Vehicles from S & C Ford

Awarded the bid for four 2007 Crown Victoria Police Interceptor vehicles to S&C Ford Fleet Sales in the amount of \$109,456.56 including tax, extended warranty, freight and tire fees.

* 12. Truck Vehicle Purchase from S & C Ford

Awarded bid for one 2007 Ford F-250 pick up truck to S& C Ford Fleet Sales in the amount of \$21,767 including lift gate, sales tax and extended warranty.

* 13. Reprographic Services for the New Library

Awarded bid for Reprographic Services to San Jose Blue and authorized the City Manager to sign a contract for the not to exceed amount of \$27,010.51, including tax, shipping and handling, subject to approval by the City Attorney.

PUBLIC HEARING

1. Appeal of Planning Commission Decision to Deny Use Permit for Dance Floor

Planner Cindy Hom reviewed the history of King Crab restaurant's application for a dance floor, where the hearing was continued from the August 15 Council meeting. A resolution of parking issues was necessary before the matter of the dance floor permit returned to Council. No changes to the number of seats or modification to the site, other than adding a dance floor, were under consideration.

After meeting with staff, restaurant owner and architect, and adjacent businesses, the parking challenges were met. The restaurant would be required to hire a parking attendant during the busy lunchtime hours.

Mayor Esteves opened the hearing for public comments; none heard.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Livengood)

Councilmember Polanski thanked the planning staff for expediting this issue, for working with the owner and the other shopping center tenants, and for creatively finding

a solution for King Crab and their customers. Vice Mayor Gomez wanted to echo Ms. Polanski's comments.

(2) Motion: to accept the appeal of the applicant, and approve Use Permit Amendment No. UA 2006-6, based on the findings and special conditions, including the parking attendant requirement during lunch time hours

Motion/Second: Vice Mayo Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Livengood)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA 1. CALL TO ORDER** Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:20 PM.
- RA 2. ROLL CALL** **PRESENT:** Mayor/Chair Esteves, Vice Mayor/Vice Chair Gomez and Agency/Councilmembers Giordano and Polanski
ABSENT: Agency/Councilmember Livengood
- RA 3. MEETING MINUTES** Motion: approve the Redevelopment Agency minutes of October 3, 2006, including joint meeting with the City Council, as submitted.

Motion/Second: Agency/Councilmember Polanski/ Agency/Councilmember Giordano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Livengood)
- RA 4. Approval of Agenda and Consent Calendar** Motion: approve the agenda and RDA consent calendar, as amended

Staff requested to remove Item RA 5, as no appeals were filed.

Motion/Second: Agency/Councilmember Giordano/ Agency/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Livengood)
- RA 5. Hear Any Appeal of Milpitas Library Bidders List** Item removed from the agenda (no appeals of the Bidders List for Project No. 8162 received).
- * RA 6. Report to Council/ Agency on proposed merger** Approved the Report to the City Council for the proposed merger of Redevelopment Project Area No. 1 and the Great Mall Project Area, and scheduled the joint City Council/Redevelopment Agency Public Hearing on Nov. 21, by the following actions:
- 1) Adopted Redevelopment Agency Resolution No. RA 270 to approve the Report to the City Council on the proposed Amendments for the proposed merger of Project Area No. 1 and the Great Mall Project Area, submit the Report to the City Council and request a Joint Public Hearing on the Amendments at the November 21st Council/Agency meeting.
 - 2) Adopted City Council Resolution No. 7632 to receive the Report to the City Council on the proposed Amendments and consent to a Joint Public Hearing on the proposed Amendments on November 21, 2006.

* **RA 7.** Resolution Authorizing the Housing Set-Aside Funds for Land Acquisition

Adopted Resolution No. RA 271 of the Redevelopment Agency of the City of Milpitas authorizing the use of Low-and Moderate-Income Housing Set-Aside Funds for Land Acquisition.

* **RA 8.** Resolution Granting Initial Acceptance of N. Main Street Soil Remediation

Adopted Resolution No. RA 272 of the Redevelopment Agency of the City of Milpitas granting initial acceptance of Project No. 8154, subject to the one-year warranty period and reduction of the faithful performance bond to \$20,755.00.

* **RA 9.** Resolution Granting Initial Acceptance of Police Evidence Freezer

Adopted Resolution No. RA 273 of the Redevelopment Agency of the City of Milpitas granting initial acceptance of Project No. 8159, subject to the one-year warranty period and reduction of the faithful performance bond to \$10,197.20.

RA 10. ADJOURNMENT

Mayor/Chair Esteves adjourned the Redevelopment meeting at 7:21 PM.

REPORT OF OFFICER

Approved on Consent Calendar.

NEW BUSINESS

4. Event Proposal for 2007 Commissioners' Recognition

This item was removed from the consent calendar for discussion.

Recreation Services Manager Bonnie Greiner reminded the Council (as noted in the agenda report) that beyond the planned Commissioners event, the option to present a small gift to Commissioners, was suggested. It would involve additional cost to purchase a logo-type item, and it would add approximately \$1,000 to the event.

Councilmember Giordano enjoyed the dinner social event in the past, but was ok with trying the event suggested by staff. She wanted to add to the motion the funds for a gift item for Commissioners.

Staff recommendation was to approve Option A: hold the event on a non-City Council meeting night Wednesday, April 18, 2007 with appetizers and a soda bar at the City Hall lobby/rotunda, for the 2007 Commissioners' Recognition Event. It would address City Council concerns allowing more time for Commissioners to be individually recognized and for the City Council to be able to socialize with their Commissioners after the main presentation.

Motion: Approve the Commissioners Recognition event (separate from City Council meeting at City Hall rotunda) and include a small gift item

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Livengood)

ORDINANCES

6. Ordinance No. 196.8 regarding prohibition on the amplification of sound at Gill Park

City Attorney Steve Mattas provided the history for the ordinance regarding the request from Council to make a "no exception" policy for amplified sound solely at Gill Park.

Mayor Esteves asked for comments from audience, none were heard.

Councilmember Polanski thanked the City Attorney for acting so quickly.

Mr. Mattas described when it would go into effect, following the second reading anticipated at the next City Council meeting, and then it would go into effect 30 days after that action.

Motion: waive the first reading beyond the title of Ordinance No. 196.8 and introduce the Ordinance

City Attorney Mattas read aloud the title of Ordinance No. 196.8 "An Ordinance of the City Council of the City of Milpitas Amending Milpitas Municipal Code Section V-9-4.05 Regarding Amplified Noise in Gill Park."

Motion/Second: Councilmember Polanski/Vice Mayor Gomez

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Livengood)

RESOLUTIONS

Two resolutions were adopted on the Consent Calendar.

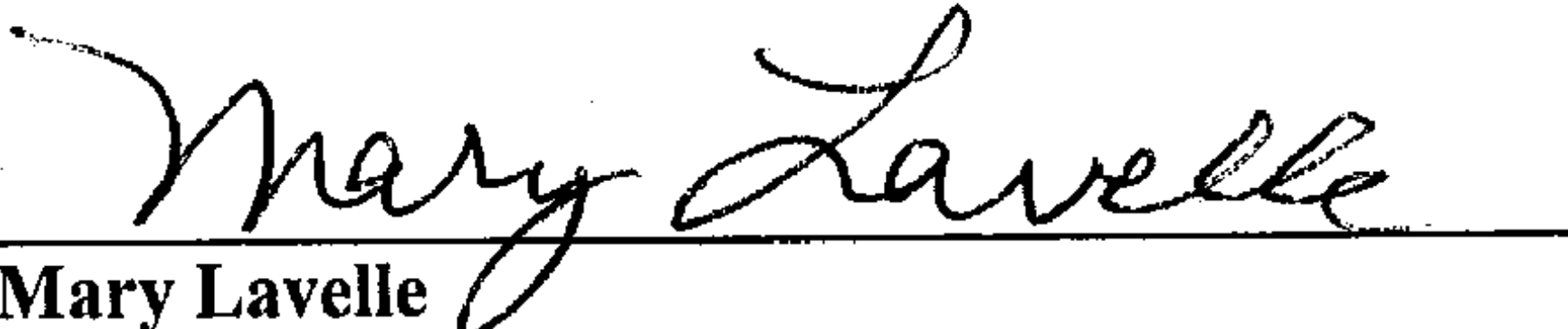
BIDS AND CONTRACTS

Four items were adopted on the Consent Calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 7:28 PM.

The foregoing minutes were approved by the Milpitas City Council as submitted on November 7, 2006.



Mary Lavelle
City Clerk

REGULAR**NUMBER:** 196.8**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING MILPITAS MUNICIPAL CODE, SECTION V-9-4.05, REGARDING AMPLIFIED NOISE IN GILL PARK**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of October 17, 2006, upon motion by Councilmember Polanski and was adopted (second reading) by the City Council at its meeting of November 7, 2006, upon motion by Councilmember Giordano. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

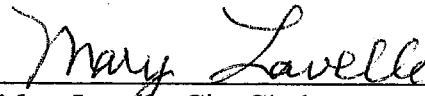
AYES: (5) Mayor Esteves, Vice Mayor Gomez,
Councilmembers Livengood, Polanski and
Giordano

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:


Mary Lavelle, City Clerk

APPROVED:


Jose S. Esteves, Mayor

APPROVED AS TO FORM:


Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1. Findings. The Milpitas Municipal Code currently allows those who desire to use amplifiers for music or sound in City parks to request a permit from the City Manager. The purpose of this ordinance is to prohibit the issuance of City Manager-issued permits for amplified sound at Gill Park. The City Council received information from residents near Gill Park notifying the City Council that amplified sounds have a disruptive effect on the nearby community. The City Manager will continue to consider issuing amplified sound permits to qualified applicants at all other City parks.

Section 2. Amendment to Section 4.05, Chapter 9 of Title V

Chapter 9 of Title V of the Milpitas Municipal Code is hereby amended to read as follows:

V-9-4.05 Use of loudspeakers

The use of any loudspeaker or other noise amplifying device. The issuance of a written permit from the City Manager or his authorized agent for the use of any loudspeaker or other noise amplifying device referred to in Section V-9-4.00 shall not apply to Gill Park.

Section 3. Effective Date and Posting

In accordance with CA Government Code Section 36937, this Ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The Milpitas City Clerk shall cause this Ordinance to be published in accordance with Government Code Section 36933.

Suzanne Guzzetta

From: Michael Mutalipassi
Sent: Friday, September 15, 2023 9:27 AM
To: Michael Mutalipassi
Cc: Suzanne Guzzetta
Subject: FW: Gill Memorial Park Noise Ordinance
Attachments: Noise petition.doc; Gill Park Milpitas Post.JPG

Importance: High

From: j ting [REDACTED]
Sent: Thursday, September 14, 2023 3:23 PM
To: CAO <cao@milpitas.gov>; Carmen Montano <cmontano@milpitas.gov>; Ned Thomas <nthomas@milpitas.gov>; Garry Barbadillo <gbarbadillo@milpitas.gov>; Evelyn Chua <echua@milpitas.gov>; Anthony Phan <aphan@milpitas.gov>; Hon Lien <hlien@milpitas.gov>
Subject: Gill Memorial Park Noise Ordinance

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](#).

Dear Madam/Sir,

I want to share with you information that can help in correcting the City Ordinance regarding amplified music, amplified oration and live music at Gill Park. I attached the petition that my neighbors and I worked hard on to get signatures and submitted to the city council in October of 2006, as well as the newspaper article that shows that the city approved the noise ordinance. The Gill Park noise ordinance (V-9-4.05) originally stated and should say that Gill Park is not permitted to have amplified music, amplified oration and live music.

I appreciate your assistance in correcting the poor wording in the current ordinance as it clearly does not show the indented meaning of the residents surrounding Gill Park in the original city ordinance passed in 2006.

Sincerely,

Jennifer Ting

This petition is to help ensure that Gill Memorial Park is kept as a welcoming family neighborhood park. The residents surrounding Gill Park are being subject to excessively loud noise generated mostly by amplified music. There is no escaping from the unwanted noise which is creating a negative impact on the lives of the residents in the area. Due to the close proximity of homes to the park, we the undersign want the City of Milpitas to deny future permits for live music, amplified music, or amplified oration in Gill Memorial Park. We hope that the City of Milpitas shares our concern to help keep Gill park as a pleasant place to live nearby and visit.

[illegible]

133.1
Community

Gill park neighbors win noise reprieve

City bans users from blasting amplified sound

BY IAN BAUER

Homeowners adjacent Peter D. Gill Memorial Park can rest more easily.

For years, noise levels at the park near Paseo Refugio and Santa Rita Drive north of East Calaveras Boulevard had been so loud residents say they found no peace in their own homes.

Several area homeowners implored city officials do something to literally lower the volume at Gill park.

Last week, Milpitas City Council complied with the request, voting 4-0 to approve an ordinance prohibiting amplified sound at Gill park.

Gill Park's noise issue was first brought to the city council's attention as a discussion item Oct. 3, presented by Councilwoman Althea Polanski.

At the meeting, resident Jennifer Ting told council members she and

her neighbors put together a petition that urged the city to quell the "horrendous" noise, which often comes from people playing amplified music from stereos.

"When it gets excessively loud we call the police and they ensure that they actually have a permit," she said.

But Ting suggested police patrols weren't enough to stop the noise levels that had become "a public nuisance" and that infringed on residents' rights.

Ting maintained that noise levels from Gill park often prevented her son from doing his homework, forcing him instead to seek refuge at Milpitas Community Library in order to study.

"It's pretty sad when you have to leave your own home to get some peace and quiet," she said.

The petition presented to the city asked officials not to issue permits for amplified music, live

music or oration at Gill Memorial Park.

"Because it is so closely surrounded by homes," Ting said.

She added, however, that the petition did not object to activities or groups using the park.

At the Oct. 3 meeting, Councilman Bob Livengood suggested this issue was similar to the removal of the city skateboard park there several years ago due to noise.

"Clearly we need to stop this problem," Livengood said.

Previously, park users had to obtain a waiver from the city allowing for the amplification of sound during park use.

During the Oct. 17 meeting, the city council approved an ordinance to amend Milpitas Municipal Code to prohibit the amplification of sound by electronic means at Gill park, and at no other city park.

The sound ordinance is expected to take effect in December.

Councilman Livengood was absent from the Oct. 17 meeting.