



JOINT MEETING OF THE MILPITAS CITY COUNCIL AND THE MILPITAS PUBLIC FINANCING AUTHORITY BOARD

AGENDA

TUESDAY, OCTOBER 17, 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 only be provided live during the City Council meeting in person. 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. Members of the public may submit written comments by email to CityClerk@milpitas.gov

The meeting will be streamed via Zoom for viewing purposes only. To watch via Zoom, please register at:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_j6dZ-hDvS8uFgJDAV4Mdaq

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 REAL PROPERTY NEGOTIATORS

Property: 1700 Sango Court

Agency negotiator: Alex Andrade, Economic Development Director

Under negotiation: Both lease price and terms

(c) THREAT TO PUBLIC SERVICES OR FACILITIES

Pursuant to Government Code section § 54957

Consultation with: IT Director Daniel Nam

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.

PRESENTATIONS (7:05 PM)

- Breast Cancer Awareness Month
- Diwali

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Phan)

PUBLIC FORUM (7:15 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 (7:20 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 October and November 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

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

C2. Approve City Council City Council Meeting Minutes of October 3, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Meeting minutes of October 3, 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. Consider the Recommendation from Mayor Montano for Appointments to and Removals from City Commissions (Contact: Mayor Montano, 408-586-3024)

Recommendation: Receive the recommendation from Mayor Montano and approve appointment to the Planning Commission and removal from the Parks, Recreation and Cultural Resources Commission, and direct the City Clerk to post the notice of unscheduled vacancy.

C5. Accept the FY 2022-23 Commissioners Annual Report for Four (4) Commissions and Oversight Committee and Approve Four (4) City of Milpitas Commission and Oversight Committee Work Plans for FY 2023-24 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: (1) Accept the 2022-23 Commissioners Annual Report; and (2) Approve proposed Fiscal Year 2023-24 Work Plans for (a) Community Advisory Commission, (b) Economic Development and Trade Commission, (c) Science, Technology, and Innovation Commission, and (d) Measure F Oversight Committee.

C6. Receive Recommendations from Staff Regarding a Proposed Joint Powers Agency (JPA) Agreement for the Cities Association of Santa Clara County and Approve Direction on Feedback to the Cities Association Board (Staff Contact: Ned Thomas, City Manager: 408-586-3059)

Recommendation: Receive recommendations regarding a Proposed Joint Powers Agency (JPA) Agreement for the Cities Association of Santa Clara County (CASCC) and approve direction to staff and Mayor Montano, as the City's representative to the CASCC, to oppose the formation of a Joint Powers Authority at this time.

C7. Receive Report on the American Rescue Plan Act (ARPA) Investment Plan (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3053; and Lauren Lai, Director of Finance, 408-586-3111)

Recommendation: Receive Report on the American Rescue Plan Act (ARPA) Investment Plan.

C8. Adopt a Resolution Granting Acceptance of Public Improvements and Approve a Reduction of the Faithful Performance Bond for the Self-Storage Project Located at 1 Hanson Court and Grant Authorization to the City Engineer to Release the Performance Bond after the One-Year Warranty Period (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Transportation and Traffic Manager, 408-586-3316)

Recommendation: Adopt a resolution granting acceptance of the completed public improvements for the Self-Storage Project located at 1 Hanson Court as shown on Public Improvement Plans No. 2-1224; and approve a reduction in the faithful performance bond to \$16,000.00, which is 10% of the security's original value which shall be in effect for the duration of the warranty period; and grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided that all required warranty work is completed to the satisfaction of the City Engineer.

C9. Adopt Resolutions of the Milpitas City Council and Milpitas Public Financing Authority Board Authorizing Investment of Monies in the Local Agency Investment Fund and Updating Officers' Information (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Recommendation: Adopt two Resolutions of the Milpitas City Council and Milpitas Public Financing Authority Board authorizing investment of monies in the Local Agency Investment Fund and updating officers' information.

C10. Approve and Authorize the City Manager to Execute a Sole Source Three-Year Agreement with CentralSquare Inc. for Maintenance and Support of the Public Safety Computer Aided Dispatch System (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)

Recommendation: Approve and authorize the City Manager to execute a sole source three-year agreement with CentralSquare Inc. for maintenance and support of the Public Safety Computer Aided Dispatch System for the not-to-exceed amount of \$142,160.56 annually and \$426,481.68 for a three-year term.

C11. Receive an Update on the Emergency Repairs to the HVAC System and Equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

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

C12. Approve and Authorize the FY 2023-2024 Santa Clara Valley Urban Runoff Pollution Prevention Program Assessment Payment for the Not-to-Exceed Amount of \$154,067.00 (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

Recommendation: Approve and authorize the FY 2023-2024 Santa Clara Valley Urban Runoff Pollution Prevention Program Assessment Payment for the not-to-exceed amount of \$154,067.00.

C13. Approve and Authorize the City Manager to Execute a No-Cost Amendment No. 7 to extend the terms of the Agreement with West Yost Associates for Construction Support Services for the Main Lift Pump Station Odorous Emissions Control Facility Project (Staff Contact: Christian Di Renzo, Public Works Director, 408- 586-2602)

Recommendation: Approve and authorize the City Manager to execute a no-cost Amendment No. 7 to extend the terms for the agreement with West Yost Associates for construction support services for the Main Lift Pump Station Odorous Emissions Control Facility Project.

C14. Authorize and Approve Travel to Santa Cruz, CA, for City Manager Ned Thomas to Attend the Annual 2023 Silicon Valley Economic Development Alliance (SVEDA) Conference on November 2, 2023 (Staff Contact: Ned Thomas, City Manager, 408-586-3059)

Recommendation: Authorize and approve travel to Santa Cruz, CA, for City Manager Ned Thomas to attend the Annual 2023 Silicon Valley Economic Development Alliance (SVEDA) Conference on November 2, 2023, for a total amount of \$150.00 budgeted under Conferences/Trainings allocation for the City Manager's Office.

PUBLIC HEARINGS (7:30 PM)

Members of the public may be allotted up to three (3) minutes or less at the Mayor's discretion, to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of ten (10) minutes for opening

statements and up to a total of five (5) minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.

- 15.** Conduct a Public Hearing to Consider a Zoning Variance to Allow Development of a Structure with a Height that Extends Above the Hillside Crestline Zone of Protection Sight Line, as Related to an Application for a Site Development Permit and Planned Unit Development Amendment for a Proposed 5,900-Square Foot Single-Family Residence, on a Vacant +1.4-Acre Lot in the R1-H Single-Family Residential - Hillside Zoning District Located at 1339 Terra Vista Court (APN: 029-07-010) (Staff Contact: Jay Lee, Planning Director, 408-586-3273, and Avery Stark, Acting Senior Planner, 408-586-3288)

Recommendation: Hold a public hearing and, by a motion of the Council, uphold a Variance recommendation made by the Milpitas Planning Commission to deny the request for a structure with a height that extends above the Hillside Crestline Zone of Protection Sight Line, as established by the City's Hillside development standards, on a vacant +1.4-acre lot in the R1-H Single-Family Residential-Hillside Zoning District located at 1339 Terra Vista Court (Countryside Estates, Lot 1).

COMMUNITY DEVELOPMENT (8:30 PM)

- 16.** Receive Progress Report from Raimi and Associates and Staff on the Housing Opportunity Districts and Provide Direction on the Preferred Alternative (Staff Contact: Jay Lee, Planning Director, 408-586-3077; and Avery Stark, Acting Senior Planner, 408-586-3288)

Recommendation: (1) Receive progress report on the work completed and summary of community feedback from Raimi and Associates and staff on the Housing Opportunity Districts; and (2) Provide direction on the preferred alternative for the Housing Opportunity Districts.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (9:00 PM)

- 17.** Consider the Authorization of the Final Application for the \$301,516.00 Land and Water Conservation Fund Grant from the State Department of Parks and Recreation and associated Land Protection for Delano Manongs Park (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Recommendation: Authorize the Final Application for the \$301,516.00 Land and Water Conservation Fund (LWCF) Grant from the State Department of Parks and Recreation and associated Land Protection for Delano Manongs Park which places the entire Delano Manongs Park in the LWCF boundary map of protected open space, in perpetuity.

LEADERSHIP AND SUPPORT SERVICES (9:30 PM)

- 18.** Introduce Ordinance 196.12, an Ordinance of the City Council of the City of Milpitas Amending Section 4.05 of Chapter 9 ("Parks") of Title V ("Public Health, Safety, and Welfare") of the Milpitas Municipal Code and Introduce Ordinance 196.13 an Ordinance of the City Council of the City of Milpitas Adding Section 2.13 to Chapter 9 ("Parks") of Title V ("Public Health, Safety, And Welfare") of the Milpitas Municipal Code and Amending Section 4.00 of Chapter 9 ("Parks") of Title V ("Public Health, Safety, And Welfare") of the Milpitas Municipal Code (Staff Contact: Michael Mutalipassi, City Attorney, 408-858-3040)

Recommendation: (1) Following the City Attorney's reading aloud the titles, move to waive the reading beyond the title and introduce Ordinance 196.12; and (2) Decline to introduce Ordinance 196.13.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (10:00 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.

ADJOURNMENT (10:05 PM)

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government’s duty is to serve the public, reaching its decisions in full view of the public. Commissions and other City agencies exist to conduct the people’s business. This ordinance assures that deliberations are conducted before the people and City operations are open to the people’s review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney’s office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: mmutalipassi@milpitas.gov / 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: <https://www.milpitas.gov/129/Agendas-Minutes> (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.milpitas.gov 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.

September 2023						
S	M	T	W	T	F	S
	3	4	5	6	7	8
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17	18	19	20	21	22	23
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MILPITAS CITY COUNCIL CALENDAR

October 2023

November						
S	M	T	W	Th	F	S
	5	6	7	8	9	10
12	13	14	15	16	17	18
19	20	21	22	23	24	25
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 4:00-6:00 PM - Artwalk (Main Street)
8	9 4:30 PM -Economic Development and Trade Commission (CM)	10	11 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM -Planning Commission	12 11:15 AM -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 9:00 AM – 2:30 PM-2023 Manufacturing Day @ KLA+ and Flex (CM/EC [AM only]/HL [PM only])	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 4:00 PM - Finance Subcommittee	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 3:00 PM -City/School Collaborative Subcommittee Meeting (CM/EC) 				

October 2023						
S	M	T	W	T	F	S
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MILPITAS CITY COUNCIL CALENDAR

November 2023

December						
S	M	T	W	Th	F	S
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31						

Item # C1.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 1:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) (Santa Clara) 7:00 PM -Community Advisory Commission (EC)	2 5:30 PM -Santa Clara VTA Board of Directors (CM) 5:30 PM -Milpitas Chamber of Commerce Board (GB)	3	4
5	6 7:00 PM -Parks, Recreation & Cultural Resources Commission (HL)	7 6:00 PM -Closed Session 7:00 PM -City Council	8 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino)	9 4:00 PM -Santa Clara VTA Policy Advisory Committee (EC) 4:00 PM -Treatment Plant Advisory Committee (CM) (San Jose) 6:00 PM -Youth Advisory Commission (HL) 5:30 PM -Cities Assoc of SCC Legislative Action Committee (CM) 7:00 PM -Cities Assoc of SCC (CM)	10  CITY HALL CLOSED IN OBSERVANCE OF VETERANS DAY	11
12	13 4:30 PM -Economic Development and Trade Commission (CM)	14 4:00PM - Milpitas HOPE 5:30 PM -Special Council Meeting in lieu of 11/21 Regular Meeting	15 6:00 PM -Energy and Environmental Sustainability Commission (EC)	16 3:00 PM -VTA Safety, Security, and Transit Planning & Operations Committee (CM) 6:30 PM -Bay Area Water Supply Conserv Agency (CM) (Wind Room Foster City Community Center) 7:00 PM -Public Safety and Emergency Preparedness Commission (HL)	17	18
19	20 7:00 PM -Science, Technology, and Innovation Commission (GB) 7:00 PM -Library and Education Commission (EC) (Milpitas Public Library)	21	22	23	24	25
	26 7:00 PM -Arts Commission (EC)	27	28	29	30	



CITY HALL CLOSED FOR THANKSGIVING



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES
TUESDAY, OCTOBER 3, 2023

The City Council of the City of Milpitas convened on October 3, 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

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

PRESENT: Vice Mayor Chua, Councilmembers Barbadillo (6:08 PM), Lien, and Phan.

ABSENT: Mayor Montano.

City Attorney Mutalipassi announced the closed session items. The City Council adjourned to Closed Session at 6:01 PM.

ADJOURN TO CLOSED SESSION

(a) THREAT TO PUBLIC SERVICES OR FACILITIES

Pursuant to Government Code section § 54957

Consultation with: City of Milpitas Acting City Manager Ned Thomas

(b) PUBLIC EMPLOYEE APPOINTMENT

Pursuant to Government Code Section 54957(b)(1)

Employee Position: City Manager

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

CLOSED SESSION ANNOUNCEMENT:

City Attorney Mutalipassi announced that direction was given on Item (a) and announced that the City Council selected Acting City Manager Ned Thomas as City Manager.

PLEDGE OF ALLEGIANCE

Councilmember Barbadillo led the Pledge of Allegiance.

INVOCATION

Vice Mayor Chua announced that the meeting was dedicated to the memory of Senator Diane Feinstein.

Councilmember Lien presented the invocation.

PRESENTATIONS

Vice Mayor Chua and the City Council presented proclamations in recognition of Fire Prevention Week accepted by Fire Marshal / Deputy Fire Chief Belton and Fire Chief Schoonover, Indigenous Peoples' Day, Hindu America Awareness and Appreciation Month, and Clean Air Day accepted by Silicon Valley Clean

Energy Director Monica Padilla. Vice Mayor Chua and Silicon Valley Clean Energy Director Padilla presented the Electric Showcase Award to Seema's Beauty Salon. Deputy Public Works Director Marshall provided additional comments.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

READING OF THE CITY COUNCIL CODE OF CONDUCT

Vice Mayor Chua read the Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the October 3, 2023 Regular Meeting Agenda.

Motion/Second: Councilmember Lien / Councilmember Barbadillo

Motion carried by the following:

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

NOES: None

ABSENT: Mayor Montano.

CONSENT CALENDAR

Motion: to approve the Consent Calendar

Motion/Second: Councilmember Lien / Councilmember Barbadillo

Motion carried by the following:

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

NOES: None

ABSENT: Mayor Montano.

There were the following public speakers:

1. Voltaire Montemayor

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

Received City Council Calendar of Meetings for October 2023.

C2. Approve City Council City Council Meeting Minutes of September 14 and 19, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Approved City Council Meeting minutes of September 14 and 19, 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 for Appointments to City Commissions (Contact: Mayor Montano, 408-586-3024)

Received recommendations and approved recommendations for appointments to the Community Advisory Commission and Energy and Environmental Sustainability Commission and directed the City Clerk to post the Notice of Unscheduled Vacancy.

The following appointments were made:

Community Advisory Commission:

1. Appoint Armilyn Quijano to an unexpired term ending January 2026.

Energy and Environmental Sustainability Commission:

1. Promote Frank Bush from alternate to full voting seat with an unexpired term ending October 2025.
2. Appoint Thelma Batilo to a term ending October 2026.
3. Appoint Lisa Oliver to an unexpired term ending October 2024.

C6. Adopt a Resolution Authorizing the Application to the Prohousing Designation Program (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, 408-586-3275)

Adopted **Resolution No. 9274** authorizing the application to and participation in the Prohousing Designation Program.

C7. Authorize the Acting City Manager to Enter into a Master Professional Services Agreement with Asquare, Inc. for Temporary IT Staffing Services (Staff Contact: Nick Raisch, Human Resources Director, 408-586-3086; and Daniel Nam, Information Technology Director, 408-586-2712)

Authorized the Acting City Manager to enter into a two-year Master Professional Services Agreement with Asquare, Inc. for Temporary IT Staffing Services for the not-to-exceed amount of \$250,000.00.

C8. Adopt a Resolution to Approve Sole Source Procurement of Police Vehicles from Duval Ford, LLC, and Authorize the Acting City Manager to Execute a Purchase Agreement with a Total Not-to-Exceed Amount of \$701,953.92 for the Purchase of Up to 12 Police Vehicles (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406 and Christian Di Renzo, Public Works Director, 408-586-2602)

(1) Adopted **Resolution No. 9275** to approve sole source procurement of police vehicles from Duval Ford, LLC, and authorize the Acting City Manager to execute a purchase agreement with a total not-to-exceed amount of \$701,953.92 for the purchase of up to 12 police vehicles; and (2) In the event the City is unable to procure the vehicles from Duval Ford LLC, authorized the City Manager to select another vendor and execute a purchase agreement with a total not-to-exceed amount of \$701,953.92 for the purchase of up to 12 police vehicles.

C9. 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.

C10. Consider Two Fee Waiver Requests from FAREPA Silicon Valley and the Joseph Bettencourt Foundation and One Donation Request from Korean Language and Culture Foundation (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

(1) Approved a Fee Waiver of \$945.00 for the Joseph Bettencourt Foundation Fundraiser at the Milpitas Community Center on October 20, 2023; (2) Approved a Fee Waiver of \$1,500 for the FAREPA Silicon Valley Unity in Diversity event at the Milpitas Community Center on October 12, 2023; and (3) Approved Donation request of \$500 for the Korean Language and Culture Foundation Alphabet event at the Milpitas Library on October 1, 2023.

COMMUNITY DEVELOPMENT

11. Provide Feedback and Guidance on the Proposed Workforce Housing Rental Assistance Program Approve an Additional Appropriation of \$28,389.76 from the Affordable Housing Community Benefit Fund to FORWARD for the Administration of the Workforce Housing Rental Assistance Program, and Direct the Use of an Allocation from the State Budget for Homelessness Prevention and Unhoused Services (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 item, and Economic Development Director Andrade presented the report, joined by Senior Administrative Analyst Balcha and Housing Manager Musallam.

There were the following public speakers:

1. Voltaire Montemayor

Council Discussion ensued.

After discussion, motion: to (1) Receive a recommendation from the Housing Subcommittee and staff to provide rental assistance for up to 50 households over 24 months through a Workforce Housing Rental Assistance Program; (2) Approve and Authorize the Acting City Manager, or designee, to allocate an additional appropriation of \$28,389.76 from the Affordable Housing Community Benefit Fund to FORWARD for the administration of the Workforce Housing Rental Assistance Program ; and (3) Provide feedback and guidance on the use of an allocation from the State Budget for Homelessness Prevention and Unhoused Services for the Workforce Housing Rental Assistance Program.

Motion/Second: Councilmember Lien / Councilmember Phan

Motion carried by the following:

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

NOES: None

ABSENT: Mayor Montano.

12. Receive a Progress Report and Provide Direction to Staff on the Work Completed to Date on Phase 1 of the Comprehensive Zoning Ordinance Update, Including the Background and Recommendations Report, Draft New Zoning Districts (Business Park. Research and Development and Metro Area Zoning Districts), and Draft Updated Citywide Zoning Map (Staff

Contact: Jay Lee, Interim Planning Director, 408-586-3077; and Holly Pearson, Senior Special Projects Associate, 408-609-0072)

Recommendation: Receive a progress report and provide direction to staff on the work completed to date on Phase 1 of the Comprehensive Zoning Update, including the Background and Recommendations Report, draft new zones (Business Park Research and Development and Metro Area Zones), and draft updated Citywide Zoning Map.

Acting City Manager Thomas introduced the item. Acting Planning Director Lee presented the report, joined by Associate Planner Kristina Phung and Consultant Holly Pearson, and LWC Consultant Jen Murrillo. LWC Consultants Monica Szydluk and Stefano Richichi were available to respond to questions.

There were the following public speakers:

1. Voltaire Montemayor
2. Sean Morley
3. Kristen Brown
4. Ward Mace
5. Philip Sidles

Councilmember Barbadillo questioned the customary order for updating zoning ordinances in whether they followed a specific plan and general plan or otherwise and asked how differences between the two would be resolved. Interim Planning Director Lee noted they are trying to strike a balance between the central vision and the businesses currently in those districts. He also indicated that non-conforming properties grandfathered in. Councilmember Barbadillo emphasized the importance of consistency between the zoning ordinance and the plans adopted by the city.

Councilmember Phan spoke in support of Councilmember Barbadillo's comments. He encouraged staff to work with affected businesses, conduct outreach, and report back to the City Council. He more specifically requested in outreach efforts to reach out to major employers in the city that would be affected and work on resolving any concerns.

Councilmember Lien thanked staff for their hard work and cautioned staff to ensure the new updates don't affect existing business owners.

Vice Mayor Chua echoed councilmember concerns. She asked how staff would ensure these issues wouldn't happen again. Interim Planning Director Lee noted that future updates would be more specific. Vice Mayor Chua continued, emphasizing the importance of few limitations in certain areas to bring more businesses to the area.

Further Council Discussion ensued.

No action was taken.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE

13. Receive Presentation from Staff on Storm Drain System Revenue Requirements Analysis (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

Acting City Manager Thomas introduced the item. Public Works Director Di Renzo presented the report, joined by SCI Consulting Group Consultant Jerry Bradshaw, and Principal Civil Engineer Siddiqui.

There were the following public speakers:

1. Voltaire Montemayor
2. Johnny Reed

Public Works Director Di Renzo and Principal Civil Engineer Siddiqui responded to questions from the City Council.

Councilmember Barbadillo asked for information regarding shared stormwater infrastructure or regulatory obligations.

Vice Mayor Chua asked to return with details on the differences between the varied scenarios and the estimated fees.

No action was taken.

LEADERSHIP AND SUPPORT SERVICES

14. Approve Employment Agreement for the City Manager (Staff Contact: Nick Raisch, Human Resources Director, 408-687-5086)

City Attorney Mutalipassi introduced the item.

There were the following public speakers:

1. Voltaire Montemayor
2. Avery Stark

Councilmembers Phan, Lien, Barbadillo and Vice Mayor Chua offered congratulations to the newly appointed City Manager. City Manager Thomas offered thanks and provided remarks on the future of the city.

After discussion, motion: to approve Employment Agreement for the City Manager.

Motion/Second: Vice Mayor Chua / Councilmember Phan

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan and Vice Mayor Chua.
 NOES: None
 ABSENT: Mayor Montano.

PUBLIC FORUM

The following people spoke under Public Forum:

1. Amrita Nayyar
2. Johnny Reed
3. Avery Stark
4. Stephen Balsbaugh
5. Voltaire Montemayor

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (10:05 PM)

Councilmember Lien asked to agendize the Main Street International Festival. There was consensus from the City Council to move the item forward.

Councilmember Barbadillo made the following requests:

1. Agendize a discussion of what the City Council can do regarding shoplifting.
2. Consider a possible ordinance or policy regarding solicitations at home.

Both items received consensus to be placed on the future agenda items list.

ADJOURNMENT

Vice Mayor Chua adjourned the meeting at 9:55 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # C3.

as of 10/13/2023

November 7, 2023 – Regular Meeting

CLOSED SESSION

- Labor Relations

INVOCATION (Mayor Montano)

PRESENTATION

CONSENT CALENDAR

1. Receive City Council calendar for November 2023 (City Clerk)
2. Approve City Council Meeting minutes of October 17, 2023 (City Clerk)
3. Preview list of items for November 21, 2023 (City Clerk)
4. Councilmember Request List (City Clerk)
5. Commission Appointments (City Clerk)
6. Commission Workplans and Accomplishments
7. BVP Grant (Engineering)
8. Initial Acceptance – District 1 Lot 4 (Engineering)
9. HDL Agreement for Sales Tax services (Finance)
10. Report on Emergency HVAC Repairs (Public Works)
11. Disposition of Fleet and Equipment (Public Works)

PUBLIC HEARINGS

12. 1355 California Circle General Plan Amendment and Zoning Amendment (Planning)

LEADERSHIP AND SUPPORT SERVICES

13. Council Handbook (City Manager / City Clerk)
14. Revenue Measures Discussion (City Manager / Finance)
15. Medical Cannabis Delivery (City Attorney)
16. Council Prioritization Quarterly Update (City Manager)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider the Recommendation from Mayor Montano for Appointments to and Removals from City Commissions (Contact: Mayor Montano, 408-586-3024)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Receive the recommendation from Mayor Montano and approve appointment to the Planning Commission and removal from the Parks, Recreation and Cultural Resources Commission, and direct the City Clerk to post the notice of unscheduled vacancy.

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 interests and policy areas.

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

Current Commissioners may seek to be reappointed upon the expiration of their current term, but reappointment to a new term is not automatic. Those Commissioners seeking reappointment must contact the City Clerk and the Mayor to convey their request. Re-appointment must be recommended by the Mayor and confirmed by the City Council.

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

Analysis:

Mayor Montano is making the following recommendations for appointment:

Parks, Recreation and Cultural Resources Commission:

1. Remove Yesenia Illescas from a full voting seat with an unexpired term ending June 2025

Yesenia Illescas was appointed as a full voting commissioner on the Parks, Recreation and Cultural Resources Commission on December 6, 2022. Since her appointment, Commissioner Illescas has missed all scheduled meetings.

Planning Commission:

1. Appoint Parveen Gupta to an unexpired term ending December 2024

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

By state law, a Notice of an Unscheduled Vacancy must be posted by the City Clerk to advertise the vacant Commission seats. Final appointment to the board, commission, or committee for the Unscheduled Vacancy shall not be made by the legislative body for at least ten working days after the posting of the notice in the Clerk's office. The notice of the unscheduled vacancy for the Parks, Recreation and Cultural Resources Commission will be posted Wednesday, October 18, 2023.

Fiscal Impact:

There is no fiscal impact associated with this item.

California Environmental Quality Act (CEQA):

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

Recommendation:

Receive the recommendation from Mayor Montano and approve appointment to the Planning Commission and removal from the Parks, Recreation and Cultural Resources Commission, and direct the City Clerk to post the notice of unscheduled vacancy.

Attachments:

1. Application for Appointments



CITY OF MILPITAS PLANNING COMMISSION APPLICATION

Item # C4.

Thank you for your interest in serving on the City of Milpitas Planning Commission. The Planning Commission advises the City Council on matters related to land use, development, and planning permit decisions. Milpitas Municipal Code requires a Planning Commissioner to be a resident of the City of Milpitas and a registered voter. Planning Commissioners typically serve three-year terms and may serve up to three consecutive terms.

This Application is intended to provide basic information about your background and experience in relation to the work of the Planning Commission. City staff and members of the City Council will review this information and make recommendations to the Mayor for possible appointment to the Planning Commission. In addition to this Application form, applicants are required to complete the attached Supplemental Questionnaire.

PLEASE PROVIDE COMPLETE INFORMATION (in black ink)

☒ Mr. ☐ Mrs./Ms.

Milpitas Resident? Yes ☐

Registered voter? Yes ☐

Personal Information:

Parveen		Kumar	Gupta
Name:	First	Middle	Last
[REDACTED]			Milpitas, CA 95035
Address:	Number	Street (apt. # if needed)	City, State, Zip Code
[REDACTED]			[REDACTED]
Phone Number(s)	E-mail Address		
President/Co-CEO	Creative Solutions Network, Inc.		
Occupation	Present Employer		
[REDACTED]		[REDACTED]	
Business Address		Business Phone	

Education:

College, Professional, Vocational, or other schools attended	Major Subject	Certificate or Degree?
University of Wisconsin, Madison, Wisconsin	Electrical&Computer Engineering	Ph.D. GPA: 3.9/4.0
University of Kansas, Lawrence, Kansas	Electrical Engineering	M.S. GPA: 4.0/4.0

Experience:

Briefly describe any personal experience or work in the community that you believe would be an asset to your service on the Planning Commission (additional information may be attached):

(1) Former Milpitas Telecomm Commissioner (2003 and 2004). (2) President of Calera Creek Heights HOA for the last

3 years. (3) Founding Charter Member of TiE, the world's leading organization for the promotion of entrepreneurship and startups. (4) Significant construction experience from building one of my previous homes. Own and manage several

rental properties. (5) Special recognition from the California Senate on September 3rd, 2003 for community work.

I hereby certify that all statements contained in this application are true and that I am a registered voter and a resident of the City of Milpitas. If appointed, I have enough time to devote to this responsibility and will attend the required meetings.

Signature

Date

9/8/2023

Note: All Commission Applications are Public Record. Applications will be kept on file by the City Clerk for one year.

Please Mail or drop off your completed application and supplemental questionnaire to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

Phone: (408) 586-3001 – Fax: (408) 586-3030 – E-mail (cityclerk@milpitas.gov)



PLANNING COMMISSION APPLICATION SUPPLEMENTAL QUESTIONNAIRE

Item # C4.

(Please type or print responses below or use a separate sheet of paper).

1. Why are you interested in serving on the Planning Commission?

After living in Milpitas for over 26 years, I believe I'm familiar with most of the important development issues in the city. In addition, I have the right background for a strategic advisory role to make a significant contribution to the future growth of Milpitas. I have the necessary time now to devote to the community after spending a long career in the corporate and business world in Silicon Valley.

2. What do you think are important skills or attributes for a Planning Commissioner, and why?

1. Understanding of the land use and development issues and guidelines in Milpitas to make the right recommendations to the City Council.
2. Understanding of the City Zoning Ordinance and Subdivision Ordinance guidelines.
3. Dedication and passion to improve the city for a better quality of life for its residents.
4. Being ethical and honest. Complying with the city's ethical and conflict-of-interest guidelines.

3. How will your personal or work experience contribute to your role as a Planning Commissioner?

(Please see attached sheet)

4. From your viewpoint, what are the most pressing land use or development issues in Milpitas?

(Please see attached sheet)

5. How would you typically prepare for a Planning Commission meeting?

1. Read the background paperwork of each project or case prepared by the city staff.
2. Reach out to the city staff to understand the project better, if required.
3. Visit the development site for a better understanding, if applicable.
4. Make a list of questions or issues for the meeting.

6. What do you see as the different roles of City staff, the Planning Commission, and City Council?

City Staff: Collect and prepare the relevant background information for the Planning Commission and the City Council. Prepare the agenda. Identify different options. Make recommendations, if appropriate.

Planning Commission: As a strategic advisory role to the City Council, ask the right questions to come up with the right advice and recommendations for the City Council. Work in a collaborative fashion with the city staff and other commissioners.

City Council: Make the final decision based on the information from the City Staff and the Planning Commission.

Supplemental Sheet – Parveen Gupta

How will your personal experience contribute to your role as a Planning Commissioner?

1. As President of the Calera Creek Heights HOA, I came up with several innovative and practical ideas to improve the community. I made major repairs to the 1-mile-long HOA road, installed internet and security cameras at the neighborhood gate, installed a video entry system at the gate, reduced operational costs significantly, etc. According to residents, I have done more for the HOA community than all other Presidents in its 37-year history.

The experience of managing a small HOA community has given me good insight into development issues and solutions that may be applicable to the entire city.

2. As a Milpitas Telecomm commissioner, I developed a good understanding of how a commissioner's advisory role works. I learned to work in a collaborative fashion with the city staff and fellow commissioners.
3. As a member of the founding team of TiE since 1992, I made major contributions to make TiE the most prominent nonprofit organization in the world for the promotion of entrepreneurship and startups. It has over 60 chapters around the world. I was a board member for several years. I started TiE Institute in 2003 and Innovation Expo in 2000. In 2001, I was the convenor for TiE's annual conference, TiEcon, with over 3000 attendees. **I received special recognition from the California Senate on September 3rd, 2003, for my contributions to the community.**

With this experience of working with some of the most successful entrepreneurs in Silicon Valley, I learned to do nonprofit volunteer work with the same dedication and passion as a fully paid job in the corporate world.

4. I have significant construction experience from building one of my previous homes and managing several rental properties for many years. I have knowledge about what is involved in building a house and making major improvements later, including the permit approval process from the city.

From your viewpoint, what are the most pressing land use or development issues in Milpitas?

1. Lack of a walkable downtown area like Mountain View.
2. Litter and weeds all over town require cleaning up.
3. The homeless problem persists and needs innovative solutions.
4. Lack of natural/organic grocery options, such as Sprouts or Whole Foods stores.
5. Lack of notable or known attractions for visitors.
6. Need better branding for the city. For example, we could identify and brand some of the hilly areas as Milpitas Hills (e.g., Los Altos Hills, Saratoga Hills).



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Accept the FY 2022-23 Commissioners Annual Report for Four (4) Commissions and Oversight Committee and Approve Four (4) City of Milpitas Commission and Oversight Committee Work Plans for FY 2023-24 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/17/2023
Recommendation:	(1) Accept the 2022-23 Commissioners Annual Report; and (2) Approve proposed Fiscal Year 2023-24 Work Plans for (a) Community Advisory Commission, (b) Economic Development and Trade Commission, (c) Science, Technology, and Innovation Commission, and (d) Measure F Oversight Committee.

BACKGROUND:

The City of Milpitas has 13 Commissions and Committees, 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 works with commissions to develop their respective workplans and takes them to Council for review and approval.

ANALYSIS:

The Community Advisory Commission; Economic Development and Trade Commission; Science, Technology and Innovation Commission; and Measure F Oversight Committee 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.

Commission accomplishments for and carry-overs from Fiscal Year 2022-2023 are as follows:

Commission Accomplishments

Community Advisory Commission

The Community Advisory Commission (CAC) serves as an advisory body on matters affecting Milpitas residents, especially those relating to community improvement. The CAC also evaluates and makes recommendations to the City Council on diverse issues including City-wide beautification, which includes community and neighborhood clean-ups and reviewing issues related to neighborhood abatement. CAC also advises City Council on recommended funding for the annual Community Development Block Grant program. The Community Advisory Commission (CAC) met ten times during fiscal year 2022-2023. The CAC successfully accomplished the Commission's work plan goals. Notably, the Commission held two Spring Cleaning Day events, the first at Mobilodge mobile home park and the second at the Pioneer mobile home park. Both events brought 40+ volunteers out to the community to help mobile home residents with critical clean-up around their community. The Commission also held their annual Community Engagement & Affordable Housing and Building Safety month event to celebrate Affordable Housing month and the City's progress on affordable housing. Lastly, the Commission continued to provide critical feedback to staff and Council on the Community Development Block Grant Program (CDBG). Through the Commission's guidance, staff was able to adopt the 2022-2025 Consolidated Plan and 2022-2023 Annual Action Plan allocations which brought over \$650,000 in federal funding to the City's low and moderate-income residents.

Economic Development and Trade Commission

The Economic Development and Trade Commission advises the City Council on business issues, cultivate international trade and commerce opportunities, and makes recommendations on the design, development,

and implementation of economic development in Milpitas. The Economic Development and Trade Commission (EDTC) met eight times during Fiscal Year 2022-2023. During the fiscal year, EDTC had significant accomplishments. They include, but are not limited to, the following: strategized on commission roles, involvement, and how to support Office of Economic Development staff, participated in the 6th Annual Manufacturing Day event and the newly created Zoning Advisory Committee, provided input on the planned Job Fair event, Innovation District Branding Initiative, Gateway-Main Street Specific Plan, and Milpitas business layoffs, and also received Brown Act Training, and American Rescue Plan Act (ARPA) updates on the Economic Vitality Investment Framework.

FY 2022-23 Work Plan Item	Accomplished	Carryover	Notes
Economic Development Strategy	X	X	58% complete on the 5-year plan
American Rescue Plan Act (ARPA) Economic Vitality Framework	X	X	Ongoing
Main Street Revitalization		X	Ongoing
Workforce Development & Education	X	X	Ongoing
Innovation District	X	X	Consultant agreement executed and Branding Initiative is ready to be launched
International Trade & Commerce	X	X	Annual attendance at US Economic Summit with Go-Biz
Manufacturing Day 2022	X		Annual event

Science, Technology and Innovation Commission

The Science, Technology and Innovation Commission advises the City Council on matters of telecommunications policy, legislation, and implementation at the local, state, and federal levels. The Commission also considers and recommends information technology services that benefit the Milpitas community.

22-23 Workplan Item	Accomplished	Carryover	Notes
Smart City Initiatives	X		Research and recommend Smart City projects Received presentation on Smart City Initiatives
Comprehensive Internet Connectivity Plan	X		Develop strategy to ensure digital access and literacy across the Milpitas community Received Milpitas internet providers research report
City of Milpitas MUSD Innovation Center Partnership		X	Continued partnership with MUSD for Innovation Center Programs Received Innovation Campus tour report
IT Technology Projects		X	Review and provide feedback on Technology Projects - Received Fire Station #2 tour & technology report - Received new City Website presentation - Received Police Dispatch Center and IT Datacenter tour report

Measure F Oversight Committee

The Measure F Oversight Committee advises the Council by Committee motion regarding staff recommendations, a report furnished and approved by the Committee, and/or at a City Council meeting.

FY 2022-23 Work Plan Item	Accomplished	Carryover	Notes
As part of the development of the budget, review the projected revenues and recommended expenditures for the funds generated by Measure F	X	X	Ongoing
Towards the end of the Fiscal Year review status of programs and services, funded wholly or partially with proceeds from Measure F	X	X	Ongoing
Receive presentation from the City's independent financial auditor	X	X	Ongoing
Receive presentation from the City's sales and use tax consultant	X	X	Ongoing

FISCAL IMPACT:

Each Commission, except for Measure F Oversight Committee 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.

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; and
- (2) Approve proposed Fiscal Year 2023-24 Work Plans for
 - (a) Community Advisory Commission,
 - (b) Economic Development and Trade Commission,
 - (c) Science, Technology, and Innovation Commission, and
 - (d) Measure F Oversight Committee.

Attachment(s):

1. Community Advisory Commission FY 23-24 Workplan
2. Economic Development and Trade Commission FY 23-24 Workplan
3. Science, Technology and Innovation Commission FY 23-24 Workplan
4. Measure F Oversight Committee FY 23-24 Workplan

MILPITAS COMMUNITY ADVISORY COMMISSION FY 2023-2024 WORK PLAN

Work Plan Goals: Serve as an advisory body on matters affecting Milpitas residents, especially those relating to community improvement.					
Topic/Advisory Area		Tasks	Required Resources	Begin Discussion	Deadline
A.	CDBG public meeting process	Staff 1. Present informational workshop for commissioners 2. Prepare application packages 3. Coordinate with CDBG applicants to attend the meeting CAC 1. Review prepared application packages for a public meeting 2. Make recommendations for CDBG service areas to the City Council 3. Receive periodic updates from staff	Time: Commission, Staff, CDBG Applicants Budget: Refreshments	September	March
B.	Spring Cleaning Day	1. Commissioners discuss the location for the event 2. Staff coordinates with community organizers to present logistics for the event and volunteers 3. Staff will coordinate trash receptacles and other necessities for the event	Time: Commission, Staff, Community Organizers Budget: Outreach materials, refreshments for volunteers, certificates of appreciation for volunteers	October	April
C.	National Night Out	1. Staff coordinates with Milpitas PD to present about National Night Out 2. Commissioners discuss outreach strategies for the event and determine areas to engage	Time: Commission, Staff, Police Department Budget: Outreach materials, flyer printing (if event is held by the CAC)	April	August
D.	Neighborhood Beautification Awards	1. Commissioners discuss award categories, criteria, application window, and logistics. 2. Commissioners conduct community outreach 3. Commission reviews applicants and votes for winners of each award category	Time: Commission, Staff Budget: Award plaques for winners	August	October

		4. Staff coordinates the presentation of award winners to the City Council			
E.	Community Engagement & Affordable Housing and Building Safety Month	1. Commissioners coordinate with staff to promote Affordable Housing and Building Safety Month 2. Commissioners conduct outreach for activities, workshops, and community events 3. Commissioners provide a forum to engage with residents on community needs and resources	Time: Commission, Staff Budget: Outreach materials	March	May



**ECONOMIC DEVELOPMENT & TRADE COMMISSION (EDTC)
WORK PLAN FY 2023-2024**

EDTC Mission Statement:

Advise the City Council on business issues, cultivate international trade and commerce opportunities, and make recommendations on the design, development, and implementation of economic development in Milpitas.

Topic/Overall Goal	Specific Action(s) Required	Schedule	Project Status
Economic Development Strategy	Implement Strategies and Actions: Storefront Improvement Grant Program, Business Improvement District (BID), economic indicators, branding/marketing assets, improving & updating website, & demonstration project policy. - EDTC Commissioners may volunteer as ambassadors to assist in formal and informal business outreach as directed by staff, particularly along Main Street - EDTC Commissioners may participate and present at Chamber of Commerce events such as breakfast and lunch convenings		
American Rescue Plan Act (ARPA) Economic Vitality Framework	Economic Vitality: support re-building the Milpitas economy through a Small Business Assistance Grant Program, Workforce Development, Financial Assistance to Chamber & Hotels, Main St. Revitalization & Limited Term Economic Development Specialist. - EDTC Commissioners may provide expertise and feedback on hospitality and workforce development matters - Volunteer ambassadors may help with business outreach for re-building the Milpitas economy		
Main Street Revitalization	Main Street Revitalization will encourage economic vitality, enhance business marketability, increase property values, and attract people and new businesses. - Economic Development Strategy 31: Position Midtown as a community destination for independent retail & restaurants and Implementation Action 9.1: Implement Pilot Storefront Improvement Grant Program under Retail and Restaurant Strategies - Business Improvement District Feasibility Analysis		
Workforce Development & Education	Promote a diversified workforce and provide training opportunities for Milpitas residents. - COVID-19 Workforce Recovery implementation, education/outreach on Phase II - FlexFactor Initiative - Workforce dev./training to Milpitas High School students - City/MUSD MOU - Workforce/Educ., MFG Day, career fair, business outreach		

	As directed by staff, EDTC Commissioners may help facilitate opportunities with MUSD, engage with Milpitas High School students, and leverage networks at San Jose State University, San Jose City College, Evergreen Valley College, NextFlex, etc.		
Innovation District	Market development opportunities with the real estate development & brokerage communities & business attraction in the emerging technologies arena.		
International Trade & Commerce	Support business expansion into global markets, attract foreign investment through information gathering, needs assessment, & cultivate relationships w/service providers. - Provide expertise and feedback on the draft International Trade and Commerce work effort - Help facilitate trade events, including hosting dignitaries, trade missions, attending trade shows, etc.		
Manufacturing Day 2023	Manufacturing Day 2023: Focus on career opportunities in tech/advanced manufacturing, impacts of onshoring of jobs and supply chain disruption on Milpitas and Silicon Valley manufacturing industry. Continue to partner with the Office of Economic Development to support Manufacturing Day 2023 by participating as program speakers; event promotion and marketing; leveraging networks, and/or providing feedback.		

City of Milpitas Science, Technology and Innovation Commission 23-24 Workplan

City of Milpitas Science, Technology and Innovation Commission advises the City Council on matters of telecommunications policy, legislation, and implementation at the local, state, and federal levels. The Commission also considers and recommends information technology services that benefit the Milpitas Community.

Topic/Advisory Area	Tasks	STATUS
IT Technology Projects	Review and provide feedback on Technology Projects	Carryover
City of Milpitas - MUSD Innovation Center Partnership	Commission to establish partnership with the MUSD Innovation Center	Carryover
Emergency Communications	Research and identify emergency communication systems used by the city and provide feedback	NEW
Artificial Intelligence	Research technology and necessary policies in the areas of Artificial Intelligence	NEW

Measure F Oversight Committee FY 2023-24 Work Plan

The Measure F Oversight Committee advises the Council by Committee motion regarding staff recommendations, a report furnished and approved by the Committee, and/or at a City Council meeting.

Tasks	Required Resources	Goal Deadline
As part of the development of the budget, review the projected revenues and recommended expenditures for the funds generated by Measure F	Committee, Staff	Ongoing
Towards the end of the Fiscal Year review status of programs and services, funded wholly or partially with proceeds from Measure F	Committee, Staff	Ongoing
Receive presentation from the City's independent financial auditor	Committee, Staff	Ongoing
Receive presentation from the City's sales and use tax consultant	Committee, Staff	Ongoing



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Recommendations from Staff regarding a Proposed Joint Powers Authority (JPA) Agreement for the Cities Association of Santa Clara County and Approve Direction on Feedback to the Cities Association Board (Staff Contact: Ned Thomas, City Manager: 408-586-3059)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Receive recommendations from staff regarding a Proposed Joint Powers Authority (JPA) Agreement for the Cities Association of Santa Clara County (CASCC) and approve direction to staff and Mayor Montano, as the City's representative to the CASCC, to oppose the formation of a Joint Powers Authority at this time.

Background:

Over thirty years ago, the cities and towns in Santa Clara County ("Member Agencies") established the Cities Association of Santa Clara County (CASCC) to improve cooperation and collaboration on issues of common interest. The intent was to consolidate and maintain the functions and purposes of the Inter-City Council, the Santa Clara County Mayor's Conference, and the City Selection Committee for Santa Clara County. The cities and towns entered into an informal agreement to provide some structure and outline the purpose and function of the CASCC, eventually adopting bylaws and operating as an unincorporated association.

In 2017, the CASCC began reviewing its organizational structure. In August 2020, the CASCC Board voted 12 ayes with three absences (Los Altos Hills, Monte Sereno, San José) to take the necessary steps to form a joint powers authority. The vote took place after a presentation considering both a JPA and a 501(c)4. The presentation noted that:

- Since CASCC formation, California and federal law has changed.
- CASCC was not originally registered as a governmental entity and attempts to do so with the IRS have been unsuccessful.
- CASCC is growing with respect to its responsibilities and involvement in projects of mutual interest (e.g., Planning Collaborative, SCSC Airplane Noise Roundtable, Silicon Valley Clean Energy, City Selection Committee).

At present, the CASCC is again proposing a Joint Powers Authority (JPA) Agreement that they contend would limit the potential liability of Member Agencies and to provide increased clarity relating to tax status and governmental immunities. (Though it has not been clearly established that this new form of organization is necessary to accomplish either of these goals). Attachment A is the proposed Draft JPA Agreement.

On September 14, 2023, the CASCC Board approved a motion to request that individual Board members seek input from their respective Member Agencies on the proposed JPA. To form a joint powers authority, a JPA would need to be approved by the CASCC Board of Directors and then executed by each Member Agency that wishes to join. Cities and towns throughout Santa Clara County will be similarly considering the proposed JPA, though none have indicated that they are likely to approve the Agreement as drafted. Milpitas City staff have lingering concerns with the JPA, as outlined in the Analysis section of this report, and we have provided recommendations for potential changes per Council direction. Should Council accept these recommendations and propose changes to the Agreement, staff will convey this feedback to CASCC. CASCC may then consider revising the draft Agreement in response to this feedback.

Currently, the CASC Board appoints members to a variety of regional boards. This function falls under the City Selection Committee established by state statute and will continue regardless of the formation of a JPA, unless the local agencies determine otherwise. The appointments include the Airport Land Use Commission, the Association of Bay Area Governments (ABAG), ABAG Regional Planning Committee, Bay Area Air Quality Management District (BAAQMD), Sourcewise, the Local Agency Formation Commission (LAFCO), Metropolitan Transportation Commission (MTC), Santa Clara County Local Board CAL-ID-RAN, Santa Clara County Emergency Operational Area Council (EOAC), Silicon Valley Regional Interoperability Authority (SVRIA), Recycling Waste & Reduction Commission (RWRC), Redevelopment Dissolution Countywide Oversight Board of Santa Clara County, and Measure A (Housing Bond) Independent Citizens' Oversight Committee. Participation in the City Selection Committee is governed by Government Code section 50207, which requires "the membership of each such city selection committee shall consist of the mayor of each city within the county." Thus, the Mayor of Milpitas will continue to be a member of the City Selection Committee regardless of whether Milpitas chooses to become a member of the proposed JPA.

Over the past two years, the CASC Board conducted outreach and sought input from City and Town Attorneys, as well as City Managers. This outreach included circulating the Draft Agreement and attending meetings. There was extensive feedback and input from the City and Town Attorneys and City Managers, some of which has been incorporated into the Draft Agreement. On September 14, 2023, the Draft Agreement was considered by the CASC Board. In response to various issues raised at the meeting, the CASC Board directed that the Draft Agreement be revised to clarify that the JPA would not hire employees. The CASC Board further directed that the Draft Agreement be revised to provide some language permitting but not requiring the CASC Board to appoint a working committee composed of professional staff from the member cities to review new initiatives and provide input to the CASC Board. With these changes, the CASC Board unanimously approved transmittal of the Draft Agreement to the City and Town Councils of the proposed Member Agencies for their consideration. The CASC Executive Board has expressed a goal of finalizing the JPA in November. Despite the CASC Board's amendments and adoption of the JPA agreement, many of the region's City Managers and City Attorneys see significant potential problems with the JPA agreement as written. The City Manager and City Attorney of Milpitas share these concerns.

Analysis:

Development of the proposed JPA Agreement has been led by CASC's Executive Board (to be renamed the Executive Committee with the proposed JPA). Executive Board members have spent significant time and effort, working with their Executive Director and General Counsel to draft the agreement, seek input, and respond to feedback to date. CASC has incorporated many suggestions into the draft Agreement, and staff appreciates their effort to address the issues raised. At this point, staff is recommending a few remaining issues for Council to consider in determining whether to request changes from CASC:

1. **JPA Alternatives** – CASC has indicated it is seeking to become a JPA to ensure governmental immunities and decrease liability for member agencies. There are alternative ways of avoiding liability, such as refraining from hiring employees and avoiding involvement in initiatives without sufficient management or checks and balances. Over time, CASC has also been challenged to maintain financial and organizational management given limited resource allocation and oversight. If the CASC was to continue as an unincorporated association, one alternative could be that cities provide greater in-kind support such as acting as fiscal agent and/or providing other services to assist with the ongoing functions of the organization. *Staff recommends that this option could be referred to the city managers and city attorneys, in their respective groups, for further consideration and development.*
2. **Scope and Purpose** – Article 7 of the Draft Agreement outlines activities that the JPA would be prohibited from engaging in, such as purchasing real property, hiring employees, and issuing debt. Beyond these specific functions, the language describing what the JPA can do (Articles 2 and 6) — its purposes and powers — is very broad. *Staff recommends that these activities should be further limited, either by adding prohibited activities or by more tightly defining the JPA's specific purposes and powers. This may also include recommendations on the level of consensus required before the JPA were to represent positions on issues or undertake new initiatives.* For example, whether a simple majority or supermajority should be required for action.

3. Fiscal Management –

- a. *Timing and Ability to Provide Budget Input.* Article 8 of the Draft Agreement grants responsibility for developing an annual budget to the Board. However, it does not specify an opportunity for member agencies to review and provide input to budget decisions. The Silicon Valley Regional Interoperability Authority (SVRIA), used as a model for the JPA, established a Working Committee consisting of member agency staff and assigns to the Working Committee responsibility for ensuring preparation and establishes deadlines for distribution of the budget to members. This ensures member agencies can provide timely input to the JPA budget preparation. *Staff recommends that the proposed JPA include a similar Working Committee to support preparation of the annual budget.*
 - b. *Cost Allocation Specificity.* The Draft Agreement does not specify cost allocations to Member agencies. While CASCSC representatives have indicated no plans to change current fees and allocations to individual cities, neither the initial structure for dues nor a process for future changes are stated. *Staff recommends that the JPA should establish clearly defined cost allocations and a process for changes to provide cities and towns greater clarity when making decisions about becoming a JPA member.*
 - c. *Weighted Voting.* The proposed JPA organization would allow smaller cities to have an amplified voice in the organization disproportionate to the population of the agency member and the value of the annual dues or potential in-kind support offered to the organization. *Staff recommends that the Board membership should mirror the dues structure such that the number or weighted value of votes allowed for an agency member should increase based on that jurisdiction's population and the amount of dues paid by that jurisdiction.*
4. **Undertaking New Initiatives/Programs** – In Article 15 of the Draft Agreement, the definition of a significant program assumes the JPA's ability to determine whether an activity will require \$10,000 or more annually. In response to feedback received, the Draft Agreement authorizes the Board to appoint a Working Group to study a significant activity and provide input to the Board. However, the need to establish a Working Committee when an opportunity has already been presented would likely be a barrier to implementation, versus establishing a Working Committee in advance, responsible for identifying what may constitute a significant program, and advising the Board on issues that may not initially appear to be significant.

In its discussions, CASCSC has indicated the Executive Committee would serve this function in lieu of a Working Committee. However, given the breadth of powers proposed for the JPA, staff recommends that a Working Committee comprised of staff from Member agencies be required to advise the Board. Some initiatives can appear no-cost or low cost when first suggested, only later becoming clear to require significant time and/or funding to implement. A staff-level Working Committee would provide professional expertise on a range of topics can support decision-making and help ensure focus of JPA resources.

5. **Contract/Contractor Oversight and Performance Review** – The contractual professional services provided by the Executive Director, General Counsel, Auditor, and potentially other services are described in Article 14. The draft Agreement does not specify, however, the responsibilities of the Board and Executive Committee for the selection, performance evaluation, and potential termination of the contractors providing these services. Absent a member agency staff structure for supporting these duties, this can be a difficult function for the Board and Executive Committee to perform.
6. **Executive Committee Authority** – Decisions other than the annual budget are largely left to the Executive Committee (see Article 11 of the Draft Agreement). This creates the potential that Executive Committee decisions and activities may not align with the Board or some of the individual member agencies.

Two questions that have never been fully explained are the exact function of the new JPA and how that function is not duplicative of other organizations in the area. Aside from the Cities Association Selection Committee, the Cities Association does not seem to have any unique function within the community. The League of Cities has a regional legislative advocacy group that is generally successful at the legislative advocacy functions that the Cities Association seeks to undertake. If this is the case, then the cost-benefit of

forming a JPA is questionable given the extraordinary costs associated with the formation and management of a JPA that duplicates work already successfully been undertaken at the League.

There is also an issue regarding potential divergent interests that needs further consideration. For example, members of the Cities Association have had divergent positions on the flight paths of aircraft. With an unincorporated association, members who disagree with the path taken by the Cities Association can easily leave the association. This will not be true once a JPA is formed. Members may find themselves in a position where they cannot easily leave the JPA (without incurring substantial liabilities) even though the JPA is actively taking positions that would negatively affect the member's constituents. This could be a substantial problem when it comes to especially controversial regional issues.

Staff recommends that the Council oppose the formation of the JPA at this time. Staff further recommends that the Council approve the recommendations outlined above, which will be communicated to CASCC as requested revisions to the draft Agreement.

Fiscal Impact:

The primary fiscal impacts are related to the future dues structure and cost allocation that would be associated with the JPA. Since the Draft Agreement does not define this, there is the potential that future costs may vary from current contributions. Milpitas' Membership Dues to CASCC in FY22-23 and FY23-24 were \$19,665. The CASCC reported a budget of \$293,403 total revenues and \$212,159 total expenses for fiscal year FY2022-23. Future dues will be established after approval of the JPA, and the CASCC has stated that no changes are anticipated. Long-term costs are unknown.

California Environmental Quality Act:

Council consideration of and direction on the Draft Agreement will not cause physical changes to the environment and does not constitute a "Project" under the California Environmental Quality Act (CEQA).

Recommendation:

Staff recommends that Council oppose the formation of the proposed JPA at this time, and approve the recommendations outlined in the Analysis section above, which will be communicated to the CASCC Board as requested revisions to the draft Agreement.

Attachments

1. Attachment A: Draft Agreement
2. Attachment B: City Managers Questions and CASCC Answers

JOINT POWERS AGENCY AGREEMENT FOR CITIES ASSOCIATION OF SANTA CLARA COUNTY

This Joint Powers Agreement (“Agreement” or “JPA”) for the Cities Association of Santa Clara County is entered into by and among the cities (“Members”), which are organized and existing under the Constitution and laws of the State of California in which public agencies are located in the County of Santa Clara, and upon approval and full execution of the Agreement, creates the Cities Association of Santa Clara County Joint Powers Agency (“Agency”).

RECITALS

WHEREAS, Articles 1 and 2, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 *et seq.*) permit two or more public agencies by agreement to jointly exercise powers common to the Members; and

WHEREAS, the public agency Members executing this JPA are cities or towns within the jurisdiction of the County of Santa Clara (“County”); and

WHEREAS, the Cities Association of Santa Clara County has existed as an unincorporated association since 1990 and desires to formalize the relationship between its City and Town members and form a Joint Powers Agency in order to carry out activities for the good of all its Members; and

WHEREAS, the Members executing this Agreement, desire to join together to create a separate Joint Powers Agency for the purpose of promoting cooperation among the Members; advocating for positive action; enhancing the quality of life for the residents of the County and their individual cities; and encouraging other joint and cooperative endeavors among the public agencies for their mutual benefit.

NOW, THEREFORE, the Parties agree to the following:

AGREEMENT

ARTICLE 1 - DEFINITIONS

- 1.1 “Associate Member” shall mean any non-city local agency, located within jurisdictional authority of the County of Santa Clara, and shall have duly executed and delivered to the Agency an Associate Membership Agreement in the form of and as further provided in the Bylaws of the Agency, as further provided in Article 32 herein.
- 1.2 “Agency” shall mean the Cities Association of Santa Clara County Joint Powers Agency created by this Agreement.
- 1.3 “Board of Directors” or “Board” shall mean the governing body of the Agency.
- 1.4 “Executive Committee” shall mean the Executive Committee of the Board of Directors of the Agency.

- 1.5 “Fiscal Year” shall mean that period of twelve (12) months which is established by the Board of Directors or the Bylaws as the fiscal year of the Agency, which shall run from July 1 to June 30 of each year.
- 1.6 “Government Code” shall mean the California Government Code, as amended.
- 1.7 “Joint Powers Law” shall mean Articles 1 and 2, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code, known as the Joint Exercise of Powers Act, as amended.
- 1.8 “Legislative Body” shall mean the legislative board of each Public Agency that is a Member of the Agency.
- 1.9 “Member” shall mean any city which has executed this Agreement and has become a member of the Agency. The complete list of Members is set forth in Exhibit “A” attached hereto and incorporated herein by this reference.
- 1.10 “Parties” shall mean Members or Associate Members who are party to this Agreement.
- 1.11 “Public Agency” shall mean public agency as defined in Government Code Section 6500, as amended.
- 1.12 Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neutral gender shall be construed to include each other gender, when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions herein shall be construed to effectuate the purposes set forth and to sustain the validity of those purposes.

ARTICLE 2 - CREATION AND PURPOSES

- 2.1 This Agreement is entered into by the Members in order to:
 - 2.1.1 Review, study, develop consensus positions, and take action on issues of interest to Members;
 - 2.1.2 Focus on local and regional matters that are important to our future;
 - 2.1.3 Develop a common agenda for Santa Clara County cities;
 - 2.1.4 Serve as a unified voice for Santa Clara County cities in relationship to other agencies, organizations, and levels of government;
 - 2.1.5 Establish and administer the City Selection Committee pursuant to Government Code Section 50270 *et seq.*, as amended and make appointments to regional and local bodies as provided by law;
 - 2.1.6 Serve as a source of education, information, and networking for officials from all cities in Santa Clara County;

- 2.1.7 Provide a forum for non-city individuals, groups and organizations and the private sector to address items of interest to Santa Clara County cities;
- 2.1.8 Reduce duplication of effort by sharing information and provide a unified voice and strong advocacy on legislation and other important issues that affect its Members;
- 2.1.9 Strengthen the Members' and Agency's standing at the regional, State and Federal level;
- 2.1.10 Strive to respect local control, provide regional perspective, and make a difference to elevate the quality of life throughout the County;
- 2.1.11 Provide a forum for discussion and study of problems common to the Members and to assist in the development and implementation of solutions to such problems;
- 2.1.12 Provide a method for the Members to collaborate and jointly develop policies that benefit the region; and
- 2.1.13 Collaborate in such a way that is efficient, saves the jurisdictions the expense of individual effort, and creates positive outcomes.

ARTICLE 3 - PARTIES TO AGREEMENT

Each Member, as a Party to this Agreement, intends to and does contract with all other Members as Parties to this Agreement and, with other Public Agencies as may later be added as Parties to this Agreement pursuant to the Joint Powers Law. The withdrawal of any party from this Agreement, pursuant to Article 20, shall not affect this Agreement or the remaining Members' obligations.

ARTICLE 4 – FORMATION; TERM

This Agreement shall become effective when fully executed and returned to the Agency by at least eight (8) Members, but only as to those Members that have executed the Agreement. The Agency shall promptly notify all Members in writing of the effective date. After one full year after the initial formation of the Agency, should the membership fall below seven (7) Members due to the withdrawal of Members and the membership level remains at below seven (7) Members for a period of at least one (1) year and a similar joint powers authority, with the same or similar powers and functions is formed containing a majority of cities in the County of Santa Clara, the Agency shall change its name and permit the new organization to take on the name of the Agency. Notwithstanding the name change, this Agreement shall continue in effect until terminated as provided herein. The termination of this Agreement with respect to an individual Member upon its withdrawal from membership in the Agency shall not operate to terminate this Agreement with respect to the remaining Members.

ARTICLE 5 - CREATION OF THE AGENCY

Pursuant to the Joint Powers Law, there is hereby created a public entity, separate and apart from the Parties hereto, to be known as the "Cities Association of Santa Clara County Joint Powers

Agency” with powers as are set forth herein. Upon formation of the Agency as described in Article 4, the Cities Association of Santa Clara County, an unincorporated association shall follow the process of dissolution and cease to exist.

ARTICLE 6 - POWERS OF THE AGENCY

6.1 Subject to the terms of this agreement, the Agency shall have all of the powers of a public agency as defined in the Government Code Section 6500 as amended and all additional powers set forth in the Joint Powers Law and other statutes applicable to the Joint Powers Agency created hereby and is authorized to do all acts necessary for the exercise of these powers on behalf of its Members. Powers include, but are not limited to, the following, in the Agency’s own name:

- 6.1.1 To make and enter into contracts;
- 6.1.2 To incur debts, liabilities, and obligations and to encumber personal property;
- 6.1.3 To acquire, hold, or dispose of personal property, contributions, and donations of personal property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities;
- 6.1.4 To sue and be sued in its own name, and to settle any claim against it;
- 6.1.5 To receive and use contributions and advances from Members as provided in Government Code Section 6504, as amended including contributions or advances of personnel and equipment;
- 6.1.6 To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5, as amended;
- 6.1.7 To acquire, construct, manage, maintain, or operate title to personal property, or rights, or any interest therein;
- 6.1.8 To retain the services of agents, contractors, and consultants;
- 6.1.9 To receive, collect, and disburse monies;
- 6.1.10 To conduct studies, tests, evaluations, and similar activities;
- 6.1.11 To contract for services from Members, including in-kind services;
- 6.1.12 To conduct public outreach and education;
- 6.1.13 To participate in pilot and demonstration projects;
- 6.1.14 To charge for services, programs, and/or systems;
- 6.1.15 To work with elected officials and local, regional, state, and federal agencies, including other joint powers agencies and unincorporated associations to pursue funding, enter agreements and otherwise carry out the purposes of the Agency; and

6.1.16 Subject to this Agreement or the Bylaws of the Agency, and only as authorized by the Joint Powers Law, to exercise other reasonable and necessary powers in furtherance or support of any purpose of the Agency.

ARTICLE 7 - RESTRICTIONS ON POWERS

- 7.1 Pursuant to and to the extent required by Government Code Section 6509, as amended, the Agency shall be restricted in the exercise of its powers and shall exercise its powers in the same manner as the Town of Los Gatos is restricted in its exercise of similar powers; provided that, if the Town of Los Gatos shall cease to be a Member, then the Agency shall be restricted in the exercise of its power in the same manner as another Member agreed to by the majority of the Board of Directors. Unless expressly provided for, the Agency does not, by virtue of this Section or this Agreement, subject itself to the internal policies or ordinances of any Member.
- 7.2 The Agency shall not have the power of eminent domain.
- 7.3 The Agency shall not have the power of taxation. The Agency may not impose taxes but may receive the proceeds of taxes imposed by other entities or public funds from other entities.
- 7.4 The Agency shall not have the power to acquire, purchase, hold or dispose of real property.
- 7.5 The Agency shall not have the power to hire employees.
- 7.6 The Agency shall not have the power to issue debt.

ARTICLE 8 - BOARD OF DIRECTORS

- 8.1 The Agency shall be governed by the Board of Directors, which shall be composed of one Director representing each Member. Each Member's Legislative Body, according to its own procedures, shall appoint a Member of the Legislative Body as a Director to represent the Member on the Board of Directors. The Director shall serve at the pleasure of their respective Legislative Body. The Legislative Body of each Member shall also appoint one alternate Director ("Alternate") who shall participate in and vote at any meeting of the Board when the primary Director is absent. Any vacancy in a Director or Alternate position shall be filled by the appointing Member's Legislative Body, subject to the provisions of this Article. Immediately upon admission of a new Member, the new Member shall be entitled and required to appoint a Director and one alternate Director. Every Director or Alternate shall be a Council Member or Mayor of their individual Member city.
- 8.2 A Director and/or Alternate shall be removed from the Board of Directors upon the occurrence of any one of the following events: (1) the Agency receives written notice from the appointing Member of the removal and/or replacement of the Director or Alternate; (2) the withdrawal of the Member from this Agreement; (3) the death or resignation of the Director or Alternate; (4) the Agency receives written notice from the Member that the Director or Alternate is no longer qualified as provided in the first paragraph of this Article 8; or as set forth in Article 21.

- 8.3 The Board of Directors shall have the following powers and functions:
- 8.3.1 Except as otherwise provided in this Agreement, the Board shall exercise all powers and conduct all business of the Agency, either directly or by delegation to other bodies or persons;
 - 8.3.2 The Board shall elect an Executive Committee, as provided in Article 11;
 - 8.3.3 The Board shall be the policy setting body of the Agency;
 - 8.3.4 The Board shall appoint or retain the services of necessary agents, consultants, or independent contractors in accordance with Article 14;
 - 8.3.5 The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Agency. Adoption of the budget may not be delegated. The Board shall adopt their budget no later than the first April 30th following formation and then subsequently by April 30th of each successive year. The Board shall review, set, and adopt annual dues to be funded by Agency Members;
 - 8.3.6 The Board shall receive, review and act upon periodic reports and audits of the funds of the Agency, as required under Article 16 of this Agreement;
 - 8.3.7 The Board may adopt policies regarding personnel, conflicts of interest and other matters necessary or convenient for the efficient operation of the Agency;
 - 8.3.8 The Board shall adopt a set of priorities and work plan for each fiscal year; and
 - 8.3.9 Subject to the terms of this Agreement, the Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Agency.

ARTICLE 9 – MEETINGS OF THE BOARD OF DIRECTORS

- 9.1 The Board of Directors shall hold at least one regular meeting each year. The Board of Directors shall fix by resolution, or in the Bylaws, the date, time, and location of each regular meeting. The Board or Executive Director, in consultation with the President of the Board as provided in Article 10 below, may call special meetings.
- 9.2 Each meeting of the Board of Directors, including without limitation, regular, adjourned regular and special meetings shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.
- 9.3 The Agency shall require the Secretary/Treasurer or designee to take and maintain minutes of all regular, adjourned regular and special meetings. As soon as practicable after each meeting, the Secretary/Treasurer or designee shall forward to each Board Member, a copy of the minutes of the meeting.
- 9.4 A majority of the Members of the Board shall constitute a quorum for the transaction of business. Unless otherwise required by law, a vote of the majority of a quorum of the members

present at a meeting is sufficient to take any action, unless otherwise specified in this Agreement. However, less than a quorum may adjourn the meeting to a future date.

9.5 Each Member of the Board shall have one vote.

ARTICLE 10 - OFFICERS

The Board shall elect as Officers of the Agency President, First Vice President, Second Vice President, Secretary/Treasurer, and Immediate Past President at its first meeting. Thereafter, except as may be otherwise provided in the Bylaws of the Agency, the Board shall elect the President, First Vice President, Second Vice President, Secretary/Treasurer, and Immediate Past President, at the November Board of Directors meeting, or the first meeting held on or after November 1 of each year. Of the Officers, the President, and at least two other Officers, must also be members of the Board of Directors. The remaining Officers may be the elected or appointed Mayor or Council Member of any Member of the Agency regardless of whether they are on the Board of Directors. Each Officer shall assume the duties of his or her office upon election. If the President ceases to be a Member of the Board, the resulting vacancy shall be filled at the next meeting of the Board held after the vacancy occurs, or at a special meeting of the Board called to fill the vacancy. The President shall preside at and conduct all meetings of the Board. Should the Board President not be available then the highest-level Officer, who is a member of the Board of Directors, shall preside. If that individual is unavailable, then any Director appointed by the President may preside. The Board may appoint other officers as it considers necessary. The duties of the Secretary/Treasurer are set forth in Articles 16 and 17 of this Agreement. The Secretary/Treasurer shall be appointed by the Board of Directors and shall be eligible to serve as Secretary/Treasurer, as provided in the Joint Powers Law.

ARTICLE 11 - EXECUTIVE COMMITTEE

At such time as there are nine Members, the Board shall establish and elect an Executive Committee of the Board which shall consist solely of three (3) Officers consisting of the President, First Vice President, and Secretary/Treasurer, which shall exist thereafter. At such time as there are 11 Members, the Board shall establish and elect an Executive Committee of the Board which shall consist solely of five (5) Officers, with the addition of the Immediate Past President, which shall exist thereafter. Should the Immediate Past President no longer hold elected office then a Member at Large may be appointed by the Board to serve on the Executive Committee. The qualifications of the Member at Large are that they must be an elected or appointed Mayor or Council Member of a Member of the Agency but need not be on the Board of Directors. The terms of office of the Members of the Executive Committee shall be one year. The Executive Committee shall conduct the business of the Agency between meetings of the Board, exercising all those powers as provided for in this Article, or as otherwise delegated to it by the Board.

The Executive Committee, subject to approval by the Board of Directors, shall exercise all powers or duties of the Board relating to the entering, approval and execution of agreements, leases, and other instruments of or relating to the finances of the Joint Powers Agency within the previously

approved annual budget or amended budget. The Executive Committee may have additional powers delegated to it by the Board, except for the adoption of the Agency's annual budget. Any additional powers and duties delegated shall be specified in a Resolution adopted by the Board. The Executive Committee shall obtain approval from the Board before authorizing or conducting any investigations into the business of the Agency and before taking personnel action. These actions must be authorized by a majority vote of the Executive Committee. Each meeting of the Executive Committee shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.

ARTICLE 12 - COMMITTEES

The Board may establish committees, as it deems appropriate to conduct the business of the Agency or it may, in the Bylaws or by resolution, delegate this power to the Executive Committee by Resolution. Members of committees, except as otherwise stated in this Agreement, shall be appointed by the President. Each committee shall have those duties as determined by whichever Agency body created it or as otherwise set forth in the Bylaws. Each committee shall meet on the call of its chairperson and shall report to and be directed by whichever entity created it. No more than one representative from each jurisdiction shall serve on each committee. Membership of any committee may consist in whole or in part of persons who are not members of the Board; provided that the Board may delegate decision-making powers and duties only to a committee, a majority of the members of which are Board Members. Any committee, except the City Selection Committee, in which a majority of the members are not Board Members may function only in an advisory capacity. The Legislative Action Committee shall be a permanent Committee of the Agency chaired by the Second Vice President and whose members shall be appointed by the Agency Members. Should there be no Second Vice President, the Legislative Action Committee shall be chaired by the First Vice President. All standing committees shall abide by the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.

ARTICLE 13 – CITY SELECTION COMMITTEE

The City Selection Committee is established pursuant to State law and the Agency shall administer the City Selection Committee as follows: The City Selection Committee shall be a permanent committee of the Agency, consisting of the Mayor of each City or Town, consistent with Government Code 50270, as amended. The Agency shall allow all cities in the County to participate in the City Selection Committee, whether or not they are members of the Agency.

ARTICLE 14 – PROFESSIONAL SERVICES

14.1 The Board of Directors may contract with individuals or companies to provide the following services at the pleasure of the Board of Directors:

- 14.1.1 Executive Director. The Board shall contract with a consultant or independent contractor to fulfill the following duties of an Executive Director: manage the affairs of the Agency, subject to the general supervision and policy direction of the Board and the Executive Committee; oversee the day-to-day activities of the Agency; select and manage the activities of all consultants and independent contractors to the Agency; be responsible for required filings by the Agency with the State of California; prepare or delegate the preparation of all meeting notices, minutes, and required documentation of the Agency; prepare and propose an annual budget; prepare reports and recommendations for consideration by the Executive Committee or Board; be responsible for billing and collection of annual dues; maintain the records of the Agency; assist Local Agencies in the preparation and filing of applications for participation in the financing programs of the Agency; expedite the processing of these applications; pay all invoices, taxes and amounts due; and perform other duties as are assigned by the Board and Executive Committee. The Executive Director may have the authority to sign agreements, applications, and other documents on behalf the Agency, if authorized by the Board or Executive Committee. The Executive Director shall have the Authority to enter into individual Agreements with a single vendor over the course of a fiscal year, on behalf of the Agency, up to the amount set by the Bylaws.
- 14.1.2 General Counsel. The Board shall contract with a consultant, independent contractor, or law firm to fulfill the duties of General Legal Counsel. The General Counsel shall take direction from the majority of the Board of Directors. The General Counsel shall be a member in good standing of the California State Bar. The General Counsel shall be responsible for the legal affairs of the Agency;
- 14.1.3 Auditor. The Auditor shall be a Certified Public Accountant licensed to practice in the State of California. The Auditor will conduct annual financial audits of the Agency;
- 14.1.4 Other services. The Executive Director may hire additional consultants and independent contractors, as appropriate, based upon a previously approved budget;
- 14.1.5 The Agency shall not contract with or become a member of the California Public Employees Retirement System ("PERS"), nor shall any agent, consultant or independent contractor of the Agency become a member of PERS or be entitled to a pension or retirement from PERS as a result of service to the Agency; and
- 14.1.6 The consultants and independent contractors fulfilling the duties of Executive Director, the Auditor, the General Counsel and any other consultants or independent contractors who provide services to the Agency shall be compensated in such manner as shall be approved by the Board and as permitted by applicable law.

ARTICLE 15 - SIGNIFICANT PROGRAMS

If the Board desires to create significant programs or activities which will utilize substantial resources of the Agency, it shall do so by a vote of the Board. If the Board deems it necessary, it may

appoint a working committee to study the significant program or activity and provide input to the Board. Substantial resources and significant program or activity shall be defined as any program or activity requiring \$10,000 or more in annual expenditures; this amount shall be increased by the annual cost of living CPI index. Any new significant program or activity shall require a work plan and a two-thirds vote of the Members in order to be initiated. When a new significant program is intentionally designed to be limited in scope, such that it only provides benefits to particular Members, the Agency may enter into a specific program or project Agreement that includes relevant terms regarding the particular affected Members, and any such Agreement shall be approved by the Board prior to or at the same time as formation of the significant program. These limited scope Agreements shall be subject to approval by the Board by a two-thirds vote of the Members.

ARTICLE 16 - ACCOUNTS AND RECORDS

- 16.1 The Agency shall adopt an operating budget pursuant to Section 8.3.5 of Article 8 of this Agreement.
- 16.2 The Secretary/Treasurer of the Agency or the Executive Director shall establish and maintain funds and accounts as may be required by good accounting practices and by the Board. Books and records of the Agency shall be open to and made available for inspection at all reasonable times upon request by authorized representatives of the Members.
- 16.3 The Agency shall adhere to the standard of strict accountability for funds and report all receipts and disbursements as set forth in the Joint Powers Law.
- 16.4 Auditor's Report. The Auditor, within one hundred and twenty (120) days after the close of each Fiscal Year, shall give a complete written report of all financial activities for the prior Fiscal Year to the Board.
- 16.5 The Agency shall either make or contract with a Certified Public Accountant to make an annual Fiscal Year audit of all accounts and records of the Agency, conforming in all respects with the requirements of the Joint Powers Law. A report of the audit shall be filed as a public record and be provided to each of the Members, and with the County Auditor of the County of Santa Clara. Costs of the audit shall be considered a general expense of the Agency. Any costs of the audit shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for this purpose.

ARTICLE 17 - RESPONSIBILITIES FOR FUNDS AND PROPERTY

- 17.1 The Secretary/Treasurer, or his or her designee, shall have the custody of and disburse the Agency's funds. Proceeds of similar obligations of the Agency may be deposited with a trustee, agent or other depository and shall not be considered the Agency's funds for purposes of this Article. The Secretary/Treasurer may delegate disbursements to persons as may be authorized by the Board or the Executive Committee to perform that function, subject to the requirements of Section 17.2 below.

- 17.2 The Secretary/Treasurer or designee shall perform all functions then required to be performed by the Treasurer under the Joint Powers Law. The Secretary/Treasurer shall review the financial statements and the annual audit of the Agency.
- 17.3 Pursuant to Government Code Section 6505.1, as amended, the Executive Director, the Secretary/Treasurer, and other persons as the Board may designate, shall have charge of, handle, and have access to the property of the Agency. The Agency shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in a form specified by the Board of Directors, covering any officers or agents of the Agency who are authorized to hold or disburse funds of the Agency and any officers or agents who are authorized to have charge of, handle and have access to property of the Agency.

ARTICLE 18 - MEMBER RESPONSIBILITIES

- 18.1 Each Member shall have the following responsibilities:
- 18.1.1 To appoint its Director and Alternate to, or remove its Director and Alternate, from the Board, as set forth in Article 8;
- 18.1.2 To consider proposed amendments to this Agreement as set forth in Article 29;
- 18.1.3 To make contributions in the form of annual membership assessments and fees, if any, determined by the Board for the purpose of defraying the costs of providing the annual benefits accruing directly to each party from this Agreement; and
- 18.1.4 If a Member provides written notice to the Agency of its election to relinquish its status as a Member, or if a Member fails to be represented at four (4) or more consecutive regular meetings of the Board of Directors, then that Member may be deemed to be a suspended Member, with all the rights and duties of an Associate Member, upon action of the Board of Directors duly adopted. Prior to the suspension, the President shall contact the Mayor and request that another Council Member be appointed or that reinstatement for the current Member be requested. The suspension shall be approved by the Board of Directors. Promptly following that action by the Board of Directors, the Member may be reinstated by informing the Board of its intent to be reinstated within thirty (30) days and to attend all future meetings either via the Director or Alternate. Removal of a Member for failure of the Director to attend meetings shall not relieve the Member from its obligations under any outstanding agreements relating to the Agency's financial obligations, except in accordance with this Agreement.

ARTICLE 19 - NEW MEMBERS

With the approval of the Board, any city located within the County of Santa Clara may become a party as a Member to this Agreement. A city requesting membership shall apply by presenting to the Agency, a resolution of the Legislative Body of the City, evidencing its approval of this Agreement. The date that the applying city will become a Member will be determined by the Board. The Agency shall

accept new Members upon a majority affirmative vote of the entire Board and upon payment of any Board determined assessments and fees.

ARTICLE 20 - WITHDRAWAL

A Member may terminate its membership in the Agency at any time upon giving one hundred and eighty (180) days written notice of withdrawal to the Agency. The notice shall be given to the Board of Directors. The effective date shall be the conclusion of the first Board Meeting which occurs after the one hundred and eighty (180) day notice period has passed. Any Member who withdraws shall remain obligated to pay its share of all debts, liabilities, and obligations incurred or accrued through the end of the current fiscal year of the Agency. The withdrawal does not in any way impair any contracts, resolutions, indentures, or other obligations of the Agency then in effect. In the event of a disagreement between the Agency and the withdrawing Member as to whether the withdrawal shall cause the impairment of any contracts, resolutions, indentures, or other obligations of the Agency, the determination shall be made by a majority vote of the Board of Directors. Any Member that withdraws and later seeks reinstatement to the Agency shall provide funds to the Agency, proportionate to their responsibility for the current fiscal year, as if the Member had never left the Agency. A withdrawing Member shall, in all events, remain liable for its proportionate share of: (i) its full amount of its proportionate share of the adopted fiscal year budget; (ii) any call for funds or assessment levied by the Agency prior to the date it provides its notice of withdrawal; (iii) any contribution in existence at the time of the notice of withdrawal.

ARTICLE 21 - REMOVAL

If the Board of Directors determines that reasonable cause exists to remove a Director from the Board, it can remove the Director and request that the Member who appointed the Director appoint a new Director. The Board may, by two-thirds majority vote of the entire Board, remove a Member based on a Member's breach of any material term of this Agreement, and the failure to cure that breach within sixty (60) days written notice. A terminated Member shall remain liable for any obligation under this Agreement as described above. Failure to pay dues within 60 days following notice shall result in a Member becoming suspended with all the rights of an Associate Member. A suspended Member shall immediately have its voting rights restored upon full payment of dues.

ARTICLE 22 - OBLIGATIONS OF AGENCY

The debts, liabilities, and obligations of the Agency shall not be the debts, liabilities, and obligations of the Members. Any Member may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the Agency. Nothing in this Agreement shall be interpreted to limit the applicability of the provisions of Government Code Section 895.6.

ARTICLE 23 - TERMINATION AND DISTRIBUTION OF ASSETS

This Agreement may be terminated at any time that no financial obligations of the Agency are outstanding, with the approval of two-thirds of the Members. Upon termination of this Agreement, all assets of the Agency shall, after payment of all unpaid costs, expenses and charges incurred under this Agreement, be distributed among the parties to this Agreement, in accordance with the respective contributions of each of the Parties.

ARTICLE 24 - LIABILITY OF BOARD OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS

- 24.1 The Members of the Board of Directors, Officers, and Committee Members of the Agency shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be individually liable for any mistake of judgment, or any other action made, taken, or omitted by them in good faith, nor for any act or omission by any agent, consultant or independent contractor selected with reasonable care, nor for loss incurred, resulting from any action made, taken, or omitted by them in good faith and with reasonable care through investment of Agency funds, or failure to invest.
- 24.2 No Director, Officer, or Committee Member shall be responsible for any act or omission of any other Director, Officer, or Committee Member. Unless otherwise required by law, no Director, Officer, or Committee Member shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement.
- 24.3 The funds of the Agency shall be used to defend, indemnify, and hold harmless the Agency for any Director, Officer, or Committee Member, for their actions taken within the scope of the Agency. Nothing herein shall limit the right of the Agency to purchase insurance to provide coverage for these types of losses.
- 24.4 These indemnification and defense obligations shall survive the termination of the Agreement as to any acts or omissions occurring before such termination.

ARTICLE 25 - INDEMNIFICATION

To the fullest extent allowed by law, the Agency shall defend, indemnify, and save harmless the Members and their governing bodies, officers, agents and employees from all claims, losses, damages, costs, injury, and liability of every kind, nature, and description directly or indirectly arising from the performance of any of the activities of the Agency or the activities undertaken pursuant to this Agreement.

ARTICLE 26 - BYLAWS

The Board shall adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Agency. The provisions of the Bylaws, as modified from time to time, shall establish the operating procedures and standards for the Agency.

ARTICLE 27 - NOTICES

The Agency shall address notices, billings, and other communications to a Member as directed by that Member. Each Member shall provide the Agency with the email and physical address to which communications are to be sent. Members shall address notices and other communications to the Agency, at the office address of the Agency, or the email address of the Agency as directed by the Member and as set forth in the Bylaws.

ARTICLE 28 - CODES

The Agency shall adopt and observe a Code of Conduct and Conflict of Interest Policy. The Agency shall comply with all requirements of the Fair Political Practices Commission as required by law or regulation.

ARTICLE 29 - AMENDMENT

This Agreement may be amended at any time by vote of the Members, acting through their Legislative Bodies. Any amendment of this Agreement shall become effective upon receipt by the Agency of notice of the approval of the amendment by two thirds of the Legislative Bodies of the Members.

ARTICLE 30 - SEVERABILITY

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected.

ARTICLE 31 - PROHIBITION AGAINST ASSIGNMENT

No Member may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee or third-party beneficiary of any Member shall have any right, claim, or title to any part, share, interest, fund, or asset of the Agency. This Agreement shall be binding upon and shall inure to the benefit of successors of the Members. This Agreement is intended solely for the benefit of the

Agency and its Members. No third party shall be deemed a beneficiary of this Agreement or have any rights against the Agency or its Members.

ARTICLE 32 - ASSOCIATE MEMBERS

Any Public Agency located within the jurisdictional authority of the County of Santa Clara may, with the approval of the Board of Directors, become an Associate Member of the Agency by executing and delivering to the Agency an Associate Membership Agreement and providing an Associate Membership fee and as further provided in the Bylaws. An Associate Member shall not be entitled to representation on the Board of Directors, or to vote on any matter coming before the Board of Directors or the Agency, unless a separate written agreement is entered into between the Associate Member and the Agency.

ARTICLE 33 - LIBERAL CONSTRUCTION

The provisions of this Agreement shall be liberally construed as necessary or reasonably convenient to achieve the purposes of the Agency.

ARTICLE 34 - NON-WAIVER

No waiver of the breach of default of any of the covenants, agreements, restrictions, or conditions of this Agreement by any Member shall be construed to be a waiver of any succeeding breach of the same or other covenants, restrictions, or conditions of this Agreement. No delay or omission of exercising any right, power, or remedy in the event of a breach or default shall be construed as a waiver or a variation of any of the terms of this Agreement or any applicable agreement.

ARTICLE 35 - REMEDIES FOR BREACH

If any Member shall default on any obligation contained in this Agreement, the default shall not excuse any other Member from fulfilling its respective obligations under this Agreement. Any Member shall be entitled to pursue all legal and equitable remedies against another Member in response to any alleged default under this Agreement. Any and all of the remedies provided to the Members, hereunder or by law now or hereafter enacted, are cumulative and the exercise of one right or remedy shall not impair the Members to any other remedy.

ARTICLE 36 - ARTICLE HEADINGS

All article headings are for reference only and are not intended to define or limit the scope of any provision of this Agreement.

ARTICLE 37 - DISPUTE RESOLUTION

- 37.1 The Members agree that any dispute regarding the enforcement or interpretation of any term, covenant, or condition of this Agreement ("Dispute") may first, for a period of not less than thirty (30) days, be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation, or any other binding arbitration or adjudicative dispute resolution process. The Members shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in the Dispute; (iii) exchange written position papers stating their position on the Dispute and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the Dispute; and (iv) engage and cooperate in such further discovery as the Members agree or mediator suggests may be necessary to facilitate effective mediation.
- 37.2 Each Member shall bear its own costs, attorney's fees, and expenses of the mediation. Venue of the mediation shall be a mutually agreeable city within Santa Clara County, California.

ARTICLE 38 – INSURANCE

If available, the Agency shall obtain insurance for all Members, appointed Members, and Committee Members, including, but not limited to, Directors and Officers liability insurance and general liability insurance containing policy limits in such amounts as the Board of Directors shall deem will be necessary to adequately insure against the risks of liability that may be incurred by the Agency. Insurance under this provision may include an insurance pool program.

ARTICLE 39 - FILING WITH SECRETARY OF STATE

The Executive Director of the Agency shall file a notice of this Agreement with the office of the California Secretary of State within thirty (30) days of its effective date, as required by Government Code Section 6503.5, as amended and within seventy (70) days of its effective date as required by Government Code Section 53051, as amended.

ARTICLE 40 - COUNTERPARTS

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the Members hereto. Facsimile and electronic signatures shall be binding.

ARTICLE 41 - AGREEMENT COMPLETE

This Agreement constitutes the full and complete Agreement of the parties and supersedes any prior written Agreement between the Members on the same topic.

**Answers to City Managers Questions re: Cities Association of Santa Clara County (“CASCC”) and Proposed Joint Powers Authority (“JPA”)
August 7, 2023**

GENERAL

Question #1. a.: What do we want this organization to be?

Answer #1. a.: The goals and purposes of the organization will not change. Here are the stated goals of the CASCC:

- To review, study, develop consensus positions, and recommend on issues of interest to Santa Clara County cities;
- To develop a common agenda for Santa Clara County cities;
- To serve as a unified voice for Santa Clara County cities in relationship to other agencies, organizations, and levels of government, including the Peninsula Division of the League of California Cities;
- To serve as the City Selection Committee pursuant to Government Code section 50270 et seq. and make appointments to regional and local bodies as provided by law;
- To assist in the development of state-wide legislative policy through the structure of the League of California Cities;
- To serve as a source of education, information, and networking for officials from all cities in Santa Clara County;
- To provide a forum for non-city individuals, groups and organizations, and the private sector to address items of interest to Santa Clara County cities.

And here are the stated purposes of the proposed JPA:

1. Review, study, develop consensus positions, and take action on issues of interest to Members;
2. Focus on local and regional matters that are important to our future;
3. Develop a common agenda for Santa Clara County cities;
4. Serve as a unified voice for Santa Clara County cities in relationship to other agencies, organizations, and levels of government;
5. Establish the City Selection Committee pursuant to Government Code Section 50270 *et seq.*, as amended and make appointments to regional and local bodies as provided by law;
6. Serve as a source of education, information, and networking for officials from all cities in Santa Clara County;
7. Provide a forum for non-city individuals, groups and organizations and the private sector to address items of interest to Santa Clara County cities;
8. Reduce duplication of effort by sharing information and provide a unified voice and strong advocacy on legislation and other important issues that affect its Members;
9. Strengthen the Members’ and Agency’s standing at the regional, State and Federal level;
10. Strive to respect local control, provide regional perspective, and make a difference to elevate the quality of life throughout the County;

11. Provide a forum for discussion and study of problems common to the Members and to assist in the development and implementation of solutions to such problems;
12. Provide a method for the Members to collaborate and jointly develop policies that benefit the region; and
13. Collaborate in such a way that is efficient, saves the jurisdictions the expense of individual effort, and creates positive outcomes.

Question #1. b.: What are the goals in forming this separate JPA as opposed to something less structured?

Answer #1. b.: Currently, the CASC is an unincorporated association under the California Corporations Code. Since its creation, the member agencies have executed some agreements to provide a bit more structure to the association. In 1990, the CASC's member cities also entered into an agreement governing the operation of the organization, later amended on June 30, 1995. A copy of that Agreement is attached. As authorized by this Agreement, the CASC has also adopted bylaws, available on the organization's website. The existing Agreements set forth a structure that is similar to what a Joint Powers Agreement would establish for a JPA.

If the Cities Association becomes a JPA, neither the purpose nor the budget process would change. However, the JPA structure addresses concerns that have been raised about the CASC such as liability and insurance. The JPA would have access to insurance that is not currently available. Governmental immunities would apply to the JPA that do not apply to an unincorporated association. A JPA would also clarify the tax status of the organization. The governance and organizational structure are also familiar to the members.

Question #1. c. How is forming the JPA furthering those goals.

Answer #1. c.: The most effective CASC is one that is permanent, has governmental immunities to liabilities and employs an organizational structure that is both equitable and highly functional. Also, it will insulate the individual city/town members from future individual liability that an unincorporated association would arguably not do. The CASC has accomplished much in the past and can accomplish many of the same programs and should the Board of Directors wish to, additional tasks with the new, permanent structure. In addition, the formation of a JPA eliminates potential tax issues as governmental entities are generally not subject to federal and State tax-related requirements.

Question #2: Are there better organizational forms such as public benefits corporation or nonprofit organization?

CASC previously considered both a 501 (c) (4) non-profit social welfare organization and a JPA. In 2020, the Board of Directors chose to pursue a JPA based on factors, such as the time and cost of forming the new entity and the compatibility of the JPA structure and membership of

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the association. Considering the events that have transpired since the Board of Directors made the decision in 2020, we are even more convinced the JPA structure is best suited to the needs of the CASC for the reasons stated above and the fact that the CASC members are elected Council members appointed by their respective agencies and the CASC administers the Cities Selection Committee.

Question #3: What models/example joint powers agreements were used to develop the proposed CASC JPA?

Answer #3: The proposed JPA was developed by the two prior General Counsels, including Gary Baum, and he utilized the following examples: Silicon Valley Regional Interoperability Authority JPA (click on JPA document link) <https://svria.org/resources/documents/> Silicon Valley Animal Control Authority JPA (click on JPA link) <https://www.svaca.com/about-us>

Question #4: What issues, structural or otherwise, is the association facing that can only or uniquely be solved by the formation of a JPA?

The JPA would provide a governmental structure for the CASC. As a JPA, the CASC would have governmental immunities and the liability of its members would be clarified. The JPA would have also access to some risk pools that insure governmental entities. The JPA structure itself would create a backbone of organization by clearly setting forth the scope of the JPA's authority.

See answer to Question 1c above.

Question #5: Are there examples of issues that the JPA can address, particularly that cannot be accomplished through a less formal structure?

See answers to Questions #3 and #4.

Collaboration amongst our cities is one of the key advantages of the CASC, which helps to strengthen our region. It is noteworthy, that in a county as populous and diverse as Santa Clara County, our cities have been able to come together and have some notable successes that could only have happened through CASC. For example, the work of the CASC during the COVID-19 pandemic resulted in a stronger partnership with our County, paving the way for greater trust and collaboration in the future. In recognition of their hard work, the CASC was awarded the President's Medal for Exemplary Service During the COVID-19 Pandemic by the SCC Board of Supervisors. Also, our cities collectively implemented ordinances to ban single-use plastic bags in each of our cities. Perhaps one of the most timely advantages of the CASC and JPA membership would be the ability to apply for regional and statewide grants, such as the

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multi-year Regional Early Action Planning (REAP) Grant from ABAG. CASCSC contracts with Community Planning Collaborative to lead this effort. Currently, all of our cities benefit from the technical assistance provided by the Planning Collaborative. Formed in October of 2019, the Santa Clara County Planning Collaborative is a shared effort among the county's jurisdictions to help address the region's housing challenges. The jurisdictions, by working together collaboratively, save money, time, and resources by sharing information and capacity; maintain & facilitate relationships with non-profits, affordable housing advocates, and key governmental organizations.

For cities that are part of the JPA, they would be able to participate in sessions with legislators and other councilmembers to benchmark and share ideas. They would also have the opportunity to vote and advocate on issues together with their fellow cities. During COVID, different groups were able to reach out to the Cities Association knowing they would be able to reach all 15 cities. Also, having a group with all 15 cities participating would complement the SCC City Managers and City Attorneys groups.

Question #6: The primary purpose or goal of the formation described today (10/12/22), was for all cities to continue to participate. If that is the case will the final document be able to be ratified without each of the cities consenting?

The CASCSC functions best when all cities and towns within the County are members. Each of the individual Council members who serve on the CASCSC board will present the JPA to their respective agencies for approval with the goal of having all the current members cities and towns participate in the JPA. It is important to note that all cities and towns would continue to participate in the City Selection Committee (CSC) even if they are not members of the JPA. Government Code Section 50270 designates the mayors of all cities and towns within the County to serve on the CSC. The purpose of the CSC is to appoint city representatives to boards, commissions, and agencies as required by law. In Santa Clara County, CASCSC houses the CSC and takes responsibility for all the administrative tasks related to the CSC.

While it is the goal of the CASCSC and the JPA process that all cities and towns become members, the JPA is drafted so that it becomes effective once eight members join. Should the number of members fall below 7 then Article 4 of the JPA would apply:

After one full year after the initial formation of the Agency, should the membership fall below seven (7) Members due to the withdrawal of Members and the membership level remains at below seven (7) Members for a period of at least one (1) year and a similar JPA, with the same or similar powers and functions is formed containing a majority of cities in the County of Santa Clara, the Agency shall change its name and permit the new organization to take on the name of the Agency. Notwithstanding

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the name change, this Agreement shall continue in effect until terminated as provided herein. The termination of this Agreement with respect to an individual Member upon its withdrawal from membership in the Agency shall not operate to terminate this Agreement with respect to the remaining Members.

Note, this provision was added at the request of the City/Town Attorneys all of which provided input into the final draft of the JPA.

FISCAL MANAGEMENT

Question #1: How will member agencies be able to review proposed annual budget and proposed assessments in advance of adoption by the JPA board?

Answer: #1: Like the process set forth in the bylaws and the process followed by the SVRIA, section 8.3.5 of the JPA requires the Board of Directors to adopt its budget by April 30 of each year. This process is designed to ensure that city/town members can consider and incorporate any increase or decrease in their dues into their budget planning before they are required to adopt their own budgets. Only the Board of Directors may adopt the budget at a publicly noticed meeting, the Executive Committee may not adopt the budget. Notice of proposed budget figures will be sent to the City Managers in advance of any budget adoption meeting. If April 30 is too late for city/town budget planning, an alternative date of March 30 could be considered.

Question #2: Is it assumed that the dues structure/formula will be determined after approval of the JPA, or will this be established in advance of approval?

Answer: #2: While the dues will be established after approval of the JPA, no significant increases are anticipated. The adoption of any dues structure or formula would need to be considered as part of the annual budget process. The dues' structure and related provisions will be incorporated into the bylaws for the JPA. The CASCC will share information regarding its proposed budget and dues as soon as possible in each budget cycle, and will share with its member cities and towns, their elected officials, and city managers in a transparent manner. The goal is to submit next year's fiscal year budget, with the final Joint Powers Agreement, in December 2023.

Question #3: How will the JPA address disagreements on the dues structure, particularly if dues will increase with a JPA?

Answer #3: It is neither assumed nor anticipated that the dues will increase because of the change in organizational structure. It is anticipated that annual dues will increase to reflect cost

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of living increases. As set forth in the current bylaws, the Board adopts a budget every year in the same timeline as its member agencies and a majority vote is required to adopt a budget.

Question #4: Has the association considered CalPERS costs in a potential JPA?

Answer#4: Yes, CASCC has considered this matter. CASCC obtains services from independent contractors and does not have employees. CalPERS membership is not mandatory for a JPA. The JPA has been drafted to address this issue and specifically states the JPA will not contract with CalPERS. See JPA provision 14.1.5:

14.1.5 The Agency shall not contract with or become a member of the California Public Employees Retirement System ("PERS"), nor shall any employee of the Agency become a member of PERS or be entitled to a pension or retirement from PERS because of service to the Agency; and

In addition, the following change will be made to the JPA to address the issue:

14.1.6 The Agency shall not contract with or provide any pension to any employee of the Agency, nor shall any employee of the Agency be entitled to a pension or retirement Benefits, aside from Social Security as a result of service to the Agency.

Question #5: What is the extent of the Dissolution Plan and Tax Liability and who will be responsible?

Answer #5: The Dissolution Plan for CASCC has been discussed by the City/Town Attorney's group and researched by a few of its members. A consensus on the approach to dissolution has been reached with the City/Town Attorney's Group. Article 5 of the JPA it states: "Upon formation of the Agency as described in Article 4, the Cities Association of Santa Clara County, an unincorporated association shall follow the process of dissolution and cease to exist." The CASCC will follow the procedure for dissolution set forth in California Corporations Code Section 18410. Upon approval of the JPA by eight Members, the current CASCC Board of Directors will pass a resolution following the Corporations Code procedure and transfer the assets and liabilities of CASCC. The City/Town Attorneys discussed the possibility of only transferring the assets and not the liabilities of CASCC. However, the consensus of this group was that this approach may be rejected by the courts so that path is not recommended and will not be followed.

PERSONNEL MANAGEMENT

Question #1: Who is responsible for evaluating the performance of the Executive Director, and taking any associated personnel action?

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Statement #1: Difficult personnel issues can occur in any organization. It is in everyone's interest to establish a structure for handling such issues in advance of actual situations.

Response to Statement #1: Agreed.

Answer#1: The Executive Director provides services to CASC as an independent contractor. Only a majority of the Board of Directors may take action regarding the contract of the Executive Director or any performance evaluation process. The JPA will be modified to clarify this issue.

Just to reiterate from Question 4 above, all services provided to CASC will be through independent contractors, not salaried employees.

DECISIONMAKING

Question #1: How will the JPA determine whether to pursue new initiatives, such as grants, that may not clearly exceed the \$50,000 Significant Programs threshold? How will the JPA determine its ability to perform its associated responsibilities?

Answer #1: The JPA at Article 15 Substantial Programs states:

If the Board desires to create significant programs or activities which will utilize substantial resources of the Agency, it shall do so by a vote of the Board. Substantial resources and significant program or activity shall be defined as any program or activity requiring \$50,000 or more in annual expenditures, this amount shall be increased by the annual cost of living CPI index. Any new significant program or activity shall require a work plan and a two-thirds vote of the Members in order to be initiated. When a new significant program is intentionally designed to be limited in scope, such that it only provides benefits to particular Members, the Agency may enter into specific program or project Agreement that includes relevant terms, by the particular affected Members and any such Agreement shall be approved by the Board prior to or at the same time as formation of the significant program. These Agreements shall be subject to approval by the Board of Directors by a two-thirds vote of the Members.

First and foremost, the JPA's programs and activities will be limited to its available budget. If a new initiative or grant becomes available, the Board would discuss the level of interest at a public meeting and whether it should pursue it.

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Second, the CASC also intends to amend this JPA provision to define a Substantial Program as any program or activity requiring \$10,000 or more (subject to CPI adjustments) - rather than \$50,000 or more - in annual expenditures, in order to exercise greater fiscal oversight.

Statement #1: For example, the SVRIA JPA establishes a Working Committee with specified composition, that is responsible for recommending a budget, accepting grants, and awarding contracts, as well as recommending an Executive Director.

Response to Statement #1: The Executive Committee performs a similar role to that of SVRIA's Working Committee, but its powers have been limited based upon input from the City Managers and City/Town Attorneys. Should the CASC Board of Directors wish to create a new committee, such as the Working Committee with significant powers, the concept, scope, staffing and resources implications would need to be considered by the Board of Directors.

While SVRIA is a JPA model that was considered in the formation of the CASC JPA, it should be noted that SVRIA's annual budget exceeds \$5 million (for FY 23 and beyond). By comparison, the CASC annual budget is currently under \$300K. Currently, it is sufficient for the Executive Committee to perform some, not all, functions of the SVRIA Working Committee. At some point in the future, the CASC Board of Directors may consider formation of a Working Committee, and may choose to do so with input from the City Managers and/or the City Attorneys.

Question #2: How will the JPA determine its position and activities related to legislative advocacy? How will individual Director's responsibility to the JPA be reconciled with positions of their respective agencies?

Answer #2:

Role of the Legislative Action Committee ("LAC")

LAC advocates on behalf of all 15 cities on issues of mutual interest, provides legislative updates to cities, and organizes emergency responses to urgent issues. LAC acts as the convening body for all 15 cities to discuss and take positions on legislative bills, and local and state measures ("Bills/Measures"). The LAC meetings allow for collaboration, advocacy, and education. It allows the cities to delve into an issue and discuss how the issue may affect their cities. LAC is also guided by the Legislative Guiding Principles and the Housing Position Paper, which were both adopted by the Cities Association Board and aim to be representative of all 15 cities.

Benefit to cities from LAC

Cities benefit from the LAC in many ways. An organization consisting of 15 cities with over 1.9 million residents has a louder and more impactful and effective voice compared to each city advocating on its own behalf, especially smaller cities. Legislators have said repeatedly that they pay attention to the positions taken by the Cities Association. Legislators and local groups

seek the Cities Association's endorsement because they understand the importance and influence of an endorsement from the Cities Association.

LAC also provides an opportunity for legislators to present an idea for a potential Bill/Measure and solicit feedback on how such a Bill/Measure may impact cities, or what provisions would cities support/oppose. This is also a great opportunity for Cities to weigh in and give feedback to help shape a bill before it moves forward. Legislators/groups have also shared that it is much easier for them to come to Cities Association and reach all 15 cities at the same time than try to reach each Council individually. For many of the presentations, the legislators will attend the LAC meeting, which gives the cities face to face time with legislators.

Another benefit is LAC provides a forum for cities to learn from each other, hear different perspectives, and better understand the potential impact of a Bill/Measure. Often, this results in the cities being better informed on the pressing issues happening at the state and local levels.

Decision-making process for LAC

The LAC agenda normally consists of (1) an educational item whereby a legislator or group presents on a potential or new Bill/Measure, the intent being to educate and answer any questions representatives may have, or (2) a few Bills/Measures for discussion and action, to recommend a position to the Cities Association Board. It is the Board that makes the final decision on the Cities Association's position on a particular Bill/Measure. Some cities have the same Councilmember serve on LAC and the Board, while others will have different Councilmembers serve on each body. Therefore, although the discussion and presentation at the Board level is not as in depth as the LAC meeting, sometimes the discussion and vote at the Board level are different from what happened at the LAC meeting.

LAC's recommendation to the Board is based on what majority of the cities support. The practice is for the LAC Chair to communicate the recommended position to the full Board and include the minority position(s) or any concerns expressed during the discussion at the LAC meeting.

One of the ways the CASC communicates its position on a particular Bill/Measure is to send a letter to the applicable body. In recent years, the CASC has made an effort to include the concerns of the "minority position" in the letter, and advocate that certain bills carve out an exemption for smaller cities, recognizing that all 15 cities are unique, diverse and range from populations of a few thousand to one million people.

Every city has its own approach to how it votes on a Bill/Measure at a LAC meeting. Some cities will only vote on a Bill/Measure if their full Council has taken a position on the particular item. Other cities will vote on the item if it aligns with a position taken on a similar issue by its Council. If an item is not controversial like housing, then most cities will vote on the item, even if their full Councils have not considered the item.

ANSWERS TO CITY MANAGER'S QUESTIONS RE: CASC JPA

August 7, 2023

How to make LAC even better

The CASCC Executive Committee has continued to identify ways to improve LAC because of the value it provides to the cities. Here are some things we are already considering, and we welcome any suggestions you may have:

- Need staff support to be better prepared for LAC meetings. This work can be time consuming as it requires analyzing bills, researching the support and oppose positions and legislative history, and tracking the status of the Bill/Measure. To date, this work has fallen to the LAC Chair, CASCC Executive Director, and/or the Board President's staff. If cities, like San Jose, are willing to share their legislative staff with the CASCC, at no cost, it is worth exploring, provided the work is objective and does not reflect the position of that city.
- Continue to do a better job of including the minority voices in our advocacy and any unique impacts to smaller cities.
- Provide a LAC calendar at the beginning of the year that gives dates when LAC will be considering certain bills to give cities an opportunity to have their Councils take a position on the bill before it goes to LAC.
- Have cities suggest bills they want LAC to consider.
- Continue to have the Board members report back to their Councils and City Managers on the impactful and valuable work the CASCC is doing.

Question #3: How does the organization work if/when not all cities join? If not all or enough members join, how does the association act as the appointing body for various regional commissions.

Answer #3: The Agency will be formed once eight cities/towns approve the JPA (See JPA Article 8). The participating members would meet and operate as a JPA. Given Government Code provisions governing the CSC, all cities are permitted to participate in these Committee meetings and the appointment process even if they are not members of the JPA (See JPA Article 13). The JPA would continue to administer the CSC.

At the request of the City/Town Attorneys provisions were added to Article 8 that after one year of formation should membership fall to less than seven members for a period of one year that the Agency is required to release the CASCC name to a new JPA should one be formed. On a related note, the Executive Committee is not activated until there are nine members, and it will then consist of three members, in order to address any potential ties in voting. If the JPA

has eleven or more members, the Executive Committee would then consist of five members (See JPA Article 11). The CASCC intends to amend JPA Article 11 to capture this approach.

For cities that are part of the JPA, they would be able to participate in sessions with legislators and other councilmembers to benchmark and share ideas. They would also have the opportunity to vote and advocate on issues together with their fellow cities. During COVID, different groups were able to reach out to the Cities Association knowing they would be able to reach all 15 cities. Also, having a group with all 15 cities participating would complement the SCC City Managers and City Attorneys groups.

Question #4: Does the proposed power of the executive committee have the potential to allow the executive board to make decisions at the expense of some or all of the members?

Answer #4: The proposed JPA has been drafted to address concerns regarding the authority of the Executive Committee (formerly known as the “Executive Board”). Additional changes will be made to the JPA to clarify that the Executive Committee cannot make personnel decisions and that new powers can only be vested in the Executive Committee following a vote of the Board of Directors on the issue. The Executive Committee will not have the authority to make personnel decisions or decisions related to the contract for the Executive Director.

The JPA currently reads as follows: at Article 11: “The Executive Committee may have additional powers delegated to it by the Board, except for the adoption of the Agency’s annual budget. Any additional powers and duties delegated shall be specified in a Resolution adopted by the Board. The Executive Committee shall provide notice to the Board before authorizing or conducting any investigations into the business of the Agency and before taking personnel action. These actions must be authorized by a majority vote of the Executive Committee.”

The reference to personnel action will be removed and the Executive Committee will be prohibited from taking any personnel actions.

Question #5 What is a situation where the association would need to issue debt, purchase land, or hire or terminate multiple employees?

Answer#5: The provisions authorizing the JPA to issue debt or purchase land will be removed. It is unknown whether the Agency would ever need to hire or terminate an employee, but those decisions would be made by the Board of Directors and memorialized in a budget adopted by the Board of Directors, not the Executive Committee. (See answer to PERSONNEL MANAGEMENT #1)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report on the American Rescue Plan Act (ARPA) Investment Plan (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3053 and Lauren Lai, Director of Finance, 408-586-3111)
Category:	Leadership and Support Services
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Receive Report on the American Rescue Plan Act (ARPA) Investment Plan

Background:

In March 2020, due to the rampant spread of the Coronavirus (Pandemic), a state of emergency was declared at the local, state, and federal levels and stay-at-home orders issued, which had an enormous impact on the local, state and national economy as well as the City's finances.

On March 11, 2021, President Biden signed into law the American Rescue Plan Act (ARPA), a \$1.9 trillion stimulus package, to counteract the economic impacts of the pandemic. The City's ARPA allocation of \$16,736,815 is available in two tranches, which was received in June 2021 and June 2022. Funds need to be either expended or encumbered by December 31, 2024, with all funds to be expended by December 31, 2026.

On May 11, 2021 ([link to staff report](#)), staff presented preliminary information on ARPA's Coronavirus State and Local Fiscal Recovery Funding. Staff also provided information on other funding through ARPA that could benefit the Milpitas community since the Coronavirus Local Fiscal Recovery Funding (CLFRF) is only a portion of the total ARPA funding. Staff received Council input on ARPA Plan spending priorities in May and June ([June 8, 2021 Council Meeting agenda report](#)). A majority of the spending priorities were related to financial assistance and social services to those impacted by the pandemic, economic vitality, infrastructure, public safety, and technology.

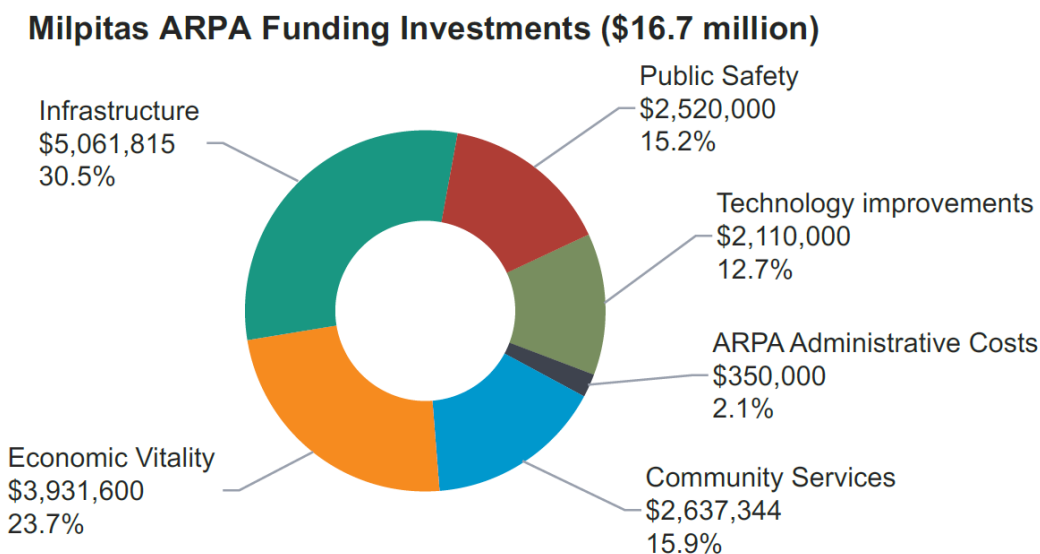
On June 21, 2021 ([link to the agenda report](#)), Council approved the ARPA Investment Framework including the Fiscal Guidelines and Five Investment Areas. Fiscal Guidelines include the following:

1. Identify and promote **other ARPA or State funding sources** to the extent possible before dedicating local ARPA funds.
2. Use one-time ARPA funds for **one-time expenditures** such as investment in infrastructure or technology with minimum ongoing operating costs.
3. **Avoid ongoing General Fund commitments** with additional programs and positions.
4. **Avoid creating a structural budget deficit** if restoring any reduced services.
5. Leverage **regional agencies, non-profit partners, and existing programs** to maximize efficiency in delivering programs and services.

On August 9, 2021 ([link to the agenda report](#)), Council approved funding for 25 programs in the ARPA Investment Plan and delegated authority to the City Manager to proceed with appropriation actions and contract approvals, up to the approved amount for each program approved by Council, once compliance with ARPA procurement, contracting, and reporting requirements are confirmed. This would allow the funding to go to residents and businesses significantly impacted by the pandemic, in an efficient and expeditious manner. Moreover, Council allocated funding into Five Investment areas of **Community Services, Economic Vitality, Infrastructure, Public Safety, and Technology**.

On January 11, 2022 ([link to the agenda report](#)), Council approved program funding re-allocations to enhance service delivery and/or streamline implementation, especially procurement.

On March 15, 2022 ([link to the agenda report](#)), Council provided feedback and direction as a part of the Fiscal Year 2022-23 budget development, and also established the ARPA funding process to align with the annual budget development, which maximizes efficacy of budget management and service delivery. Current funding authorized by Council are allocated into five Investment areas of **Community Services, Economic Vitality, Infrastructure, Public Safety, and Technology** and **unallocated of \$126,056** as shown below.



On February 21, 2023 ([link to the agenda report](#)), Council approved a motion to defund the (1) Pilot Curbside Trash Pick Up Program (\$85,500); (2) Small Business Assistance Program (\$4,900); (3) Sustainable Neighborhood Program (\$60,000); and (4) Milpitas Chamber of Commerce Program (\$200,000). Additionally, Council's motion directed staff to find a LGBTQIA+ youth services provider in the Social Services Program, to relocate \$70,000 within the Workforce Development Program for Youth Force and reallocate the \$97,000 within the parks appropriation to Selwyn Park.

During the FY 2023-24 Budget process, the Council approved changes to the ARPA Investment Plan, including re-allocation of funding from previously approved programs. \$126,056 of unallocated ARPA funding is now available.

Analysis:

This report is consistent with prior periodic ARPA program reports to the City Council. In accordance with the March 2022 Council approved process for ARPA updates, ARPA funding will be reviewed annually as a part of the annual budget development. This process for ARPA funding aligns with the citywide budget development and also maximizes efficacy of budget management and service delivery. Should City Council desire, the ARPA funding may also be considered during the FY2023-24 mid-year process during February 2024.

Total ARPA funding of \$16.7 million was distributed to the City of which \$7.0 million has been expended and \$9.7 million obligated on various Council authorized programs as summarized below and in Attachment #1. It should be noted that an additional \$1.2 million in Parks funds was expended within the last few weeks due to the recent completion of Phase I of the parks projects. However, this is not reflected in the below table as the table shows expenses as of September 16, 2023.

No.	Program	Approved Appropriation	Year to Date Expenditure	Balance
1	Rent and Mortgage Relief	\$1,100,000	\$674,472	\$425,528
2	Social Services	\$500,000	\$414,365	\$85,635
3	Financial Assistance to Low and Moderate Income Residents for Utility Payments and Childcare Costs	\$575,000	\$202,320	\$372,680
4a	Beautify Milpitas Program	\$100,000	\$19,654	\$80,346
4b	Weed Abatement	\$90,000	\$89,961	\$39
5	Homeless Outreach and Assessment	\$100,000	\$20,525	\$79,475
6	Public Works Maintenance Staffing	\$172,344	\$0	\$172,344
	Community Services Subtotal	\$2,637,344	\$1,421,297	\$1,216,047
7	Small Business Assistance Grant Program	\$1,565,100	\$1,565,100	\$0
8	Hotel Assistance Grant Program	\$130,000	\$130,000	\$0
9	Accessory Dwelling Unit Program	\$990,000	\$546,612	\$443,388
10	Storefront Improvement Grant Program	\$365,000	0	\$365,000
11	Community Events	\$125,000	\$92,595	\$32,405
12	Workforce Development Program	\$300,000	\$126,839	\$173,161
13	Limited Term Economic Development Specialist Position	\$330,000	\$220,069	\$109,931
14	Business Improvement District	\$126,500	\$29,640	\$96,860
	Economic Vitality Subtotal	\$3,931,600	\$2,710,855	\$1,220,745
15	Park Rehabilitation	\$4,386,815	\$77,059	\$4,309,756
16	Public Safety Facilities' Rehabilitation	\$250,000	0	\$250,000
17	Mobile Emergency Operations Center (MEOC)	\$425,000	0	\$425,000
	Infrastructure Subtotal	\$5,061,815	\$77,059	\$4,984,756
18	Public Safety Staffing	\$1,200,000	\$1,200,000	\$0
19	Fire Pumper Truck	\$920,000	\$455,580	\$464,420
20	Emergency Management Program Assessment Study	\$200,000	\$113,275	\$86,725
21	Catalytic Converter Public Safety Initiative	\$200,000	\$59,162	\$140,838
	Public Safety Subtotal	\$2,520,000	\$1,828,018	\$691,982
22	Human Resources Information System	\$1,100,000	0	\$1,100,000
23	Financial Management System	\$100,000	0	\$100,000
24	Cybersecurity Programs and Training	\$300,000	\$269,123	\$30,877
25	Technology Infrastructure	\$610,000	\$609,377	\$624
	Technology Subtotal	\$2,110,000	\$878,500	\$1,231,500
26	ARPA Funds Administration	\$350,000	\$99,486	\$250,514
	Administration Subtotal	\$350,000	\$99,486	\$250,514
	ARPA Funds - Unallocated	\$126,056	\$0	\$126,056
	Grand Total	\$16,736,815	\$7,015,215	\$9,721,600

Existing ARPA Programs that may require future funding changes

A handful of programs listed in the above table will need future budget adjustments either because they have been completed underbudget, staff anticipates completing in the future underbudget, or may need additional funding. These programs are listed below for reference and staff anticipates returning to the Mayor and City Council during the Fiscal Year 2024-2025 Budget Development process with specific recommendations on funding shifts.

Community Services

Rent and Mortgage Relief Program

The ARPA Investment Plan includes \$1,100,000 for a Rent and Mortgage Relief Program. Of the total amount allocated \$648,375 is for rent relief, \$216,125 for mortgage relief, \$150,000 for a 3-year limited term analyst, and \$85,500 for the program administrator FORWARD. The rent relief portion of this program was launched in December 2022 and to date, the City has received 138 applications and disbursed \$263,596 to 73 households. The mortgage relief program was launched in March 2023 and to date, the City has received 9 applications. However, the City has not been able to disburse any funds due to households being current on payments, requesting more than the maximum payment allowed, or not being Milpitas residents therefore not eligible. The City's maximum of \$15,000 was created with the knowledge that the California Mortgage Relief Program is still open and provides up to \$80,000 in mortgage relief. The City's Program Administrator, FORWARD, works with local nonprofit organizations to help connect any resident who is requesting over the City of Milpitas maximum amount with the State's program for a seamless transition. It should be noted that the City's Mortgage Relief program specifically prohibits households from accessing both the City's and the State's mortgage relief funding. As such, a residents' inability to access funding from both programs may be contributing to the lack of applicants for the City's Mortgage Relief program. During the upcoming Fiscal Year 2024-2025 Budget process, staff will likely recommend a different allocation for the \$216,125 allocated towards mortgage relief.

Financial Assistance to Very Low to Moderate Income Residents for Utility Payments and Childcare Costs
Staff is dispersing childcare subsidies and utility assistance on monthly basis and continuing to enroll participants and work directly with childcare providers. Additional marketing on available subsidies began in February 2023 and funding for childcare costs are anticipated to be expended by the June 2023. The current utility payment assistance enrollment is low despite multiple campaigns to inform the public. During the upcoming Fiscal Year 2024-2025 Budget process, staff will likely recommend a different allocation for the anticipated balance of allocated funds towards utility assistance.

Infrastructure

Parks

To provide for greater flexibility for project completion and ensure that critical health and safety improvements could be addressed expeditiously, the budget was split into two project phases.

On December 6, 2022, the Mayor and City Council approved the Phase I project award of an \$872,059 construction contract to G&G Builders for renovations of up to 11 parks, along with authority to negotiate and execute change orders not to exceed \$468,514, utilizing ARPA funding. The seven parks included in the base scope of work are Sunnyhills Augustine Memorial, Cerano, John McDermott, O'Toole Elms, Pinewood, Selwyn and Tom Evatt. Parks included as add-alternates were Parc Metro Central, Parc Metro East, Parc Metro West and Sinnott. On February 21, 2023, Council approved additional ARPA funding in the amount of \$60,000 to fund improvements at Selwyn Park. It is anticipated that approximately \$100,000 in savings will be available at the completion of this Phase I project after any final change orders.

Phase II is under design and construction is expected to begin by Spring 2024 and complete by Spring 2025. The current estimated budget for Phase II is \$3.5 million. The twelve parks included in the project are Sandalwood, Sinnott, Starlite, Strickroth, Ben Rodger, Foothill, Hidden Lake, Murphy, Oliver Jones Memorial

Parc Metro West, Robert E. Brown and Sunnyhills Augustine Memorial (Sunnyhills Augustine Memorial has improvements included in the scope of both projects). The scope of work for these park improvements focuses on critical health and safety related improvements such as replacement of site furnishing and fitness station, picnic area, pathway, and restroom. Currently, the improvement needs at these parks exceeds the available funding. Staff is including add-alternates as part of the bid package to provide the opportunity for additional improvements to be included at the time of project award if additional funding becomes available. These add alternates include critical health and safety improvements. The current estimate for the add-alternates included in the design is approximately \$500,000.

Additionally, staff has heard recent concerns from the community regarding the condition of the playground at Sinnott Park. While the playground is dated and in need of replacement, it was not identified in the Master Plan (other than the swing set) as a short term health and safety priority and there is no current budget for playground replacement. In the Master Plan, the replacement of the entire playground, including rubberized surfacing, was estimated at \$1,000,000 in construction costs. With the inclusion of design, contingency and mobilization costs the playground replacement could cost as much as \$1,500,000. As an additional consideration, with a lower allocation of approximately \$350,000, staff could investigate replacing some of the playground equipment with “like for like” pieces.

In total, the identified additional short term project funding needs for parks funded by ARPA are as follows:

- \$500,000 for critical health and safety related add-alternates;
- \$350,000 for playground upgrades at Sinnott Park (this does not include the larger playground replacement estimate)
- **\$850,000** total funding need.

The bid results for the ARPA funded Parks project are expected to be received in February or March 2024. Staff recommends holding off on transferring any additional funds into the ARPA parks project until bid results are received as less than the anticipated funding of \$500,000 in add alternates may be needed if the bid results are favorable. Additionally, staff recommends discussing potential additional funding for Sinnott Park as part of the Fiscal Year 2024-2025 Capital Budget Process.

Economic Vitality

Economic Development Workforce Development

ARPA funding of \$300,000 was appropriated to provide Workforce Development Programs including funding for Milpitas Youth Force (\$40,000 for 2022 summer program; \$70,000 for 2023 summer program) to support low income youth and develop a local workforce pipeline, First 5 Santa Clara County for a Pilot Early Childhood Education Teacher Apprenticeship program (\$40,000), Rising Sun Center for Opportunity Climate Careers to develop a program addressing climate change by employing local youth to provide energy efficiency services (\$10,000), Build It Green to implement a Certified Green Building Professional Training program (\$10,000), SEMI Foundation STEM kits program (\$45,000), and Milpitas Unified School District Adult Education Career Training Center program (\$30,000).

The Milpitas Youth Force 2022 and 2023 Programs, Rising Sun for Opportunity Careers program, and Build It Green’s Certification for the Green Building Professional Training program are complete. First 5 Santa Clara County’s Pilot for Early Childhood Education Teacher Apprenticeship program is ongoing until 2024. The SEMI Foundation STEM kits program is anticipated to launch by the end of the year and the MUSD Adult Education Career Training Center has launched and staff is currently in the process of grant fund disbursement.

The Office of Economic Development staff is currently evaluating workforce development programs for the estimated remaining funds of \$73,000. Staff plans to utilize \$18,000 of this \$73,000 for a future Milpitas Youth Force Program. Staff is researching potential options for the remaining \$55,000 that consists of early childhood education training at MUSD’s Innovation Campus, senior programs to assist older adults in obtaining job skills and job placement to re-enter the workforce, among others.

Public Safety

Catalytic Converter Theft Deterrent Program (\$200,000)

The Public Safety area of the ARPA Investment Plan includes an allocation of \$200,000 to prevent catalytic converter theft. The limited term program was launched in November 2022 and required close coordination between the City Manager's Office, Office of Economic Development, Police, Information Technology, and Finance. Extensive outreach was conducted to automotive businesses and Milpitas residents. Seven Milpitas businesses participated in the program and were reimbursed up to \$400 for each installation of a physical protection measure such as plates and rods to protect catalytic converters against theft. The make and model of the cars determined which of the seven businesses could perform the work, thus not all businesses could avail themselves of the maximum amount of reimbursement offered through the program. The program registration ended on March 30, 2023 and final payments to participating business for services rendered were completed by June 30, 2023. \$59,162 was disbursed to Milpitas businesses and 148 vehicles benefited from this program.

During the upcoming Fiscal Year 2024-2025 Budget process, staff will likely recommend a different allocation for the \$140,838 remaining in this program allocation.

Fiscal Impact:

The ARPA allocation to the City is in the amount of \$16,736,815 which Council appropriated and obligated into investment areas and specific programs.

California Environmental Quality Act:

This item is not a Project under CEQA in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) as it can be seen with certainty that a general discussion of funding priorities by the City Council will not have a significant effect on the environment. Further, the item is also not a Project pursuant to CEQA Guidelines Section 15378(b)(2) as an administrative activity which is defined in the CEQA Guidelines to include the purchase of supplies and personnel related actions. It is further 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. Although the use of funding will be discussed for various potential projects, future environmental analysis will be conducted for the various potential projects prior to the City making any commitment or approval of any project, or it is covered by the CEQA Guideline 15061(b)(3) and/or 15378(b)(2).

Recommendations:

Receive Report on the American Rescue Plan Act (ARPA) Investment Plan

Attachments

1. ARPA status update – All Projects

City of Milpitas					
ARPA Project Appropriation and Expenditures through Sept. 19, 2023					
No.	Program	Approved Appropriation	Total Program Expenditures	Balance	Current Status
1	Rent and Mortgage Relief	\$1,100,000	\$674,472	\$425,528	The rent relief program funds are nearing a 50% disbursement rate. There are funds available in the mortgage relief program as well.
2	Social Services	\$500,000	\$414,365	\$85,635	Non-profit grants & Team Programs: Grants awarded and programming has begun, serving Milpitas residents. Monies anticipated to be expended by the end of the fiscal year.
3	Financial Assistance to Low and Moderate Income Residents for Utility Payments and Childcare Costs	\$575,000	\$202,320	\$372,680	Dispersing childcare subsidies and utility assistance monthly. Continuing to enroll participants and work directly with childcare providers. Additional marketing on available subsidies starting in February 2023. Monies for childcare costs are anticipated to be expended by the end of the FY. Utility payment assistance enrollment is low despite multiple campaigns to inform the public.
4a	Beautify Milpitas Program	\$100,000	\$19,654	\$80,346	Beautification Events are scheduled monthly and kits are ordered, assembled and distributed as needed.
4b	Weed Abatement	\$90,000	\$89,961	\$39	Remaining funds are anticipated to be exhausted by the end of the fiscal year.
5	Homeless Outreach and Assessment	\$100,000	\$20,525	\$79,475	HEAT services agreement with Santa Clara County was executed.
6	Public Works Maintenance Staffing	\$172,344	\$0	\$172,344	FY23-24 adopted budget includes ARPA funding for public works service enhancements and staffing.
	Community Services Subtotal	\$2,637,344	\$1,421,297	\$1,216,047	
7	Small Business Assistance Grant Program	\$1,565,100	\$1,565,100	\$0	Grants have been disbursed and program is complete. 343 businesses received grants.
8	Hotel Assistance Grant Program	\$130,000	\$130,000	\$0	Grants have been disbursed and program is complete. 13 hotels received grants.
9	Accessory Dwelling Unit Program	\$990,000	\$546,612	\$443,388	114 ADU/JADU grants; 18 Permits Finaled, 43 Issued, 16 Approved, 47 in Plan Check
10	Storefront Improvement Grant Program	\$365,000	0	\$365,000	Four applications have been submitted. Applicants have received award letters. Staff is processing a grant agreement and the other three applications are being reviewed. Next steps include meeting with the applicants, design team and representatives from Planning, Building, and Economic Development.
11	Community Events	\$125,000	\$92,595	\$32,405	Program Coordinator Hired. Events include: Earth Day, Family Campout, Lantern Festival. ArtWalk, Dia de Los Muertos, and Holi Festival. Last events are held FY24.
12	Workforce Development Program	\$300,000	\$126,839	\$173,161	Staff is processing grant disbursements from MUSD's Career Education Training Center and SEMI Foundation's STEM Kits. Staff is also researching the potential of Workforce Development grants for early education training and for seniors to return to work.
13	Limited Term Economic Development Specialist Position	\$330,000	\$220,069	\$109,931	Position is currently occupied by a part-time Senior Special Projects Associate.
14	Business Improvement District	\$126,500	\$29,640	\$96,860	Staff, Civitas Advisors, and Community Strong Strategies continues to meet with the Steering Committee on the feasibility analysis of a Property-Business Improvement District (PBID).
	Economic Vitality Subtotal	\$3,931,600	\$2,710,855	\$1,220,745	
15	Park Rehabilitation	\$4,386,815	\$77,059	\$4,309,756	Engineering's Project No. 3501: RFP process was completed in December 2023 for design services of 13 park improvements. The final design is anticipated to be completed by the end of this year and construction phase is anticipated to start in Spring 2024. Public Works' PH3 Park Improvement Project No. 3500: On 12/06/22, City Council awarded a construction contract for 7 base bid sites and 2 add alternate sites to G&G Builders. This project has been completed and there are approximately \$100,000 remaining funds that can be used to fund add-alternates for the Engineering's Project No. 3501. All funds are expected to be expended at the completion of the Engineering project in mid-2025.
16	Public Safety Facilities' Rehabilitation	\$250,000	0	\$250,000	Funds were allocated to Fire Station No. 1 Modular Building Project No. 3465 within the FY 2022-23 Mid-year budget adjustments on 2/21/2023 to fund a portion of the cost for the modular replacement. Engineering is working with Finance Department to purchase a modular that meet Fire Department's needs. It is anticipated the modular building selection will be completed by Summer 2024 and installation will be completed by Fall 2025. The allocation is expected to be fully expended in 2025.
17	Mobile Emergency Operations Center (MEOC)	\$425,000	0	\$425,000	Vehicle is 90% complete. Project is on schedule for a December 2023 delivery.
	Infrastructure Subtotal	\$5,061,815	\$77,059	\$4,984,756	
18	Public Safety Staffing	\$1,200,000	\$1,200,000	\$0	Four(4) firefighters and two(2) police officers funded.
19	Fire Pumper Truck	\$920,000	\$455,580	\$464,420	Fire attended Pre-construction meeting with the manufacturer on 10/3/23 with projected build date of mid-2024.
20	Emergency Management Program Assessment Study	\$200,000	\$113,275	\$86,725	12 annexes completed at this time. 8 remaining. ELT and CMO final reviews are currently in-progress with an estimated final completion date of QTR 1 2024.
21	Catalytic Converter Public Safety Initiative	\$200,000	\$59,162	\$140,838	Project Complete. 148 residents participated and 7 businesses were supported with a total of \$59,162 in funding paid to the businesses.
	Public Safety Subtotal	\$2,520,000	\$1,828,018	\$691,982	
22	Human Resources Information System	\$1,100,000	0	\$1,100,000	Request for Information (RFI) completed, Request For Proposals (RFP) underway and vendor demonstrations for October. 5 Key HR process mapped.
23	Cybersecurity Programs and Training	\$300,000	\$269,123	\$30,877	User training service contract completed. Procured and completed implementation of an advanced endpoint protection system. Procured and currently implementing a web filtering solution.
24	Technology Infrastructure	\$710,000	\$609,377	\$100,624	Procured and completed two rounds of end-user equipment replacement projects. Third round in progress.
	Technology Subtotal	\$2,110,000	\$878,500	\$1,231,500	
25	ARPA Funds Administration	\$350,000	\$99,486	\$250,514	Procurement administration is on-going. Quarterly Treasury reports are submitted timely. Staff participates in GFOA meetings on emerging policy.
	Administration Subtotal	\$350,000	\$99,486	\$250,514	
26	ARPA Funds - Unallocated	\$126,056	\$0	\$126,056	
	Grand Total	\$16,736,815	\$7,015,215	\$9,721,600	



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Granting Acceptance of Public Improvements and Approve a Reduction of the Faithful Performance Bond for the Self-Storage Project located at 1 Hanson Court and Grant Authorization to the City Engineer to Release the Performance Bond after the One-year warranty period; (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; Roberto Alonzo, Transportation and Traffic Manager, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Adopt a resolution granting acceptance of the completed public improvements for the Self-Storage Project located at 1 Hanson Court as shown on Public Improvement Plans No. 2-1224; and approve a reduction in the faithful performance bond to \$16,000.00, which is 10% of the security's original value which shall be in effect for the duration of the warranty period; and grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided that all required warranty work is completed to the satisfaction of the City Engineer.

BACKGROUND:

On October 17, 2017, the City Council approved the Improvement Agreement for the Self-Storage Facility Project (Project) on a 4.13-acre site located at 1 Hanson Court. New public improvements constructed by the Project include; curb, gutters; sidewalk; driveway; utilities; landscaping; and other miscellaneous items of work.

ANALYSIS:

The Developer, One Hanson, LLC, has successfully completed all required public improvements for the Project in accordance with the City approved public improvement plans. The public improvements are now ready for City Council acceptance and commencement of the 1-year warranty period. Staff recommends the City Council adopt a Resolution (attached) granting acceptance of the public improvements, and to approve a reduction of the performance bond to \$16,000.00, which is 10% of the security's original value, and grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided that all required warranty work is completed to the satisfaction of the Engineering Director/City Engineer.

POLICY ALTERNATIVE(S):

Alternative 1:

Not approve a resolution granting acceptance of public improvements including the reduction of the performance bond.

Pros: None

Cons: Not granting acceptance of the completed public improvements would limit use of improvements and would not promote the orderly completion and closeout of the Project, and it would be in conflict with the City's obligation under the Subdivision Improvement Agreement.

Reason for Not Recommending: Granting the acceptance of the completed public improvements would allow public use of the improvements and provides for the completion and closeout of the Project as required by the

Improvement Agreement. Staff recommends the City Council adopt the resolution granting acceptance of public improvements.

FISCAL IMPACT:

Public Improvements completed as part of this project will be perpetually owned and maintained by the city following acceptance by the City Council and completion of the 1-year warranty period. The Public Works Department will be responsible for maintenance of the improvements and any required additional funding for ongoing maintenance will be requested through future budget appropriations as the Council adopts the annual operating budget for the Public Works Department.

California Environmental Quality Act (CEQA):

Granting acceptance of public improvements and reducing faithful performance bond for public improvements are not considered projects under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment. On October 28, 2015, per Resolution No. 15-034, the Planning Commission approved the construction of the project and adopted the Mitigation Monitoring and Reporting Program prepared as part of the Initial Study/Mitigated Negative Declaration for the Project.

RECOMMENDATION:

Adopt a resolution granting acceptance of the completed public improvements for the Self-Storage Project located at 1 Hanson Court as shown on Public Improvement Plans No. 2-1224; and approve a reduction in the faithful performance bond to \$16,000.00, which is 10% of the security's original value which shall be in effect for the duration of the warranty period; and grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided that all required warranty work is completed to the satisfaction of the City Engineer.

Attachment(s):

Resolution

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING ACCEPTANCE AND REDUCING PERFORMANCE BOND OF THE SELF-STORAGE PROJECT AND GRANTING AUTHORIZATION TO THE CITY ENGINEER TO RELEASE THE PERFORMANCE BOND AFTER THE ONE-YEAR WARRANTY PERIOD

WHEREAS, the City Council of the City of Milpitas on October 17, 2017 approved the plans and specifications for the Self-Storage Project, (the “Project”) to be completed by One Hanson, LLC as part of its commercial development on 1 Hanson Court; and

WHEREAS, the City of Milpitas has heretofore entered into an improvement agreement on October 17, 2017 with One Hanson, LLC, for the Self-Storage Project; and

WHEREAS, One Hanson, LLC, as Principal, and Developers Surety and Indemnity Company, as Surety, executed and posted a certain Performance Bond Number 652453S conditioned upon the faithful performance of the provisions of said improvement agreement and upon the faithful performance of all improvement work required thereunder; and

WHEREAS, said public improvements for the Self-Storage Project have been completed and the improvement agreement provides that the security shall extend for a period of one year after the date of acceptance of said improvements to cover the warranty period of said improvements under said agreement; and

WHEREAS, the City Council is willing to consent to a reduction in the penal sum of said security during said one-year warranty period; and

WHEREAS, the City Engineer of the City of Milpitas has made a final inspection of said improvements for the Self-Storage Project and recommends that the City Council of the City of Milpitas accept the same as constructed in accordance with the approved plans and specifications.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Those certain public improvements constructed as part of the Self-Storage Project, are hereby accepted as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer of the City of Milpitas.
3. The penal sum of the faithful performance bond securing said improvements may be reduced to the sum of \$16,000.00, upon request of Principal and Surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of one year of said security. Provided, however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquish by City of any obligations imposed upon the developer or his surety, or sureties, by law or by the above referend public improvement agreement, save and except as expressly set forth herein.
4. The City Council grants authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided all required warranty work is completed to the satisfaction of the City Engineer.

PASSED AND ADOPTED this ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt Resolutions of the Milpitas City Council and Milpitas Public Financing Authority Board Authorizing Investment of Monies in the Local Agency Investment Fund and Updating Officers' Information (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Adopt two Resolutions of the Milpitas City Council and Milpitas Public Financing Authority Board authorizing investment of monies in the Local Agency Investment Fund and updating officers' information.

BACKGROUND:

The City of Milpitas and the Milpitas Public Financing Authority (PFA) have been participating in the State's Local Agency Investment Fund (LAIF) since 1977. LAIF offers local agencies such as our City the opportunity to participate in a major portfolio administered by the State Treasurer's Office for short-term investments.

LAIF requires that the City Council adopt a resolution that authorizes City designated individuals to have access to the City's and PFA's LAIF accounts. On June 6, 2023, with Council adoption of City Resolution Number 9250 and PFA Resolution Number 28, the signature authority was last updated to include Assistant City Manager and Director of Finance for re-authorization and the change of Mayor, Vice Mayor, City Manager and Deputy City Manager, in accordance with LAIF instructions and signature authority.

ANALYSIS:

Periodically it is necessary to update the signatories with LAIF. This occurs when there is either a change of staffing or a change of member(s) of the Council. The new authorization includes the newly appointed City Manager and vacant Assistant City Manager, in accordance with LAIF instructions and signature authority.

By updating the resolutions and completing the LAIF authorization form, all prior authorizations on file with LAIF for transfer of funds will be replaced and superseded.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt two resolutions updating the list of authorized individuals having access to the City and the Public Finance Authority's LAIF accounts.

Pros: None

Cons: The City will not be current with authorizations for appointed and elected officials.

Reason for Not Recommending: Not updating City and the Public Finance Authority's account authorizations will be inconsistent with LAIF requirements.

FISCAL IMPACT:

There is no fiscal impact to change authorized persons.

RECOMMENDATION:

Adopt the following two resolutions:

- Resolution of the City Council of the City of Milpitas Authorizing Investment of Monies in the Local Agency Investment Fund; and
- Resolution of the Board of Directors of the Milpitas Public Finance Authority Authorizing Investment of Monies in the Local Agency Investment Fund.

Attachment(s):

1. City Council Resolution
2. Financing Authority Resolution

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING
INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND**

WHEREAS, Chapter 730 of the statutes of 1976 Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

WHEREAS, the City Council does hereby find that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein is in the best interests of the City of Milpitas.

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

1. The City Council does hereby authorize the deposit and withdrawal of City of Milpitas monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government Code as stated herein, and verification by the State Treasurer's Office of all banking information provided in that regard.
2. The following City of Milpitas officers or their successors in office shall be authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund:

Carmen Montano, Mayor

Evelyn Chua, Vice Mayor

Ned Thomas, City Manager

Assistant City Manager

_____vacant_____

Matt Cano, Deputy City Manager

Lauren Lai, Director of Finance

PASSED AND ADOPTED this ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MILPITAS PUBLIC FINANCING AUTHORITY
AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND**

WHEREAS, Chapter 730 of the statutes of 1976 Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

WHEREAS, the Board of Directors of the Milpitas Public Financing Authority (“Authority”) does hereby find that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein is in the best interests of the Authority.

NOW, THEREFORE, the Board of Directors of the Milpitas Public Financing Authority hereby finds, determines, and resolves as follows:

1. The Board of Directors does hereby authorize the deposit and withdrawal of Authority monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government Code as stated herein, and verification by the State Treasurer’s Office of all banking information provided in that regard.
2. The following Authority officers or their successors in office shall be authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund:

Carmen Montano, Chair	_____
Evelyn Chua, Vice Chair	_____
Ned Thomas, Authority Director	_____
Assistant Authority Director	_____ vacant _____
Matt Cano, Deputy Authority Director	_____
Lauren Lai, Treasurer	_____

PASSED AND ADOPTED this day of, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, Authority Secretary

Carmen Montano, Chair

APPROVED AS TO FORM:

Michael Mutalipassi, Authority Counsel



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a Sole Source Three-Year Agreement with CentralSquare Inc. for Maintenance and Support of the Public Safety Computer Aided Dispatch System (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Approve and authorize the City Manager to execute a sole source three-year agreement with CentralSquare Inc. for maintenance and support of the Public Safety Computer Aided Dispatch System for the not-to-exceed amount of \$142,160.56 annually and \$426,481.68 for a three-year term.

BACKGROUND:

A Computer Aided Dispatch (CAD) system is vital for the efficient delivery of police and fire services. Due to the complex nature of the system, routine updates and maintenance are imperative in ensuring performance and reliable operations.

In October 2003, after competitively evaluating different software packages for CAD software from several companies, the City entered into an agreement with Tritech Software Systems, Inc. Tritech Software Systems was determined to have the best price and service and has been the provider of the CAD systems used by the police and fire departments since 2003.

In July 2018, TriTech was acquired by CentralSquare Inc., and the City has continued to rely on CentralSquare for the maintenance and support of the CAD software. The system is proprietary, and only CentralSquare can provide the necessary annual software maintenance services for the system. The software maintenance renewal is subject to an annual agreement between the parties. In September 2023, the City's Purchasing Agent redesignated CentralSquare Inc. as the "Sole Source" provider of the TriTech CAD system and its maintenance in accordance with Municipal Code Section 1-2-3.06 "Sole Source Procurement." This designation is active for three (3) years, ending on August 31, 2026.

ANALYSIS:

Previously, the City did not have an agreement with the vendor and instead directly paid the invoice or used a standard purchase order template with terms and conditions for services. The City is continually evaluating its contracts, and as this is a critical function and maintenance service, the City wishes to formalize this service with terms and conditions within a formal agreement.

Since the CAD system is essential for public safety services, staff recommends continuing the maintenance and support agreement with CentralSquare and requests Council authorization for the agreement not-to-exceed amount of \$142,160.56 annually and \$426,481.68 for a three-year contract term.

POLICY ALTERNATIVE(S):

Alternative 1: Do not authorize the City Manager to execute the Sole Source agreement with CentralSquare Technologies Maintenance Contract related to 9-1-1 Computer-Aided-Dispatch system.

Pros: None

Cons: The city will lose the ability to keep the CAD systems up-to-date through routine upgrades and receive technical assistance from the vendor, which could have an impact on the efficient delivery of public safety

services.

Reason for Not Recommending: Authorizing the City Manager to execute this sole source agreement would allow Staff to continue efforts to negotiate a timely agreement and ensure a reliable CAD system, which is vital to the delivery of police and fire services.

FISCAL IMPACT:

The annual maintenance cost is \$142,160.56. The total cost for the three-year agreement term is \$426,481.68. There are sufficient funds available for the first year in the Information Technology FY24 operating budget. Funding for future years will be allocated through the annual budget 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:

Approve and authorize the City Manager to execute a sole source three-year agreement with CentralSquare Inc. for maintenance and support of the Public Safety Computer Aided Dispatch System for the not-to-exceed amount of \$142,160.56 annually and \$426,481.68 for a three-year term.

Attachment(s):

Sole Source Request Form
Professional Services Agreement



CITY OF MILPITAS SOLE SOURCE OR SOLE BRAND (STANDARDIZATION) REQUEST

THIS FORM MUST BE COMPLETED AND APPROVED
PRIOR TO ANY PROCUREMENT

When a request is made for a sole source procurement or to restrict procurement to a specific brand (standardization) for the acquisition of supplies, equipment and materials or services (except for consultant services or contracts with other governmental agencies), as applicable, the requesting department must complete this form consistent with [Section I-2-3.06 - Sole Source Procurement](#) or [Section I-2-3.14 - Standardization](#).

Per the aforementioned Municipal Code section, a sole source contract is authorized 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 that there is a compelling reason for using only one source. The detailed information you are providing will facilitate such a determination.

Per the aforementioned Municipal Code section, a standardization of supplies, materials or equipment, including information and communication technology products and services and subsequent sole brand procurement is authorized, when the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the City, or that cost savings have been demonstrated. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

- a) In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.
- b) When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.
- c) In order to achieve significant cost savings based upon consideration of the following cost factors: (1) Timeliness and quality of installation, repair and maintenance; (2) Quality of user training; (3) Supplies and replacement parts; (4) Modification of existing equipment, materials or systems; (5) Future upgrades and updates; (6) Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination; and/or (7) Administrative costs.

This form is not necessary for contracting for professional services or contracting with other governmental agencies.

Please answer in the space provided, or in an attachment address by specific reference, each question listed below in your justification. Be sure to answer each part of each question as each must be addressed; no response can be not applicable. Failure to respond fully to any of the questions may result in delay or rejection of the request due to inadequate justification. If additional information is necessary, please attach additional page(s) and/or documents, as needed.

1. This is a request for a (circle one) **Sole Source** Sole Brand exception.
2. Using appropriate detail, including brand name and model number, ***briefly*** describe the product you wish to procure. In the case of a general service use enough detail to clearly describe to someone not familiar with your department's operation what you are procuring.

If it is your assertion that the manufacturer or distributor is the only authorized source in the Bay Area, Northern California; or whatever the claim is; please substantiate that with a letter from the manufacturer or distributor. The letter must be on their stationary but can be sent via email. Attach a copy to this form.

TriTech was acquired by CentralSquare Inc. and the City has continued to rely on CentralSquare for the maintenance and support of the CAD software. The system is proprietary and only CentralSquare can provide the necessary annual software maintenance services to the system.

3. Please provide the total not-to-exceed amount of the purchase and/or agreement/contract as well as the requested term. (if buying software, the City's standard term is five years)

Total Cost: \$ 426,481.68

Term: 9/1/2023-8/31/2026

Detailed cost breakdown explanation per year:

Year 1: 142,160.56
Year 2: 142,160.56
Year 3: 142,160.56

4. For goods: What are the unique performance features of the product/brand requested that are not available in any other product/brand? For services: What unique qualifications, rights, degrees, certifications, licenses and/or experience does this vendor possess?

Staff competitively evaluated different software packages for Computer Added Dispatching (CAD) software from a variety of different companies. Tritech Software Systems was determined to have the best price and service and has been the backbone of both the Police and Fire Main computerized dispatch systems since 2003.

5. **What other products/services have been examined and rejected, and why?** *(Please provide a specific meaningful explanation, one vendor and one feature at a time. For products be sure to clearly identify the product by name and model number and **include the name, address, email, and telephone number of the company representative whose product you tested.**)*

This service requires highly specific knowledge and skills related to the CentralSquare Inform 9-1-1 CAD system. This service is provided solely by the manufacturer.

6. If justification is based on matching and/or intermixing with existing equipment (standardization or sole brand only – (sole brand may only be used by authority of the City Council)), list the quantity, manufacturer, brand, and model of the existing equipment, and identify measurable cost savings consistent with the sole brand requirements identified on page one of the request form (attach calculations as necessary).

I HEREBY CERTIFY THAT:

1. I have read and understand the City's requirements for competitive bidding, as well as the criteria for justification for sole source and sole brand procurements.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment/service.
3. There is validity as to the information contained herein justifying my request for sole source or sole brand procurement and meeting the City's criteria.
4. A sole source or sole brand procurement in this case would withstand a possible audit or a vendor's protest.

Requestor: Subia Karim _____ Date: 7/31/2023

Department Head: Daniel Nam _____ Date: 7/31/2023

PURCHASING DIVISION USE ONLY:

APPROVED: Yes No

Purchasing Agent: _____ Date:

Purchasing Agent's Written Determination:

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SOLE SOURCE OR SOLE BRAND REQUEST

A. OVERVIEW

Purchasing recognizes that departments often invest a great deal of time and effort in selecting a source or brand, prior to submitting a requisition to Purchasing. Even though the departmental review process prior to the submittal of a requisition may be sound, it is highly recommended to quickly engage with Purchasing as soon and early in the process as possible to ensure all documentation and justifications for the request are consistent with the Municipal Code.

Likewise, Purchasing can be an effective partner in a competitive review process given adequate time and involvement in your requirement definition.

In an effort to expedite sole source or sole brand requisitions through Purchasing, you are directed to review the Sole Source or Sole Brand Request form herein. If the Department feels the request meets the criteria, follow the instructions in filling out the form and attach it to the requisition. After review, if Purchasing concurs with your sole source or sole brand justification, the requisition may be expedited without the competitive solicitation requirements.

This is an internal City review process. Departments are directed to use discretion in their discussion with vendors so as to not compromise any competitive advantage that Purchasing may utilize; in the event the sole source or sole brand justification is rejected. Rather than merely a shift of the review burden, this process acknowledges the significant effort a department may undertake when identifying a vendor or brand and provides you with the method by which to make requisitioning efforts more efficient adhering to the City's Purchasing Ordinance.

In order for Purchasing to accept a request for sole source/sole brand, the certification form referenced is made a part of the Purchasing Agent's written determination as provided by the Municipal Code must be signed by the Department Head. The completed form will remain on file for audit purposes.

Sole Source Requests Over \$100,000

Sole Source requests over \$100,000 require submission of an Agenda Report [Sample - Sole Source Agenda Report](#) and approval by City Council and require submission of a resolution as in the [Sample - Sole Source Resolution](#). If you are making a second sole source purchase, over \$100,000, within the five-year life of the original sole source purchase you are still required to submit an AR to City Council, and at a minimum, the report should confirm the findings in the prior sole source resolution are still accurate and that nothing has changed in the marketplace or elsewhere. If anything has changed, then a new resolution is required. If

nothing has changed, then the Department can rely on the prior resolution but should include language in the AR indicating that all previous findings and conclusions are still accurate, and staff is not aware of any new information that would change those findings or conclusions in the prior sole source resolution.

B. PROCEDURE Sole source or sole brand procurements are an exception to competitive solicitation requirements and, therefore, require a detailed justification. In processing sole source or sole brand requests for supplies, equipment and/or services (except for consultant services or contracts with other governmental agencies), Purchasing adheres to and is governed by the principles set forth in City of [Milpitas Municipal Code Section I-2-3.06 - Sole Source Procurement](#) or [Section I-2-3.14 - Standardization](#) as approved by the City Council.

If the requesting Department is requesting a particular vendor, brand or product, staff must make this fact clear on your requisition. If approved, the request will then be restrictive and non-competitive and will fall into a sole source or sole brand category.

Such a request should not be made unless Department staff is confident that the request is reasonable and appropriately justified to meet the City's requirements and withstand any possible audit or scrutiny. The City's requirements and the format for submitting such requests are contained herein.

The following factors DO NOT apply to sole source requests and should not be included in any sole source and/or sole brand justification request. They will not be considered and only tend to confuse the evaluation process and delay the procurement.

1. Personal preference or experience with or for a particular product or vendor.
2. Cost, vendor performance, and/or local service (these are generally considered award factors in competitive bidding).
3. Features which exceed the minimum department requirements.
4. Explanation of the need and/or basic use for the equipment, unless the information relates to a request for "unique factors" (refer to question three from the Sole Source/Sole Brand Request form). In other words, it is not appropriate to only state the Department is requesting a specific tree trimmer so staff can trim trees, instead explain why this particular trimmer with these exact performance specifications is the only one that will meet the Department's need(s).
5. A request for "no substitution" submitted without justification. This is just a sole source or sole brand request without justification and will be rejected

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND CENRALSQUARE TECHNOLOGIES LLC**

This Agreement is made and entered into as of _____, 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 **CentralSquare Technologies, LLC**, a Florida limited liability company, with its principal place of business at **1000 Business Center Dr., Lake Mary, FL 32746** (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:

Central Square- VisiCAD Maintenance Renewal

(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 **Four Hundred Twenty-Six Thousand Four Hundred Eighty-One Dollars and Sixty-Eight Cent (\$426,481.68)**. 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 three (3) years from the date of final payment under the Agreement for inspection by City.

5. Term of Agreement

The term of this Agreement shall be from **September 01, 2023** to **August 31, 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.

6. Delays in Performance

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance

Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

c. Consultant shall not be required to indemnify City for any claims or actions caused to the extent of the negligence or wrongful act of City, its employees, agents, or contractors. If a claim, lawsuit or liability results from or is contributed to by the actions or omissions of City, or its employees, agents or contractors, Consultant's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.

d. Notwithstanding the foregoing, the total liability of Consultant for any claim or damage arising from or otherwise related to this agreement, whether in contract, tort, by way of indemnification or under statute shall be limited to direct damages which shall not exceed the total amount paid and to be paid under this contract for the applicable twelve (12) month term. The foregoing is not limited by any insurance proceeds or coverage paid or to be paid by any insurance carrier.

13. California Labor Code Requirements

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall

not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

//

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor

14. Verification of Employment Eligibility

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial

failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

c. The Consultant understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Consultant's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

17. Documents

Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. 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: City Manager

CONSULTANT:

CentralSquare Technologies, LLC
1000 Business Center Drive
Lake Mary, FL 32746
Attn: Commercial Contracts Team

and shall be effective upon receipt thereof.

20. 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.

21. 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.

22. 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.

23. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

24. 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.

25. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

26. Time of Essence

Time is of the essence for each and every provision of this Agreement.

27. 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.

28. 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.

29. 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 CENRALSQUARE TECHNOLOGIES LLC**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

Ned Thomas, Acting City Manager

Date

Approved As To Form:

Michael Mutalipassi, City Attorney

Approved:

Lauren Lai, CPA, MPA
Finance Director/Risk Manager

Approved As To Content:

Daniel Nam, Information Technology Director

**CENRALSQUARE TECHNOLOGIES
LLC**

Approved By:

Signature

Michelle Turner
Name

Title

Date

Signature

Ronald A. Anderson
Name

Title

Date

EXHIBIT A

Scope of Services

This Support & Maintenance Exhibit describes support and maintenance relating to technical support that CentralSquare will provide to Client during the Term of the Agreement.

1. **Product Updates and Releases**

1.1. **Software Version.** “Software Version” means the base or core version of the Software that contains significant new features and significant fixes and is available to the County. Software Versions may occur as the Software architecture changes or as new technologies are developed. The nomenclature used for updates and upgrades consists of major, minor, build, and fix and these correspond to the following digit locations of a release, a,b,c,d. An example of which would be 7.4.1.3, where the 7 refers to the major release, the 4 refers to the minor release, the 1 refers to the build, and the 3 refers to a fix. All Software Versions are provided and included as part of this Agreement.

1.2. **Updates.** From time-to-time CentralSquare may develop permanent fixes or solutions to known problems or bugs in the Software and incorporate them in a formal “Update” to the Software. If Client is receiving technical support from CentralSquare on the general release date for an Update, CentralSquare will provide the Client with the Update and related Documentation at no extra charge.

1.3. **Releases.** Client shall agree to install and/or use any Release provided by CentralSquare within one year to avoid or mitigate a performance problem or infringement claim. All modifications, revisions and updates to the Software shall be furnished by means of new Releases of the Software and shall be accompanied by updates to the Documentation whenever CentralSquare determines, in its sole discretion, that such updates are necessary.

2. **Telephone Support & Support Portal**

2.1. CentralSquare shall provide to Client, 24/7 via toll-free phone number 833-278-7877. CentralSquare shall provide to Client, commercially reasonable efforts in solving errors reported by the Client as well as making available an online support portal. Client shall provide to CentralSquare reasonably detailed documentation and explanation, together with underlying data, to substantiate errors and to assist CentralSquare in its efforts to diagnose, reproduce and correct the error. Should either Party not be able to locate the error root cause and Client and CentralSquare agree that on-site services are necessary to diagnose or resolve the problem CentralSquare shall provide a travel estimate and estimated hours in order to diagnose the reported error. If after traveling onsite to diagnose a reported error and such reported error did not, in fact, exist or was not attributable to a defect in the Software provided by CentralSquare or an act or omission of CentralSquare, then Client shall pay for CentralSquare's investigation, travel, and related services in accordance with provided estimate. Client must provide CentralSquare with such facilities, equipment and support as are reasonably necessary for CentralSquare to perform its obligations under this Exhibit, including remote access in accordance with the Remote Access Policy.

//

3. **Website Support**

Online support is available via <https://support.centalsquare.com/s/contact-us>, offering Client the ability to resolve its own problems with access to CentralSquare's most current information. Client will need to enter its designated username and password to gain access to the technical support areas on CentralSquare's website. CentralSquare's technical support areas allow Client to: (i) search an up-to-date knowledge base of technical support information, technical tips, and featured functions; and (ii) access answers to frequently asked questions (FAQ).

4. **Exclusions from Technical Support Services**

CentralSquare shall have no support obligations with respect to any third-party hardware or software product not licensed or sold to Client by CentralSquare ("Nonqualified Product"). Client shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

5. **Client Responsibilities**

In connection with CentralSquare's provision of technical support as described herein, Client acknowledges that Client has the responsibility to do each of the following:

5.1. Provide hardware, operating system and browser software that meets technical specifications, as well as a fast, stable, high speed connection and remote connectivity.

5.2. Maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications, and ensure that any problems reported to CentralSquare are not due to hardware malfunction;

5.3. Maintain the designated operating system at the latest code revision level reasonably deemed necessary by CentralSquare for proper operation of the Software;

5.4. Supply CentralSquare with access to and use of all information and facilities reasonably determined to be necessary by CentralSquare to render the technical support described herein;

5.5. Perform any test or procedures reasonably recommended by CentralSquare for the purpose of identifying and/or resolving any problems;

5.6. At all times follow routine operator procedures as specified in the Documentation or any error correction guidelines of CentralSquare posted on the CentralSquare website;

5.7. Client shall remain solely responsible at all times for the safeguarding of Client's proprietary, confidential, and classified information; and

5.8. Reasonably ensure that the designated computer system is isolated and free from viruses and malicious code that could cause harm before requesting or receiving remote support assistance.

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6. Priorities and Support Response Matrix

The following priority matrix relates to software errors covered by this Agreement. Causes secondary to non-covered causes - such as hardware, network, and third-party products - are not included in this priority matrix and are outside the scope of this Support & Maintenance Exhibit. CentralSquare will make commercially reasonable efforts to respond to Software incidents for live remote based production systems using the following guidelines:

Priority	Issue Definition	Response Time
Priority 1 – Urgent	The software is completely down and will not launch or function.	Priority 1 issues must be called in via 833-278-7877 and will be immediately answered and managed by the first available representative.
Priority 2 – Critical	A high-impact problem that disrupts the customer's operation but there is capacity to remain productive and maintain necessary operations.	Priority 2 issues must be called in via 833-278-7877 and will be immediately answered and managed by the first available representative.
Priority 3 – Non-Critical	A Software Error related to a user function which does not negatively impact the User from the use of the system. This includes system administrator functions or restriction of user workflow but does not significantly impact their job function.	Priority 3 issues called in via 833-278-7877 will be immediately answered and managed by the first available representative. Non-Critical Priority 3 issues may also be reported via https://support.centalsquare.com/s/contact-us
Priority 4 – Minor	Cosmetic or documentation errors, including Client technical questions or usability questions.	Priority 4 issues called in via 833-278-7877 will be immediately answered and managed by the first available representative. Minor Priority 4 issues may also be reported via https://support.centalsquare.com/s/contact-us

7. Exceptions

CentralSquare shall not be responsible for failure to carry out its service and maintenance obligations under this Exhibit if the failure is caused by adverse impact due to:

7.1. defectiveness of the Client's environment, hardware or ancillary systems, or due to Client corrupt, incomplete, or inaccurate data reported to the Software, or documented defect.

7.2. denial of reasonable access to Client's system or premises preventing CentralSquare from addressing the issue.

7.3. material changes made to the usage of the Software by Client where CentralSquare has not agreed to such changes in advance and in writing or the modification or alteration, in any way, by Client or its subcontractors, of communications links necessary to the proper performance of the Software.

7.4. a force majeure event, or the negligence, intentional acts, or omissions of Client or its agents.

8. **Incident Resolution**

Actual response times and resolutions may vary due to issue complexity and priority. For critical impact level and above, CentralSquare provides a continuous resolution effort until the issue is resolved. CentralSquare will make commercially reasonable efforts to resolve Software incidents for live remote based production systems using the following guidelines:

Priority	Resolution Process	Resolution Time
Priority 1 – Urgent	CentralSquare will provide a procedural or configuration workaround or a code correction that allows the Client to resume live operations on the production System.	CentralSquare will work continuously to provide the Client with a solution that allows the Client to resume live operations on the production system. CentralSquare will resolve the issue as soon as possible and not later than twenty-four (24) hours after notification.
Priority 2 – Critical	CentralSquare will provide a procedural or configuration workaround or a code correction that allows the Client to resume normal operations on the production System.	CentralSquare will work continuously to provide the Client with a solution that allows the Client to resume normal operations on the production System. CentralSquare will resolve the issue as soon as possible and not later than thirty-six (36) hours after notification.
Priority 3 – Non-Critical	CentralSquare will provide a procedural or configuration workaround that allows the Client to resolve the problem.	CentralSquare will work to provide the Client with a resolution which may include a workaround or code correction within a timeframe that takes into consideration the impact of the issue on the Client and CentralSquare's User base. Priority 3 issues have priority scheduling in a subsequent release.
Priority 4 – Minor	If CentralSquare determines that a reported Minor Priority error requires a code correction, such issues will be addressed in a subsequent release when applicable.	CentralSquare will work to provide the Client with a resolution which may include a workaround or code correction in a future release of the software. Priority 4 issues have no guaranteed resolution time.

9. Non-Production Environments

CentralSquare will make commercially reasonable efforts to provide fixes to non-production environment(s). Non-production environments are not included under the response or resolution tables provided in this Exhibit.

9.1. Maintenance. All non-production environment resolution processes will follow the structure and schedules outlined above for production environments.

9.2. Incidents and service requests. Non-production environment incidents are considered priority 3 or 4, dictated by circumstances and will be prioritized and scheduled similar to production environment service requests.

10. Training

Outside the scope of training services purchased, if any, Client is responsible for the training and organization of its staff in the operation of the Software.

11. Development Work

Software support and maintenance does not include development work either (i) on software not licensed from CentralSquare or (ii) development work for enhancements or features that are outside the documented functionality of the Software, except such work as may be specifically purchased and outlined in the Agreement. CentralSquare retains all intellectual property rights in development work performed and Client may request consulting and development work from CentralSquare as a separate billable service.

EXHIBIT B
Schedule of Charges/Payments

[Vendor Invoice on Following Page]



Invoice

RECEIVED
kalteza , 7/10/23

Item # C10.

Invoice No (1 of 1)	Date	Page
386769	7/7/2023	1 of 5

Tritech Software Systems, a CentralSquare Company
1000 Business Center Drive
Lake Mary, FL 32746

Billing Inquiries: Accounts.Receivable@centralsquare.com

Bill To	Ship To
Milpitas, CA	Milpitas, CA
Daniel Nam	Daniel Nam
1265 North Milpitas Boulevard	1265 North Milpitas Boulevard
Milpitas CA 95035	Milpitas CA 95035
United States	United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
12635	Milpitas, CA		USD	Net 30	8/31/2023

Description	Units	Rate	Extended
Contract No. Q-137807			
1 Inform Mobile Base Position with CJIS/NCIC Forms Annual Main - Annual Maintenance Fee Inform Mobile Base Position with CJIS/NCIC Forms Annual Maintenance Fee Maintenance: Start:9/1/2023, End: 8/31/2024	5	\$231.04	\$1,155.20
2 Inform Mobile Mapping Annual Maintenance Fee - Annual Maintenance Fee Inform Mobile Mapping Annual Maintenance Fee Maintenance: Start:9/1/2023, End: 8/31/2024	5	\$46.21	\$231.04
3 Standard Station Alert Interface Annual Maintenance Fee - Annual Maintenance Fee Standard Station Alert Interface Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$5,093.55	\$5,093.55
4 Escrow Fee - Annual Subscription Fee Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$950.00	\$950.00
5 Inform Mobile Mapping Annual Maintenance Fee - Annual Maintenance Fee Mobile Mapping Support Fees Maintenance: Start:9/1/2023, End: 8/31/2024	51	\$29.67	\$1,513.17
6 Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Command Public Safety Full-User License*** Maintenance: Start:9/1/2023, End: 8/31/2024	6	\$3,533.36	\$21,200.16
7 Inform CAD Quickest Path Module Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Live Routing License Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$4,416.71	\$4,416.71
8 Inform CAD The GISLink Utility Position Annual Maintenance F - Annual Maintenance Fee GISLink / VisiCAD MapImport Utility Maintenance: Start:9/1/2023, End: 8/31/2024	2	\$2,944.48	\$5,888.96



Invoice

Item # C10.

Invoice No (1 of 1)

386769

Date

7/7/2023

Page

2 of 5

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United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
12635	Milpitas, CA		USD	Net 30	8/31/2023

	Description	Units	Rate	Extended
9	Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD MultiAgency Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$1,472.24	\$1,472.24
10	Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Multiassign Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$2,208.35	\$2,208.35
11	Event Playback (GIS Playback) Module Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Playback Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$1,472.24	\$1,472.24
12	CentralSquare Message Switch Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Query Message Switch Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$1,472.24	\$1,472.24
13	Inform CAD the Archive Server Software Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Archive License Data Purging & SQL Replication Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$5,888.95	\$5,888.95
14	Inform CAD Rotation Provider Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Rotation Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$147.22	\$147.22
15	Inform CAD Test or Training System Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Training/Test Server Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$2,945.82	\$2,945.82
16	Standard Alpha Numeric Paging Interface Annual Maintenance Fee - Annual Maintenance Fee Standard Alpha-Numeric Paging Interface License Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$2,650.01	\$2,650.01



Invoice

Item # C10.

Invoice No (1 of 1)

386769

Date

7/7/2023

Page

3 of 5

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United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
12635	Milpitas, CA		USD	Net 30	8/31/2023

	Description	Units	Rate	Extended
17	Inform Mobile Base Position Annual Maintenance Fee - Annual Maintenance Fee VisiNet Mobile Applications Server License Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$14,722.34	\$14,722.34
18	Inform Mobile Base Position Annual Maintenance Fee - Annual Maintenance Fee VisiNet mobile Client License*** Maintenance: Start:9/1/2023, End: 8/31/2024	50	\$203.15	\$10,157.50
19	Inform Mobile Mapping Annual Maintenance Fee - Annual Maintenance Fee VisiNet Mobile Mapping Client License Maintenance: Start:9/1/2023, End: 8/31/2024	50	\$88.35	\$4,417.50
20	Standard Station Alert Interface Annual Maintenance Fee - Annual Maintenance Fee Locution Station Alert/Printer Interface License (Centralized) Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$8,833.40	\$8,833.40
21	NCIC/State Message Switch Software - Inform CAD/Inform Mobil - Annual Maintenance Fee Interfaces to CLETS/SLETS/NCIC Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$4,416.71	\$4,416.71
22	Standard ANI/ALI Interface Annual Maintenance Fee - Annual Maintenance Fee Standard E-9-1-1 With TDD Interface License Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$5,888.95	\$5,888.95
23	Message Switch Manager Annual Maintenance Fee - Annual Maintenance Fee Message Switch Manager Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$1,472.24	\$1,472.24
24	Inform CAD Integrated Solution Annual Maintenance Fee - Annual Maintenance Fee Aether Fire RMS Closed-Record Download License w/ Personnel and Roster Integration Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$8,833.40	\$8,833.40



Invoice

Item # C10.

Invoice No (1 of 1)

386769

Date

7/7/2023

Page

4 of 5

Tritech Software Systems, a CentralSquare Company
1000 Business Center Drive
Lake Mary, FL 32746

Billing Inquiries: Accounts.Receivable@centralsquare.com

Bill To

Milpitas, CA
Daniel Nam
1265 North Milpitas Boulevard
Milpitas CA 95035
United States

Ship To

Milpitas, CA
Daniel Nam
1265 North Milpitas Boulevard
Milpitas CA 95035
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
12635	Milpitas, CA		USD	Net 30	8/31/2023

	Description	Units	Rate	Extended
25	Std Inform CAD to Inform CAD Basic Interface (single side) A - Annual Maintenance Fee Standard VisiCAD to CAD Interface License Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$7,497.82	\$7,497.82
26	Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD Command Public Safety Database Server License Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$8,833.40	\$8,833.40
27	Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD BOLO License Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$1,472.24	\$1,472.24
28	Inform CAD Mapping Annual Maintenance Fee - Annual Maintenance Fee CAD Mapping Support Fees Maintenance: Start:9/1/2023, End: 8/31/2024	10	\$18.52	\$185.20
29	Inform CAD Position Annual Maintenance Fee - Annual Maintenance Fee VisiCAD R-Check Maintenance: Start:9/1/2023, End: 8/31/2024	1	\$1,472.24	\$1,472.24
30	Inform CAD Mapping Test or Training Annual Maintenance Fee - Annual Maintenance Fee Inform CAD Mapping Test or Training Maintenance: Start:9/1/2023, End: 8/31/2024	4	\$132.74	\$530.96
31	TomTom Street GIS Data (Enterprise Mobile On-Prem) Annual Subscription Fee - Annual Subscription Fee Maintenance: Start:9/1/2023, End: 8/31/2024	56	\$55.38	\$3,101.28
32	TomTom Street GIS Data (Enterprise CAD/RMS On-Prem) Annual Subscription Fee - Annual Subscription Fee Maintenance: Start:9/1/2023, End: 8/31/2024	56	\$28.92	\$1,619.52



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Item # C10.

Invoice No (1 of 1)
386769

Date
7/7/2023

Page
5 of 5

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
12635	Milpitas, CA		USD	Net 30	8/31/2023

**Please include invoice number(s) on your remittance advice,
made payable to Tritech Software Systems**

Subtotal \$142,160.56

Tax \$0.00

Invoice Total \$142,160.56

Payments Applied \$0.00

Balance Due **\$142,160.56**

ACH:
Routing Number 121000358
Account Number 1416612641
E-mail payment details to: Accounts.Receivable@CentralSquare.com

Check:
12709 Collection Center Drive
Chicago, IL 60693

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.
- ☒ 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 and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

- ☒ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.
- ☐ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.
- ☐ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

- ☒ 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 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 include 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 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.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

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. Contractor shall maintain insurance coverage for the duration of the Agreement and any extensions thereafter. 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.
3. 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. Contractor will be provided 60 days written notice of any modifications to the requirements as outlined above.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.



CITY OF MILPITAS AGENDA REPORT (AR)

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:	10/17/2023
	<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.

Progress Report:

Below is a current update on the status of emergency repairs to the HVAC systems at City Hall and the Public Works, Information Technology and Police Department Buildings.

City Hall

The new boilers have been placed in the mechanical room on the 4th floor. Staff is working with the contractor for the building permitting process and to finalize the installation plan for the new boilers. The contractor is continuing repairs to the VAV boxes. All repairs are expected to be completed by early December.

Public Works/Information Technology/Police Department

The contractor is currently working on the repairs to the VAV boxes in the Public Works and Information Technology work areas. The contractor is also working on installing the new boiler and chiller pumps. The installation is expected to be completed by the end of October. The next phase will include the update to the BMS system to finalize the emergency repairs for this building, which is expected to be completed by early December.

Fiscal Impact:

Funding for these repairs is available in the City's Capital Improvement Program (CIP) budget and has been fully encumbered CIP Project 3499 - HVAC Systems Repairs funded \$620,000 for the upgrades to the Building Management System (BMS) and Variable Air Flow (VAV) boxes at both buildings. The remaining repairs were funded by CIP Project 3406 – City Building Improvements in the amount of \$279,300.

California Environmental Quality Act:

The emergency repair work is exempt from CEQA, per CEQA Guidelines Section 15301, Existing Facilities and 15302, Replacement or Reconstruction.

Recommendations:

1. Receive an update on the emergency repairs to the HVAC system and equipment for City Hall and the Public Works, Information Technology and Police Department buildings.
2. Determine by a four-fifths vote that the condition continues to constitute an emergency.

Attachment:

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the FY 2023-2024 Santa Clara Valley Urban Runoff Pollution Prevention Program Assessment Payment for the Not-to-Exceed Amount of \$154,067.00 (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Approve and authorize the FY 2023-2024 Santa Clara Valley Urban Runoff Pollution Prevention Program Assessment Payment for the not-to-exceed amount of \$154,067.00.

BACKGROUND:

The Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) was originally formed in 1990 through a Memorandum of Agreement (MOA) among Santa Clara Valley-based local governments as a means to assist its members to negotiate and comply with a federal Clean Water National Pollutant Discharge Elimination System (NPDES) permit for municipal stormwater systems (Stormwater Permit). In 2000, the parties entered into the Agreement Providing for Implementation of the SCVURPPP that established terms relating to the implementation, oversight, and cost allocation of the program. Cities are required to comply with the permit for stormwater flows to creeks, streams, and ultimately the San Francisco Bay. SCVURPPP is comprised of the Santa Clara Valley Water District, the County of Santa Clara, and thirteen cities and towns that discharge stormwater to the San Francisco Bay, including the City of Milpitas.

SCVURPPP supports its members by providing a coordinated approach to implementing the Stormwater Permit, including outreach, water quality monitoring, program research and development, collaboration with other countywide programs, and negotiations with regulators. SCVURPPP allows its members to leverage resources and has proven highly effective, twice winning national awards issued by the U.S. Environmental Protection Agency. Since its original formation, the participating agencies, including City of Milpitas, have twice previously authorized a continuation of SCVURPPP without changing the original terms.

The Agreement was first amended in 2005 to extend one fiscal year beyond the termination date of the National Pollution Discharge Elimination System (NPDES) Permit issued to the parties. The Municipal Regional Stormwater NPDES Permit regulates the discharge of stormwater runoff from the separate municipal storm sewer systems. The Agreement was amended a second time in 2010 to extend one fiscal year beyond the termination date of the NPDES Permit. A new Municipal Regional Stormwater NPDES Permit was issued by the Regional Water Quality Control Board – San Francisco Bay Region and became effective on January 1, 2016.

On November 15, 2016, the City Council approved and authorized the City Manager to execute the Third Amendment to the Agreement, providing for continued participation in the SCVURPPP under the original terms, for one fiscal year after the current permit expiration date of December 21, 2020, or regulatory agency permit term extension, which extended the term of agreement one fiscal year beyond the date of termination of the Municipal Regional Permit.

A new Municipal Regional Permit was adopted by the San Francisco Bay Regional Board that became effective on July 1, 2022 and is effective through June 30, 2027. On March 7, 2023, the City Council approved and authorized the City Manager to execute the Fourth Amendment to the Agreement, providing for continued participation in the SCVURPPP under the original terms, for one fiscal year after the current permit expiration date (through June 20, 2028).

ANALYSIS:

On June 6, 2023, the City Council approved and adopted the Fiscal Year 2023-2024 operating budget which included the allocation of \$153,892 in funding payable to the City of Sunnyvale (who serves as fiscal agent for the program) for the FY 2023-2024 Santa Clara Valley Urban Runoff Pollution Prevention Program Assessment Payment. The amount budgeted was an estimated value based on previous payments. Annual program assessment costs fluctuate annually depending on the credit the City receives from unspent SVURPPP carryover funds from previous fiscal years. The City did not receive the actual FY 2023-2024 program assessment amount until July 1, 2023 which was \$175 above the budgeted amount. This agenda report is being brought to the City Council to request increasing the previously approved payment of \$153,892 to \$154,067. Staff recommends the City Council approve and authorize the FY 2023-2024 Santa Clara Valley Urban Runoff Pollution Prevention Program Assessment Payment for the not-to-exceed amount of \$154,067.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve funding to participate in the Santa Clara Valley Urban Runoff Pollution Prevention Program.

Pros: This will result in a cost savings of \$154,067 to the General Fund.

Cons: The City will not be able to benefit from the regional resources that help Santa Clara County municipalities cost-effectively comply with the Municipal Regional Stormwater NPDES Permit.

Reason for Not Recommending: The City executed the Third Amendment to the Agreement for continued participation in the Santa Clara Valley Urban Runoff Pollution Prevention Program.

FISCAL IMPACT:

The MOA for SCVURPPP allocates the costs of the program across its members with those allocations having been negotiated at the time of formation in 1990. The cost sharing allocation set forth in the MOA allocates 30.2% to the Water District, 30.1% to the City of San Jose, and the remainder to the remaining agencies, roughly proportional to community size and runoff from respective jurisdictions.

The City's proportional share of the SCVURPPP cost is 2.75% of the total program budget. The SCVURPPP program costs for FY 2023-2024 total \$5,602,455 and the City of Milpitas share is \$155,609. The City received a credit of \$1,542 which has been applied to the assessment and brings the total cost for the current fiscal year to \$154,067. Sufficient funds for the project are available in the Public Works Operating Budget for this service.

California Environmental Quality Act (CEQA):

Participation in SCVURPPP is exempt from the requirements of the California Environmental Quality Act (CEQA) because it is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement or protection of the environment. (CEQA Guidelines Section 15308). In addition, the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. (CEQA Guidelines Section 15061(b)(3).)

RECOMMENDATION:

Approve and authorize the FY 2023-2024 Santa Clara Valley Urban Runoff Pollution Prevention Program Assessment Payment for the not-to-exceed amount of \$154,067.

Attachment(s):

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve and Authorize the City Manager to Execute a No-Cost Amendment No. 7 to extend the terms of the Agreement with West Yost Associates for Construction Support Services for the Main Lift Pump Station Odorous Emissions Control Facility Project (Staff Contact: Christian Di Renzo, Public Works Director, (408) 586-2602
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Approve and authorize the City Manager to execute a no-cost Amendment No. 7 to extend the terms for the agreement with West Yost Associates for construction support services for the Main Lift Pump Station Odorous Emissions Control Facility Project.

BACKGROUND:

In 2018, the City Council approved Capital Improvement Project No. 6130 – Main Lift Station Odor Emissions Control, which provided funding for the design and construction of odorous emissions control at the Main Lift Pump Station in order to address concerns regarding elevated levels of hydrogen sulfide and other odorous compounds in the environment.

All wastewater collected by the City's sanitary sewer system flows through the Milpitas Main Lift Pump Station (Main Lift). The Main Lift discharges wastewater through two 36-inch diameter force mains to the San Jose-Santa Clara Regional Wastewater Facility. Concerns from the community and Bay Area Air Quality Management District regarding elevated levels of hydrogen sulfide and odors prompted the City to initiate an investigation into odor emissions control technologies to address these concerns. West Yost completed the Main Pump Station Emissions Control Study for the City that included hydrogen sulfide monitoring and analysis and identified a treatment system that could treat hydrogen sulfide and odor resulting from operations of the Main Lift Pump Station.

On November 21, 2018, the City entered into a professional services agreement with West Yost Associates for design services on the Main Lift Pump Station Odorous Emissions Control project. The initial agreement was set to expire on November 20, 2019 with a not-to-exceed amount of \$98,000.00. The scope of work in the agreement included a number of tasks for West Yost Associates including workshops and meetings, preliminary design confirmation, detailed design work for the improvements at the Main Lift Pump Station, as well as bid support services. This initial agreement was not bid as it qualified for the professional services exemption under I-2-3.12 - Contracting for Consultants of the Milpitas Municipal Code.

On June 12, 2019, the City Council approved Amendment No. 1 to this agreement to add additional design services needed to address issues identified during the 50% design phase of the project, including investigating options for treating/controlling a tar-like substance that accumulates in the exhaust ducts, and potholing to determine extent of underground electrical utilities that could impact the project. This amendment extended the term of the agreement through November 20, 2019 and increased the total compensation to a not-to-exceed amount of \$134,340.00. On December 14, 2020 the City Manager authorized Amendment No. 2 to the Agreement to extend the expiration date of the agreement to May 20, 2021.

On January 27, 2021, the City Manager authorized Amendment No. 3 to the agreement to add construction support services for the implementation of the project, increasing the total compensation to a not-to-exceed amount of \$384,000.00 and extending the expiration date of the agreement to June 30, 2022 in order to align with the project's construction schedule. On May 5, 2022 Amendment No. 4 was executed to extend the expiration date of the agreement to December 31, 2022. On December 9, Amendment No. 5 was executed

extend the expiration date of the agreement to June 30, 2023. On June 29, 2023 Amendment No. 6 was executed to extend the expiration date of the agreement to October 31, 2023.

ANALYSIS:

West Yost has completed the 100% design of the project is currently providing construction support services needed for the construction phase of the project, which include:

- Construction Engineering Services – Consultant would provide engineering support to conduct technical submittal reviews and engineering services during the construction of the project, as well as facility testing and commissioning plan review. Public Works does not have the technical expertise to support these components of the project and West Yost's familiarity with the project and technology will ensure that the facility is constructed as designed.
- Construction Inspection Services – Consultant would provide construction support services at an anticipated level of up to 20 hours per week during project construction, to oversee the General Contractor on the project and ensure that proper procedures and requirements are being followed. Public Works does not have any Public Works Inspectors on staff that can inspect and manage a project of this size.

Project construction began on July 2021 and West Yost has been providing construction support services since then. The project has been impacted by supply chain issues and the delivery of the trickling biofilter and fiberglass ducting was significantly delayed. The project has also been delayed due to recycled water use permit which is currently under review by the State and South Bay Water Recycling. Once the recycled water permit is issued, the general contractor can complete and commission startup of the odor control system. As a result, the construction support services need to be extended through project completion which is anticipated in the upcoming months.

Per section I-2-3.21 of the Municipal Code, the Purchasing Agent is only authorized to extend the term of the contract up to twelve (12) consecutive months from the last Council-approved expiration date. The project time for the construction of this project has been extended multiple times due to supply chain delays for the biotrickling filter in addition to the extra time needed to obtain a recycled water permit. Public Works is requesting approval of Amendment No. 7 to extend the agreement with West Yost Associates to June 30, 2024 to ensure that the final facility meets the design specifications. The construction of this project is anticipated to be completed by Spring 2024. There is no additional costs associated with this contract extension.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve Amendment No. 7 for the agreement with West Yost Associates.

Pros: None. West Yost is familiar with the project and is still needed to review technical specifications from the general construction contractor to ensure that the final facility meets the design specifications.

Cons: If the City Council does not approve Amendment No. 7 for the agreement, staff would need to issue an RFP to seek proposals from additional consultants for the needed construction supports services and would delay the overall construction of the Main Lift Pump Station Odorous Emissions Control Facility.

Reason for Not Recommending: West Yost's familiarity with the project provides the best value to the City for the needed review of technical specifications from the general construction contractor, to ensure that the final facility meets the design specifications and that the facility will perform as required. West Yost is familiar with the technology being used to treat the odor emissions and they are most qualified to support the City in reviewing the facility's post-construction testing and commissioning plan.

FISCAL IMPACT:

There is no additional funding impact. Funding for this project is available in the City's Capital Improvement Program (CIP) Project No. 6130 – Main Lift Station Odor Emissions Control budget.

California Environmental Quality Act (CEQA):

By the definition provided in the CEQA Guidelines Section 15378, this action does not qualify as a “project” for the purpose of CEQA as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

RECOMMENDATION:

On June 11, 2019, the City Council determined the project is exempt from CEQA under Class 1 - Section 15301 - Existing Facilities because they relate to the operation, repair, maintenance or minor alterations to a public facility involving no or negligible expansion of use. As an additional and independent grounds, by the definition provided in the CEQA Guidelines Section 15378, this action does not qualify as a “project” for the purpose of CEQA as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Attachment(s):

- 1) Amendment No. 7 to the Agreement with West Yost Associates
- 2) Amendment No. 6 to the Agreement with West Yost Associates
- 3) Amendment No. 5 to the Agreement with West Yost Associates
- 4) Amendment No. 4 to the Agreement with West Yost Associates
- 5) Amendment No. 3 to the Agreement with West Yost Associates
- 6) Amendment No. 2 to Agreement with West Yost Associates
- 7) Amendment No. 1 to Agreement with West Yost Associates
- 8) Original Agreement with West Yost Associates



AMENDMENT NO. 7
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
WEST YOST ASSOCIATES
FOR
DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS
EMISSIONS CONTROL FACILITY

This Amendment No. 7 is entered on _____, by and between the City of Milpitas, a municipal corporation (hereafter referred to as “City”), and **West Yost Associates**, a corporation (hereafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Amendment No 7.

RECITALS

WHEREAS, on November 21, 2018, the Parties entered into a Professional Services Agreement for Design Services – Milpitas Main Lift Pump Station Odorous Emissions Control Facility, for the not-to-exceed compensation amount of \$98,000.00 and with a term period of November 21, 2018 through November 20, 2019 (the “Agreement”); and

WHEREAS, on June 12, 2019, the Parties entered into Amendment No. 1 to the Agreement, adding additional design services to the Scope of Work, increasing the compensation amount by \$36, 340.00, and extending the term period expiration date for one year through November 20, 2020; and

WHEREAS , on December 14, 2020, the Parties entered into Amendment No. 2 to the Agreement, extending the term period expiration date from November 20, 2020 to May 20, 2021, and replacing Exhibit B-1, Schedule of Charges/Payments, and Exhibit C, Activity Schedule, with updated Exhibit s B-2 and C-1, accordingly; and

WHEREAS, on January 27, 2021, the Parties entered into Amendment No. 3 to add additional construction engineering and inspection services, increase the compensation amount by \$ 250,000.00 and to extend the term period expiration date from May 20, 2021 to June 30, 2022; and

WHEREAS, on May 5, 2022, the Parties entered into Amendment No. 4 to extend the term period expiration date from May 20, 2021 to December 31, 2022; and

WHEREAS, on December 9, 2022, the Parties entered into Amendment No. 5 to extend the term period expiration date from December 31, 2022 to June 30, 2023; and

WHEREAS, on June 29, 2023 the Parties entered into Amendment No. 6 to extend the term period expiration date from June 30, 2023 to October 31, 2023, and update Exhibit B-3, Schedule of Charges/Payments, and Exhibit C-2, Activity Schedule, as specified in Exhibits B-4 and C-3 accordingly; and

WHEREAS, the Parties now desire to further amend the Agreement to extend the term period expiration date from October 31, 2023 to June 30, 2024.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 5. Term is deleted in its entirety and replaced with the following:

Section 5. Term.

The term of this Agreement shall be from **November 21, 2018** 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.

2. All other provisions of the Agreement not amended by this Amendment No. 7 shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 7 as of the date first written above.

CITY OF MILPITAS

Approved By:

Ned Thomas, City Manager

Date

Approved As To Form:

Michael Mutalipassi, City Attorney

Approved:

Lauren Lai, CPA, MPA, Finance Director/
Risk Manager

Approved As To Content:

Christian Di Renzo, Public Works Director

WEST YOST ASSOCIATES

Signature

Name

Title

Date



AMENDMENT NO. 6
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
WEST YOST ASSOCIATES
FOR
DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS
EMISSIONS CONTROL FACILITY

This Amendment No. 6 is entered on Jun-29-2023, by and between the City of Milpitas, a municipal corporation (hereafter referred to as “City”), and **West Yost Associates**, a corporation (hereafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Amendment No 6.

RECITALS

WHEREAS, on November 21, 2018, the Parties entered into a Professional Services Agreement for Design Services – Milpitas Main Lift Pump Station Odorous Emissions Control Facility, for the not-to-exceed compensation amount of \$98,000.00 and with a term period of November 21, 2018 through November 20, 2019 (the “Agreement”); and

WHEREAS, on June 12, 2019, the Parties entered into Amendment No. 1 to the Agreement, adding additional design services to the Scope of Work, increasing the compensation amount by \$36, 340.00, and extending the term period expiration date for one year through November 20, 2020; and

WHEREAS , on December 14, 2020, the Parties entered into Amendment No. 2 to the Agreement, extending the term period expiration date from November 20, 2020 to May 20, 2021, and replacing Exhibit B-1, Schedule of Charges/Payments, and Exhibit C, Activity Schedule, with updated Exhibit s B-2 and C-1, accordingly; and

WHEREAS, on January 27, 2021, the Parties entered into Amendment No. 3 to add additional construction engineering and inspection services, increase the compensation amount by \$ 250,000.00 and to extend the term period expiration date from May 20, 2021 to June 30, 2022; and

WHEREAS, on January 27, 2021, the Parties entered into Amendment No. 4 to extend the term period expiration date from May 20, 2021 to December 31, 2022; and

WHEREAS, on December 9, 2022, the Parties entered into Amendment No. 5 to extend the term period expiration date from December 31, 2022 to June 30, 2023; and

WHEREAS, the Parties now desire to further amend the Agreement to extend the term period expiration date from June 30, 2023 to October 31, 2023, update Exhibit B-3, Schedule of Charges/Payments, and Exhibit C-2, Activity Schedule, as specified in Exhibits B-4 and C-3 accordingly.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 5. Term is deleted in its entirety and replaced with the following:

Section 5. Term.

The term of this Agreement shall be from **November 21, 2018** to **October 31, 2023**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement.

2. Exhibit B-3, entitled "Schedule of Charges/Payments – (Revised December 2020)," is hereby replaced by Exhibit B-4, Schedule of Charges/Payments (Revised June 2023).
3. Exhibit C-2, entitled "Activity Schedule – (Revised December 2020)," is hereby updated by Exhibit C-3, Activity Schedule – (Revised June 2023).
4. All other provisions of the Agreement not amended by this Amendment No. 6 shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 6 as of the date first written above.

CITY OF MILPITAS*Approved By:*

DocuSigned by:



Ashwin Kantak, Acting City Manager

Jun-29-2023

Date

Approved As To Form:

DocuSigned by:



Michael M. Milipassi, City Attorney

Approved:

DocuSigned by:

Lauren Lai, CPA, MPA, Finance Director/
Risk Manager*Approved As To Content:*

DocuSigned by:



Christian Di Renzo, Public Works Director

WEST YOST ASSOCIATES

DocuSigned by:



Signature

Elizabeth Drayer

Name

Vice President

Title

Jun-26-2023

Date

EXHIBIT B-4
CONSTRUCTION ENGINEERING AND INSPECTION SERVICES
SCHEDULE OF CHARGES/PAYMENTS
(Revised June 2023)

Estimated Project Hours and Budget

Engineering Services During Construction		
Task	Level of Effort, hours	Estimated Budget
Task 6. Pre-Construction Meeting	8	\$ 1,878
Task 7. Submittal Reviews	90	\$ 35,659
Task 8. Responses to RFIs	38	\$ 10,092
Task 9. Design Clarifications	24	\$ 5,615
Task 10. Progress Meetings and Site Visits	46	\$ 13,393
Task 11. Record Drawings	75	\$ 15,932
Task 12. Startup and Performance Testing Services	18	\$ 3,776
Task 13. Project Management	38	\$ 19,893
Subtotal	337	\$ 106,238
Inspection Services		
Task 14. Preconstruction Phase	10	\$ 1,569
Task 15. Construction Phase	829	\$ 136,249
Task 16. ODCs (Transportation)		\$ 5,944
Subtotal	839	\$ 143,762
Total Amendment Hours and Budget	1,176	\$ 250,000

2023 Billing Rate Schedule

(Effective January 1, 2023 through December 31, 2023)*

POSITIONS	LABOR CHARGES (DOLLARS PER HOUR)
ENGINEERING	
Principal/Vice President	\$338
Engineer/Scientist/Geologist Manager I / II	\$319 / \$334
Principal Engineer/Scientist/Geologist I / II	\$288 / \$307
Senior Engineer/Scientist/Geologist I / II	\$259 / \$272
Associate Engineer/Scientist/Geologist I / II	\$215 / \$231
Engineer/Scientist/Geologist I / II	\$173 / \$201
Engineering Aide	\$101
Field Monitoring Services	\$125
Administrative I / II / III / IV	\$92 / \$115 / \$138 / \$152
ENGINEERING TECHNOLOGY	
Engineering Tech Manager I / II	\$332 / \$334
Principal Tech Specialist I / II	\$305 / \$315
Senior Tech Specialist I / II	\$279 / \$291
Senior GIS Analyst	\$252
GIS Analyst	\$239
Technical Specialist I / II / III / IV	\$178 / \$203 / \$228 / \$254
Technical Analyst I / II	\$128 / \$152
Technical Analyst Intern	\$103
Cross-Connection Control Specialist I / II / III / IV	\$133 / \$144 / \$162 / \$180
CAD Manager	\$201
CAD Designer I / II	\$156 / \$176
CONSTRUCTION MANAGEMENT	
Senior Construction Manager	\$322
Construction Manager I / II / III / IV	\$197 / \$211 / \$224 / \$283
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$172 / \$191 / \$213 / \$221
Apprentice Inspector	\$156
CM Administrative I / II	\$83 / \$112
Field Services	\$221

- Hourly rates include Technology and Communication charges such as general and CAD computer, software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, etc. will be billed at actual cost plus 15%.
- The Federal Mileage Rate will be used for mileage charges and will be based on the Federal Mileage Rate applicable to when the mileage costs were incurred. Travel other than mileage will be billed at cost.
- Subconsultants will be billed at actual cost plus 10%.
- Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.
- A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

2023 Billing Rate Schedule

(Effective January 1, 2023 through December 31, 2023)*

Equipment Charges

EQUIPMENT	BILLING RATES
2" Purge Pump & Control Box	\$300 / day
Aquacalc / Pygmy or AA Flow Meter	\$28 / day
Emergency SCADA System	\$35 / day
Field Vehicles (Groundwater)	\$1 / mile
Gas Detector	\$80 / day
Generator	\$60 / day
Hydrant Pressure Gauge	\$10 / day
Hydrant Pressure Recorder, Impulse (Transient)	\$55 / day
Hydrant Pressure Recorder, Standard	\$40 / day
Low Flow Pump Back Pack	\$135 / day
Low Flow Pump Controller	\$200 / day
Powers Water Level Meter	\$32 / day
Precision Water Level Meter 300ft	\$30 / day
Precision Water Level Meter 500ft	\$40 / day
Precision Water Level Meter 700ft	\$45 / day
QED Sample Pro Bladder Pump	\$65 / day
Stainless Steel Wire per foot	\$ 0.03 / day
Storage Tank	\$20 / day
Sump Pump	\$24 / day
Transducer Components (per installation)	\$23 / day
Trimble GPS – Geo 7x	\$220 / day
Tube Length Counter	\$22 / day
Turbidity Meter	\$30 / day
Vehicle (Construction Management)	\$10 / hour
Water Flow Probe Meter	\$20 / day
Water Quality Meter	\$50 / day
Water Quality Multimeter	\$185 / day
Well Sounder	\$30 / day

EXHIBIT C-3
(Revised June 2023)

CONSTRUCTION ENGINEERING AND INSPECTION SERVICES SCHEDULE

The proposed level of effort and budget for each of the tasks described above is shown in Table 1. The fee estimate was based on the following criteria and assumptions:

- Project start - May 20, 2021
- Project duration – 250 working days (pending award of General Construction Contract)
- Project completion – October 31, 2023
- Part-time inspection
- Submittals - 30
- RFIs - 15
- Design clarifications – 2

AMENDMENT NO. 5
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
WEST YOST ASSOCIATES
FOR
DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS
EMISSIONS CONTROL FACILITY

This Amendment No. 5 is entered on Dec 9, 2022, by and between the City of Milpitas, a municipal corporation (hereafter referred to as “City”), and **West Yost Associates**, a corporation (hereafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Amendment No 5.

RECITALS

WHEREAS, on November 21, 2018, the Parties entered into a Professional Services Agreement for Design Services – Milpitas Main Lift Pump Station Odorous Emissions Control Facility, for the not-to-exceed compensation amount of \$98,000.00 and with a term period of November 21, 2018 through November 20, 2019 (the “Agreement”); and

WHEREAS, on June 12, 2019, the Parties entered into Amendment No. 1 to the Agreement, adding additional design services to the Scope of Work, increasing the compensation amount by \$36, 340.00, and extending the term period expiration date for one year through November 20, 2020; and

WHEREAS, on December 14, 2020, the Parties entered into Amendment No. 2 to the Agreement, extending the term period expiration date from November 20, 2020 to May 20, 2021, and replacing Exhibit B-1, Schedule of Charges/Payments, and Exhibit C, Activity Schedule, with updated Exhibits B-2 and C-1, accordingly; and

WHEREAS, on January 27, 2021, the Parties entered into Amendment No. 3 to add additional construction engineering and inspection services, increase the compensation amount by \$ 250,000.00 and to extend the term period expiration date from May 20, 2021 to June 30, 2022, and

WHEREAS, on January 27, 2021, the Parties entered into Amendment No. 4 to extend the term period expiration date from May 20, 2021 to December 31, 2022, and.

WHEREAS, the Parties now desire to further amend the Agreement to extend the term period expiration date from December 31, 2022 to June 30, 2023.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 5. Term is amended to read as follows:

Section 5. Term

The term of this Agreement shall be from **November 21, 2018** to **June 30, 2023**, unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 5 as of the date first written above.

CITY OF MILPITAS*Approved By:*

DocuSigned by:



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Chris Schroeder, Purchasing Agent

Dec-09-2022

Date

Approved As To Form:

DocuSigned by:



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Michael Mutalipassi, City Attorney

Approved:

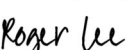
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Lauren Lai, CPA, MPA, Finance
Director/ Risk Manager*Approved As To Content:*

DocuSigned by:



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Roger Lee

Interim Public Works Director

WEST YOST ASSOCIATES

DocuSigned by:



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Signature

Elizabeth Drayer

Name

Vice President

Title

Dec-08-2022

Date

AMENDMENT NO. 4
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
WEST YOST ASSOCIATES
FOR
DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS
EMISSIONS CONTROL FACILITY

This Amendment No. 4 is entered on May-05-2022, by and between the City of Milpitas, a municipal corporation (hereafter referred to as “City”), and **West Yost Associates**, a corporation (hereafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Amendment No 4.

RECITALS

WHEREAS, on November 21, 2018, the Parties entered into a Professional Services Agreement for Design Services – Milpitas Main Lift Pump Station Odorous Emissions Control Facility, for the not-to-exceed compensation amount of \$98,000.00 and with a term period of November 21, 2018 through November 20, 2019 (the “Agreement”); and

WHEREAS, on June 12, 2019, the Parties entered into Amendment No. 1 to the Agreement, adding additional design services to the Scope of Work, increasing the compensation amount by \$36, 340.00, and extending the term period expiration date for one year through November 20, 2020; and

WHEREAS, on December 14, 2020, the Parties entered into Amendment No. 2 to the Agreement, extending the term period expiration date from November 20, 2020 through May 20, 2021, and replacing Exhibit B-1, Schedule of Charges/Payments, and Exhibit C, Activity Schedule, with updated Exhibit s B-2 and C-1, accordingly; and

WHEREAS, on January 27, 2021, the Parties entered into Amendment No. 3 to add additional construction engineering and inspection services, increase the compensation amount by \$ 250,000.00 and to extend the term period expiration date from May 20, 2021 through June 30, 2022, and

WHEREAS, the Parties now desire to further amend the Agreement to extend the term period expiration date from June 30, 2022 through December 31, 2022.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 5. Term is amended to read as follows:

Section 5. Term

The term of this Agreement shall be from **November 21, 2018 to December 31, 2022**, 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.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 4 as of the date first written above.

CITY OF MILPITAS*Approved By:*

DocuSigned by:



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Chris Schroeder, Purchasing Agent

May-05-2022

Date

Approved As To Form:

DocuSigned by:



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Christopher J. Diaz, City Attorney

Approved:

DocuSigned by:



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Lauren Lai, CPA, MPA, Finance
Director/ Risk Manager*Approved As To Content:*

DocuSigned by:



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Tony Ndah, PE

Public Works Director

WEST YOST ASSOCIATES

DocuSigned by:



8AFE9273E57406...

Signature

Elizabeth Drayer

Name

Vice President

Title

May-05-2022

Date

AMENDMENT NO. 3
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
WEST YOST ASSOCIATES
FOR
DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS
EMISSIONS CONTROL FACILITY

This Amendment No. 3 is entered into as of Jan-27-2021 (“Effective Date”), by and between the City of Milpitas, a municipal corporation (hereinafter referred to as “City”), and **West Yost Associates**, a California corporation (hereinafter referred to as “Consultant”). City and Consultant are sometimes jointly referred to as “Parties” in this Amendment No. 3.

RECITALS:

WHEREAS, on November 21, 2018, the Parties entered into a Professional Services Agreement for Design Services – Milpitas Main Lift Pump Station Odorous Emissions Control Facility, for the not-to-exceed compensation amount of \$98,000.00 and with a term period of November 21, 2018 through November 20, 2019 (the “Agreement”); and

WHEREAS, on June 12, 2019, the Parties entered into Amendment No. 1 to the Agreement, adding additional design services to the Scope of Work, increasing the compensation amount by \$36,340.00, and extending the term period expiration date for one year through November 20, 2020; and

WHEREAS, on December 14, 2020, the Parties entered into Amendment No. 2 to the Agreement, extending the term period expiration date from November 20, 2020 through May 20, 2021, and replacing Exhibit B-1, Schedule of Charges/Payments, and Exhibit C, Activity Schedule, with updated Exhibits B-2 and C-1, accordingly; and

WHEREAS, the Parties now desire to further amend the Agreement to add additional construction engineering and inspection services, to increase the compensation amount by \$250,000.00 to cover these additional services for a new total compensation amount of \$384,340.00, to extend the term period expiration date from May 20, 2021 through June 30, 2022, and to amend Exhibit A-1, Scope of Services, Exhibit B-2, Schedule of Charges/Payments, and Exhibit C-1, Activity Schedule, as specified in Exhibits A-2, B-3, and C-2, accordingly.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 2 Compensation, letter b, is deleted in its entirety and replaced with the following:

“b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Three Hundred and Eighty-Four Thousand Three Hundred and Forty Dollars (\$384,340.00)**. 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 deleted in its entirety and replaced with the following:

“5. Term

The term of this Agreement shall be from **November 21, 2018** through **June 30, 2022**, 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. Exhibit A-1, entitled “Scope of Services,” is hereby amended to add “Scope of Services for Construction Engineering and Inspection Services,” as specified in Exhibit A-2, attached hereto and incorporated herein by this reference.
4. Exhibit B-2, entitled “Schedule of Charges/Payments-(Revised December 2020),” is hereby amended to add “Construction Engineering and Inspection Services Schedule of Charges/Payments,” as specified in Exhibit B-3, attached hereto and incorporated herein by this reference.
5. Exhibit C-1, entitled “Activity Schedule-(Revised December 2020),” is hereby amended to add “Construction Engineering and Inspection Services Schedule,” as specified in Exhibit C-2, attached hereto and incorporated herein by this reference.
6. All other provisions of the Agreement not amended by this Amendment No. 3 shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AMENDMENT NO. 3
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND WEST YOST ASSOCIATES
FOR
DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS
EMISSIONS CONTROL FACILITY**

CITY OF MILPITAS

WEST YOST ASSOCIATES

Approved By:

DocuSigned by:

Ashwini Kantak,

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Steven G. McHarris, City Manager

Jan-27-2021

Date

Approved As To Form:

DocuSigned by:

Christopher J. Diaz

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Christopher J. Diaz, City Attorney

Approved:

DocuSigned by:

Walter C. Rossmann

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Walter C. Rossmann,
Risk Manager/ Finance Director

Approved As to Content:

DocuSigned by:

Tony Ndah

42758DCCF3174B8...

Tony Ndah, Public Works Director

DocuSigned by:

Elizabeth Drayer

8AFE9275E57406...

Signature

Elizabeth Drayer

Name

Vice President

Title

Jan-25-2021

Date

EXHIBIT A-2

SCOPE OF SERVICES FOR CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

ENGINEERING SERVICES DURING CONSTRUCTION

The following is a list of the key tasks necessary to perform the proposed Engineering Services During Construction Scope of Services, each is further described below:

- Task 6. Pre-Construction Meeting
- Task 7. Submittal Reviews
- Task 8. Responses to RFIs
- Task 9. Design Clarifications
- Task 10. Progress Meetings and Site Visits
- Task 11. Record Drawings
- Task 12. Startup and Performance Testing Services
- Task 13. Project Management

Task 6. Pre-Construction Meeting

This task will involve participation of key design team members in the pre-construction meeting with the City, the City's CM, and Contractor. It is anticipated that the meeting will be held at the Milpitas Main Lift Station and that the CM will develop the agenda and materials for this meeting and will be developing meeting notes.

Task 6 Deliverables

- No deliverable will be provided for this task

Task 7. Submittal Reviews

West Yost will review shop drawings, product data, and samples provided by the City's CM for conformance with the design concepts and general compliance with the Contract Documents. Submittal reviews will be provided on West Yost's standard review response form, modified to suit City's standard submittal disposition codes. For budgeting purposes, a total of 90 hours of engineering staff time has been assumed for this task and assumes approximately 30 individual submittal reviews (20 initial submittals and 10 resubmittals) at a rate of approximately 3 hours per submittal. A list of submittals that West Yost anticipates to review and submittals that West Yost anticipates the City will review is included in this exhibit.

Task 7 Deliverables

- Submittal review comments

Task 8. Responses to RFIs

RFIs submitted by the Contractor will be reviewed and necessary guidance will be provided to the Contractor on interpretation of the Contract Documents. West Yost will respond to formal RFIs that are provided to West Yost by the City's CM. Responses to RFIs will be provided on West Yost standard response form. For

budgeting purposes, a total of 38 hours of engineering staff time has been assumed for this task, equivalent to 15 individual RFI responses at a rate of approximately 2.5 hours per RFI.

Task 8 Deliverables

- RFI responses

Task 9. Design Clarifications

If required for unforeseen conditions or other reasons, West Yost will prepare up to two design clarifications of the Contract Drawings. Design clarifications may include narrative descriptions, revised Contract Drawings, and/or revised specifications. A total of 24 hours of engineering and drafting staff time has been assumed for this task.

Task 9 Deliverables

- Narrative descriptions, revised Contract Drawings, and/or revised specifications

Task 10. Progress Meetings and Site Visits

This task includes participation by phone in construction progress meetings during the course of construction to facilitate communication between West Yost, the City, the City's CM, and the Contractor. This task also includes time for two site visits by design team members at periodic times during construction to observe the construction work and/or meet with the construction team. Such site visits will take place at the request of the City. For budgeting purposes, it has been assumed that a representative from West Yost will attend up to 15 progress meetings by teleconference. All meetings and site visits are assumed to have a duration of 1 hour each.

Task 10 Deliverables

- No deliverable will be provided for this task

Task 11. Record Drawings

West Yost will provide modifications to the design plans based upon a single, red-lined mark-up set provided by the City. It is anticipated that the City will provide a set of drawings with red-lined markups that indicate the changes that were made through the course of construction. It is assumed that the CM will be responsible for checking that the Contractor is taking necessary steps throughout the course of construction to document record drawing information in the redline markups. It is assumed that all record drawing information will be included in the redline markups without the need for separate instructions, interpretations, or separate sheets that are attached to the drawings or provided separately of the drawing set.

Task 11 Deliverables

- Project record drawings

Task 12. Startup and Performance Testing Services

This task includes oversight of startup and performance testing activities for the new odor control system. As part of this work, West Yost will attend the pre-test

coordination meeting by phone, review draft testing protocol, review testing calculations and spreadsheets, and review a summary report that documents quality control and testing results compared with specification requirements.

Task 12 Deliverables

- Review comments on testing protocol and results

Task 13. Project Management

This task includes internal communication and documentation necessary to execute the ESDC activities described above. This task also includes assisting with monthly invoicing, project planning, quality control and Project administration. This task includes management of West Yost's subconsultants assigned to the City's project.

Task 13 Deliverables

- Monthly invoices

INSPECTION SCOPE OF SERVICES

The following is a list of the key tasks necessary to perform the proposed Inspection Scope of Services, each is further described below:

- Task 14. Pre-Construction Phase
- Task 15. Construction Phase
- Task 16. Other Direct Costs

Task 14. Pre-Construction Phase

Pre-Construction Conference / Notice to Proceed

West Yost will attend and participate in the preconstruction conference conducted by the City. We assume the City will prepare and issue the construction contract Notice to Proceed (NTP), Pre-construction meeting agenda, and meeting summary.

Pre-Construction Documentation of Conditions

West Yost will coordinate a day and time to walk the pump station site to photo document the preconstruction conditions of the site with the General Contractor (GC). The photos will be used to document the condition of the site prior to construction commencing.

Task 14 Deliverables

- Photos of the site prior to construction

Task 15. Construction Phase

Progress Meetings

West Yost inspection staff will attend weekly or bi-weekly progress meetings with the GC, City staff, and other members of the project team to review and provide updates on the overall progress, coordination, and communication related to safety, submittals, Requests for Information (RFI)s, changes, progress payments, coordination with pump station operations, progress schedules, and quality control/assurance.

Requests for Information

West Yost's inspection staff will participate in the resolution/response to RFIs written by the GC that are related to constructability only.

Quality Control/Inspection

West Yost will provide part-time quality assurance inspection of the GC's performance of the work. This will include confirming compliance with the contract plans, specifications, approved submittals, applicable RFI responses, and approved change orders. If work is observed or tested to be in non-compliance with the contract a verbal notice followed by a Non-Compliance Notice (NCN) will be issued to the GC.

Inspection reports will be prepared in Microsoft Word and issued to the City's construction manager (CM) by the end of each week in Portable Document Format (pdf). The reports will contain a summary of the work performed, important discussions needing to be documented, and photos of the work performed.

Progress Payments

West Yost will review the GC's monthly progress payment application and determine if the amount being requested by the GC is accurate and consistent with the amount of work performed. The values will be negotiated with the GC prior to reaching agreement, if necessary and will culminate with a recommendation to the City to approve the payment request.

As-Built Record Drawings

The GC's as-built record drawings will be reviewed by the inspector at the end of each month as part of the progress payment process.

Site Safety

West Yost will provide safety related equipment to its project staff such as hard hats, safety vests, safety glasses, gloves, ear protection, etc. West Yost will conduct bi-weekly safety meetings with its field staff and report any incidents to the City if they occur on the jobsite. West Yost will also monitor the safety program and practices of the GC to confirm that they are providing a safe work site for our staff members as well as those of the City.

Materials Testing

West Yost's materials testing subconsultant will perform standard materials testing quality assurance sampling and testing of soil and concrete placement. The tests will include soil classification, moisture density curves, and in-place density testing using a nuclear density gage. Concrete sampling will consist of slump measurement and temperature. Concrete samples will be collected, temporarily stored in the field, taken back to the laboratory for curing and compression tested at 7-day and 28-day strengths. Included in this scope is the coordination with the materials testing subconsultant and the review, logging, and transmittal of the test reports to the GC and City for their records and acceptance.

Testing, Startup, and Commissioning

West Yost will attend all startup meetings, witness the testing of the odor control system that includes the performance and operational testing, and will coordinate startup activities with the City's plant operations staff.

Punchlist and Final Walk Through

West Yost will arrange a final inspection once the GC requests Substantial Completion. The inspection will create a final punchlist of work items remaining to be completed. The punchlist will be transmitted to the GC with the decision on the substantial completion request. The remainder of the contract will be to confirm that the items on the punchlist have been addressed and any other remaining deliverables are received.

Task 15 Deliverables

- Provide input to construction related RFIs
- Inspection reports and NCNs, when applicable
- A signed-off progress payment application for each month the GC submits a payment request for processing
- Delivery of the inspector's as-built record drawings
- Summary of bi-weekly safety tailgate meetings, and any incident report generated by the GC
- Test reports generated by our subconsultant on concrete or soils sampled.
- Generate final punchlist and a Certificate of Completion

Task 16. Other Direct Costs

Included in this task are costs associated with transportation to and from the project site.

ANTICIPATED LIST OF SUBMITTALS TO BE REVIEWED

Submittal	Specification	Reviewer
Geotextile Fabric	02071	WY
Controlled Low Strength Material	02081	City
Compressive Strength Test results	02081	WY
Site Preparation	02200	City
Site Preparation - Shop Drawings	02200	City
Control Points & Stability Measurements	02200	City
Earthwork	02200	City

Trenching	02320	City
Aggregate Base Course Material	02722	City
Asphalt Paving	02740	City
Cast-In-Place Concrete - Shop Drawings	03301	WY/WY Sub
Cast-In-Place Concrete -Product Data	03301	WY Sub
Grout	03600	City
Anchor Bolts	05501	WY/WY Sub
High Performance Coatings	09960	WY
Warning Signs	10020	City
General Requirements for Equipment	11000	WY
Equipment Mounting	11002	WY/WY Sub
Biological Oder Control System - O&M Manual	11060	WY/WY Sub
Biological Oder Control System - Foul Air Fan	11302	WY/WY Sub
Biological Oder Control System - Control Panel	11302	WY Sub
Biological Oder Control System - Motor	11302	WY/WY Sub
Mist and Grease Eliminator	11303	WY
Fiberglass Reinforced Plastic Ductwork	13235	WY
Piping Systems	15050	WY
Pipe Hangers and Supports	15060	WY/WY Sub
Piping Identification	15076	City
Piping Appurtenances	15095	WY
Piping Seismic Restraints	15097	WY/WY Sub
Valves	15110.1, 15114	WY
Piping Connections	15122	WY
Piping Insulation	15250	WY

Item # C13.

Drains and Cleanouts	15440	WY
Testing Pipelines	15951	City
Electrical	16000	WY Sub

EXHIBIT B-3
CONSTRUCTION ENGINEERING AND INSPECTION SERVICES
SCHEDULE OF CHARGES/PAYMENTS

Estimated Project Hours and Budget

Engineering Services During Construction		
Task	Level of Effort, hours	Estimated Budget
Task 6. Pre-Construction Meeting	8	\$ 1,878
Task 7. Submittal Reviews	90	\$ 35,659
Task 8. Responses to RFIs	38	\$ 10,092
Task 9. Design Clarifications	24	\$ 5,615
Task 10. Progress Meetings and Site Visits	46	\$ 13,393
Task 11. Record Drawings	75	\$ 15,932
Task 12. Startup and Performance Testing Services	18	\$ 3,776
Task 13. Project Management	38	\$ 19,893
Subtotal	337	\$ 106,238
Inspection Services		
Task 14. Preconstruction Phase	10	\$ 1,569
Task 15. Construction Phase	829	\$ 136,249
Task 16. ODCs (Transportation)		\$ 5,944
Subtotal	839	\$ 143,762
Total Amendment Hours and Budget	1,176	\$ 250,000

2021 Billing Rate Schedule

(Effective January 1, 2021 through December 31, 2021)*



POSITIONS	LABOR CHARGES (DOLLARS PER HOUR)
ENGINEERING	
Principal/Vice President	\$307
Engineering/Scientist/Geologist Manager I / II	\$291 / \$304
Principal Engineer/Scientist/Geologist I / II	\$263 / \$279
Senior Engineer/Scientist/Geologist I / II	\$236 / \$247
Associate Engineer/Scientist/Geologist I / II	\$202 / \$216
Engineer/Scientist/Geologist I / II	\$162 / \$188
Engineering Aide	\$95
Administrative I / II / III / IV	\$83 / \$105 / \$126 / \$139
ENGINEERING TECHNOLOGY	
Engineering Tech Manager I / II	\$302 / \$304
Principal Tech Specialist I / II	\$277 / \$287
Senior Tech Specialist I / II	\$254 / \$266
Senior GIS Analyst	\$230
GIS Analyst	\$217
Technical Specialist I / II / III / IV	\$162 / \$185 / \$208 / \$232
Technical Analyst I / II	\$116 / \$139
Technical Analyst Intern	\$94
Cross-Connection Control Specialist I / II / III / IV	\$121 / \$131 / \$147 / \$164
CAD Manager	\$183
CAD Designer I / II	\$142 / \$160
CONSTRUCTION MANAGEMENT	
Senior Construction Manager	\$294
Construction Manager I / II / III / IV	\$179 / \$192 / \$204 / \$258
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$157 / \$174 / \$194 / \$202
Apprentice Inspector	\$142
CM Administrative I / II	\$76 / \$102
Field Services	\$202

- Hourly rates include Technology and Communication charges such as general and CAD computer, software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, etc. will be billed at actual cost plus 15%.
- Mileage will be billed at the current Federal Rate and Travel will be billed at cost.
- Subconsultants will be billed at actual cost plus 10%.
- Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.
- A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

2021 Billing Rate Schedule

(Effective January 1, 2021 through December 31, 2021)*



Equipment Charges

EQUIPMENT	BILLING RATES
Gas Detector	\$80 / day
Hydrant Pressure Gauge	\$10 / day
Hydrant Pressure Recorder, Standard	\$40 / day
Hydrant Pressure Recorder, Impulse (Transient)	\$55 / day
Trimble GPS – Geo 7x	\$220 / day
Vehicle	\$10 / day
Water Flow Probe Meter	\$20 / day
Water Quality Multimeter	\$185 / day
Well Sounder	\$30 / day

EXHIBIT C-2

CONSTRUCTION ENGINEERING AND INSPECTION SERVICES SCHEDULE

The proposed level of effort and budget for each of the tasks described above is shown in Table 1. The fee estimate was based on the following criteria and assumptions:

- Project start - May 20, 2021
- Project duration – 165 working days (pending award of General Construction Contract)
- Project completion – June 30, 2022
- Part-time inspection
- Submittals - 30
- RFIs - 15
- Design clarifications – 2

AMENDMENT NO. 2
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
WEST YOST ASSOCIATES
FOR
DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS
EMISSIONS CONTROL FACILITY

This Amendment is entered into as of Dec-14-2020, (“Effective Date”) by and between the City of Milpitas, a municipal corporation (hereinafter referred to as “City”), and **West Yost Associates**, a California corporation (hereinafter referred to as “Consultant”). City and Consultant are sometimes jointly referred to as “Parties” in this Amendment No. 2.

RECITALS:

WHEREAS, on November 21, 2018, the Parties entered into a Professional Services Agreement for Design Services – Milpitas Main Lift Pump Station Odorous Emissions Control Facility, for the not-to-exceed compensation amount of \$98,000.00 and with a term period of November 21, 2018 through November 20, 2019 (the “Agreement”); and

WHEREAS, on June 12, 2019, the Parties entered into Amendment No. 1 to the Agreement, adding additional design services to the Scope of Work, increasing the compensation amount by \$36,340.00, and extending the term period expiration date for one year through November 20, 2020; and

WHEREAS, the Parties now wish to further amend the Agreement to extend the term period expiration date from November 20, 2020 through May 20, 2021, and to replace Exhibit B-1, Schedule of Charges/Payments, and Exhibit C, Activity Schedule, with updated Exhibits B-2 and C-1, accordingly; and

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to amend the Agreement as follows:

1. Section 5 Time of Performance is deleted in its entirety and replaced with the following:

“ 5. Term

The term of this Agreement shall be from **November 21, 2018** through **May 20, 2021**, 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."

2. Exhibit B-1, entitled "Schedule of Charges/Payments," is hereby deleted and replaced in its entirety with **Exhibit B-2**, entitled "Schedule of Charges/Payments- (Revised December 2020)," attached hereto and incorporated herein by this reference.

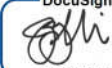
3. Exhibit C, entitled "Activity Schedule," is hereby deleted and replaced in its entirety with **Exhibit C-1**, entitled "Activity Schedule- (Revised December 2020)," attached hereto and incorporated herein by this reference.

4. All other provisions of the Agreement not amended by this Amendment No. 2 shall remain in full force and effect.

CITY OF MILPITAS

WEST YOST ASSOCIATES

Approved By:

DocuSigned by:

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Chris Schroeder, Purchasing Agent Zachary DeVine

DocuSigned by:

8AFE9275E57406...

Signature

Dec-14-2020

Date

Elizabeth Drayer

Approved As To Form:

DocuSigned by:

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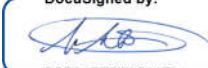
Christopher J. Diaz, City Attorney

Name

Vice President

Title

Approved:

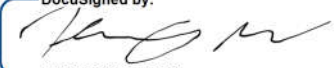
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Walter C. Rossmann,
Risk Manager/ Finance Director

Dec-10-2020

Date

Approved As to Content:

DocuSigned by:

4276BDDGCF3174B8...

Tony Ndah, Public Works Director

EXHIBIT B-2

Schedule of Charges/Payments -
(Revised December 2020)

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detained 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 contract.

TASK OR SUBTASK NO.	FEE
Task 1. Project Management and Quality Control	
1.01 Project Management	\$ 3,038.00
1.02 Quality Control	\$ 3,176.00
<u>Subtotal, Task 1</u>	<u>\$ 6,214.00</u>
Task 2. Workshops and Meetings	
2.01 Project Kickoff	\$ 8,049.00
2.02 50% Design Review	\$ 4,864.00
2.03 Pre-bid Meeting	\$ 1,718.00
<u>Subtotal, Task 2</u>	<u>\$ 14,631.00</u>
Task 3. Preliminary Design Confirmation	
3.01 Review H2S data	\$ 994.00
3.02 Solicit Revised Equipment Cost	\$ 461.00
<u>Subtotal, Task 3</u>	<u>\$ 1,455.00</u>
Task 4. Detailed Design	
4.01 Topographic Survey	\$ 5,102.00
4.02 Prepare Construction Cost Estimate	\$ 3,362.00
4.03 50% Design Drawings	\$ 21,444.00
4.035 Potholing, Control of Tar Like Material, and Additional Design Work for Two Exhaust Fans	\$ 36,340.00
4.04 90% Design Drawings	\$ 21,844.00
4.05 Final Design Drawings	\$ 15,136.00
<u>Subtotal, Task 4</u>	<u>\$ 103,228.00</u>
Task 5. Bid Support Services	
5.01 Review Potential Bidder's Questions	\$ 4,053.00
5.02 Prepare up to Two Addenda	\$ 3,944.00
<u>Subtotal, Task 5</u>	<u>\$ 7,997.00</u>
TOTAL	\$ 133,525.00

CONSULTANT'S 2018 BILLING RATE SCHEDULE
(January 1, 2018 through December 31, 2018)

POSITIONS	LABOR CHARGES (DOLLARS PER HR)
ENGINEERING	
Principal/Vice President	\$285
Engineering/Scientist/Geologist Manager I / II	\$263 / \$274
Principal Engineer/Scientist/Geologist I / II	\$240 / \$254
Senior Engineer/Scientist/Geologist I / II	\$214 / \$225
Associate Engineer/Scientist/Geologist I / II	\$190 / \$203
Engineer/Scientist/Geologist I / II	\$154 / \$178
Engineering Aide	\$87
Administrative I / II / III / IV	\$78 / \$99 / \$119 / \$131
ENGINEERING TECHNOLOGY	
Engineering Tech Manager I / II	\$271 / \$281
Principal Tech Specialist I / II	\$250 / \$260
Senior Tech Specialist I / II	\$229 / \$239
Senior GIS Analyst	\$209
GIS Analyst	\$197
Technical Specialist I / II / III / IV	\$145 / \$166 / \$187 / \$208
CAD Manager	\$166
CAD Designer I / II	\$129 / \$144
CONSTRUCTION MANAGEMENT	
Senior Construction Manager	\$273
Construction Manager I / II / III / IV	\$166 / \$178 / \$190 / \$237
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$144 / \$160 / \$178 / \$185
Apprentice Inspector	\$131
CM Administrative I / II	\$71 / \$95

- Hourly rates include Technology and Communication charges such as general and CAD computer software telephone, routine in-house copies/prints postage miscellaneous supplies, and other incidental project expenses
- Outside Services such as vendor reproductions, prints, shipping and major West Yost reproduction efforts as well as Engineering Supplies, etc. will be billed at actual cost plus 15%
- Mileage will be billed at the current Federal Rate and Travel will be billed at cost
- Subconsultants will be billed at actual cost plus 10%
- Expert witness research technical review analysis preparation and meetings billed at 150% of standard hourly rates Expert witness testimony and depositions billed at 200% of standard hourly rates
- A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice

Equipment Charges

EQUIPMENT	BILLING RATES
Gas Detector	\$80/day
Hydrant Pressure Gage	\$10/day
Hydrant Pressure Recorder, Standard	\$40/day
Hydrant Pressure Recorder, Impulse (Transient)	\$55/day
Trimble GPS – Geo 7x	\$220/day
Vehicle	\$10/hour
Water Flow Probe Meter	\$20/day
Water Quality Multimeter	\$185/day
Well Sounder	\$30/day



2019 Billing Rate Schedule

(Effective January 1, 2019 through December 31, 2019) *

POSITIONS	LABOR CHARGES (DOLLARS PER HR)
ENGINEERING	
Principal/Vice President	\$298
Engineering/Scientist/Geologist Manager I / II	\$274 / \$287
Principal Engineer/Scientist/Geologist I / II	\$249 / \$264
Senior Engineer/Scientist/Geologist I / II	\$223 / \$234
Associate Engineer/Scientist/Geologist I / II	\$194 / \$208
Engineer/Scientist/Geologist I / II	\$157 / \$182
Engineering Aide	\$90
Administrative I / II / III / IV	\$79 / \$100 / \$120 / \$133
ENGINEERING TECHNOLOGY	
Engineering Tech Manager I / II	\$283 / \$294
Principal Tech Specialist I / II	\$260 / \$271
Senior Tech Specialist I / II	\$238 / \$249
Senior GIS Analyst	\$217
GIS Analyst	\$205
Technical Specialist I / II / III / IV	\$151 / \$173 / \$195 / \$216
CAD Manager	\$173
CAD Designer I / II	\$134 / \$150
CONSTRUCTION MANAGEMENT	
Senior Construction Manager	\$283
Construction Manager I / II / III / IV	\$170 / \$182 / \$195 / \$246
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$149 / \$166 / \$185 / \$192
Apprentice Inspector	\$135
CM Administrative I / II	\$73 / \$97
Field Services	\$192

- Hourly rates include Technology and Communication charges such as general and CAD computer, software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, etc will be billed at actual cost plus 15%
- Mileage will be billed at the current Federal Rate and Travel will be billed at cost
- Subconsultants will be billed at actual cost plus 10%
- Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates Expert witness testimony and depositions billed at 200% of standard hourly rates
- A Finance Charge of 1 5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice

* This schedule is updated annually

Rates-1



2019 Billing Rate Schedule (continued)

(Effective January 1, 2019 through December 31, 2019) *

Equipment Charges

EQUIPMENT	BILLING RATES
Gas Detector	\$80/day
Hydrant Pressure Gauge	\$10/day
Hydrant Pressure Recorder, Standard	\$40/day
Hydrant Pressure Recorder, Impulse (Transient)	\$55/day
Trimble GPS – Geo 7x	\$220/day
Vehicle	\$10/hour
Water Flow Probe Meter	\$20/day
Water Quality Multimeter	\$185/day
Well Sounder	\$30/day

* This schedule is updated annually

Rates-2

2020 Billing Rate Schedule

(Effective January 1, 2020 through December 31, 2020)*



POSITIONS	LABOR CHARGES (DOLLARS PER HOUR)
ENGINEERING	
Principal/Vice President	\$298
Engineering/Scientist/Geologist Manager I / II	\$283 / \$295
Principal Engineer/Scientist/Geologist I / II	\$257 / \$272
Senior Engineer/Scientist/Geologist I / II	\$230 / \$241
Associate Engineer/Scientist/Geologist I / II	\$198 / \$212
Engineer/Scientist/Geologist I / II	\$160 / \$185
Engineering Aide	\$92
Administrative I / II / III / IV	\$81 / \$102 / \$123 / \$135
ENGINEERING TECHNOLOGY	
Engineering Tech Manager I / II	\$291 / \$294
Principal Tech Specialist I / II	\$268 / \$279
Senior Tech Specialist I / II	\$245 / \$256
Senior GIS Analyst	\$224
GIS Analyst	\$211
Technical Specialist I / II / III / IV	\$156 / \$178 / \$200 / \$223
Technical Analyst I / II	\$112 / \$134
Technical Analyst Intern	\$90
Cross-Connection Control Specialist I / II / III / IV	\$117 / \$127 / \$143 / \$159
CAD Manager	\$178
CAD Designer I / II	\$138 / \$155
CONSTRUCTION MANAGEMENT	
Senior Construction Manager	\$289
Construction Manager I / II / III / IV	\$174 / \$186 / \$198 / \$251
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$152 / \$169 / \$188 / \$196
Apprentice Inspector	\$138
CM Administrative I / II	\$74 / \$99
Field Services	\$196

- Hourly rates include Technology and Communication charges such as general and CAD computer, software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, etc. will be billed at actual cost plus 15%.
- Mileage will be billed at the current Federal Rate and Travel will be billed at cost.
- Subconsultants will be billed at actual cost plus 10%.
- Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.
- A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

* This schedule is updated annually

Page 1 of 2

2020 Billing Rate Schedule

(Effective January 1, 2020 through December 31, 2020)*



Equipment Charges

EQUIPMENT	BILLING RATES
Gas Detector	\$80 / day
Hydrant Pressure Gauge	\$10 / day
Hydrant Pressure Recorder, Standard	\$40 / day
Hydrant Pressure Recorder, Impulse (Transient)	\$55 / day
Trimble GPS – Geo 7x	\$220 / day
Vehicle	\$10 / day
Water Flow Probe Meter	\$20 / day
Water Quality Multimeter	\$185 / day
Well Sounder	\$30 / day

* This schedule is updated annually

2021 Billing Rate Schedule

(Effective January 1, 2021 through December 31, 2021)*



POSITIONS	LABOR CHARGES (DOLLARS PER HOUR)
ENGINEERING	
Principal/Vice President	\$307
Engineering/Scientist/Geologist Manager I / II	\$291 / \$304
Principal Engineer/Scientist/Geologist I / II	\$263 / \$279
Senior Engineer/Scientist/Geologist I / II	\$236 / \$247
Associate Engineer/Scientist/Geologist I / II	\$202 / \$216
Engineer/Scientist/Geologist I / II	\$162 / \$188
Engineering Aide	\$95
Administrative I / II / III / IV	\$83 / \$105 / \$126 / \$139
ENGINEERING TECHNOLOGY	
Engineering Tech Manager I / II	\$302 / \$304
Principal Tech Specialist I / II	\$277 / \$287
Senior Tech Specialist I / II	\$254 / \$266
Senior GIS Analyst	\$230
GIS Analyst	\$217
Technical Specialist I / II / III / IV	\$162 / \$185 / \$208 / \$232
Technical Analyst I / II	\$116 / \$139
Technical Analyst Intern	\$94
Cross-Connection Control Specialist I / II / III / IV	\$121 / \$131 / \$147 / \$164
CAD Manager	\$183
CAD Designer I / II	\$142 / \$160
CONSTRUCTION MANAGEMENT	
Senior Construction Manager	\$294
Construction Manager I / II / III / IV	\$179 / \$192 / \$204 / \$258
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$157 / \$174 / \$194 / \$202
Apprentice Inspector	\$142
CM Administrative I / II	\$76 / \$102
Field Services	\$202

- Hourly rates include Technology and Communication charges such as general and CAD computer, software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, etc. will be billed at actual cost plus 15%.
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- A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

2021 Billing Rate Schedule

(Effective January 1, 2021 through December 31, 2021)*



Equipment Charges

EQUIPMENT	BILLING RATES
Gas Detector	\$80 / day
Hydrant Pressure Gauge	\$10 / day
Hydrant Pressure Recorder, Standard	\$40 / day
Hydrant Pressure Recorder, Impulse (Transient)	\$55 / day
Trimble GPS – Geo 7x	\$220 / day
Vehicle	\$10 / day
Water Flow Probe Meter	\$20 / day
Water Quality Multimeter	\$185 / day
Well Sounder	\$30 / day

* This schedule is updated annually

CONSULTANT'S KEY STAFF AND SUBCONSULTANTS

Consultant's key staff assigned to the Project are as follows:

Team Member Title	Project Role
Whitney Sandelin	Project Manager
Tyler Newman	Civil Designer
Greg Chung	Principal in Charge

If necessary and appropriate, Consultant will employ subconsultants it deems appropriate to the complexity and nature of the required Services. All subconsultants must, if their specialty is licensable, be licensed by the State of California to perform their specific Services. Consultant must obtain City's approval of all subconsultants. Upon City's request, Consultant must provide copies of all subconsultant contract Agreements. Any delegation or subcontracting of any services by Consultant will not operate to relieve Consultant of its responsibilities under this Agreement.

The following subconsultants are authorized to work on the Project:

Firm	Project Role
Mark Thomas	Topographic Survey
Geocon Consultants	Geotechnical Investigation
TJC and Associates	Structural Design
A TEEM Electrical Engineering	Electrical Design

EXHIBIT C-1
Activity Schedule-
(Revised December 2020)

Task/Major Milestone	Completion (Weeks Following Authorization to Proceed)
Project Management	80 weeks
Preliminary Design Confirmation	2 weeks
Topographic Survey	8 weeks
Submit 50% Complete Design Submittals (plans, specifications, cost estimate, and technical memoranda)	12 weeks
Submit 75% Complete Design Submittals (plans, specifications, cost estimate, and technical memoranda)	12 weeks
Submit 90% Complete Design Submittals (plans, specifications, cost estimate, and technical memoranda)	15 weeks
Submit 100% Complete Design Submittals (plans, specifications, cost estimate, and technical memoranda)	24 weeks
Bid Period Services	50 weeks

AMENDMENT NO. 1 TO THE AGREEMENT
WITH
WEST YOST ASSOCIATES
FOR
DESIGN SERVICES – MILPITAS MAIN LIFT PUMP STATION ODOROUS
EMISSIONS CONTROL FACILITY

This Amendment is entered into as of June 12, 2019, (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **West Yost Associates**, a corporation with its principal place of business at **2020 Research Park Drive, Suite 100 Davis, CA 95618** (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Amendment.

RECITALS

WHEREAS, on November 21, 2018 the parties entered into an agreement for Design Services – Milpitas Main Lift Pump Station Odorous Emissions Control Facility services. The initial agreement began **November 21, 2018 though and including November 20, 2019** for the not-to-exceed amount of **Ninety-Eight Thousand Dollars and Zero Cents (\$98,000.00)**; and

WHEREAS, the parties now desire to amend the Agreement to add additional services for additional design services at the Main Lift Station for the City and increasing the value of the agreement by **\$36,340.00** for the new not-to-exceed amount of **\$134,340.00** to cover these additional services and extend services an additional 365 days.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 2 Compensation, letter B is deleted in its entirety and replaced with the following: In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **One Hundred Thirty-Four Thousand Three Hundred Forty Dollars and Zero Cents (\$134,340.00)**. 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 Time of Performance is deleted in its entirety and replaced with the following: Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed (“Notice to Proceed”). Consultant shall complete the services required hereunder within **730** calendar days. The Notice to Proceed shall set forth the date of commencement of work

3. Exhibit A is hereby deleted and replaced in its entirety with Exhibit A-1, attached hereto and incorporated herein by this reference.
4. Exhibit B is hereby deleted and replaced in its entirety with Exhibit B-1, attached hereto and incorporated herein by this reference
5. All other provisions of the Agreement shall remain in full force and effect.

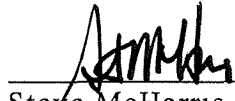
[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR AMENDMENT NO. 1
BETWEEN THE CITY OF MILPITAS
AND WEST YOST ASSOCIATES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above

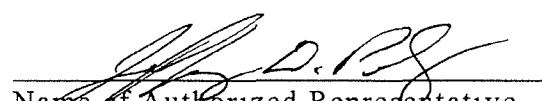
APPROVED BY.

City of Milpitas



Steve McHarris
Interim City Manager

West Yost Associates



Name of Authorized Representative

Jeffrey D. Telz

Vice President
Title of Authorized Representative

Approved as to Form.



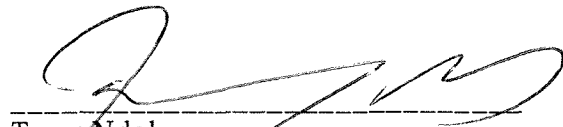
Christopher J. Diaz, City Attorney

Approved as to Content:



Walter C. Rossmann
Director of Financial Services

Approved as to Scope:



Tony Ndah
Director of Public Works

EXHIBIT A -1

Scope of Services

Task 1. Project Management and Quality ControlSubtask 1 01 Project Management

Consultant will provide overall program management, coordination of activities and communication with City staff, and coordination and management of any subconsultants on the Project.

Subtask 1 02 Quality Control

Consultant will provide detailed quality control review of all levels of design drawings, specifications, and construction cost estimate for the Project. This task will be completed by the Consultant's senior level engineering personnel not involved in the design of the Project. The review will check for correctness of the documents as well as provide a constructability review of the documents.

Task 2. Workshops and Meetings

Consultant staff will attend three (3) meetings throughout the duration of the Project as follows:

- Project Kickoff meeting to discuss the project goals, design approach, and schedule
- 50% Design Review meeting to review drawings, answer design questions, and discuss City comments
- Pre-bid meeting.

Deliverables.

- 1 Meeting notes summarizing meeting discussion and action items

Task 3. Preliminary Design Confirmation

Consultant will review of the City's preliminary designs for emissions control and H2S mentoring data that was collected in summer 2018. Consultant will evaluate the data to confirm that the equipment selected during the preliminary design is suitable for H2S concentrations observed during the summer 2018 sample period. Consultant will contact equipment manufacturer to confirm that the equipment is appropriately sized based on the data collected and provide the City with an updated quote for the system.

Deliverable:

- 1 Updated quote for emissions control system

Task 4. Detailed Design

This Task will involve preparing 50%, 90%, and Final design drawings for the improvements for the Milpitas Main Pump Station

Subtask 4 01 Topographic Survey

Consultant will complete a topographic survey of the project area to verify elevations of existing improvements shown on construction drawings and to obtain more detailed topographic information in critical areas.

Deliverables

- 1 Topographic survey of Project Area

Subtask 4 02 Prepare Construction Cost Estimate

Consultant will prepare an engineer's estimate of probable construction cost to be used for the bidding

Deliverables.

- 1 Engineer's estimate of probable construction cost

Subtask 4 03 50% Design

Consultant will prepare and present 50% complete design documents for the City's review Drawings will be developed in AutoCAD Version 2016 format and incorporate Consultant and City's drafting standards The 50% complete design submittal will also include an outline of technical specifications To support this design, Consultant will complete a geotechnical investigation to evaluate subsurface conditions at the site of the new odor emissions control facility, and provide geotechnical engineering design parameters and construction recommendations for the facility foundation to the City

Deliverable:

- 1 Technical memorandum outlining geotechnical engineering design parameters
- 2 50% design plans, specifications, and cost estimate
- 3 Outline of technical specifications

Subtask 4 035 Potholing, Control of Tar Like Material, and Additional Design Work for Two Exhaust Fans

The purpose of this subtask is to summarize the design contract discussed during the April Main Pump Station Odor Control 50 percent submittal review meeting and emailed to City on April 19, 2019 Included below are descriptions of the additional work subtasks:

- Potholing in the area of the proposed air duct to determine the depths of the electrical duct banks and other utilities in the vicinity
- Additional Design Work for Two Exhaust Fans as the current fan cannot be relied upon the City has requested a second fan to provide redundancy for the station
- Control of Tar-like Material found in the wet-well exhaust fan duct and associated investigation and design work

Consultant will prepare and submit 75% complete design documents for the City's review The submittal will reflect comments received from the City on the 50% design submittal including the additional subtasks identified above.

Deliverable.

- 1 Technical memorandum outlining how 50% design submittal comments have been addressed
- 2 75% design plans, specifications, and cost estimate

Subtask 4 04 90% Design

Consultant will prepare and submit 90% complete design documents for the City's review The submittal will reflect comments received from the City on the 70% design submittal and will include

- 90% complete design drawings.
- Draft Technical Specifications (Division 1 through 16) in CSI format

Consultant will present the 90% design submittal to the City, along with an explanation as to how 50% design submittal comments have been addressed.

Consultant will complete a quality control review of the 90% design drawings, specifications, and construction cost estimate

Deliverables

1. Technical memorandum outlining how 75% design submittal comments have been addressed.
- 2 90% design plans, specifications, and cost estimate

3 Draft Technical Specifications (Division 1 through 16) in CSI format

Subtask 4.05 100% Design

Consultant will prepare 100% design documents by incorporating review comments from City staff and from the Consultant's independent quality control check. The 100% design submittal will also include an engineer's estimate of probable construction cost to be used for the bidding phase

The completed design will allow for public bidding and construction of the proposed project. Design drawings will be prepared, stamped, and signed by California Registered Professional Engineers of the applicable discipline

Deliverables

- 1 100% design plans, specifications, and cost estimate

Task 5. Bid Support Services

This Task will involve assisting the City, as required, during the bid phase of the Project. Consultant will assist the City during the bid phase as follows:

- Prepare presentations, attend, and provide other assistance at a City-led pre-bid meeting
- Provide technical assistance to support City staff's response to bidder's inquiries during the bidding process.
- Develop addenda, if necessary, that may be needed to document responses to bidders' inquiries. Addenda will be prepared by the Consultant and delivered to the City for distribution
- Assist the City in reviewing the bids for conformance and possible irregularities with regard to the contract documents

EXHIBIT B-1

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 contract.

TASK OR SUBTASK NO.	FEE
Task 1. Project Management and Quality Control	
1 01 Project Management	\$ 3,038 00
1 02 Quality Control	\$ 3,176 00
<u>Subtotal, Task 1</u>	<u>\$ 6,214 00</u>
Task 2. Workshops and Meetings	
2 01 Project Kickoff	\$ 8,049 00
2 02 50% Design Review	\$ 4,864 00
2 03 Pre-bid Meeting	\$ 1,718 00
<u>Subtotal, Task 2</u>	<u>\$ 14,631 00</u>
Task 3. Preliminary Design Confirmation	
3.01 Review H2S data	\$ 994.00
3.02 Solicit Revised Equipment Cost	\$ 461.00
<u>Subtotal, Task 3</u>	<u>\$ 1,455 00</u>
Task 4. Detailed Design	
4.01 Topographic Survey	\$ 5,102.00
4 02 Prepare Construction Cost Estimate	\$ 3,362.00
4 03 50% Design Drawings	\$ 21,444 00
4.035 Potholing, Control of Tar Like Material, and Additional Design Work for Two Exhaust Fans	\$ 36,340 00
4.04 90% Design Drawings	\$ 21,844.00
4.05 Final Design Drawings	\$ 15,136.00
<u>Subtotal, Task 4</u>	<u>\$ 103,228 00</u>
Task 5. Bid Support Services	
5.01 Review Potential Bidder's Questions	\$ 4,053.00
5.02 Prepare up to Two Addenda	\$ 3,944.00
<u>Subtotal, Task 5</u>	<u>\$ 7,997 00</u>
TOTAL	\$ 133,525.00



2019 Billing Rate Schedule

(Effective January 1, 2019 through December 31, 2019) *

POSITIONS	LABOR CHARGES (DOLLARS PER HR)
ENGINEERING	
Principal/Vice President	\$298
Engineering/Scientist/Geologist Manager I / II	\$274 / \$287
Principal Engineer/Scientist/Geologist I / II	\$249 / \$264
Senior Engineer/Scientist/Geologist I / II	\$223 / \$234
Associate Engineer/Scientist/Geologist I / II	\$194 / \$208
Engineer/Scientist/Geologist I / II	\$157 / \$182
Engineering Aide	\$90
Administrative I / II / III / IV	\$79 / \$100 / \$120 / \$133
ENGINEERING TECHNOLOGY	
Engineering Tech Manager I / II	\$283 / \$294
Principal Tech Specialist I / II	\$260 / \$271
Senior Tech Specialist I / II	\$238 / \$249
Senior GIS Analyst	\$217
GIS Analyst	\$205
Technical Specialist I / II / III / IV	\$151 / \$173 / \$195 / \$216
CAD Manager	\$173
CAD Designer I / II	\$134 / \$150
CONSTRUCTION MANAGEMENT	
Senior Construction Manager	\$283
Construction Manager I / II / III / IV	\$170 / \$182 / \$195 / \$246
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$149 / \$166 / \$185 / \$192
Apprentice Inspector	\$135
CM Administrative I / II	\$73 / \$97
Field Services	\$192

- Hourly rates include Technology and Communication charges such as general and CAD computer, software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, etc will be billed at actual cost plus 15%
- Mileage will be billed at the current Federal Rate and Travel will be billed at cost
- Subconsultants will be billed at actual cost plus 10%
- Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates Expert witness testimony and depositions billed at 200% of standard hourly rates
- A Finance Charge of 1 5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice

* This schedule is updated annually



2019 Billing Rate Schedule (continued)

(Effective January 1, 2019 through December 31, 2019) *

Equipment Charges

EQUIPMENT	BILLING RATES
Gas Detector	\$80/day
Hydrant Pressure Gauge	\$10/day
Hydrant Pressure Recorder, Standard	\$40/day
Hydrant Pressure Recorder, Impulse (Transient)	\$55/day
Trimble GPS – Geo 7x	\$220/day
Vehicle	\$10/hour
Water Flow Probe Meter	\$20/day
Water Quality Multimeter	\$185/day
Well Sounder	\$30/day

* This schedule is updated annually

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of February 28, 2018 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 West Yost Associates a California CORPORATION with its principal place of business at 2020 Research Park Drive Suite 100 Davis CA 95618 (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

Design Services – Milpitas Main Lift Pump Station Odorous Emissions Control Facility
(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 \$98 000 (ninety-eight thousand and 0/100 dollars) 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 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 contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5 Time of Performance

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). Consultant shall complete the services required hereunder within **365 calendar days**. The Notice to Proceed shall set forth the date of commencement of work.

6 Delays in Performance

a Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage, or judicial restraint.

b Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7 Compliance with Law

a Consultant shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government, including Cal/OSHA requirements.

b If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state, and local regulatory agencies.

c If applicable, Consultant is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8 Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9 Assignment and Subconsultant

Consultant shall not assign, sublet or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10 Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11 Insurance Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit "D" (Insurance Requirements) attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12 Indemnification

a To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing) indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13 California Labor Code Requirements

a Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain 'public works' and 'maintenance' projects.

("Prevailing Wage Laws") If the services are being performed as part of an applicable 'public works' or "maintenance" project, as defined by the Prevailing Wage Laws and if the total compensation is \$1,000 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

Not Used

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.

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 Dave Anderson 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	CONSULTANT
City of Milpitas	West Yost Associates
455 E. Calaveras Boulevard	200 Research Park Drive, Suite 100
Milpitas California 95035	Davis CA 95618
Attn: Tony Ndah, Public Works Director	Attn: Dave Anderson

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.

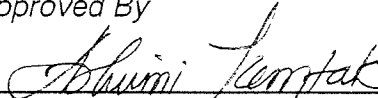
[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND WEST YOST ASSOCIATES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above

CITY OF MILPITAS

Approved By

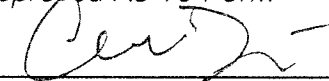


Julie Edmonds-Mares

City Manager

11/21/18
Date

Approved As To Form



Christopher J. Diaz

City Attorney

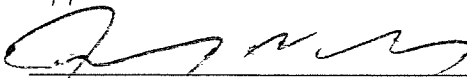
Approved As To Content.



Will Fuentes

Director of Financial Services

Approved As To Content



Tony Ndash

Public Works Director

West Yost Associates


Signature

W. Franklin Helmick
Name

Vice President
Title

10/24/18
Date

EXHIBIT A

Scope of Services

Task 1. Project Management and Quality ControlSubtask 1 01 Project Management

Consultant will provide overall program management coordination of activities and communication with City staff, and coordination and management of any subconsultants on the Project

Subtask 1 02 Quality Control

Consultant will provide detailed quality control review of all levels of design drawings specifications and construction cost estimate for the Project This task will be completed by the Consultant s senior level engineering personnel not involved in the design of the Project The review will check for correctness of the documents as well as provide a constructability review of the documents

Task 2. Workshops and Meetings

Consultant staff will attend three (3) meetings throughout the duration of the Project as follows

- Project Kickoff meeting to discuss the project goals design approach and schedule
- 50% Design Review meeting to review drawings answer design questions and discuss City comments
- Pre-bid meeting

Deliverables

- 1 Meeting notes summarizing meeting discussion and action items

Task 3. Preliminary Design Confirmation

Consultant will review of the City s preliminary designs for emissions control and H2S mentoring data that was collected in summer 2018 Consultant will evaluate the data to confirm that the equipment selected during the preliminary design is suitable for H2S concentrations observed during the summer 2018 sample period Consultant will contact equipment manufacturer to confirm that the equipment is appropriately sized based on the data collected and provide the City with an updated quote for the system

Deliverable

- 1 Updated quote for emissions control system

Task 4. Detailed Design

This Task will involve preparing 50%, 90%, and Final design drawings for the improvements for the Milpitas Main Pump Station

Subtask 4 01 Topographic Survey

Consultant will complete a topographic survey of the project area to verify elevations of existing improvements shown on construction drawings and to obtain more detailed topographic information in critical areas

Deliverables

- 1 Topographic survey of Project Area

Subtask 4 02 Prepare Construction Cost Estimate

Consultant will prepare an engineer's estimate of probable construction cost to be used for the bidding

Deliverables

- 1 Engineer's estimate of probable construction cost

Subtask 4 03 50% Design

Consultant will prepare and present 50% complete design documents for the City's review. Drawings will be developed in AutoCAD Version 2016 format and incorporate Consultant and City's drafting standards. The 50% complete design submittal will also include an outline of technical specifications. To support this design, Consultant will complete a geotechnical investigation to evaluate subsurface conditions at the site of the new odor emissions control facility, and provide geotechnical engineering design parameters and construction recommendations for the facility foundation to the City.

Deliverable

- 1 Technical memorandum outlining geotechnical engineering design parameters
- 2 50% design plans, specifications, and cost estimate
- 3 Outline of technical specifications

Subtask 4 04 90% Design

Consultant will prepare and submit 90% complete design documents for the City's review. The submittal will reflect comments received from the City on the 50% design submittal and will include

- 90% complete design drawings
- Draft Technical Specifications (Division 1 through 16) in CSI format

Consultant will present the 90% design submittal to the City, along with an explanation as to how 50% design submittal comments have been addressed.

Consultant will complete a quality control review of the 90% design drawings, specifications, and construction cost estimate.

Deliverables

- 1 Technical memorandum outlining how 50% design submittal comments have been addressed
- 2 90% design plans, specifications, and cost estimate
- 3 Draft Technical Specifications (Division 1 through 16) in CSI format

Subtask 4.05 100% Design

Consultant will prepare 100% design documents by incorporating review comments from City staff and from the Consultant's independent quality control check. The 100% design submittal will also include an engineer's estimate of probable construction cost to be used for the bidding phase.

The completed design will allow for public bidding and construction of the proposed project. Design drawings will be prepared, stamped, and signed by California Registered Professional Engineers of the applicable discipline.

Deliverables

1. 100% design plans, specifications, and cost estimate

Task 5. Bid Support Services

This Task will involve assisting the City, as required, during the bid phase of the Project. Consultant will assist the City during the bid phase as follows:

- Prepare presentations, attend, and provide other assistance at a City-led pre-bid meeting.
- Provide technical assistance to support City staff's response to bidder's inquiries during the bidding process.
- Develop addenda, if necessary, that may be needed to document responses to bidders' inquiries. Addenda will be prepared by the Consultant and delivered to the City for distribution.
- Assist the City in reviewing the bids for conformance and possible irregularities with regard to the contract documents.

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 contract.

TASK OR SUBTASK NO.	FEE
Task 1. Project Management and Quality Control	
1 01 Project Management	\$ 3,038.00
1 02 Quality Control	\$ 3,176.00
<u>Subtotal, Task 1</u>	<u>\$ 6,214.00</u>
Task 2. Workshops and Meetings	
2 01 Project Kickoff	\$ 8,049.00
2 02 50% Design Review	\$ 4,864.00
2 03 Pre-bid Meeting	\$ 1,718.00
<u>Subtotal, Task 2</u>	<u>\$ 14,631.00</u>
Task 3. Preliminary Design Confirmation	
3 01 Review H2S data	\$ 994.00
3 02 Solicit Revised Equipment Cost	\$ 461.00
<u>Subtotal, Task 3</u>	<u>\$ 1,455.00</u>
Task 4. Detailed Design	
4 01 Topographic Survey	\$ 5,102.00
4.02 Prepare Construction Cost Estimate	\$ 3,362.00
4 03 50% Design Drawings	\$ 21,444.00
4 04 90% Design Drawings	\$ 21,844.00
4 05 Final Design Drawings	\$ 15,136.00
<u>Subtotal, Task 4</u>	<u>\$ 66,888.00</u>
Task 5. Bid Support Services	
5 01 Review Potential Bidder's Questions	\$ 4,053.00
5 02 Prepare up to Two Addenda	\$ 3,944.00
<u>Subtotal, Task 5</u>	<u>\$ 7,997.00</u>
TOTAL	\$ 97,185.00

CONSULTANT'S 2018 BILLING RATE SCHEDULE
(January 1, 2018 through December 31, 2018)

POSITIONS	LABOR CHARGES (DOLLARS PER HR)
ENGINEERING	
Principal/Vice President	\$285
Engineering/Scientist/Geologist Manager I / II	\$263 / \$274
Principal Engineer/Scientist/Geologist I / II	\$240 / \$254
Senior Engineer/Scientist/Geologist I / II	\$214 / \$225
Associate Engineer/Scientist/Geologist I / II	\$190 / \$203
Engineer/Scientist/Geologist I / II	\$154 / \$178
Engineering Aide	\$87
Administrative I / II / III / IV	\$78 / \$99 / \$119 / \$131
ENGINEERING TECHNOLOGY	
Engineering Tech Manager I / II	\$271 / \$281
Principal Tech Specialist I / II	\$250 / \$260
Senior Tech Specialist I / II	\$229 / \$239
Senior GIS Analyst	\$209
GIS Analyst	\$197
Technical Specialist I / II / III / IV	\$145 / \$166 / \$187 / \$208
CAD Manager	\$166
CAD Designer I / II	\$129 / \$144
CONSTRUCTION MANAGEMENT	
Senior Construction Manager	\$273
Construction Manager I / II / III / IV	\$166 / \$178 / \$190 / \$237
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$144 / \$160 / \$178 / \$185
Apprentice Inspector	\$131
CM Administrative I / II	\$71 / \$95

- Hourly rates include Technology and Communication charges such as general and CAD computer software, telephone, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.
- Outside Services such as vendor reproductions, prints, shipping, and major West Yost reproduction efforts, as well as Engineering Supplies, etc., will be billed at actual cost plus 15%.
- Mileage will be billed at the current Federal Rate and Travel will be billed at cost.
- Subconsultants will be billed at actual cost plus 10%.
- Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.
- A Finance Charge of 1.5% per month (an Annual Rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

Equipment Charges

EQUIPMENT	BILLING RATES
Gas Detector	\$80/day
Hydrant Pressure Gage	\$10/day
Hydrant Pressure Recorder, Standard	\$40/day
Hydrant Pressure Recorder, Impulse (Transient)	\$55/day
Trimble GPS – Geo 7x	\$220/day
Vehicle	\$10/hour
Water Flow Probe Meter	\$20/day
Water Quality Multimeter	\$185/day
Well Sounder	\$30/day

CONSULTANT'S KEY STAFF AND SUBCONSULTANTS

Consultant's key staff assigned to the Project are as follows

Team Member Title	Project Role
Dave Anderson	Project Manager
Whitney Sandelin	Assistant Project Manager
Greg Chung	Principal in Charge

If necessary and appropriate Consultant will employ subconsultants it deems appropriate to the complexity and nature of the required Services. All subconsultants must, if their specialty is licensable, be licensed by the State of California to perform their specific Services. Consultant must obtain City's approval of all subconsultants. Upon City's request, Consultant must provide copies of all subconsultant contract Agreements. Any delegation or subcontracting of any services by Consultant will not operate to relieve Consultant of its responsibilities under this Agreement.

The following subconsultants are authorized to work on the Project

Firm	Project Role
Mark Thomas	Topographic Survey
Geocon Consultants	Geotechnical Investigation
TJC and Associates	Structural Design
A TEEM Electrical Engineering	Electrical Design

EXHIBIT C
Activity Schedule

Task/Major Milestone	Completion (Weeks Following Authorization to Proceed)
Project Management	21 weeks
Preliminary Design Confirmation	2 weeks
Topographic Survey	8 weeks
Submit 50% Complete Design Submittal (plans specifications cost estimate and technical memoranda)	8 weeks
Submit 90% Complete Design Submittal (plans specifications cost estimate, and technical memoranda)	15 weeks
Submit 100% Complete Design Submittal (plans specifications, cost estimate and technical memoranda)	21 weeks

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 C. 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** 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** 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** 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** per accident for bodily injury and property damage
- ☐ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage
- ☐ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees

- ☒ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate
- ☐ (If Design/Build), with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate
- ☐ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

- ☒ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

- ☐ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions

Surety Bonds:

— Contractor shall provide the following Surety Bonds

- 1 Bid Bond
- 2 Performance Bond
- 3 Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

— Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000,000** policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status:

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be

endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured

Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision

For any claims related to this contract, the **Contractor's or Consultant's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

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.

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.

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 Contractor's Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize and Approve Travel to Santa Cruz, CA, for City Manager Ned Thomas to Attend the Annual 2023 Silicon Valley Economic Development Alliance (SVEDA) Conference on November 2, 2023 (Staff Contact: Ned Thomas, City Manager, 408-586-3059)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Authorize and approve travel to Santa Cruz, CA, for City Manager Ned Thomas to attend the Annual 2023 Silicon Valley Economic Development Alliance (SVEDA) Conference on November 2, 2023, for a total amount of \$150.00 budgeted under Conferences/Trainings allocation for the City Manager's Office.

BACKGROUND:

The Silicon Valley Economic Development Alliance (SVEDA) holds its Annual Conference in Santa Cruz, California. This popular conference is scheduled for November 2 – 3, 2023, and is designed for city officials and economic development professionals to network and receive essential information and updates on key economic development trends and issues in the region. The conference is committed to addressing business needs, whether through local government policy and streamlined permitting processes, or linking businesses to local and regional resources that add value to company innovation and growth. The preliminary program is included in this report.

ANALYSIS:

The City of Milpitas Travel and Expense Policy requires approval of travel for elected officials and the City Manager by the City Council. Council approval of this request will allow City Manager Thomas to travel to Santa Cruz, CA, to represent the City. Attendance at the conference will also offer the City Manager the opportunity to exchange ideas with colleagues and business leaders from other cities and to bring back information to share with his Executive Leadership Team and Council. Participation and attendance in these conferences ensures that the City is fully represented at the local, regional, and state levels.

POLICY ALTERNATIVE(S):

Not applicable

FISCAL IMPACT:

The estimated expenses for the SVEDA conference in Santa Cruz, including the registration fee, are \$700.00. However, City Manager Thomas will attend only the first day of the conference without an overnight hotel stay, so the total amount will be \$150.00. Sufficient funds to cover the City Manager's travel expenses are included in the annual budget for the City Manager's Office under Conferences/Meetings/Memberships.

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:

Authorize and Approve travel to Santa Cruz, CA, for City Manager Ned Thomas to Attend the Annual 2023 Silicon Valley Economic Development Alliance (SVEDA) Conference on November 2, 2023, for a total amount of \$150.00 budgeted under Conferences/Trainings allocation for the City Manager's Office.

Attachment(s):

Attachment 1: Draft conference agenda for the 2023 SVEDA Conference

2023 SVEDA Conference



Dream Inn, Santa Cruz

November 2 & 3

Draft Agenda

Thursday, November 2

12:00 PM Registration and Lunch

1:00 PM The Ins and Outs of District Formation

Alex Stettinski, CEO, *San Jose Downtown Association* – **Moderator**
John Lambeth, President & CEO, *Civitas*

Tim Seufert, Managing Director, *NBS***Nathan Ulsh**, Partner, *Community Strong Strategies*

Item # C14.

Featured Speaker

1:00 PM

Alicia Scholer, Vice President, *Responsible Hospitality Institute*

Break

2:30 PM

Creative Solutions: Marketing, Space Activation, and Events

3:00 PM

Rebecca Unitt, Economic Development Manager, *City of Santa Cruz* & SVEDA Chair – **Moderator****Ryan Sebastian**, Principal, *Moveable Inc.***Matthew Swinnerton**, Founder, *Event Santa Cruz*

Rebooting in Napa Valley: the St. Helena Technical Assistance Panel

4:00 PM

Edith Ramirez, Assistant City Manager for Community Development, *City of Morgan Hill***Nell Selander**, Director, Economic and Community Development, *City of South San Francisco***Maya DeRosa**, Community Development Director, *City of St. Helena*

Optional Reception and Dinner on the Wharf

5:30 PM

Vino by the Sea & Firefish Grill

Friday, November 3

Registration and Breakfast

7:30 AM

Featured Speaker

8:30 AM

Nick Santhanam, CEO, *Fernweh Group*

Have some CHIPS!

9:00 AM

Donovan Lazaro, Economic Development Director, *City of Fremont* – **Moderator**
Arlen Chou, President & CEO, *Golden Altos*
Shari Liss, Executive Director, *SEMI Foundation*
Additional participants to be announced

Item # C14.

10:00 AM	Break
10:30 AM	High Road Training Partnerships in Action Kara Gross, Executive Director, <i>SVEDA</i> – Moderator Jay Banfield, Chief Economic Mobility Officer, <i>All Home</i> Derek Kirk, Assistant Deputy Secretary of Climate, <i>California Labor & Workforce Development Agency</i> Tahra Goraya, President and CEO, <i>Monterey Bay Economic Partnership</i>
11:30 AM	Featured Speaker To be announced
12:00 PM	Optional Lunch & Afternoon Tour <i>Venus Spirits Cocktails & Kitchen</i> Program & Tour <i>Details to be announced to attendees</i>

Registration

Both Days \$275

November 2 only \$150

November 3 only \$150



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing to Consider a Zoning Variance to Allow Development of a Structure with a Height that Extends Above the Hillside Crestline Zone of Protection Sight Line, as Related to an Application for a Site Development Permit and Planned Unit Development Amendment for a Proposed 5,900-Square Foot Single-Family Residence, on a Vacant +1.4-Acre Lot in the R1-H Single-Family Residential - Hillside Zoning District Located at 1339 Terra Vista Court (APN: 029-07-010) (Staff Contact: Jay Lee, Planning Director, 408-586-3273; and Avery Stark, Acting Senior Planner, 408-586-3288)
Category:	Public Hearings-Community Development
Meeting Date:	10/17/2023
Recommendation:	Hold a public hearing and, by a motion of the Council, uphold a Variance recommendation made by the Milpitas Planning Commission to deny the request for a structure with a height that extends above the Hillside Crestline Zone of Protection Sight Line, as established by the City's Hillside development standards, on a vacant +1.4-acre lot in the R1-H Single-Family Residential-Hillside Zoning District located at 1339 Terra Vista Court (Countryside Estates, Lot 1).

BACKGROUND:

In September of 1992, the City Council adopted Ordinance No. 38.672, generally known as the "Hillside Ordinance." The primary regulations of the Hillside Ordinance are set forth in Section 45 of Chapter 10 of Title XI of the Milpitas Municipal Code, which section is entitled "H" Hillside Combining District. The stated purpose of the Hillside Ordinance is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with development of hillside areas, including but not limited to geologic problems, slope, safe access, and visibility.

In 1998, Milpitas voters approved Measure Z, establishing a 20-year urban growth boundary (UGB) to limit hillside development by prohibiting the City from extending public services to new development in the hillside area. On November 2, 2004, Milpitas voters approved Ordinance No. 264 to mandate that amendments or modifications to the Hillside Ordinance or land subject to the Hillside Ordinance would require voter approval through December 31, 2018. In November 2016, Milpitas voters approved Measures I and J, renewing the Urban Growth Boundary and extending the requirement for voter approval of amendments or modifications to the Hillside Ordinance or the land subject to the Hillside Ordinance through December 31, 2038.

On November 17, 1992, the City Council approved Planned Unit Development (PUD) No. 68 (Countryside Estates) to allow six hillside development sites for single-family homes on a 24.5-acre parcel located along the north side of County Club Drive approximately 400 feet west of the entrance to the Bay View Golf Club. PUD No. 68 consists of one lower cul-de-sac (Countryside Court) with two buildable lots situated below the crestline and an upper cul-de-sac (Terra Vista Court) with four buildable lots situated on the east side of the crestline. The PUD also includes 15.9-acres of dedicated private common open space.

Each home site within PUD No. 68 requires separate review by the Planning Commission and City Council for conformance with the provisions of the "S" Site and Architectural Overlay District and subject to a precise building envelope and architectural design guidelines established in the PUD. To date, one lot located on the lower cul-de-sac has been developed with a one-story single-family home, one additional home is proposed on the lower cul-de-sac, and four homes are proposed on the upper cul-de-sac.

The current application for development of a single-family home on Countryside Estates Lot 1 has the following timeline:

- On October 8, 2020, the applicant filed a Pre-Application for initial review and feedback from staff on a proposed 5,900-square foot single-family hillside home and associated site improvements.
- On June 6, 2021, Architect Fumio Suda submitted an application for approval of a Site Development Permit and a Planned Unit Development (PUD) Amendment Permit to develop a new 5,900-square-foot, single-family residence, two detached accessory structures, an in-ground pool, and associated site improvements on a vacant ± 1.4 -acre lot located at 1339 Terra Vista Court (PUD No. 68 – Countryside Estates, Lot 1).
- The subject site (Lot 1) is zoned R1-H Single-Family Residential with an “H” Hillside Combining District and an “S” Site and Architectural Overlay. Per Milpitas Municipal Code (MMC) Section XI-10-45.09-2, no building permit shall be issued for the construction or expansion of a single-family structure or accessory structure in any “H” Hillside Combining District until such structure has received a site and architectural review approval by the Planning Commission and City Council.
- On June 29, 2022, as advised by the Planning Department, the applicant submitted an application for a Zoning Variance to deviate from the Hillside development standards established in MMC Section XI-10-45.06 (Crestline Zone of Protection), which restricts structure heights so that “no structure extends above the crestline sight line.” MMC Section XI-10-45.06-5 further establishes that “no structure may visually intrude into the ‘crestline zone of protection’ area,” and provides that “exception may be granted where [proposed] development would not be visible from the three (3) closest viewpoints” as shown on the Zoning Map and designated at “VP.” Thus, the proposed 5,900-square foot single-family residence on Lot 1 requires a Zoning Variance because the structure intrudes into the ‘crestline zone of protection’ area. The proposed project is also non-compliant with the site and architectural guidelines in MMC Section XI-10-45.09-7 in that the height, elevations, and placement on the site do not avoid unreasonable interference with views and privacy, and the design of the primary structure does not minimize the perception of excessive bulk. As stated by the project architect, on the record, the proposed structure is designed to maximize views and to be visually prominent on its hilltop location.
- On September 28, 2022, the Milpitas Planning Commission held a duly noticed public hearing and voted unanimously (7-0) to recommend that the City Council deny Site Development Permit No. SD21-0009, PUD Amendment Permit No. PA21-0002 and Zoning Variance No. VA22-0001, based on the proposed structure’s non-conformance with the City’s hillside development standards and the site and architectural design guidelines.
- The Planning Commission indicated, on the record, that it would reconsider its recommendation for denial if the proposed structure were modified to significantly reduce non-conformance with the City’s hillside development standards and site and architectural design guidelines.
- On Tuesday, January 10th, 2023, City Planning Staff met with the property owners, development representative, and designer to discuss possible ways the design of the proposed home could be modified to more closely conform with the purpose, intent, and development standards of the Hillside Zoning ordinance and the recommendations provided by the Planning Commission.

PROJECT SITE

The project site is an undeveloped 1.4-acre parcel located at 1339 Terra Vista Court within the Countryside Estates subdivision (PUD No. 68, Lot 1). The property and neighboring properties are zoned R1-H Single Family Residential with a Hillside Combining District. The project site is approximately 100 feet east of the hillside crest line as established in the Hillside development regulations (MMC Section XI-10-45). A vicinity map of the subject site location is shown below in Figure 1, and a zoning map is shown in Figure 2.

Figure 1: Project Location

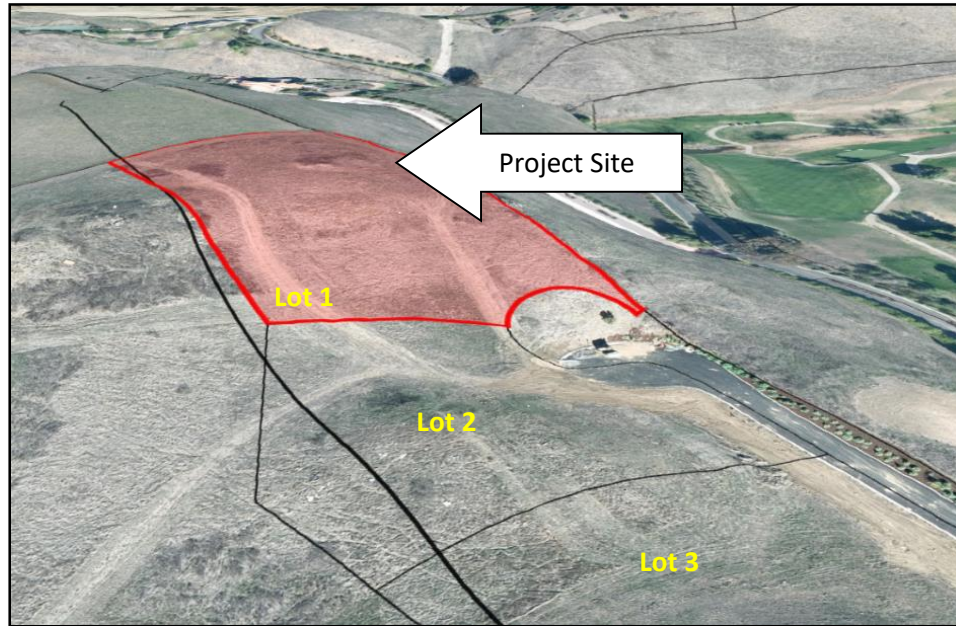
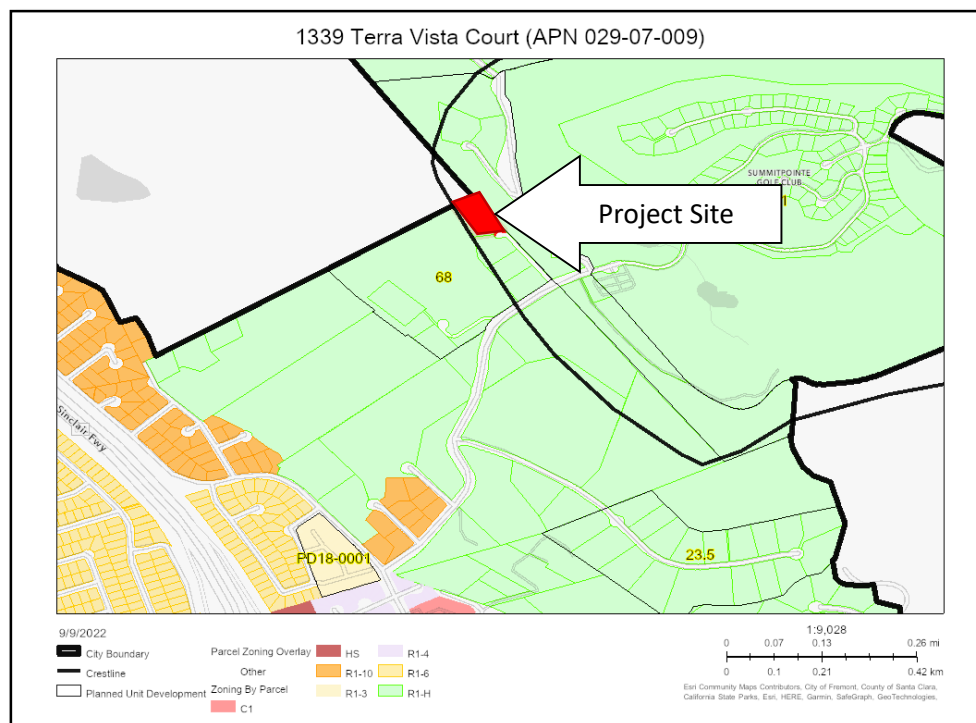


Figure 2: Zoning Map



The project site is located in the northeastern portion of the City of Milpitas in the Hillside area near the Bay View Golf Club. Table 1 below identifies current zoning and land uses surrounding the site:

Table 1: Surrounding Zoning and Land Uses

	General Plan	Zoning	Existing Use
Subject Site	Hillside Low Density (HLD)	Single-Family Residential-Hillside (R1-H)	Vacant (Lot of Record)
North	Hillside Low Density (HLD)	Single-Family Residential-Hillside (R1-H)	Open Space
South	Hillside Low Density (HLD)	Single-Family Residential-Hillside (R1-H)	Vacant (Three proposed homes)
East	Hillside Low Density (HLD)	Single-Family Residential-Hillside (R1-H)	Single-family home; Bay View Golf Club
West	Hillside Low Density (HLD)	Single-Family Residential-Hillside (R1-H)	Open space and single-family homes on large lots

PROJECT DESCRIPTION

The applicant is requesting a Variance, in relation to a Site Development Permit and a Planned Unit Development Amendment to construct a 5,900-square-foot, single-family residence, two detached accessory structures, and an in-ground pool on a ± 1.4 -acre vacant lot. The following is a summary of the applicant's requests:

1. *Zoning Variance:* To deviate from the Hillside development standards (Crestline Zone of Protection), which restricts the height of structures located within 300 feet easterly of the crestline such that no structure extends above the crestline sight line or visually intrudes into the "crestline protection" area.
2. *Site Development Permit:* To allow development of a 5,900-square-foot single-family residence, up to 27 feet in height, two detached accessory structures, an in-ground pool, and related site improvements.
3. *Planned Unit Development (PUD) Amendment:* To modify the previously approved development standards for single-family homes within PUD No. 68 to allow the following:
 - Decrease the required three-car garage to a two-car garage.
 - Increase the total square footage of the proposed residence from 4,000 square feet to 5,900 square feet (an increase of 47.5 percent).
 - Modify the traditional exterior materials and finishes required by PUD No. 68 to allow a modern contemporary design with a flat roof, large expanses of windows, high clearances between floors and ceilings, and a tuck-under garage.

ANALYSIS

General Plan Conformance

The General Plan designation for the project site is Hillside Low Density (HLD). In accordance with General Plan goals, objectives, and policies, the City's Hillside Area is characterized by gentle to steep slopes, grassy terrain with some scrub and trees, wildlife, geologically unstable areas, the Ed R. Levin County Regional Park, and a feeling of remoteness from the more urban areas of the City. The Hillside Low Density designation allows a maximum of one (1) housing unit per gross acre. Table 2 outlines the proposed Project in relation to applicable General Plan policies.

Table 2: General Plan Consistency

General Plan Policy	Conformance
CD 7-1 <i>Maintain the visual character of hillsides, recognizing both the importance of the exposure of hillside development from off-site public views and the importance of providing panoramic public views from and of hillsides.</i>	Not Consistent. The proposed 5,900-square foot single-family residence intrudes into the Crestline Zone of Protection area and, as according to the architect, has been designed to be highly visible from both near and far. The project will significantly alter the visual character of the hillside as little to no attempt has been made to minimize exposure of the project to off-site public views or to address potential impacts to panoramic views from and of the hillsides. Additional landscaping proposed by the applicant will have minimal effect on mitigating the visual intrusion of a large, boxy house. Based on the diagram and cross-sections submitted by the applicant, the home will be visible from the three nearest viewpoints indicated on the zoning map, which does not conform to the Hillside development standards.
CD 7-2 <i>Minimize the alteration of existing landforms and maintain the natural topographic characteristics of the hillside areas, allowing only minimal disruption.</i>	Consistent. The layout of PUD No. 68 – Countryside Estates includes 15.9-acres of dedicated common open space. This open space area maintains the natural topography of the hillside and protects both the crestline and steep slopes on the overall property. The proposed Project will be situated at the flattest portion of the lot to limit the disruption to the existing natural topography. The proposed driveway will require 604 cubic yards of cut and fill, and the footprint of the proposed primary home will require 486 net cubic yards of cut and fill. Cut and fill for the home's front driveway has been engineered to minimize alteration of the hillside. <i>Elimination of the basement from the proposed project would further reduce the need for excavation.</i>
CD 7-3 <i>Protect the natural character of hillside areas by means of contour grading to blend graded slopes and terraces with the natural topography.</i>	Consistent. Minimal contour grading will be required for development of the proposed residence due to its positioning on the flattest portion of the lot. Contours for the home and access driveway will be designed to blend with the natural site topography, as shown in the civil drawings in the plan set. To the extent feasible, grading of the driveway follows the natural contours of the hillside and does not require large, steep cuts.
CD 7-4 <i>Avoid mass graded pads within hillside areas. Smaller steps or grade changes should be used over single, large, slope banks to the greatest extent feasible.</i>	Consistent. The proposed residence will be situated on a flat portion of the parcel, and site improvements will be designed to minimize grading and allow equal cut and fill. To the extent feasible, grading will follow the natural contours of the hillside and preserve the natural terrain.

CD 7-5 *Ensure that any change in hillside land use is accompanied by appropriate safety measures and that the environmental constraints are adequately addressed, especially with respect to runoff and erosion.*

Consistent. Construction of the proposed residence must comply with current building code requirements, including the seismic code. The Engineering Dept. will review all construction documents for compliance with applicable stormwater and erosion management requirements. In accordance with MMC Section XI-10-45.17-3, the amount of impervious surface on the site shall be less than 8,000 sq. ft.

Zoning Ordinance Conformance

The site is located in the R1-H Single-Family Residential Zoning District with an "H" Hillside Combining District. The purpose of the "H" Hillside Combining District is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with development of hillside areas, including but not limited to geologic problems, slope, safe access and visibility.

Per MMC Section XI-10-45.17-3, the subject parcel is less than 3.0-acres, so the maximum size of the proposed residence does not exceed 6,000 square feet, and the amount of impervious surface coverage on the site will be less than 8,000 square feet. Table 3 identifies the areas where the Project is consistent with the applicable development standards of the R1-H zone and PUD No. 68. However, Table 3 also notes that the Project does not comply with the "H" Hillside Combining District in that the proposed structure visually intrudes into the "crestline zone of protection" area. The Council may consider a Zoning Variance to address this issue, but findings must be made that the project substantially conforms with all other requirements of the Hillside Ordinance, including the site and architectural design guidelines, to the extent feasible.

Table 3: Summary of Development Standards

Standards	Zoning & PUD No. 68 Requirements	Proposed	Complies?
Front Setback	25 ft. minimum when avg. slope is <16%. Otherwise, 40 ft. minimum	160 ft. from property line	Yes
Side Yard Setback	40 ft. minimum	42 ft. (east side) 78 ft. – 1 in. (west side)	Yes
Rear	40 ft. minimum	109 ft. – 5 inches	Yes
Size of Main Residence	6,000 sq. ft. maximum (lots < 3 acres)	5,900 sq. ft.	Yes*
Impervious Surfaces	8,000 sq. ft. maximum (lots < 3 acres)	4,856 sq. ft.	Yes
Building Height (Maximum)	27 ft. and two stories East of crestline	Two stories or 22 ft. – 4 in.	Yes
Parking	Four spaces required	Eight spaces (two inside garage & four outside)	Yes*
*The requested PUD amendments are discussed later in this report			

Standards	Zoning & PUD No. 68 Requirements	Proposed	Complies?
Crestline Zone of Protection	Within three hundred (300) feet easterly of the crestline, structure heights restricted so that no structure extends above the crestline sight line. Exceptions may be granted where proposed structures would not be visible from the three closest viewpoints.	Proposed structure is located within 300 ft east of the crestline and would be visible from the three closest viewpoints. The height and bulk of the proposed structure would intrude into the crestline sight line.	No. Zoning Variance required on Lot 1
Underfloor Clearance	Design all new single-family main structures and accessory buildings to follow the slope of the site to reduce the clearance between ground-floor levels and finish grade to not more than five (5) feet. This underfloor clearance shall not be enclosed. Exceptions may be granted for projects that: 1) avoid unreasonable interference with views and privacy; 2) preserve natural landscape; 3) minimize perception of excessive bulk; 4) minimize impairment of light and air; and 5) minimize site grading.	The lower level of the proposed structure is fully enclosed, and this space includes the garage and a utility room.	No. The enclosed basement with 8-foot clearance, garage, and storage area does not comply with standard.

Site & Architectural Guidelines

In addition to the development standards outlined above, the proposed Project must also comply with the Site and Architectural Guidelines for new hillside development outlined in MMC Section XI-10-45.09-7. This section states that the Planning Commission and City Council shall consider Site and Architectural Guidelines as part of the review process for proposed projects in the "H" Hillside Combining District.

As demonstrated in Table 4 below, the proposed Project is not consistent with the Site and Architectural Guidelines outlined in MMC Section XI-10-45.09-7.

Table 4: Hillside Site and Architectural Guidelines

Site and Architectural Guidelines	Consistency
<i>(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed primary or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.</i>	Not Consistent. The proposed residence is located on an approximately 1.4-acre lot with front and rear setbacks of more than 100 feet and side setbacks of more than 40 feet. Future residences on adjacent lots will be separated by approx. 200 feet. However, the proposed residence would be highly visible because of its height and bulk as well as its prominence at the top of the steep lot. In addition, the rooftop deck surrounded by a glass enclosure would create interference with views and privacy for residences on adjacent lots. The proposed residence would greatly interfere with views of the hillsides from the valley floor.

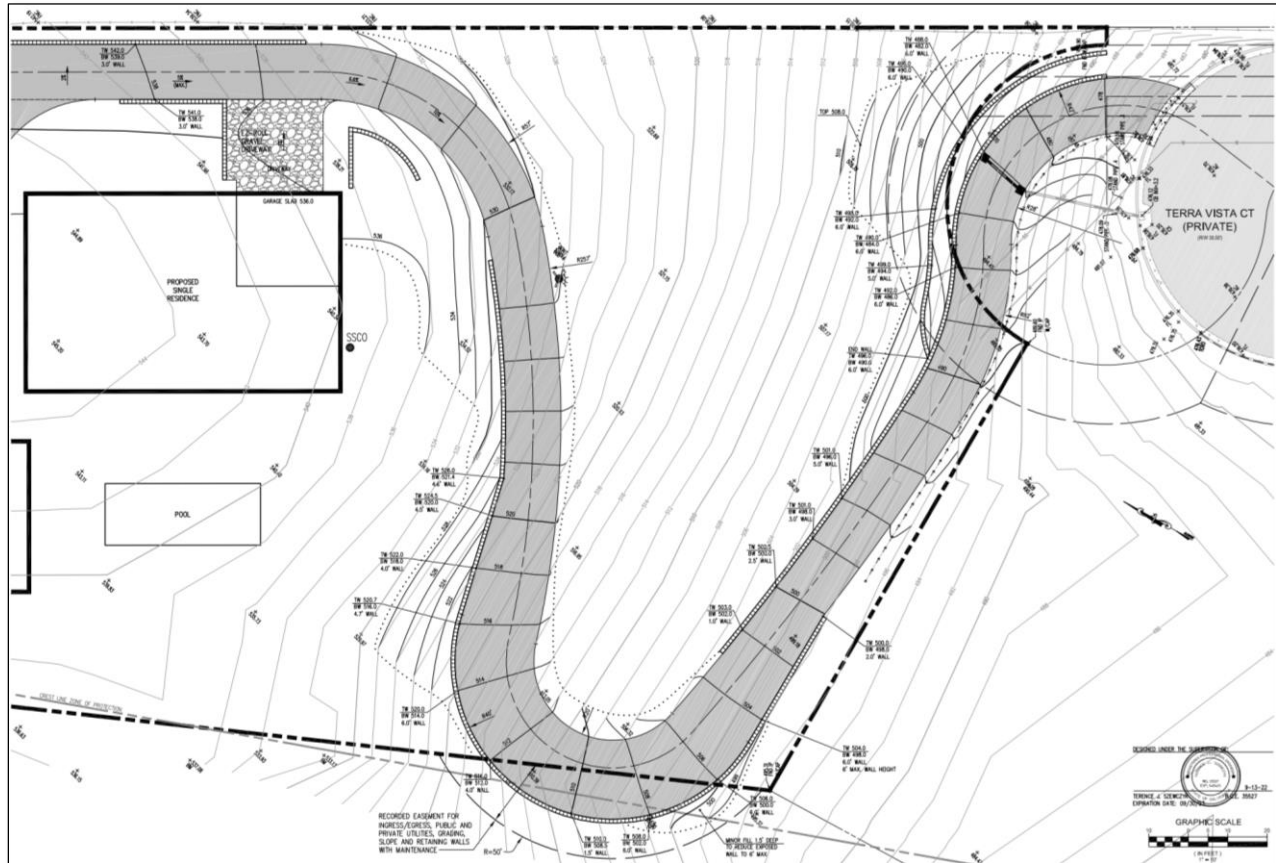
Site and Architectural Guidelines	Consistency
(b) <i>Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.</i>	Consistent. The project site is currently vacant and undeveloped, with a few shrubs on the higher sloped southern portions of the lot and no trees. The proposed residence is positioned on the site to minimize grading, and the proposed driveway follows the existing contours of the hill to limit cut and fill to an equal 607 cubic yards each. New landscaping will be installed, including 23 mid-size trees, various flowering plants, ground cover, and shrubs.
(c) <i>Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.</i>	Not Consistent. The boxy design of the proposed main structure features a flat roof with a glass-enclosed deck, large vertical windows, high clearances between floors and ceilings, and a tuck-under garage. The design is excessively bulky at this location because roofline does not step down with the slope of the hill, and the rooftop deck adds to the perceived height of the building. The structure also includes a full, enclosed basement with 11 feet of clearance. The Hillside Ordinance restricts the underfloor clearance to no more than five feet and prohibits the enclosure of this space. As suggested by the Planning Commission, the perceived bulk of the structure would be minimized by reducing the height of the underfloor clearance, stepping down the roof, and removing the roof deck.
(d) <i>Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.</i>	Consistent. The proposed residence is located on an approximately 1.4-acre lot with front and rear setbacks of more than 100 feet and side setbacks of more than 40 feet. The nearest existing residences are located more than 400 feet in any direction, and proposed homes on adjacent lots in the same subdivision will be separated by approximately 200 feet. As such, the proposed main residence on Lot 1 will not unreasonably impair access to light and air or impair the ability to utilize solar energy on any adjacent property.
(e) <i>Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.</i>	Consistent. The amount of grading is limited to 607 cubic yards, which is the minimum amount of grading needed to facilitate a curved driveway the upper portion of the lot. The proposed structure will be built on the upper portion of the lot, which is less steep. The driveway shall be designed to safely accommodate fire truck access. All grading shall comply with the grading requirements in Section XI-10-45.18 of the Hillside Ordinance.

Site Design and Grading

Due to the steep slope, the Project site will require grading to provide a suitable building pad and the access driveway. To minimize grading and the removal of soil from the site, the proposed site plan locates the proposed residence on the flattest area of the site, which is near the top of the hill. The Project will require approximately 607 cubic yards of cut and fill to accommodate both the residence and the required grade at t

driveway for firetruck access. As shown in Figure 3 below, the proposed grading seeks to blend with the natural landforms and minimize grading cuts. In addition, the overall shape, height, and grade of cut-and-fill slopes follow the natural contours and scale of the natural terrain to the extent feasible. The location and design of the proposed driveway are sensitive to visual impacts from the valley floor.

Figure 3: Proposed Grading Plan



Architectural Design

The proposed residence and two detached accessory structures are designed in a modern contemporary style with clean lines and exterior materials, such as a sand-toned travertine, patterned vertical slate elements, a brick travertine veneer on the first floor, and a smooth cream-colored stucco application on the second floor. This mix of natural colors, materials and finishes blends well with the hillside surroundings.

As discussed in Table 4 above, the proposed residence is not consistent with Architectural Guidelines outlined in MMC Section XI-10-45.09-7. Specifically, the boxy design of the proposed main structure, which features a flat roof, large expanses of windows, high clearances between floors and ceilings, and a glass-enclosed roof deck, increases the perception of excessive bulk and height. The lack of a step-down roof that follows the downward slope of the site and the fully enclosed basement with 11 feet of clearance both contribute significantly to a perception of excessive bulk. Moreover, the height, elevations, and rooftop deck may unreasonably interfere with views and privacy of nearby residences.

The applicant has requested an exception to the Hillside standards to allow the fully enclosed basement with an 11-foot underfloor clearance. This area would be used primarily for storage and include a two-car garage and a utility room. Rather than granting an exception, the Planning Commission recommended limiting the understory clearance to no more than five feet (i.e., eliminating the basement) and keeping the understory clearance open (i.e., unenclosed space), as required in the Hillside standards. The Planning Commission also

suggested eliminating the rooftop deck and incorporating a step-down roof on the southern (downslope) side of the project to reduce the perceived bulk and height of the proposed structure.

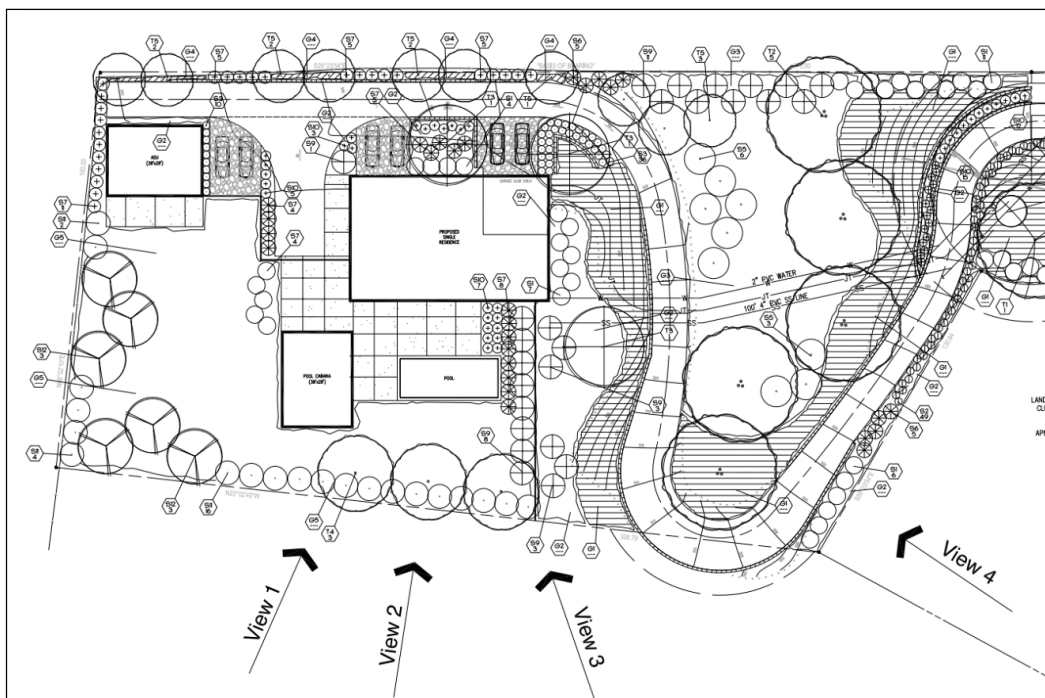
Figure 4: Front Elevation of Proposed Residence



Landscaping

As shown in Figure 5 below and Attachment B to this staff report, the landscape plan for the proposed project includes planting a variety of flowers, shrubs, and trees on the hillside lot. These plans are consistent with the grading/landscaping requirements of the "H" Hillside Combining District, and the required extra landscaping may help mitigate the visual impact of the proposed structure.

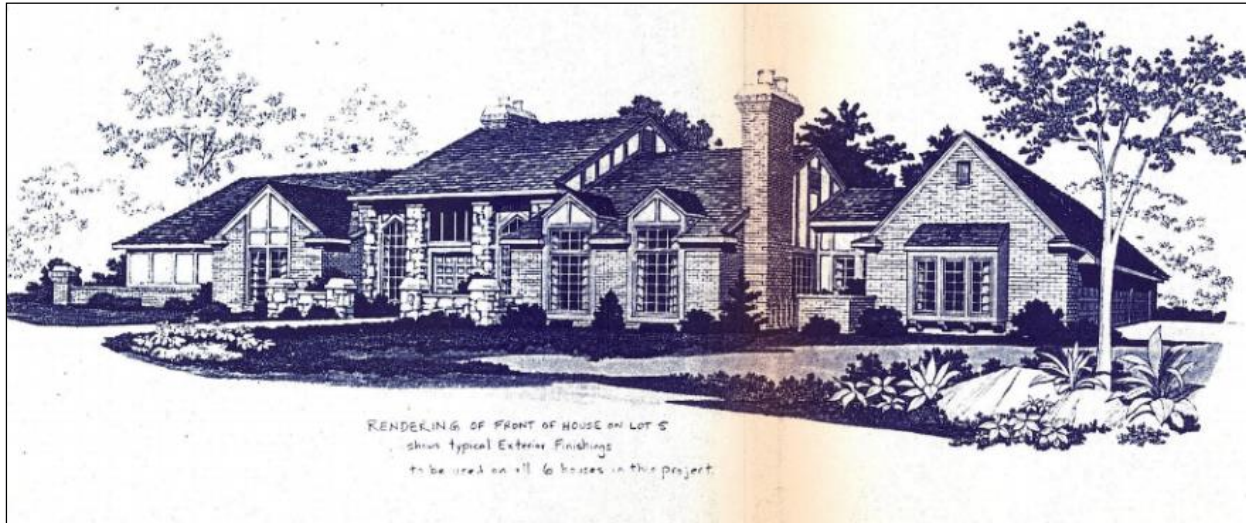
Figure 5: Landscape Plan



Planned Unit Development Amendment

As previously noted in the report, the Project is located within Planned Unit Development (PUD) No. 68 (Countryside Estates, Lot 1). As originally approved by the City Council in November 1992, the PUD establishes specific development standards for single-family residences and requires separate design review by the Planning Commission and City Council for future development on each lot. The original development standards specify a three-car garage, 4,000-5,000 square feet of total allowable square footage for the residential structure, and Tudor-style exterior finishes such as a concrete tile roof, gray stones accents, brick, textured concrete or stucco, and half-timber gables.

Figure 6:
Rendering of Tudor-Style Ranch House Style Approved for Homes in PUD No. 68



The applicant has requested an amendment to the previously approved design standards for single-family homes in PUD No. 68 to allow a smaller two-car garage, an increase in allowable square footage of the primary residence from 4,000 square feet to 5,900 square feet (47%), and the use of a contemporary modern design with updated exterior materials and finishes. Staff would support a PUD amendment to allow a smaller garage, a change in exterior materials and finishes, and a stepped-down roof design to the building that more closely adheres to the objective standards of the Hillside Ordinance. Staff further recommends eliminating the enclosed basement to reduce the perceived height and bulk of the structure and removing the rooftop deck to protect the light, air, or privacy of existing or future structures or uses in the area. The expansive use of glass windows should also be considered to reduce glare during the day and highly visible nighttime glow.

Crestline Zone of Protection

The development standards of the "H" Hillside Combining District establish a "Crestline Zone of Protection" to preserve the natural quality of the crestline and the slopes immediately below, when viewed from the valley floor. MMC Section XI-10-45.06-2 defines the crestline zone of protection as "the area westerly of the *perceived* crestline and between the *perceived* crestline and an elevation one hundred (100) feet below. In the area within three hundred (300) feet easterly of the crestline, structure heights shall be restricted so that no structure extends above the crestline sight line." The *perceived* crestline is defined in MMC Section XI-10-45.06-3 as "the crestline identified when viewed from the three (3) closest viewpoints of those nine (9) [viewpoints] shown on the zoning map and designated as "VP." All proposed new hillside development must demonstrate compliance with the crestline zone of protection, as outlined in MMC Section XI-10-45.06-5.

Planning staff provided the applicant with detailed instructions and an exhibit identifying the location of the crestline zone of protection in proximity to PUD No. 68 and the viewpoints identified on the City's Zoning Map. To demonstrate compliance with MMC Section XI-10-45.06-5, the applicant submitted cross-sections from each of the four closest viewpoints (1-4) to their site as indicated on Sheet C7-11 in the attached plan set. The applicant demonstrated that the sight lines from the valley floor would project through the primary house, resulting in the Project's inconsistency with the standard.

Staff recommended that the applicant erect story poles to demonstrate and measure the amount of deviation from the Hillside standards (i.e., the amount of visibility from the three nearest Viewpoints), as established in the Zoning Ordinance. The applicant did not erect story poles since a structure of possibly any height on Lot 1 will be visible from the three nearest viewpoints on the valley floor. However, the story poles would allow staff and the project design team to visually confirm the extent of intrusion into the crestline sight line and provide a basis for redesigning the project to minimize the visual intrusion, as required by the Hillside Ordinance.

Variance

A Variance is a type of permit approved by the City Council that allows deviations from the adopted Zoning Ordinance regulations related to physical standards of development, such as lot size, building setback, and height limits. As stated in MMC Section XI-10-57.06.A, the purpose and intent of the variance process is to provide an exception to the substantive development standards in the City's Zoning Ordinance (e.g., lot size, building setbacks, or height limits) when the strict application of these provisions deprives the property for which the Variance is sought of privileges enjoyed by other properties in the vicinity and under the same zoning classification. A Variance may be considered when special physical circumstances applicable to the property (e.g., size, shape, topography, location, or surroundings) would otherwise prohibit development.

Based on the steep slope of the subject site (Countryside Estates, Lot 1), the proposed project qualifies for consideration of a Variance to provide relief from the requirements of the City's Hillside Ordinance, which restricts building heights for structures located within three hundred feet easterly of the crestline. Specifically, the standards state that: 1) structure heights shall be restricted so that no structure extends above the crestline sight line; and 2) no structure may visually intrude into the "crestline zone of protection" area, which is detailed in the previous section of this report. This restriction applies to the proposed development on Lot 1 as it is located within 100 feet east of the crestline, and the cross-section diagrams submitted by the applicant confirm that the proposed residence would extend above the crestline sight line and intrude visually into the "crestline zone of protection" area. The use of story poles would allow staff to visually confirm the extent of the intrusion.

Staff recommends a Zoning Variance for development at the subject site because the property's steep slope makes it physically impractical to develop a habitable structure that complies with the height and non-visibility standards associated with the crestline zone of protection. However, the proposed residence should incorporate reasonable design measures to minimize visual intrusion into the crestline sight line to the greatest extent feasible. As noted elsewhere in this report, staff agrees with the Planning Commission's recommendations to eliminate the enclosed basement to reduce the height and bulk of the structure, removing the rooftop deck to protect the privacy of other structures or uses in the area, and incorporating a stepdown roof that follows the downward slope of the lot. The project should also minimize the use of large glass windows to reduce glare during the day and highly visible nighttime glow. As required by PUD No. 68, the applicant will install additional trees and landscaping to screen the primary structure and all accessory buildings to mitigate visual impacts to views from the valley floor.

FINDINGS

A finding is a statement of fact relating to the information that the Planning Commission and City Council shall consider in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Outlined below are separate findings for denial of a Site Development Permit for the development of the proposed Project at 1339 Terra Vista Court (Countryside Estates, Lot 1); an amendment to PUD No. 68 to allow modified development standards for single-family homes; and a Variance to allow an exception from the height and non-visibility standards established in the Hillside Ordinance for structures within the crestline zone of protection.

Planned Unit Development Standard Requirements (MMC Section XI-10-54.07.B.6.a-c)

1. *The proposed development will result in an intensity of land utilization no higher than and standards of open spaces at least as high as permitted or specified otherwise for such development in the General Plan, Zoning Ordinance and Subdivision ordinance.*

The proposed Project includes a single-family residence, two detached accessory structures, in-ground swimming pool, and associated site improvements that are consistent with the intensity of land utilization approved for PUD No. 68. The development standards previously approved for PUD No. 68 are consistent with the requirements of the "H" Hillside Combining District. They will result in an appropriate intensity of land utilization on the subject site as well as standards of open space that exceed the minimum standards in the Milpitas General Plan, Zoning Ordinance, and Subdivision Ordinance.

2. *The development will not create traffic congestion pursuant to the California Environment Quality Act (CEQA). However, if traffic congestion is created by the proposed development, the traffic impacts will be mitigated by traffic improvements proposed by the developer or by funding capital projects and by on-site provisions for traffic circulation and parking or, if it cannot be mitigated, the Planning Commission and City Council shall issue any necessary findings pursuant to CEQA.*

The proposed amendment to PUD No. 68 will modify the previously approved design standards for exterior materials and finishes for single-family residences. This change will not generate additional traffic. Moreover, traffic congestion is no longer used as a measure for environmental impacts under CEQA. The proposed Project will not significantly or negatively affect existing traffic operations and is exempt from analysis of Vehicle Miles Traveled (VMT), which is the current CEQA standard.

3. *For residential development in the Valley Floor Planning Area, as defined in the Milpitas General Plan Land Use Element, the maximum dwelling unit density per gross acre shall be the upper limit of the corresponding General Plan density range within each zoning designation.*

The proposed amendment to PUD No. 68 will not have any effect on residential density in the Valley Floor Planning Area.

Planned Unit Development Required Findings (MMC Section XI-10-54.07.B.6.d):

1. *Development of the site under the provisions of the Planned Unit Development will result in public benefit not otherwise attainable by application of the regulations of general zoning districts.*

The original approval of PUD No. 68 (Countryside Estates) resulted in the public benefit of protecting the hillside area by limiting future development to six buildable lots, clustering the six lots on two cul-de-sacs, and preserving 15.9-acres of dedicated private common open space. The proposed amendment would not alter the number, location, or layout of residential lots within PUD No. 68. The amendment would allow a smaller garage and changes to the exterior material and finishes.

2. *The proposed Planned Unit Development is consistent with the Milpitas General Plan.*

As originally approved, PUD No. 68 is generally consistent with the Milpitas General Plan. The design and layout of streets within the subdivision minimize the alteration of existing landforms and maintain the natural topographic characteristics of the hillside areas. In addition, the clustering of buildable lots along two cul-de-sacs avoided mass graded pads within hillside areas.

However, the proposed PUD amendment is not entirely consistent with the Milpitas General Plan in that the proposed 5,900-square foot single-family residence intrudes into the Crestline Zone of Protection area and, as stated by the architect on the record, has been designed to be highly visible from both near and far. The project will significantly alter the visual character of the hillside with little effort made to minimize exposure of the project to off-site public views or to address potential impacts to panoramic views from and of the hillsides. Design modifications to reduce the perceived height and bulk of the proposed structure and to minimize visual impacts would be needed to make this finding.

3. *The proposed development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels.*

As originally approved, PUD No. 68 is generally consistent with the character of the surrounding neighborhood. The proposed residence would be located on the far side of a 1.4-acre parcel with a minimum of 25-foot set back from all property lines and a minimum of 80-foot distance from the nearest neighboring home. In addition, the proposed site layout and grading would minimize changes to the natural topography of the parcel, and the use of natural earth-tone colors and materials on the exterior of the proposed residence would complement its hillside location.

However, the large, boxy design of the proposed residence would significantly alter the character of the surrounding hillside area and have an adverse impact on panoramic views to and from the hillside. In addition, the expansive glass windows would create daytime glare and highly visible nightglow, and the glass-enclosed rooftop deck would add to the perceived height and bulk of the structure and could result in a loss of privacy. Design modifications to reduce the perceived height and bulk of the proposed structure and to minimize visual impacts would be needed to make this finding.

Site Development Permit Findings (Section XI-10-57.03.F)

1. *The layout of the site and design of the proposed buildings, structures and landscaping are not compatible and aesthetically harmonious with adjacent and surrounding development.*

The proposed residence would be located on the far side of a 1.4-acre parcel with a minimum of 25-foot set back from all property lines and a minimum of 80-foot distance from the nearest neighboring home. The layout of the site and the proposed access driveway are designed to minimize grading and changes to the natural topography of the parcel. In addition, the use of natural earth-tone colors and materials on the exterior of the proposed residence would be compatible with adjacent and surrounding development.

However, the large, boxy design of the proposed residence would significantly alter the character of the surrounding hillside area and have an adverse impact on panoramic views to and from the hillside. In addition, the expansive glass windows would create daytime glare and highly visible nightglow, and the glass-enclosed rooftop deck would add to the perceived height and bulk of the structure and could result in a loss of privacy. Design modifications to reduce the perceived height and bulk of the proposed structure and to minimize visual impacts would be needed to make this finding.

2. *The Project is consistent with the Milpitas Zoning Ordinance.*

As outlined in Table 3 above, the Project does not comply with the development standards of the "H" Hillside Combining District in that the proposed structure would visually intrude into the "crestline zone of protection" area. MMC Section XI-10-45.06-2 defines the crestline zone of protection as "the area westerly of the *perceived* crestline and between the *perceived* crestline and an elevation one hundred (100) feet below. In the area within three hundred (300) feet easterly of the crestline, structure heights shall be restricted so that no structure extends above the crestline sight line." The *perceived* crestline is defined in MMC Section XI-10-45.06-3 as "the crestline identified when viewed from the three (3) closest viewpoints of those nine (9) [viewpoints] shown on the zoning map and designated as "VP."

The proposed structure is located within 300 ft east of the crestline and would be visible from the three closest viewpoints. The height and bulk of the proposed structure intrudes into the crestline sight line. To remedy this situation, the Council may consider granting a Zoning Variance, but separate findings must be made that the project substantially conforms, to the extent feasible, with all other requirements of the Hillside Ordinance, including the site and architectural design guidelines.

3. *The Project is consistent with the Milpitas General Plan.*

See Planned Unit Development Finding No. 3.

Variance Findings (MMC Section XI-10-57.06.F.1):

1. *Due to special circumstances applicable to the subject property including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zone classifications.*

The subject property is one of 34 properties that intersect with the crestline identified on the City of Milpitas Zoning Map. The project site is located within 300 feet easterly of the crestline and at an elevation higher than all adjacent lots to the north and south. Therefore, the strict provision of not allowing structures to intrude into the sight line or be visible from the valley floor would deprive the subject property of the right to develop any structure. The steep slope of the site makes it virtually impossible to build a structure that doesn't intrude into the sight line, and without a Variance, would exclude the subject property from the privileges enjoyed by other properties in the vicinity under an identical zone classification.

2. *The granting of the Variance is necessary for the preservation of a substantial property right possessed by other property in the same vicinity and zone and otherwise denied the subject property.*

The subject property is one of 34 residential lots that intersect with the hillside crestline, and the steep slope of the site makes it virtually impossible to build a structure that doesn't intrude into the 'crestline zone of protection' sight line. Nevertheless, the subject site is a legal lot approved by the City in 1992 as part of PUD No. 68, and the granting of the Variance is necessary to preserve the right to develop the property (Countryside Estates, Lot 1). PUD No. 68 includes a total of six buildable lots, all planned for the development of large single-family residences. In addition to PUD No. 68, there are several other properties in the same vicinity and zoning district that have been similarly developed with large single-family homes.

3. *The required conditions of approval assure that the adjustment authorized will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity subject to the same zoning regulations.*

The Variance would allow an exception to the Hillside Ordinance requirement that within 300 feet easterly of the crestline, structure heights shall be restricted so that no structure extends above the crestline sight line. The perceived crestline is defined as "the crestline identified when viewed from the three closest viewpoints of those nine shown on the zoning map and designated as "VP." The proposed project is located within 300 ft east of the crestline and cross-sectional diagrams by the applicant show that the proposed structure would intrude into the crestline sight line and be highly visible.

The Variance would not allow an exception to the Hillside Ordinance requirement that all new structures must follow the slope of the site to reduce the clearance between ground-floor levels and finish grade to not more than five feet. The Hillside Ordinance also stipulates that any underfloor clearance shall not be enclosed. Granting a Variance to allow an enclosed basement with a clearance of 11 feet would constitute a grant of special privileges that are inconsistent with other properties in the vicinity subject to the same Hillside zoning limitations.

4. *The granting of the Variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

The granting of the Variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, provided that the proposed project is re-designed to minimize visual intrusion into the crestline sight line to the greatest extent feasible. Design measures to minimize nonconformance with the Hillside standards include limiting the size of the residence to no more than 4,000 square feet, eliminating the enclosed basement to reduce the height and bulk of the structure, removing the rooftop deck to protect the privacy of other structures or uses in the area, and incorporating a stepdown roof that follows the downward slope of the lot. The project should also reduce the expansive use of glass windows to reduce glare during the day and highly visible nighttime glow. As required by PUD No. 68, the applicant must install additional trees and landscaping to screen all new structures on the property. This will help mitigate visual impacts to views from the valley floor

5. *The granting of a variance is consistent with the General Plan and the intent of this title.*

PUD No. 68 is generally consistent with the General Plan, which establishes that land uses allowed in the Hillside Area shall be limited to Very Low Density Residential, parks, and open space. The design and layout of streets within PUD No. 68 and the clustering of lots on two cul-de-sacs, helps minimize the alteration of existing landforms and maintain the natural topography of the hillside areas. However, the proposed 5,900-square foot single-family residence intrudes into the Crestline Zone of Protection area and, as stated by the architect, is designed to be highly visible. Thus, the project will significantly alter the visual character of the hillside with little effort made to minimize exposure of the project to off-site public views. Design modifications to reduce the perceived height and bulk of the proposed structure and to minimize visual impacts would be needed to make this finding.

ENVIRONMENTAL REVIEW

The proposed Project is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15270 (Projects Which Are Disapproved). If the project were approved, a finding could be made that the project entails of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The number of structures in the project do not exceed the maximum allowable on effected parcels. The project would be exempt from CEQA pursuant to Cal. Code Regs., tit. 14, § 15303.

PUBLIC COMMENT/OUTREACH

Staff provided public notice for the application in accordance with City and State public noticing requirements. A notice was published in the Milpitas Post on October 6, 2023. In addition, 17 notices were sent to owners and occupants within 500 feet of the project site. A public notice was also provided on the project site, on the City's Website, www.ci.milpitas.ca.gov, and posted at City Hall. At the time of writing this report, there have been four email inquiries from the public. At the September 28, 2022, Planning Commission meeting, four residents spoke in opposition to the proposed project.

POLICY ALTERNATIVE(S):

Alternative 1: Invite the applicant to revise the project for greater conformance to the Hillside Development standards and re-submit for reconsideration by the Planning Commission.

Pros: Redesign of the proposed project would minimize non-conformance from the Hillside development standards and strengthen the findings for approval of a variance. This would streamline the approval process.

Cons: The approval of a non-conforming residence within the City of Milpitas would establish a precedent for approving variances of substantially non-conforming projects.

Reason for Not Recommending: The proposed project does not meet the required findings for approval and is not consistent with the City's goals of supporting the development of non-conforming structures in hillside locations. Both staff and the Planning Commission are recommending the denial of the proposed project.

Alternative 2: Direct staff to draft a resolution to approve the proposed project.

Pros: Increase the City's housing stock and generate revenue in permit fees associated with new construction and increased property valuation.

Cons: The approval of a non-conforming residence within the City of Milpitas would establish a precedent for approving variances of substantially non-conforming projects.

Reason for Not Recommending: The proposed project does not meet the required findings for approval and is not consistent with the City's goals of supporting the development of non-conforming houses in hillside locations. Both staff and the Planning Commission are recommending the denial of the proposed project.

FISCAL IMPACT:

If the Council denies the proposed project, as recommended by the Planning Commission and staff, there will be no fiscal impact. If the Council opts for either of the policy alternatives outlined above, the applicant may apply for building permits and pay applicable fees. The new single-family home would increase the property value and tax revenues but will also increase the demand for City services, including public safety and utilities. The project is located within an existing residential subdivision with existing services available.

RECOMMENDATION:

Hold a public hearing and, by a motion of the Council, uphold a Variance recommendation made by the Milpitas Planning Commission to deny the request for a structure with a height that extends above the Hillside Crestline Zone of Protection Sight Line, as established by the City's Hillside development standards, on a vacant ±1.4-acre lot in the R1-H Single-Family Residential-Hillside Zoning District located at 1339 Terra Vista Court (Countryside Estates, Lot 1).

Attachments:

- A. Planning Commission Resolution No. 22-023 with Recommendation for Denial
- B. Project Plans
- C. Public Comments Received to Date

RESOLUTION NO. 22-023

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THE CITY COUNCIL DENY A SITE DEVELOPMENT PERMIT NO. SD21-0005, PLANNED UNIT DEVELOPMENT AMENDMENT PA21-0001 AND ZONING VARIANCE VA22-0001 TO ALLOW DEVELOPMENT OF A 5,900-SQUARE FOOT SINGLE-FAMILY RESIDENCE, UP TO TWO STORIES IN HEIGHT, WITH AN ENCLOSED BASEMENT, TWO DETACHED ACCESSORY STRUCTURES, AND AN IN-GROUND POOL, ON A VACANT 1.394-ACRE SITE LOCATED IN THE R-1-H SINGLE-FAMILY RESIDENTIAL-HILLSIDE ZONING DISTRICT AT 1339 TERRA VISTA COURT (PUD No. 68 – COUNTRYSIDE ESTATES, LOT 1) (APN: 029-07-009)

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules, and regulations by cities as a means of implementing the General Plan; and

WHEREAS, clear and specific zoning regulations, including development standards and findings for project approval, are important elements in a municipal government’s process of encouraging and approving high-quality development projects that are compatible with surrounding areas; and

WHEREAS, on June 6, 2021, Fumio Suda of Fumio Suda Architect (“Applicant”), submitted an application to allow development of a 5,900-square foot single-family residence, up to two stories in height, and associated site improvements, including an enclosed basement, two detached accessory structures and an in-ground pool, (“Project”) on a vacant 1.394 acre site within Planned Unit Development No. 68 at 1339 Terra Vista Ct (APN: 029-07-009). The Project site is zoned Single Family Residential - Hillside; and

WHEREAS, the proposed Project requires approval of a Site Development Permit (Permit No. SD21-0005) to allow development of a 5,900-square foot single-family residence, up to two stories in height, with an enclosed basement, two detached accessory structures, and an in-ground pool, on a vacant 1.394-acre site located in the R-1-H Single-Family Hillside Zoning District; and

WHEREAS, the proposed Project requires approval of an amendment (Permit No. PA21-0001) to the original Conditions of Approval for Planned Unit Development No. 68 to allow a two-car garage instead of a three-car garage, an increase in the total square footage of the proposed residence from 5,000 square feet to 5,900 square feet, and changes to the exterior materials and finishes; and

WHEREAS, the proposed Project requires approval of a Variance (Permit No. VA22-0001), in accordance with Section XI-10-57.06 of the Milpitas Municipal Code (MMC), to allow a deviation from the hillside development standards of MMC Section XI-10-45.06 (Crestline

Zone of Protection) to allow the height of the proposed structure to extend above the crestline sight line; and

WHEREAS, the Project is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270 (Projects which are Disapproved); and as a separate and independent basis, categorically exempt pursuant to Section 15303 (New Construction and Conversion of Small Structures).

WHEREAS, the Planning Commission is an advisory body to the City Council; and

WHEREAS, on September 28, 2022, the Planning Commission held a duly noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on Project; and

WHEREAS, the Planning Commission has considered all the written and oral testimony presented at the public hearing in making its decision.

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

SECTION 1: Recitals.

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

SECTION 2: CEQA Finding

The Project is exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15303(a) (New Construction or Conversion of Small Structures), which includes development of one single-family residence, or a second dwelling unit, in a residential zone. The proposed Project is a single-family residence and two detached accessory structures are within a residentially zoned area on a legal parcel and none of the exceptions, as specified Section 15300.2 of the CEQA Guidelines that would preclude applicability of this exemption are present.

SECTION 3: Planning Commission Action

The Planning Commission of the City of Milpitas hereby recommends the City Council deny a Site Development Permit No. SD21-0005, Planned Unit Development Amendment PA21-0001, and Zoning Variance VA22-0001 and adopt Resolution No. 22-023, based on the proposed project's non-conformance with the City's hillside development standards and design guidelines.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on September 28, 2022

DocuSigned by:
 Oct-13-2022
 Bill Chuan, Planning Commission Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on September 28, 2022, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Mercedes Albana	X			
Dipak Awasthi	X			
Bill Chuan	X			
Larry Ciardella	X			
Alexander Galang	X			
Sonia Medina-Ashby	X			
Zeya Mohsin	X			

Certificate Of Completion

Envelope Id: 674A8D5AC4F449209E5E855CFFFAB393		Status: Completed
Subject: Complete with DocuSign: Attachment A - PC Resolution 22-023- Denial 101022_CEQA rev.pdf, Attach...		
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Document Pages: 8	Signatures: 2	Envelope Originator:
Certificate Pages: 5	Initials: 0	Elizabeth Medina
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bill_chuan@yahoo.com		Viewed: October 13, 2022 13:26
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Ned Thomas nthomas@ci.milpitas.ca.gov Planning Director Security Level: Email, Account Authentication (None)	COPIED	Sent: October 13, 2022 13:27

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Completed	Security Checked	October 13, 2022 13:27

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

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- ii. send us an email to mluu@ci.milpitas.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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SANJAY MUPPANENI RESIDENCE

**SCOPE OF WORK;
SINGLE RESIDENCE WITH 2 CAR GARAGE
POOL CABANA
POOL, PRIVATE DRIVE WAY WITH LIGHTING
LANDSCAPE AND FENCE/ GATE**

ADU IS NOT IN SCOPE OF THIS ENTITLEMENT APPLICATION.

AN APPROVED AUTOMATIC FIRE SPRINKLER SYSTEM
INFA 130 SHALL BE PROVIDED FOR ALL
STORIES OF THE BUILDING. THE SPRINKLER SPACES
ATTACHED TO THE HOME, POOL, CABANA, ADO, ETC.
WHERE ADDITIONS ARE MADE, EACH ADDITION
SHALL BE PROVIDED WITH AN AUTOMATIC FIRE
WHEN THE BUILDING DEPARTMENT DETERMINES THAT
THE HOME NEEDS TO COMPLY WITH THE CURRENT CAL
FIRE CODE. A MAJOR MAINTENANCE SYSTEM
REMODEL/RENOVATION, CALIFORNIA FIRE CODE
SECTION 903.2 AMENDED BY MILPITAS MUNICIPAL
CODE SECTION 15.0100.

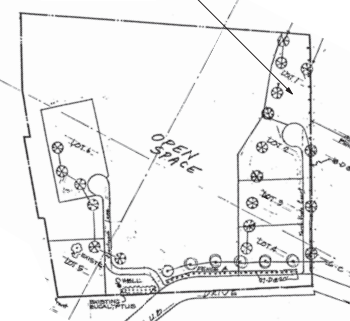
THE BUILDING DEPARTMENT PERMIT-REQUIRED THE MILPITAS FIRE
DEPARTMENT SHALL APPROVE NEW INSTALLATION OF
ALARM AND/OR MONITORING SYSTEMS A SEPARATE
PERMIT SHALL BE OBTAINED FROM THE DEPARTMENT
FOR REVIEW AND APPROVAL PRIOR TO THE
COMMENCEMENT OR ANY WORK. FUC SECTION 912.02

WATER SUPPLY SERVICE TO THE HOME FLUID GRADE (E)
WATER SUPPLY SYSTEM, A NEW WATER SERVICE LINE
BE CONSIDERED AS REQUIRED BY THE CITY OF MILPITAS
ENGINEERING DIVISION.

APPLICABLE CODES AND REGULATIONS

CALIFORNIA FIRE CODE	2019FC
CALIFORNIA BUILDING CODE	2019CB
CALIFORNIA MECHANICAL CODE	2019CM
CALIFORNIA PLUMBING CODE	2019CP
CALIFORNIA ELECTRICAL CODE	2019CE
CALIFORNIA ENERGY CODE	2019CE
CALIFORNIA GREEN BUILDING STANDARD	2019
CALIFORNIA RESIDENTIAL CODE	2019

PROJECT SITE



PARCEL MAP

PROJECT DIRECTORY

THE OWNER
SANJAY MUPPANI

THE ARCHITECT;
FUMIO SUDAARCHITECT
1522 WALNUT STREET, BERKELEY, CA94709
510-220-5436 CELL

THE GOVERNMENT AGENCY;
CITY OF MILPITAS

DRAWING INDEX
DRAWING INDEX

- A-1 TITLE SHEET
- A-2 EXISTING CONDITIONS PLAN
- C-2 DRIVEWAY PLAN
- C-3 GRADING PLAN
- C-4 DRIVEWAY PROFILE AND CROSS SECTIONS
- C-5 SITE CROSS SECTIONS
- C-6 EROSION CONTROL PLAN
- C-7 SIGHTLINE FROM VP1
- C-8 SIGHTLINE FROM VP2
- C-9 SIGHTLINE FROM VP3
- C-10 SIGHTLINE FROM VP4
- C-11 CRISTLINE ZONE OF PROTECTION
- L-1.0 LANDSCAPE PLANTING PLAN
- L-2.0 LANDSCAPE IRRIGATION PLAN
- L-3.0 EXTERIOR LIGHTING PLAN
- L-3.1 LANDSCAPE CONSTRUCTION DETAILS
- L-4.0 LANDSCAPE CONSTRUCTION DETAILS
- L-4.1 LANDSCAPE CONSTRUCTION DETAILS
- L-5.1 LANDSCAPE SPECIFICATIONS
- L-6.0 TREE SCREENING PERSPECTIVES

- A-1.1 BASEMENT FLOOR PLAN
- A-1.2 1ST FLOOR PLAN
- A-7.3 2ND FLOOR PLAN
- A-8 EXTERIOR ELEVATIONS
- A-8.1 EXTERIOR ELEVATIONS
- A-3.2 COLOR AND MATERIAL MAIN HOUSE
- A-5 BUILDING SECTION
- A-6 BUILDING SECTION
- A-10 POOL CABANA
- A-10.1 ADU
- A-10.2 COLOR AND MATERIAL POOL CABANA AND ADU

BUILDING DATA

Impervious Surface	Length	Width	Sft						
Main House	75.67	51.17	3872.03						
Pool Cabana	36.83	16.08	384.74						
Pool	40	15	600						
Total Impervious			4856.77						
Note: Driveway and Hardscaping is pervious as using PCCP Pavers									
Floor Area	Garage	Utility	Storage	Living Area	Balconies/Deck	Stairs	Open To Below	Total	
Basement	622.9	120.7	3128.43						3872.03
First Floor				3137.41	549.93	184.69			3872.03
Second Floor					549.93	184.69			
Total	622.9	120.7	3128.43	5934.77	1099.86	369.38		340.05	

SITE PLAN

NTS

USE OF STRUCTURE	OCCUPAN CY	CONSTRUCTION TYPE
SFD	R-3	V-B
GARAGE	U	V-B
DECK	U	V-B



P-PP20-0001 – 1339 Terra Vista Dr

fumioarchitect.com

1 PLAN CHECK
10-30-21

2 PLAN CHECK
02-27-21

3 PLAN CHECK
06-06-21

4 PLAN CHECK
06-29-22

[illegible]

MUPPANENI RESIDENCE

1339 TERRA VISTA CT,
MILPITAS, CA95035

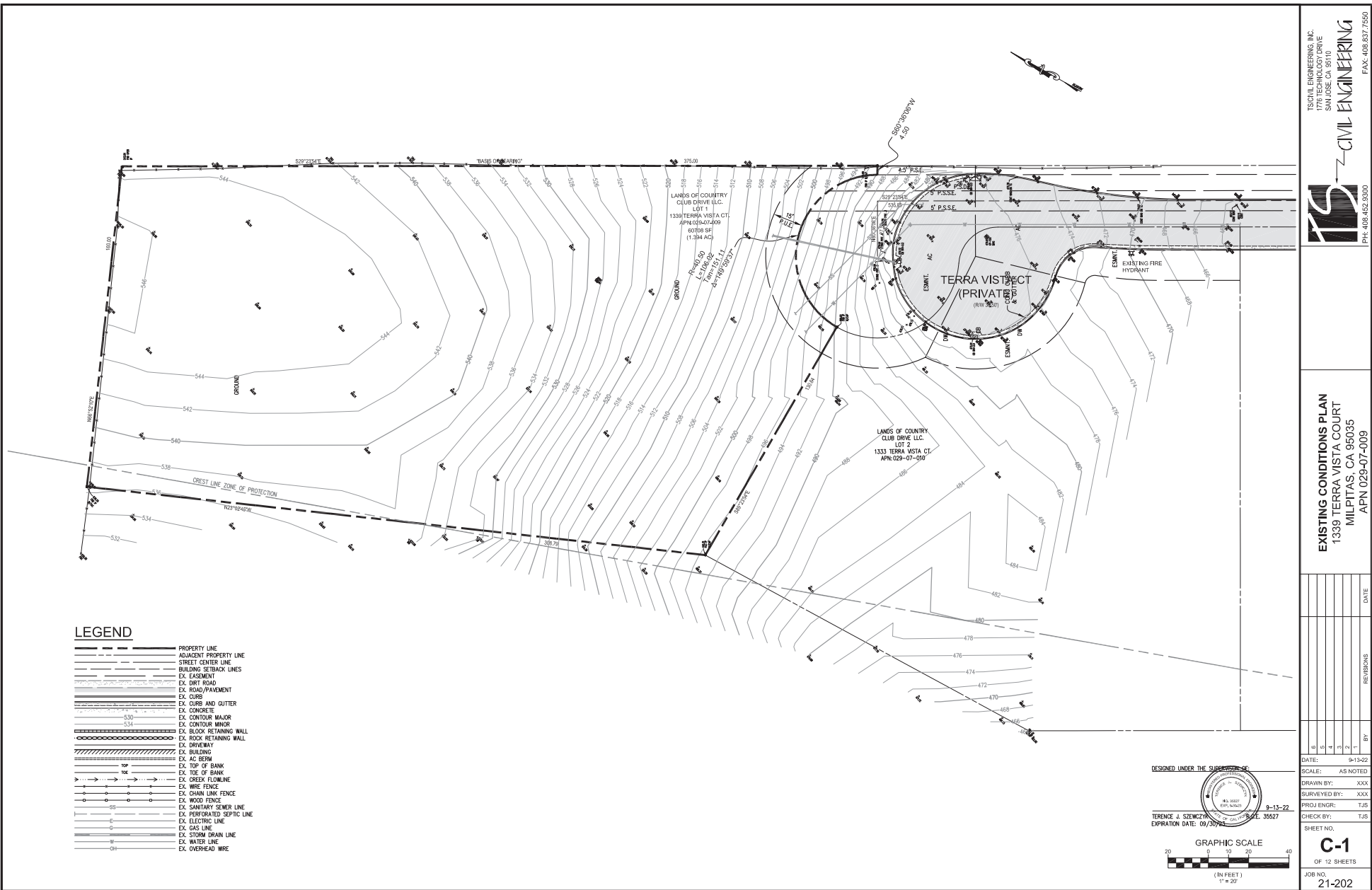
FUMIO SUDA ARCHITECT
1522 WALNUT ST, BERKELEY,
CA 94709
fumiosudaarchitect@icloud.com

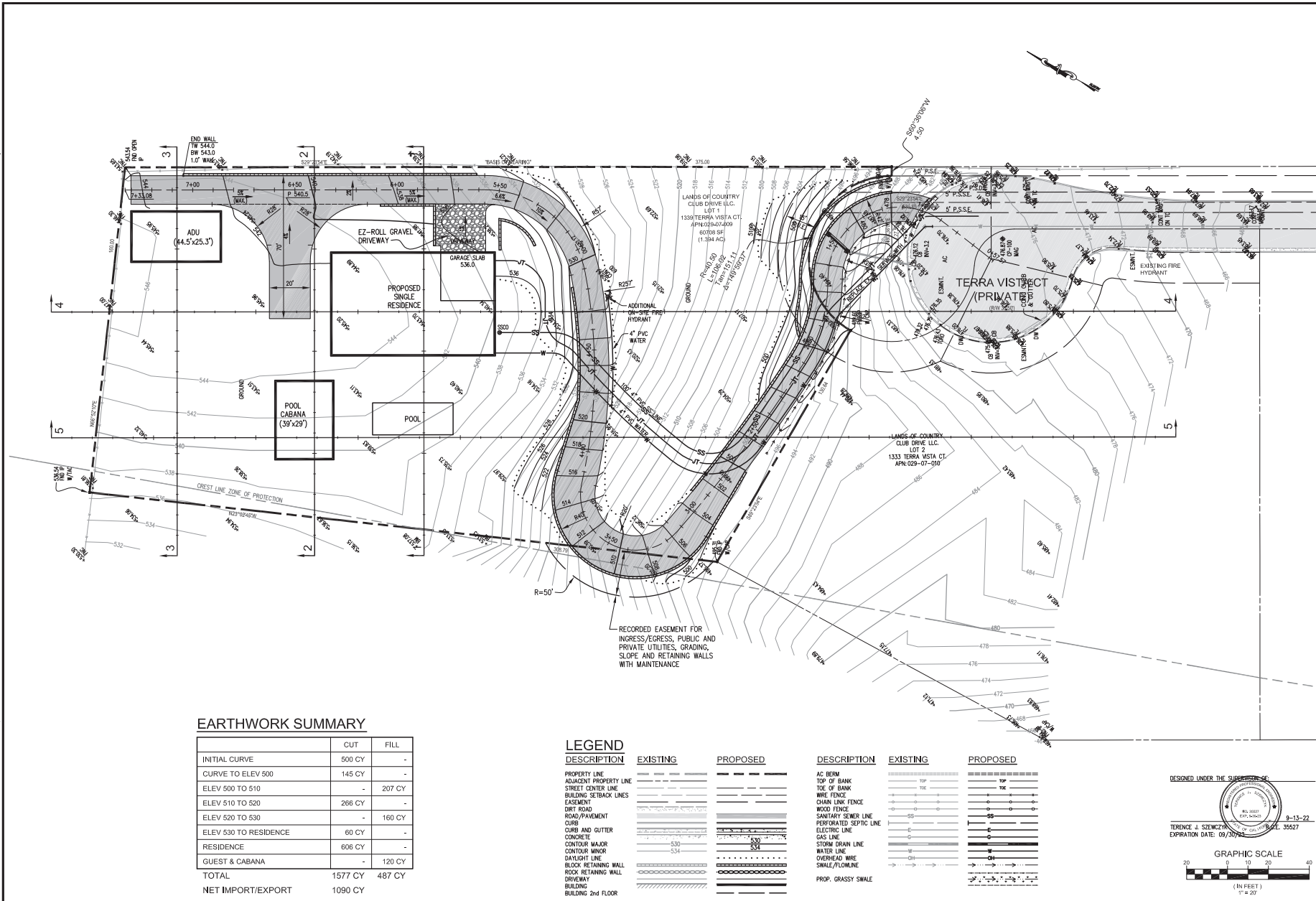
Project number	
Date	
Drawn by	FS
Checked by	FS

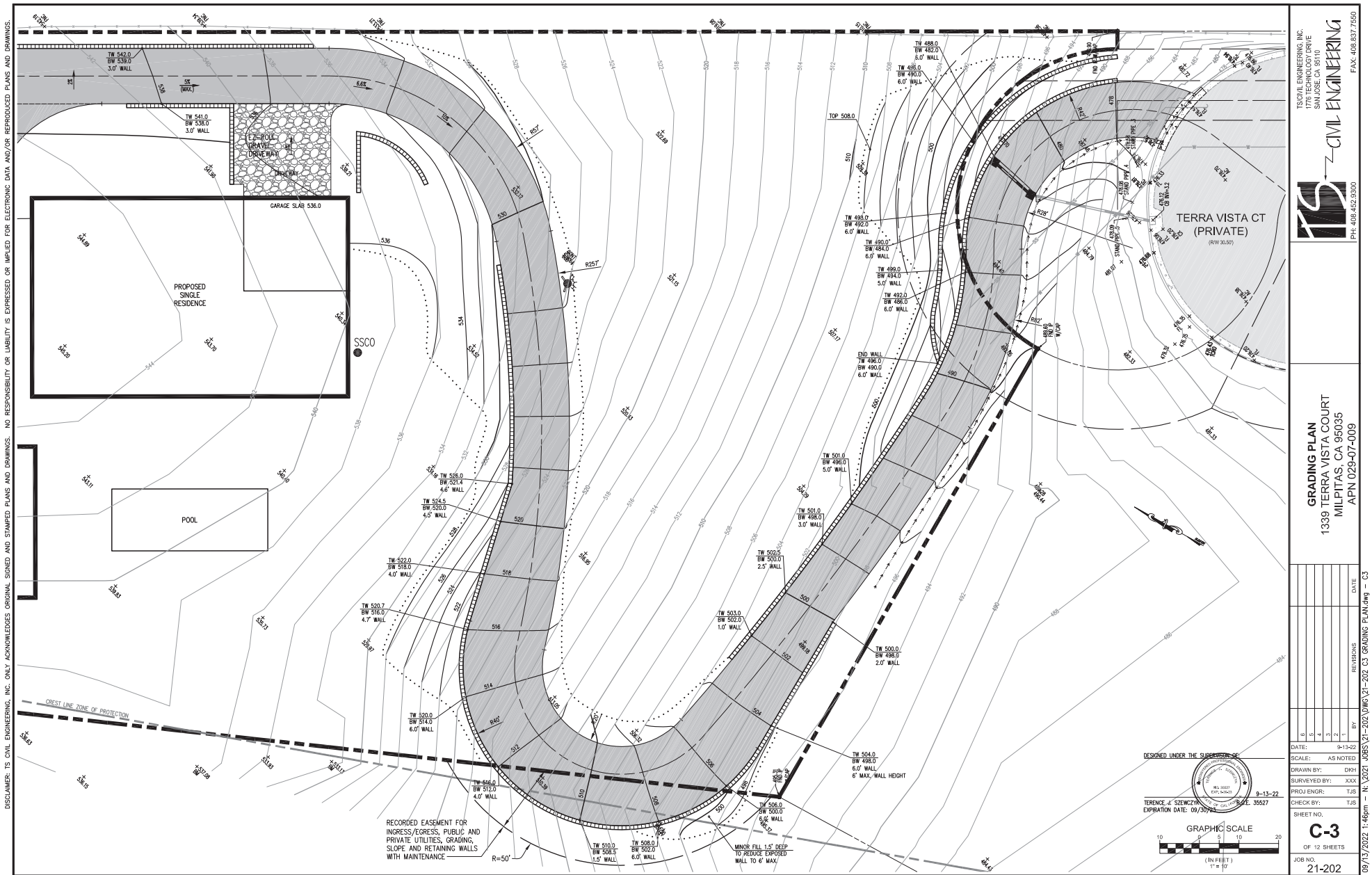
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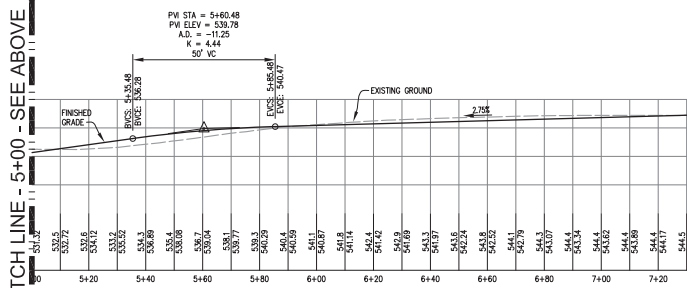
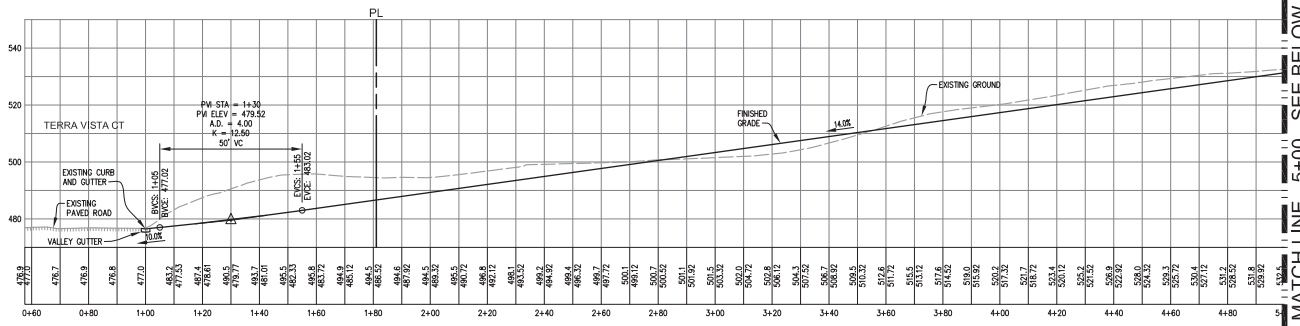
Item # 15.



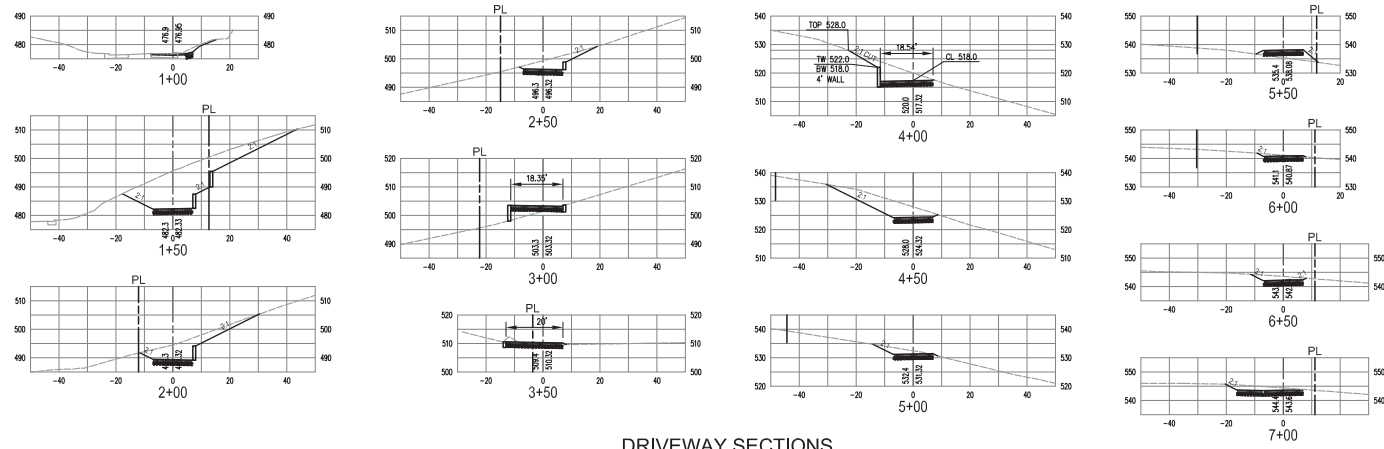




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DRIVEWAY PROFILE
1"=20'



DRIVEWAY SECTIONS
1"=20'

DESIGNED UNDER THE SUPERVISION OF
TERENCE J. SZCZEPAN
EXPIRATION DATE: 09/30/22

9-13-22
35527

GRAPHIC SCALE
(IN FEET)
1" = 20'

TS CIVIL ENGINEERING, INC.
1333 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

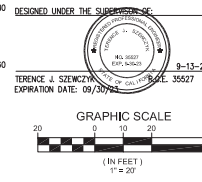
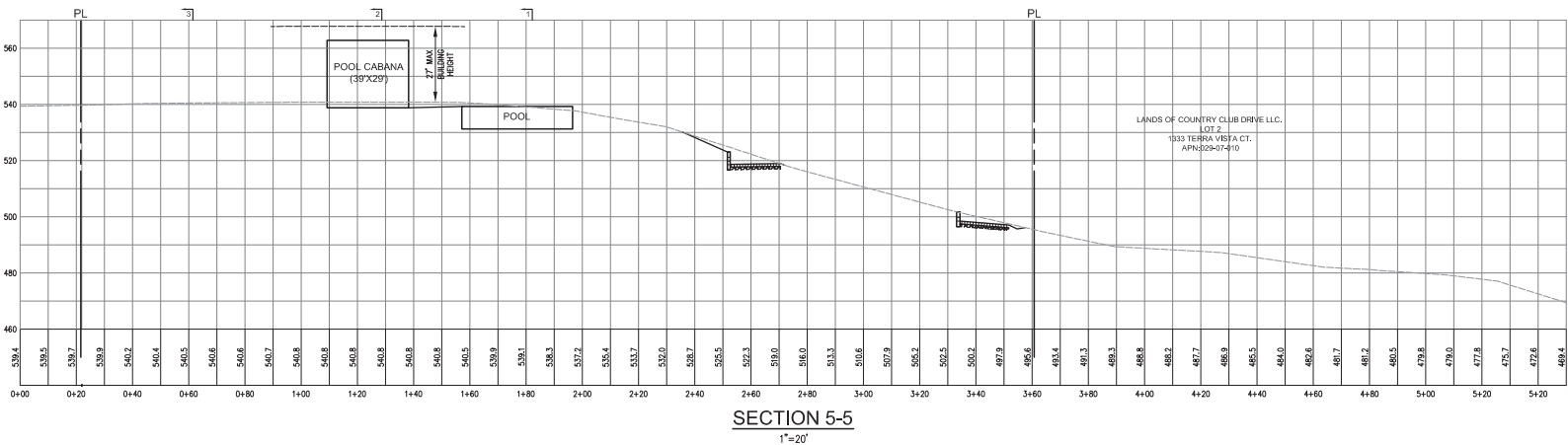
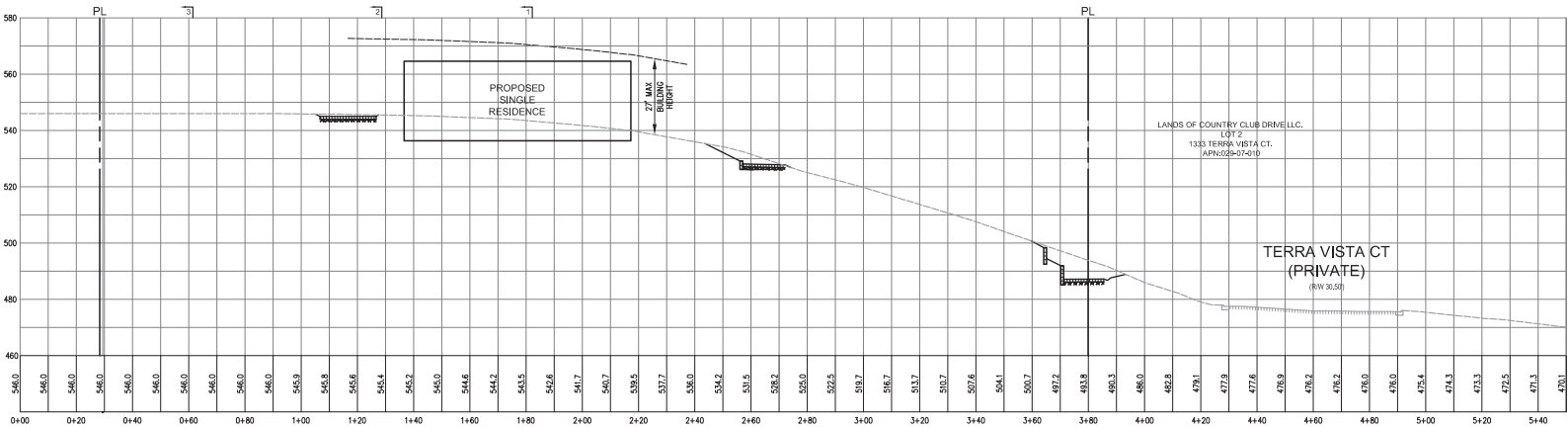
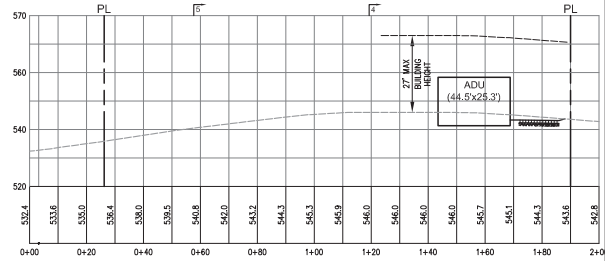
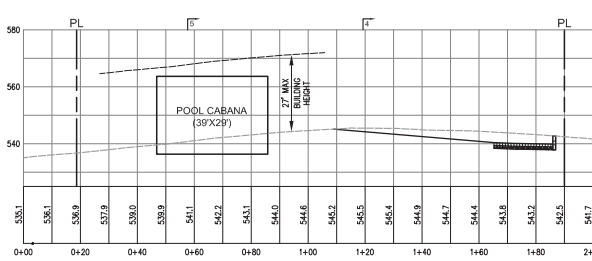
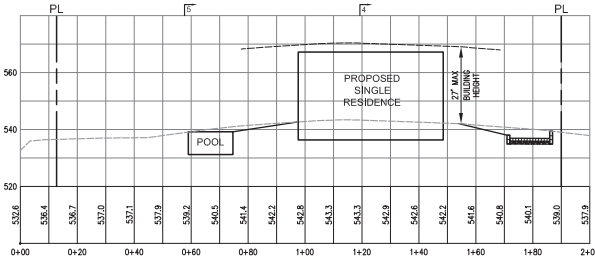
DRIVEWAY PROFILE
AND CROSS SECTIONS
1333 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

TS CIVIL ENGINEERING
1333 TERRA VISTA COURT
SAN JOSE, CA 95110
PH: 408.452.3000
FAX: 408.937.7550

NO.	REVISIONS	DATE
1	BY	
2		
3		
4		

DATE: 9-13-22
SCALE: 1"=20'
DRAWN BY: DRO
SURVEYED BY:
PROJ ENGR: TJS
CHECK BY: TJS
SHEET NO.
C-4
OF 12 SHEETS
JOB NO.
21-202

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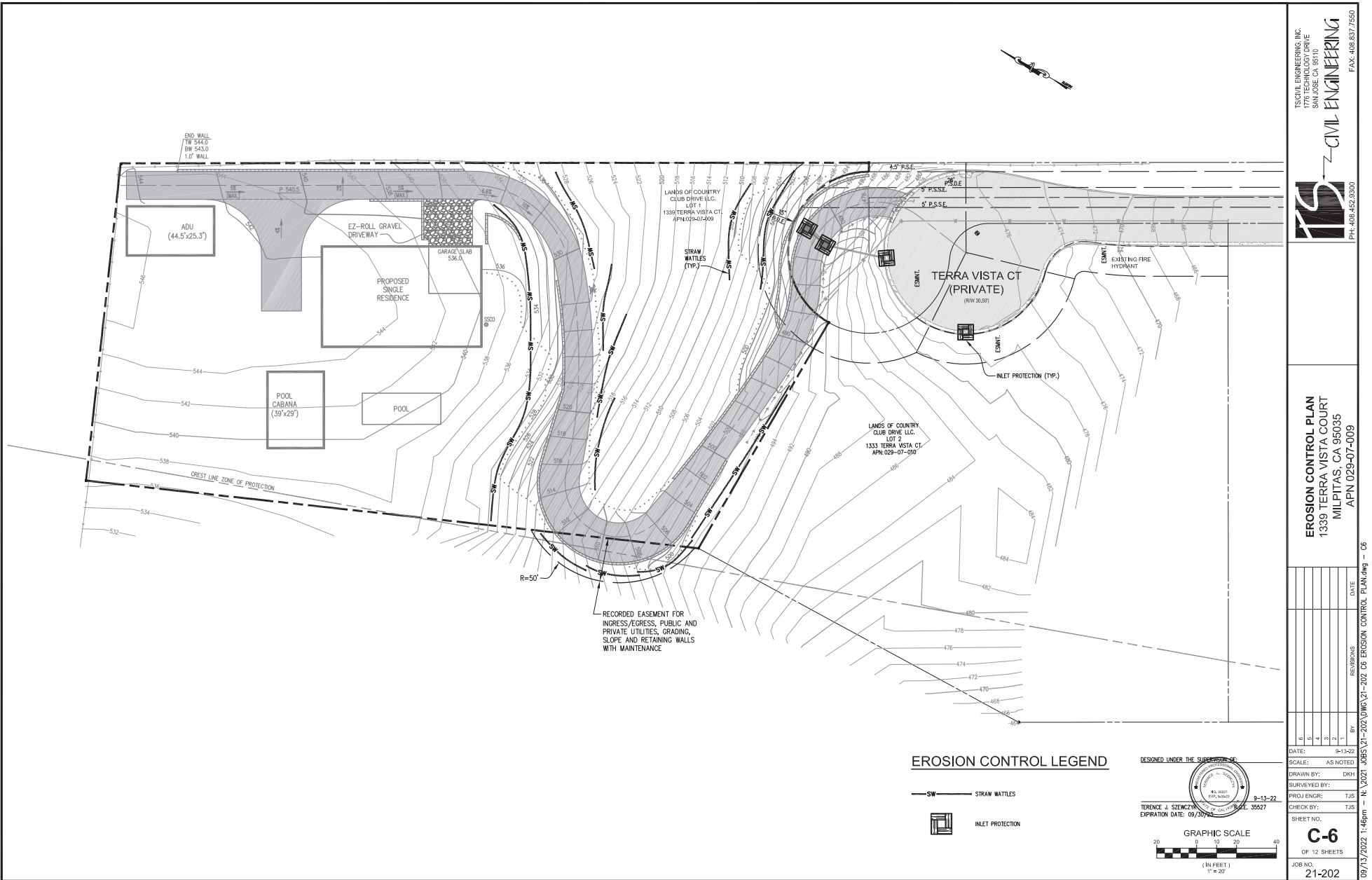


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MILPITAS, CA 95035
APN 029-07-009

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1333 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

DATE: 9-13-22
SCALE: 1"=20'
DRAWN BY: DMO
SURVEYED BY:
PROJ ENGR: TJS
CHECK BY: TJS
SHEET NO. C-5
OF 12 SHEETS
JOB NO. 21-202

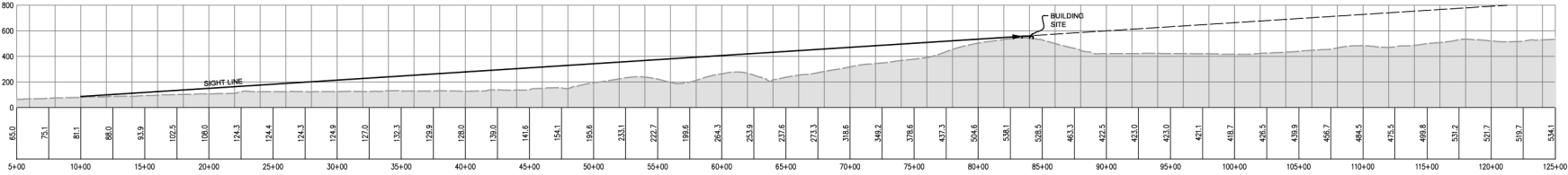
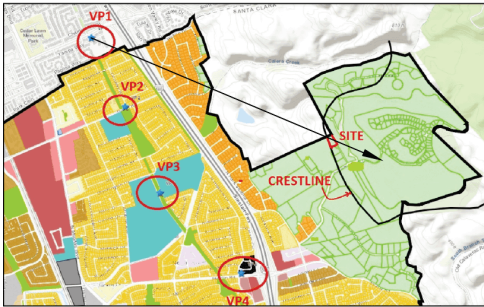
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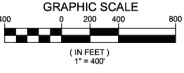


PICTURE FROM VP-1
(SITE NOT VISIBLE FROM VP1 IN THE CITY OF FREMONT)



SIGHTLINE FROM VP-1
1"=200'

DESIGNED UNDER THE SUPERVISION OF
TERENCE J. SEWICK
EXPIRATION DATE: 09/30/2022
NO. 2007
OF 1802
DATE OF CULMINATION: 35527
9-13-22



TS CIVIL ENGINEERING
1339 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

DATE: 9-13-22
SCALE: 1"=400'
DRAWN BY: DGH
SURVEYED BY:
PROJ ENGR: TJB
CHECK BY: TJB
SHEET NO. C7
OF 12 SHEETS
JOB NO. 21-202

REVISIONS
DATE
BY
1
2
3
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5
6

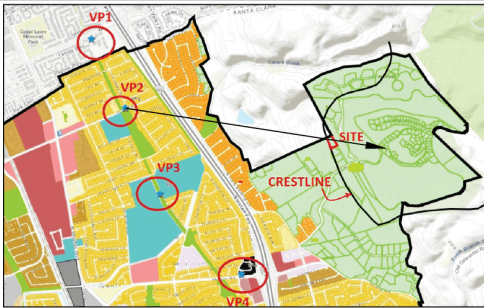
TS CIVIL ENGINEERING, INC.
1339 TERRA VISTA COURT
MILPITAS, CA 95035
PH: 408.452.3300
FAX: 408.837.7590

09/13/2022 1:46pm - R: 2021-0095-21-202 C7 SIGHTLINE FROM VP1.dwg - C7

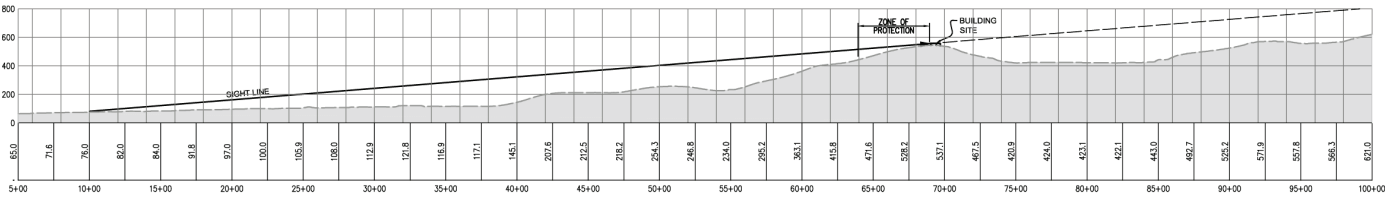
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PICTURE FROM VP-2 (DIXON ROAD)



VEIWPOINT INDEX
NOT TO SCALE



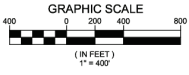
SIGHTLINE FROM VP-2 (DIXON ROAD)

1"=200'

DESIGNED UNDER THE SUPERVISION OF



TERENCE J. SEWICK
EXPIRATION DATE: 09/30/2022



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1339 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

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1339 TERRA VISTA COURT
SAN JOSE, CA 95110
PH: 408.452.3300
FAX: 408.837.7590

NO.	BY	REVISIONS	DATE
6			
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4			
3			
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1			

DATE: 9-13-22
SCALE: 1"=400'
DRAWN BY: DGH
SURVEYED BY:
PROJ ENGR: TJS
CHECK BY: TJS

SHEET NO. **C8**
OF 12 SHEETS
JOB NO. 21-202

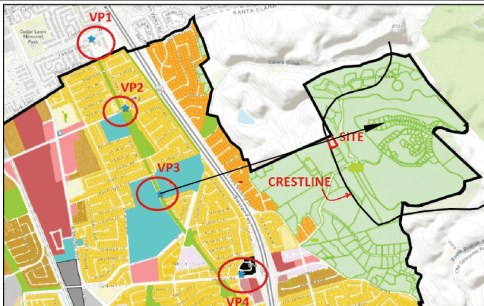
09/13/2022 1:46pm - R: 2021-0085-21-202-03 SIGHTLINE FROM VP2.dwg - C8

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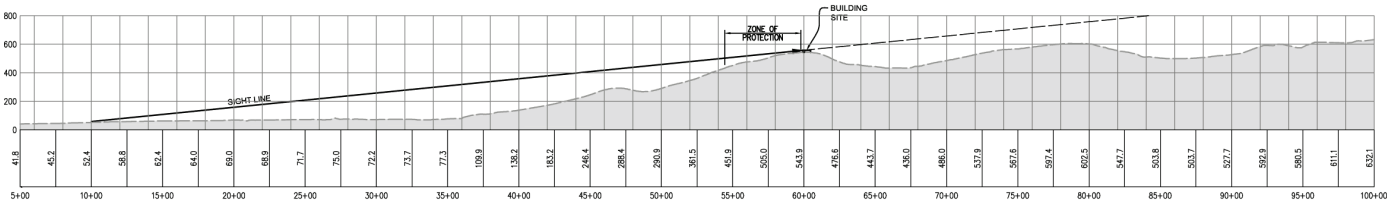
Item # 15.



PICTURE FROM VP-3 (ESCUELA PKWY)

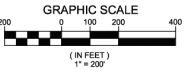


VEIWPOINT INDEX
NOT TO SCALE



SIGHTLINE FROM VP-3 (ESCUELA PKWY)
1"=400'

DESIGNED UNDER THE SUPERVISION OF
TERENCE J. SEWICK
EXPIRATION DATE: 09/30/2022
9-13-22
35527



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1339 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

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MILPITAS, CA 95035
APN 029-07-009

DATE: 9-13-22
SCALE: 1"=400'
DRAWN BY: DGH
SURVEYED BY:
PROJ ENGR: TJS
CHECK BY: TJS

SHEET NO.
C9
OF 12 SHEETS
JOB NO.
21-202

REVISIONS
DATE
BY
1
2
3
4
5
6

09/13/2022 1:47pm - R. 2021-0085-01-202-03 SIGHTLINE FROM VP-3.dwg - C9

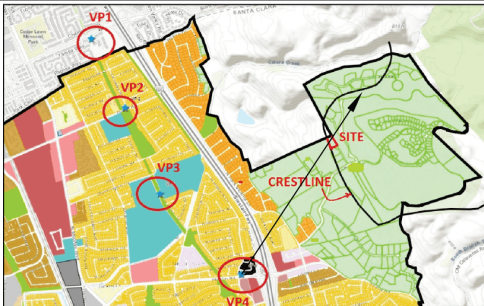
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1339 TERRA VISTA COURT
SAN JOSE, CA 95110
PHONE: 408.452.3300
FAX: 408.837.7590

230

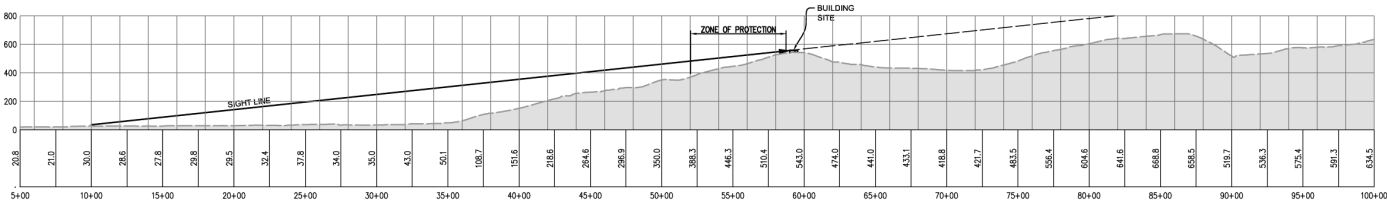
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PICTURE FROM VP4 (JACKLIN ROAD)

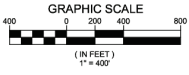


VEIWPOINT INDEX
NOT TO SCALE



SITE LINE FROM VP4 (JACKLIN ROAD)
1"=400'

DESIGNED UNDER THE SUPERVISION OF
TERENCE J. SEWICK
EXPIRATION DATE: 09/30/2022
NO. 2007
EXP. 9/30/22
STATE OF CALIFORNIA: 35527
9-13-22



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1339 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

TS CIVIL ENGINEERING
1339 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

DATE: 9-13-22
SCALE: 1"=400'
DRAWN BY: DGH
SURVEYED BY:
PROJ ENGR: TJS
CHECK BY: TJS

SHEET NO.
C10
OF 12 SHEETS
JOB NO.
21-202

09/13/2022 1:45pm - R:\2021\009\21-202\009\21-202 C10 SITELINE FROM VP4.DWG - C3

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MILPITAS, CA 95035
APN 029-07-009

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MILPITAS, CA 95035
APN 029-07-009

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1339 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

231



DATE		05/13/2022	
REVISIONS		JOBS 21-202 (JUNO 21-202 C11) CRESTLINE ZONE OF PROTECTION	
BY	1	DATE	05/13/2022
6	1	DATE	05/13/2022
5	2	DATE	05/13/2022
4	3	DATE	05/13/2022
3	4	DATE	05/13/2022
2	5	DATE	05/13/2022
1	6	DATE	05/13/2022
DATE:		05-13-22	
SCALE:		AS NOTED	
DRAWN BY:		DGH	
SURVEYED BY:			
PROJ. ENGR:		TJS	
CHECK BY:		TJS	
SHEET NO.			
C-11			
OF 12 SHEETS			
JOB NO.			
21-202			



1339 TERRA VISTA COURT
MILPITAS, CA 95035
APN 029-07-009

ISSUE	DATE
1	---
2	---
3	---
4	---
5	---



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Approved	by	Reviewed	by
Drawn	by	Reviewed	by
Project No.	21.17		
Scale	---	Issue Date	1.17.20

Landscape
Planting Plan

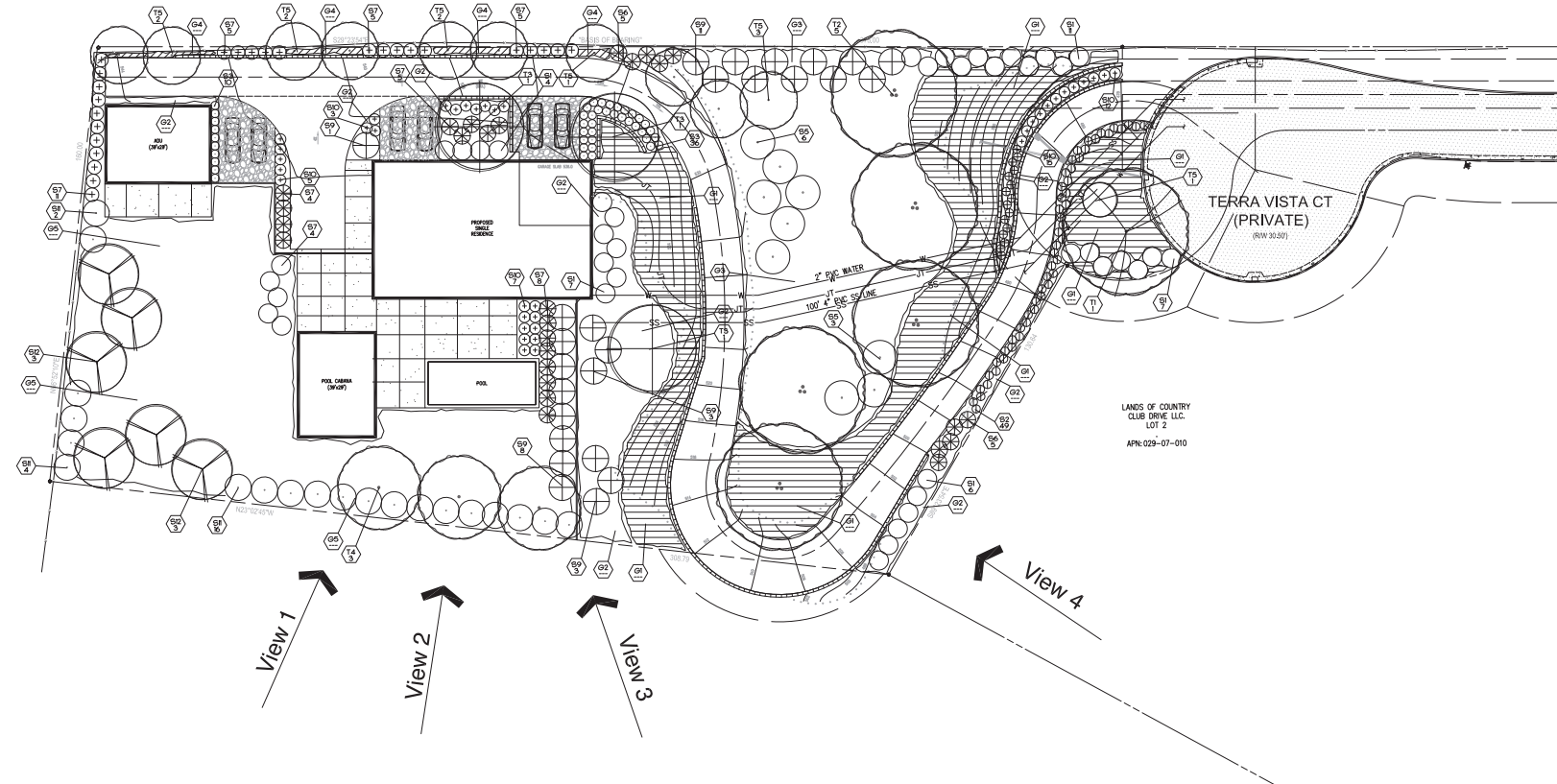
BEFORE EXCAVATING CALL 811
48-HOURS BEFORE ALL
PLANNED WORK OPERATIONS



Know what's below.
Call before you dig.

L1.0

Sheet of



EROSION CONTROL SEED MIX NOTES

- EROSION CONTROL SEED MIX TO BE: (COMBINE BOTH MIXES)
11. CALIFORNIA NATIVE WILDOFLOWER SEE MIX 10 LBS PER ACRE
12. BASIC EROSION CONTROL SEED MIX 40 LBS PER ACRE

SEE MIX AVAILABLE FROM:
6 x 8' SEEDS
INFO@SEEDS.COM
805-664-0436

PLANT LIST:

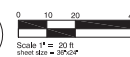
KEY	BOTANICAL NAME	COMMON NAME	QTY	SIZE	REMARKS	WUCOLS
TREES						
NATIVE	QUERCUS BILBOEDESII	SHUMPERD OAK	2	24" BOX	STANDARD	LOW
NATIVE	QUERCUS LAURENTIS	COAST LIVE OAK	8	24" BOX	STANDARD	LOW
NATIVE	QUERCUS OCCIDENTALIS	WESTERN REDWOOD	3	24" BOX	STANDARD	LOW
NATIVE	LAURUS N. SARGENTII	SARGENT LAUREL	3	18" GAL	STANDARD	LOW
NATIVE	LYONOTHEUS FLORIBUNDUS	SANTA CRUZ BROMWOOD	10	18" GAL	NATURAL	LOW
SHRUBS						
NATIVE	ARCTOSTAPHYLOS D. VIGORIS	MICHIN MANZANITA	35	5" GAL		LOW
NATIVE	JUNONIA PATENS	CALIFORNIA GREY RUBUS	44	5" GAL		LOW
NATIVE	HEIGHERIA SANTA ANA GARDEN	SANTA ANA CARNAL CORAL BELLS	36	5" GAL		LOW
NATIVE	PERISTEPHAN H. MARGARITA BOP	BLUE BEEDER	---	5" GAL		LOW
NATIVE	GRANATHEUS LONCHITIS	CALIFORNIA MOUNTAIN LILAC	9	5" GAL		LOW
NATIVE	ARTISTIA POUSS CASTLE	WONWOOD POUSS CASTLE	10	5" GAL		LOW
NATIVE	NUMBERSBURG RUBUS	DEER GRASS	41	5" GAL		LOW
NATIVE	SAVIA CLEVELANDI UNIPINNED GALVAN	BLUE SAGE	---	5" GAL		LOW
NATIVE	RUBUS G. EVE CASE	COFFEEBERRY	50	5" GAL		LOW
NATIVE	LYONOTHEUS	SEA LAVENDER	42	5" GAL		LOW
NATIVE	PRINUS CAROLINIANA	CAROLINA CHERRY LAUREL	14	5" GAL		LOW
NATIVE	LODOCEDEA V. JUMPERA	PURPLE HOPE BUSH	---	5" GAL		LOW
GROUND COVER						
NATIVE	BOCCARNO D. HARTINGTON GARDEN	HUNTINGTON CARPET ROSEMARY	---	1" GAL	36" OC	LOW
NATIVE	BERBERIS REPENS	CHIFFIN BARRBERT	---	1" GAL	24" OC	LOW
NATIVE	GRANATHEUS G. V. RUBUS	YANKEE POINT GRASSHEAT	---	1" GAL	48" OC	LOW
NATIVE	ERIOGONUM G. V. RUBUS	SAN MIGUEL ISLAND BUCKHEAT	---	1" GAL	24" OC	LOW
NATIVE	NATIVE EROSION CONTROL SEED MIX	SEE EROSION SEED MIX NOTES	---	---	---	LOW

PLANT NOTES:

- THE CONTRACTOR SHALL VERIFY PLANT QUANTITIES FROM THE PLANTING PLAN QUANTITIES SHOWN IN THE LEGEND ARE FOR CONVENIENCE ONLY.
- NOTIFY THE LANDSCAPE ARCHITECT IMMEDIATELY IN THE EVENT OF ANY DISCREPANCIES BETWEEN ACTUAL SITE CONDITIONS AND THE PLANTING PLAN.
- PLANT GROUNDCOVER IN SHADE AREAS AS NOTED, USE TRIANGULAR SPACING.
- SEE DETAIL AND SPECIFICATION SHEETS FOR ADDITIONAL INFORMATION.
- THERE WILL BE NO MATERIALS OR PLANT MATERIALS SUBSTITUTIONS WITHOUT APPROVAL OF THE OWNER OR THE LANDSCAPE ARCHITECT.
- PROVIDE POSITIVE DRAINAGE AWAY FROM ALL BUILDINGS (25 MIN).
- IN THE EVENT OF ANY DISCREPANCIES BETWEEN THIS PLAN AND ACTUAL SITE CONDITIONS, THE LANDSCAPE ARCHITECT IS TO BE NOTIFIED IMMEDIATELY.
- LANDSCAPE CONTRACTOR IS TO FINE GRADE ALL LANDSCAPE AREAS.
- ALL SITE UTILITIES ARE TO BE PROTECTED DURING CONSTRUCTION. IN THE EVENT OF CONFLICT BETWEEN THE PLANS AND UTILITIES THE CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT. ANY DAMAGE TO UTILITIES, STRUCTURES, OR OTHER FEATURES TO REMAIN AND CAUSED BY THE LANDSCAPE CONTRACTOR SHALL BE REPLACED OR REPAIRED BY THE CONTRACTOR AT NO EXPENSE TO THE OWNER.
- THE WORK IN THESE DRAWINGS AND SPECIFICATIONS MY RUN CONCURRENTLY WITH WORK BY OTHERS. THE LANDSCAPE CONTRACTOR SHALL COORDINATE THE WORK WITH OTHER CONTRACTORS.
- PRIOR TO ANY DIGGING OR TRENCHING, CALL UNDERGROUND SERVICE ALERT (800) 222-8000.
- A MINIMUM OF 3" DEPTH LAYER OF MULCH IS REQUIRED ON ALL EXPOSED PLANTING SURFACES.

PLANT SYMBOLS

- INDICATES PLANT KEY
 INDICATES PLANT QUANTITY





REED ASSOCIATES
LANDSCAPE ARCHITECTURE
1000 Park Dr., Suite 200, San Jose, CA 95128
408.281.1111 / 408.281.1112

1339 TERRA VISTA CT
MILPITAS, CA 95035
APN 029-07-009

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Project No.	21.17
Scale	---
Issue	Date 1.17.2

Landscape
Hydrozone Plan

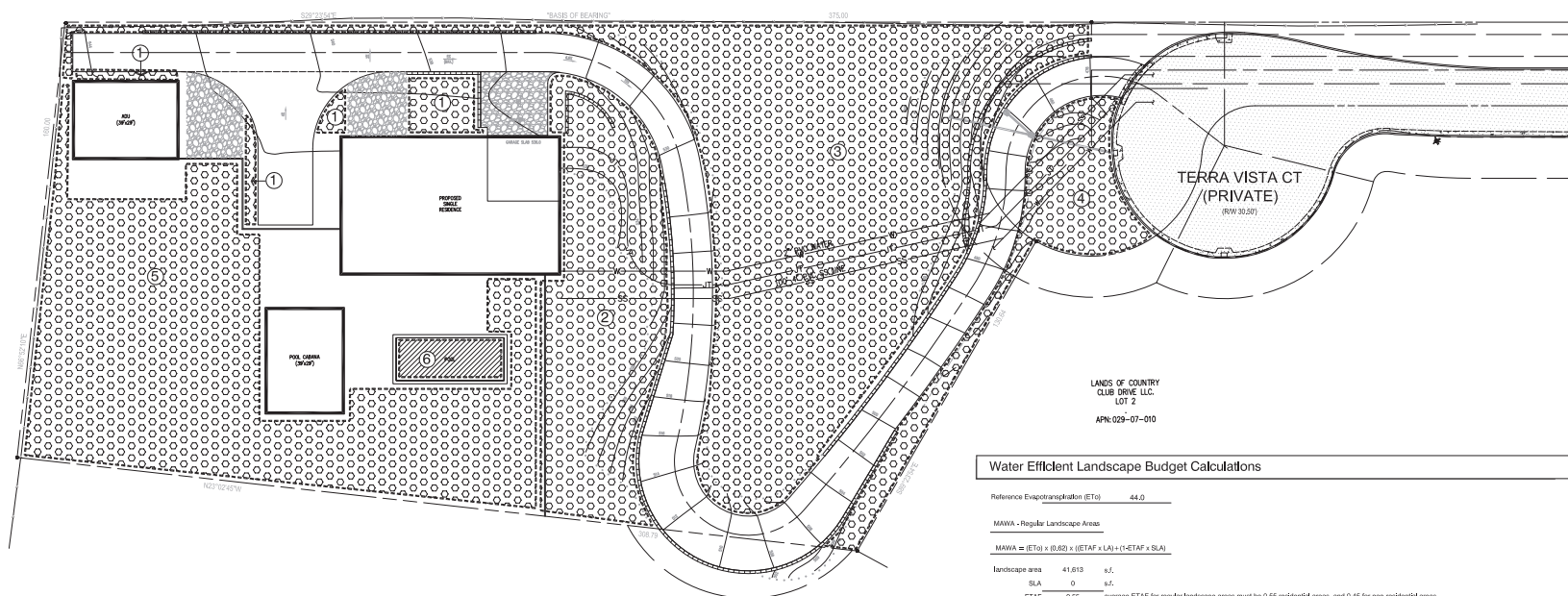
BEFORE EXCAVATING CALL 811
- 4 HOURS BEFORE ALL
PLANNED WORK OPERATIONS



Know what's below.
Call before you dig.

L2.0

Sheet of



Water Efficient Landscape Budget Calculations

Reference Evapotranspiration (ET₀) 44.0

MAWA - Regular Landscape Areas

$$MAWA = (ET_0) \times (0.62) \times ((ETAF \times LA) + (1-ETAF \times SLA))$$

Landscape area 41,613 s.f.

SLA 0 s.f.

ETAF 0.25 average ETAF for regular landscape areas must be 0.55 residential areas, and 0.45 for non-residential areas.

total area 41,613

maawa total 624,361 gallons per year

ETWU - Regular Landscape Areas

$$ETWU = (ET_0) \times (0.62) \times ((ETAF \times LA) + (SLA))$$

hydro-zone number	plant water use	plant factor (PF)	irrigation method	irrigation efficiency	ETAF (PF/0.62)	hydro-zone area	ETAF x Area	ETWU
1	low	0.2	drip	0.81	0.247	9,391	575.6	15,761
2	low	0.2	drip	0.81	0.247	6,816	1,686.5	42,543
3	low	0.2	drip	0.81	0.247	16,532	4,082	111,306
4	low	0.2	drip	0.81	0.247	2,823	687	18,015
5	low	0.2	drip	0.81	0.247	18,106	3,236	80,779
6	high	1.0	---	1.00	1.000	506	506	13,804
SLA	---	1.0	over head	1.00	1.000	0	0	0

ETWU totals 41,613 10,655.9 290,692
Total area with all zones and SLA 41,613

ETAF calculations

total ETAF x area 10,655.9

total area 41,613 s.f.

average ETAF 0.256 Average ETAF for Regular Landscape Areas must be 0.55 or below for residential areas, and 0.45 or below for non-residential areas.

ETWU calculations

$$ETWU = (ET_0) \times (0.62) \times ((PF \times HA) / RE) + SLA$$

ET₀ 44.00 conv. factor .62 PF x Area/RE 10,655.9 SLA 0

ETWU (gallons per year) 290,692

TOTALS

MAWA total 624,361 gallons per year

ETWU total 290,692 gallons per year

53.4

Percentage reduction of Potable Irrigation Water

Note: Zone 'A' not included in water calculations



0 10 20 40
Scale 1" = 20 ft.
sheet size = 30" x 42"

IRRIGATION HYDRO-ZONE LEGEND

PLANTS ARE GROUP TO HAVE MATCHING WATER REQUIREMENTS AND MICRO-CLIMATE CHARACTERISTICS. HYDROZONE DESIGNATION IS DETERMINED BY HIGHEST WATER REQUIREMENT PLANTING IN ZONE.



HIGH WATER REQUIREMENT (POOL)

LOW WATER REQUIREMENT (DROUGHT TOLERANT PLANTING)

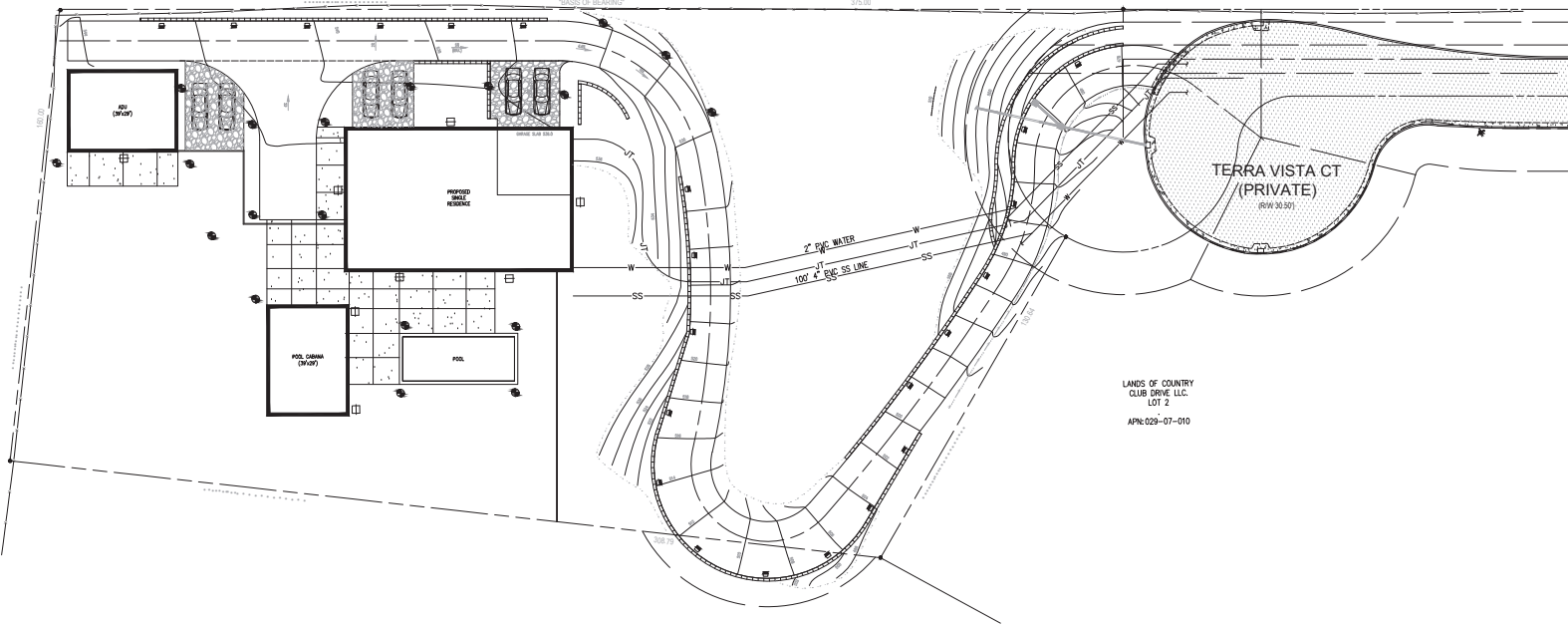
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Approved	By
Drawn	By
Project No.	21.17
Scale	1"=20'
Issue Date	11/17/20

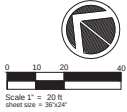
Exterior Lighting Plan

L3.0



LIGHT SYMBOLS

- 'TRU-SCAPES' - LOW VOLTAGE STEP/WALL LIGHT A6000 SERIES
- 'DOME PATH LIGHT-SHORT' BY KICHLER
- 'ELISEO' LED OUTDOOR WALL LIGHT BY LUXE



BEFORE EXCAVATING CALL 811
48 HOURS BEFORE ALL
PLANNED WORK OPERATIONS
811
Know what's below.
Call before you dig.

Eliseo LED Outdoor Wall Light
By Luxe

Details

Finish: Textured Architectural Bronze

Dimensions

Product ID: ELISEO-LED-OUTDOOR-WALL-LIGHT

Rating: ETL Listed

Item #: ETL180804

Dome Path Light-Short
By Kichler

Details

Finish: Textured Architectural Bronze

Dimensions

Product ID: DOM-PATH-LIGHT-SHORT

Rating: ETL Listed

Item #: K133266

PRODUCT SPECIFICATIONS

TRU-SCAPES

Low Voltage Landscape Lighting
Step / Wall Light - A6000 Series

Product Description

The A6000 Series is a low voltage landscape lighting fixture designed for step and wall applications. It features a modern, minimalist design with a textured finish. The fixture is made of high-quality materials and is designed to be durable and long-lasting. It is suitable for use in a variety of outdoor settings, including gardens, patios, and walkways.

Product Dimension

Length: 12" (305mm)
Width: 4" (102mm)
Height: 4" (102mm)

Features & Benefits

- Low voltage landscape lighting fixture designed for step and wall applications.
- Modern, minimalist design with a textured finish.
- High-quality materials and construction for durability and long-lasting performance.
- Easy to install and maintain.

Warranty

The A6000 Series is covered by a 5-year warranty against manufacturing defects. This warranty is valid only if the fixture is used in accordance with the manufacturer's instructions.

Certifications

ETL Listed

www.Tru-Scapes.com



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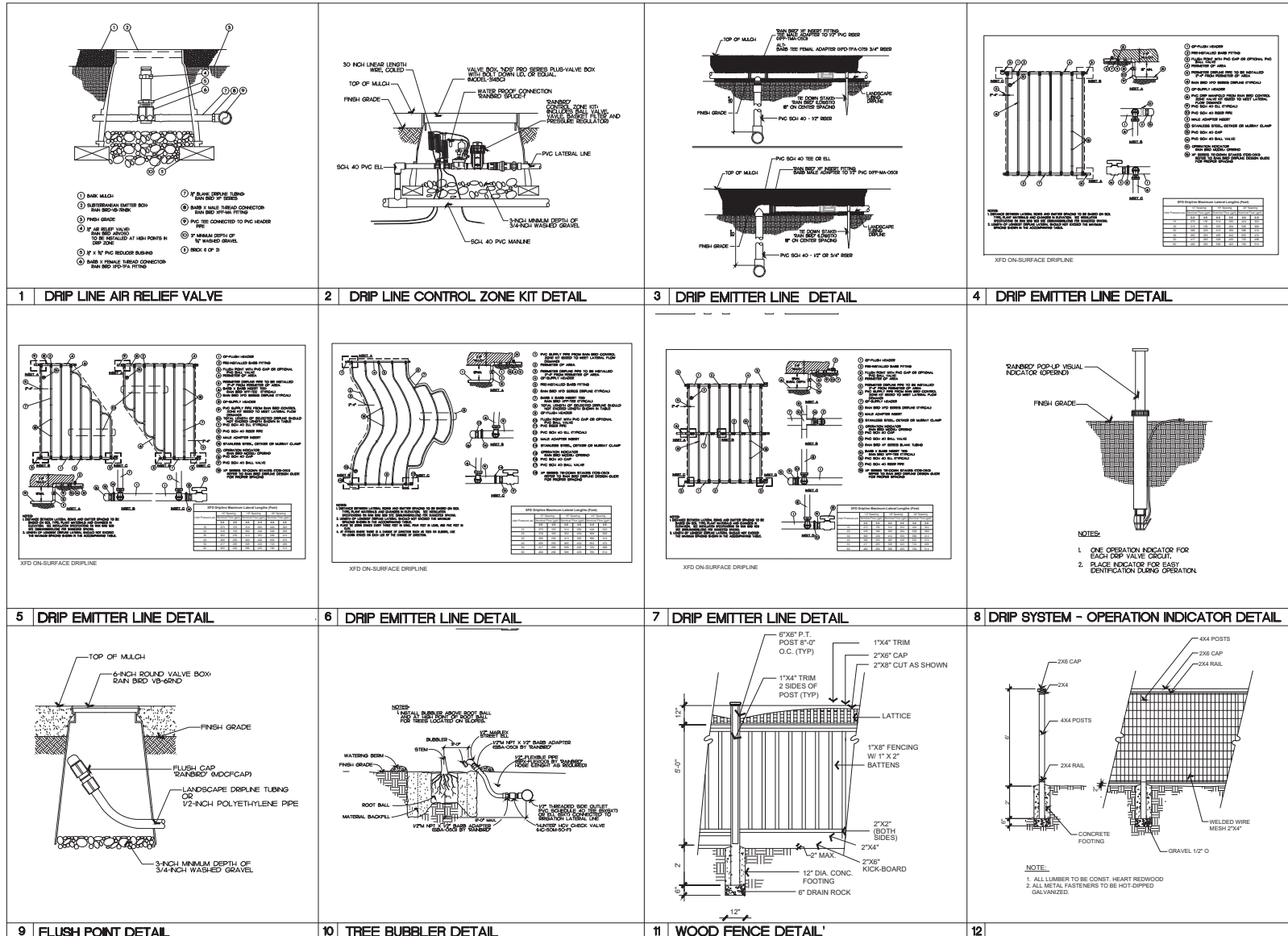
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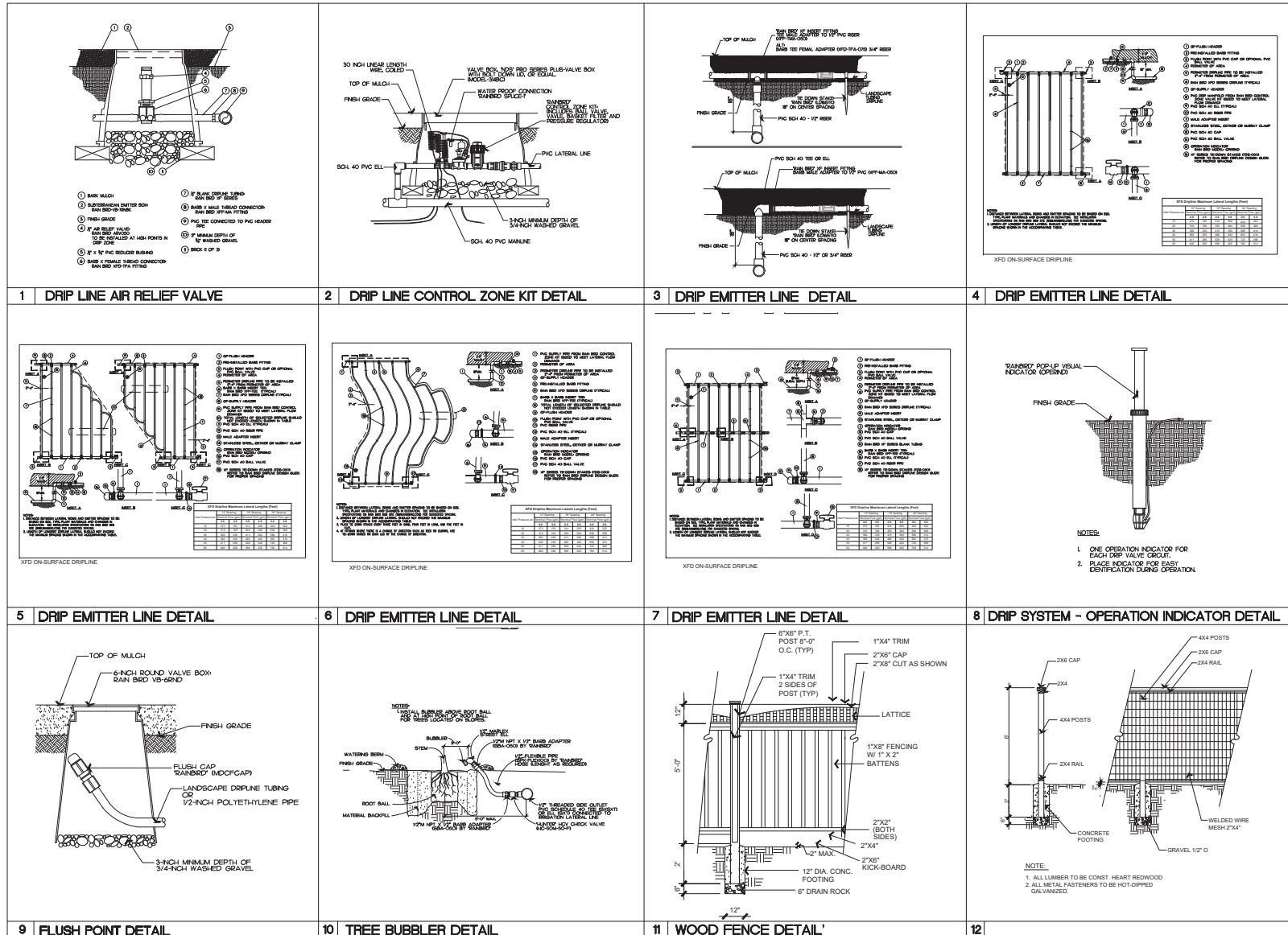
Landscape
Construction
Details

L3.1

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1 IRRIGATION HEAD DETAIL	2 IRRIGATION CONTROL VALVE DETAIL	3 QUICK-COUPLER DETAIL	4 BACKFLOW PREVENTER DETAIL
5 'BENDABOARD' LAWN HEADER (OR EQUAL) DETAIL	6 TREE PLANTING DETAIL	7 TREE ROOT BARRIER DETAIL	8 SHRUB PLANTING DETAIL
9 GROUND COVER SPACING	10 IRRIGATION TRENCH DETAIL	11 GATE DESIGN	12



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Details

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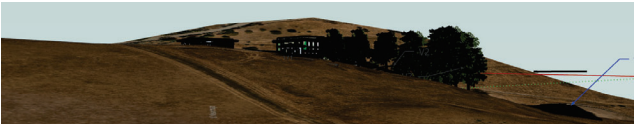
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LANDSCAPE SPECIFICATIONS		1. WARRANTY		C. CONTROL WIRE		F. IRON SULFATE	
IRRIGATION SPRINKLER SYSTEM AND LANDSCAPE PLANTING		A. FURNISH ORIGINATOR WITH GUARANTEE THAT IRRIGATION SPRINKLER SYSTEM IS FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP AND THE WORK HAS BEEN COMPLETED IN ACCORDANCE WITH THESE SPECIFICATIONS AND ALL APPLICABLE LOCAL, STATE AND FEDERAL LAWS.		1. TYPE: CONTROL WIRE, REMOTE CONTROL, SERIES, ULL APPROVED TYPE 1/4" MINIMUM OF 1750 PSI NOMINAL TENSILE STRENGTH, CONDUCTS WATER MANUFACTURER'S CURRENT RATING. 2. COMMON RETURN WIRE = WHITE, PLOT WIRE = RED, ORANGE, OR BLACK. 3. MAKE SPEAKERS WITH "SOOTH LOON" NO. 3577 CONNECTOR SEALS PACKS, OR APPROVED EQUIVALENT. 4. SPRINKLER HEADS, REMOTE CONTROL VALVES, AUTOMATIC CONTROLLER, QUICK COUPLER 1. TYPE, SIZE, AND LOCATION INDICATED IN DRAWINGS. 2. LOCATE REMOTE CONTROL VALVES AND QUICK COUPLERS A MAXIMUM OF 12 FEET FROM CURB, WALL, OR OTHER OBSTACLE. 3. LOCATE REMOTE CONTROL VALVES AND QUICK COUPLERS A MAXIMUM OF 12 FEET FROM CURB, WALL, OR OTHER OBSTACLE. 4. BACKFLOW PREVENTION 1. BACKFLOW PREVENTION AS INDICATED IN DRAWINGS OR AS APPROVED BY LOCAL GOVERNING BODY. 2. DO NOT LOCATE IN LAWN AREAS. 3. EXPOSED LINE WITH PLANT MATERIAL, SOUP ON PLANTING PLANT IN LOCATION OF BACKFLOW PREVENTION OR EXPOSED LINE OR DIRECTED BY LANDSCAPE ARCHITECT. 4. AVOID USING PVC PIPING IN BACKFLOW PREVENTION ASSEMBLY. 5. VALVE BOXES 1. CONTROL VALVE BOXES, METRIC NO. 10-75-00 WITH GREEN COVER LD NO. 10-123-00, OR LOCAL, PROVIDED BY MANUFACTURER. 2. LANDSCAPE PLANTING MATERIALS A. SOIL 1. EXISTING SURFACE SOIL, UNLESS OTHERWISE INDICATED IN DRAWINGS, FREE FROM STONES, RUBBER, RUBBER, HEAVY OR STIFF CLAY, ROCKS, STICKS, BRUSH OR OTHER OBSTRUCTIVE MATERIALS. 2. NATIVE SOIL, MATERIAL EXCAVATED FROM PLANTING HOLES, FREE FROM ROCK OR 1/2 INCH DIAMETER. 3. IMPORTED SOIL, IF REQUIRED, SANDY LOAM TEXTURE. 4. SOIL SAMPLES AND ANALYSIS OF IMPORTED SOIL TO DETERMINE SOIL TYPE, PH, AND NUTRIENT CONTENT. 5. SHOULD LANDSCAPE ARCHITECT REQUEST ANY PORTION OF SOIL TO BE ANALYZED FOR PH, NUTRIENT CONTENT, OR OTHER FACTORS, THE ANALYSIS SHALL BE THE RESPONSIBILITY OF THE LANDSCAPE ARCHITECT FOR ANALYSIS WITHOUT ADDITIONAL COST TO OWNER. 6. ORGANIC FERTILIZERS AND SOIL AMENDMENTS 1. COMMERCIAL GRADE ORGANIC FERTILIZERS AND SOIL AMENDMENTS, UNIFORM IN COMPOSITION, DRY AND FREE-FLUORINATED, DELIVERED TO SITE IN ORIGINAL, UNOPENED CONTAINERS, EACH BEARING THE MANUFACTURER'S GUARANTEE. 2. MATERIAL, WHICH BECOMES DAMP OR OTHERWISE DAMAGED, MAKING IT UNSUITABLE FOR USE, WILL BE REJECTED. 3. FERTILIZER "A": ORGANIC FERTILIZER FOR GENERAL SOIL FERTILITY IMPROVEMENT IN ALL AREAS. FERTILIZER TO BE APPLIED TO LAWN AREAS PRIOR TO SEEDING OR SOILING SHALL BE GRANULATED/FERTILIZED TYPE HAVING A N-P-K OF 20-20-20 FORMULA. 4. FERTILIZER "B": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS PRIOR TO SEEDING OR SOILING SHALL BE GRANULATED/FERTILIZED TYPE HAVING A N-P-K OF 20-20-20 FORMULA. 5. FERTILIZER "C": ORGANIC FERTILIZER TO BE INCORPORATED IN GRAZED PLANT BED SHALL BE A N-P-K OF 20-20-20 FORMULA. 6. FERTILIZER "D": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 7. FERTILIZER "E": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 8. FERTILIZER "F": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 9. FERTILIZER "G": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 10. FERTILIZER "H": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 11. FERTILIZER "I": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 12. FERTILIZER "J": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 13. FERTILIZER "K": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 14. FERTILIZER "L": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 15. FERTILIZER "M": ORGANIC FERTILIZER TO BE APPLIED TO LAWN AREAS AFTER TURF IS LAYED. 16. 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1. GENERAL		B. PROVIDE GUARANTEE FOR REPAIR OR REPLACEMENT OF DEFECTS IN MATERIALS OR WORKMANSHIP. SETTING OF BACKFILL TRENCHES OF REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. PROVIDE REPAIRS OR REPLACE DAMAGE TO EXISTING MATERIALS OR WORKMANSHIP. 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1 GOOGLE EARTH VIEW
Scale: NTS



V1



V2



V3



V4

1339 TERRA VISTA COI
MILPITAS, CA 95035
APN 029-07-009

ISSUE	DATE
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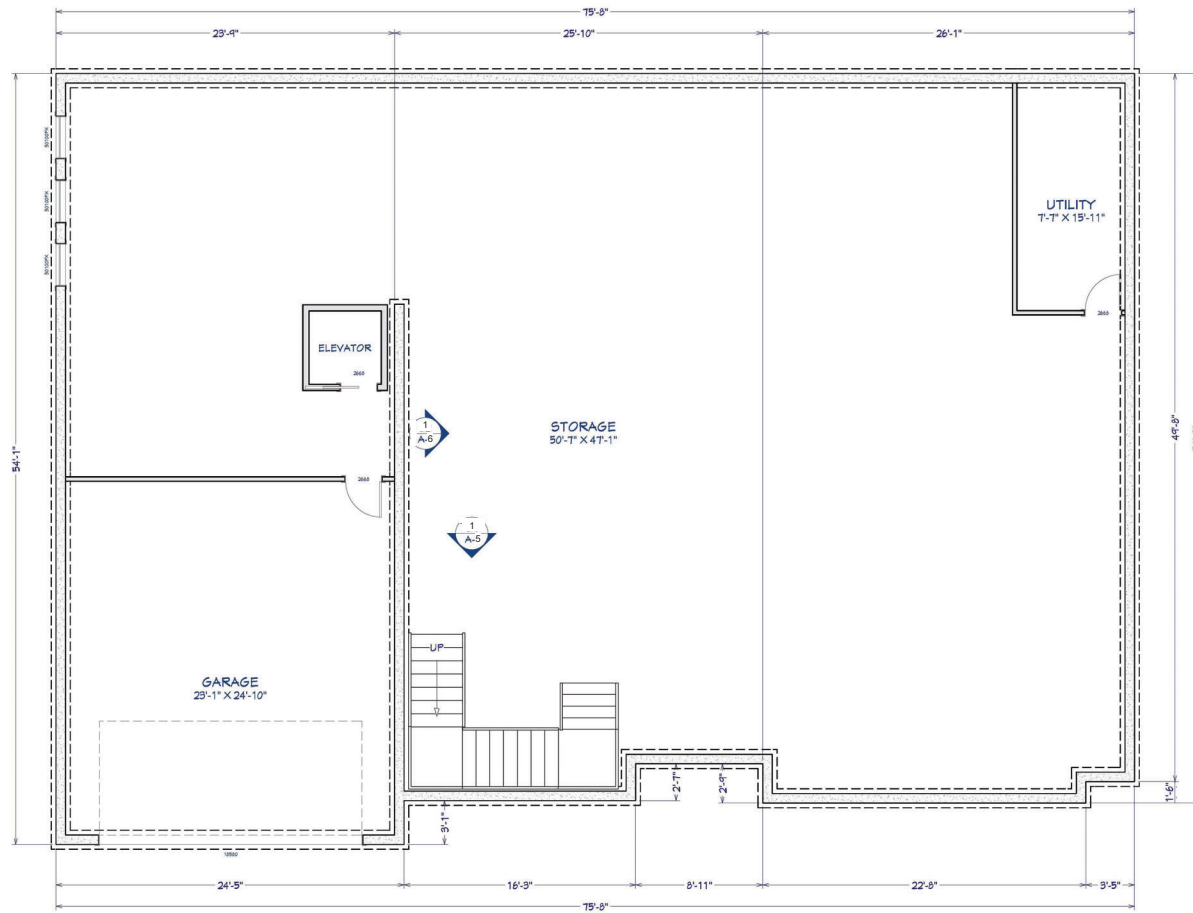
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VIEW POINT

L-6.0

Sheet of



BASEMENT PLAN

1/4"=1'-0"



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CA 94709
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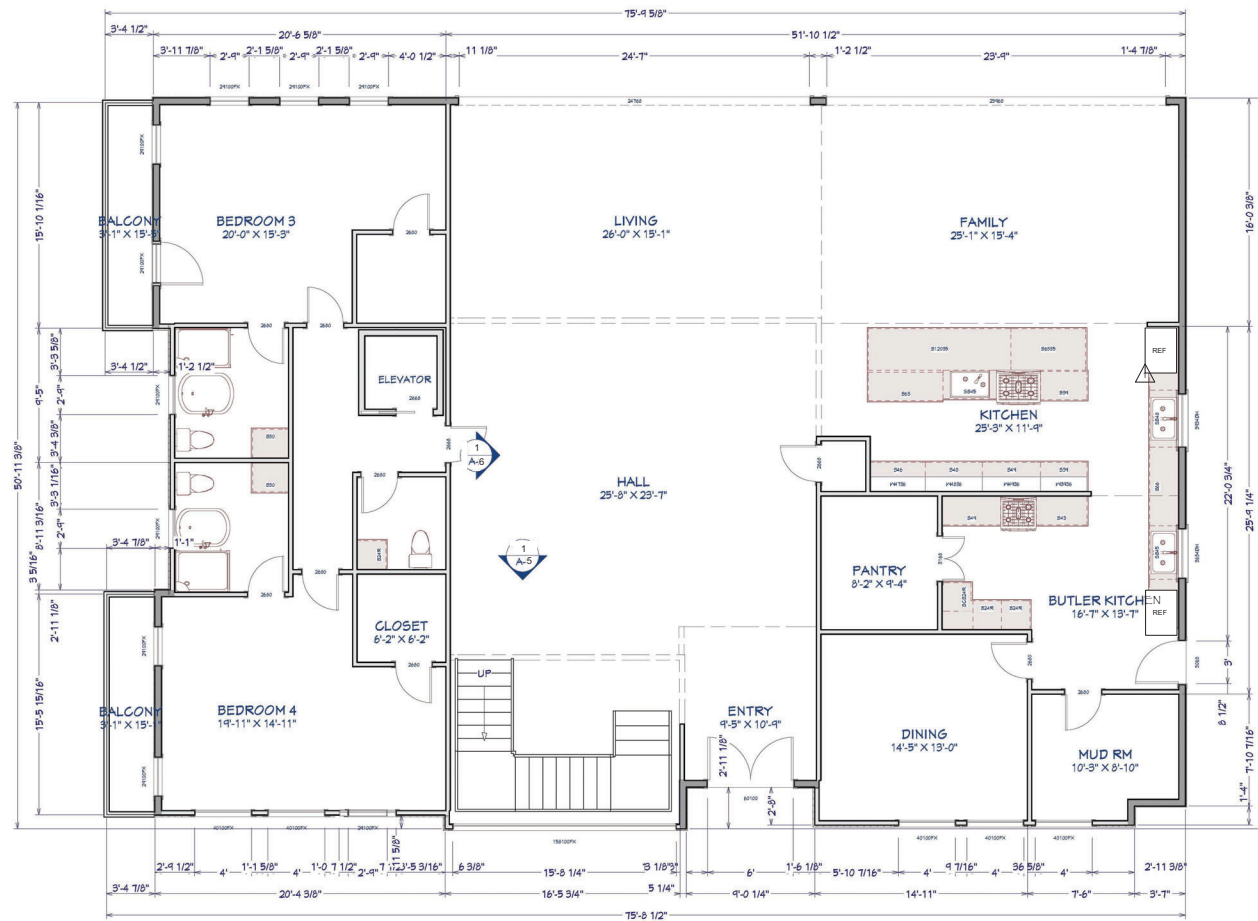
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1ST FLOOR PLAN



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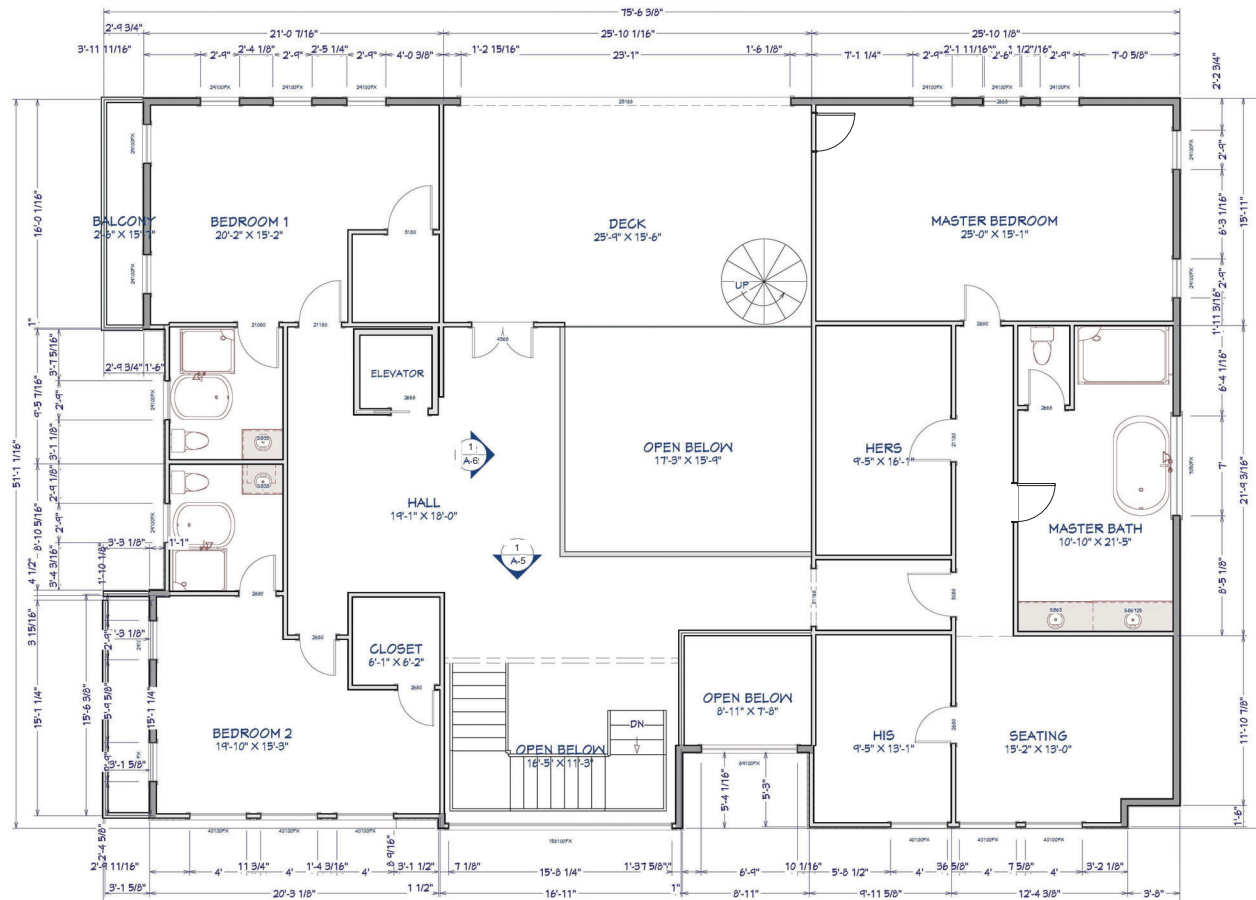
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A-1.2



2ND FLOOR PLAN

1/4"=1'-0"



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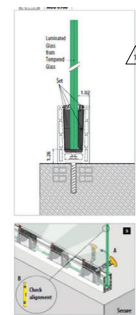
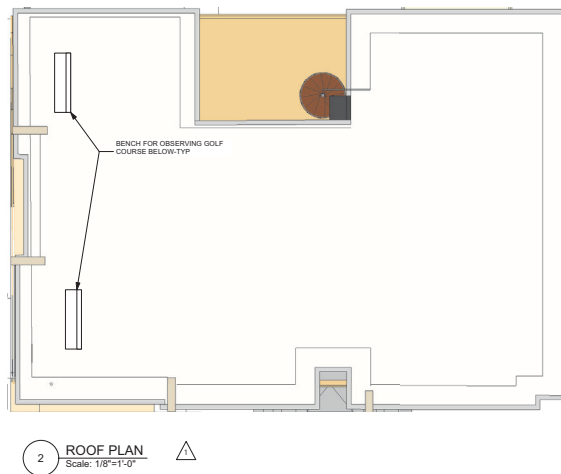
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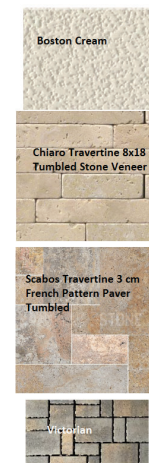


COLOR AND MATERIAL



STRUCTURAL GLASS GUARD RAIL DETAIL

NTS



Second Floor Acrylic Finish

First Floor Brick Veneer

Basement and Vertical Elements Slate

Driveway and Hardscaping Pavers

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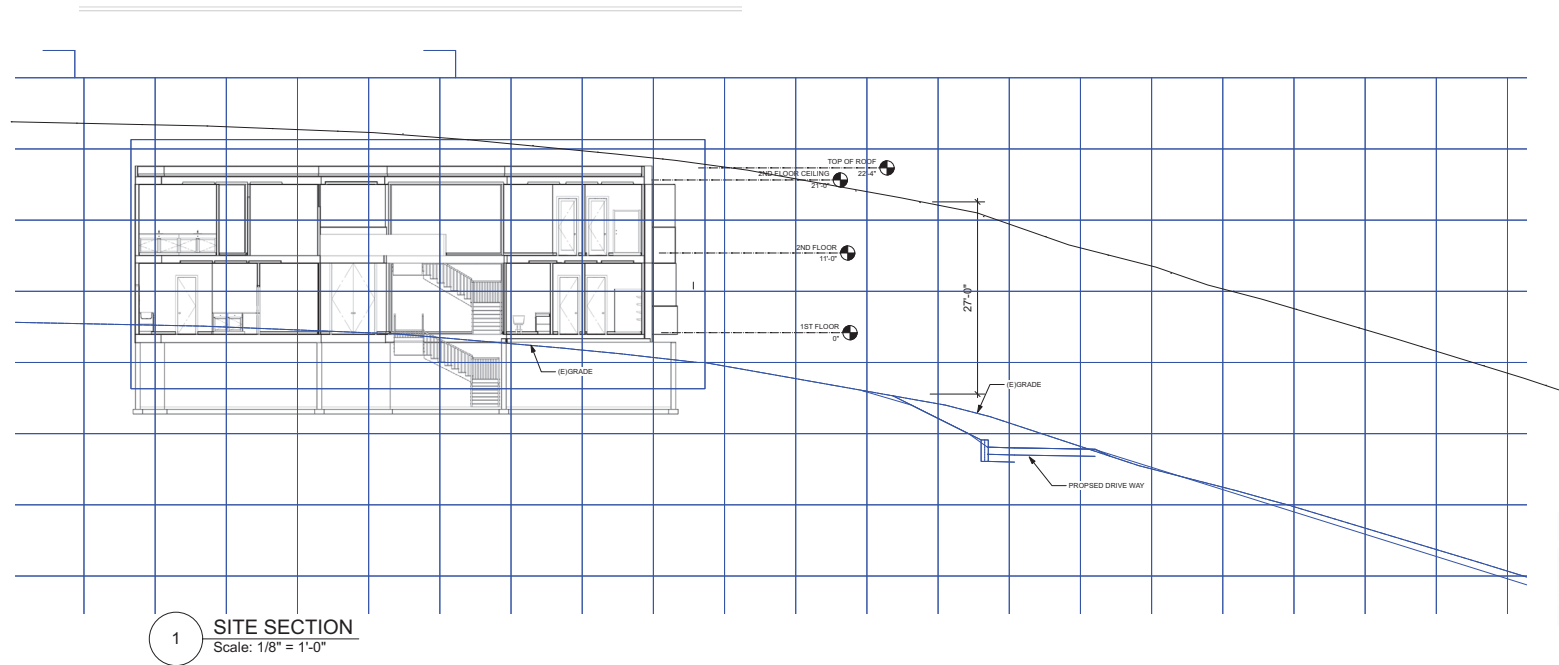
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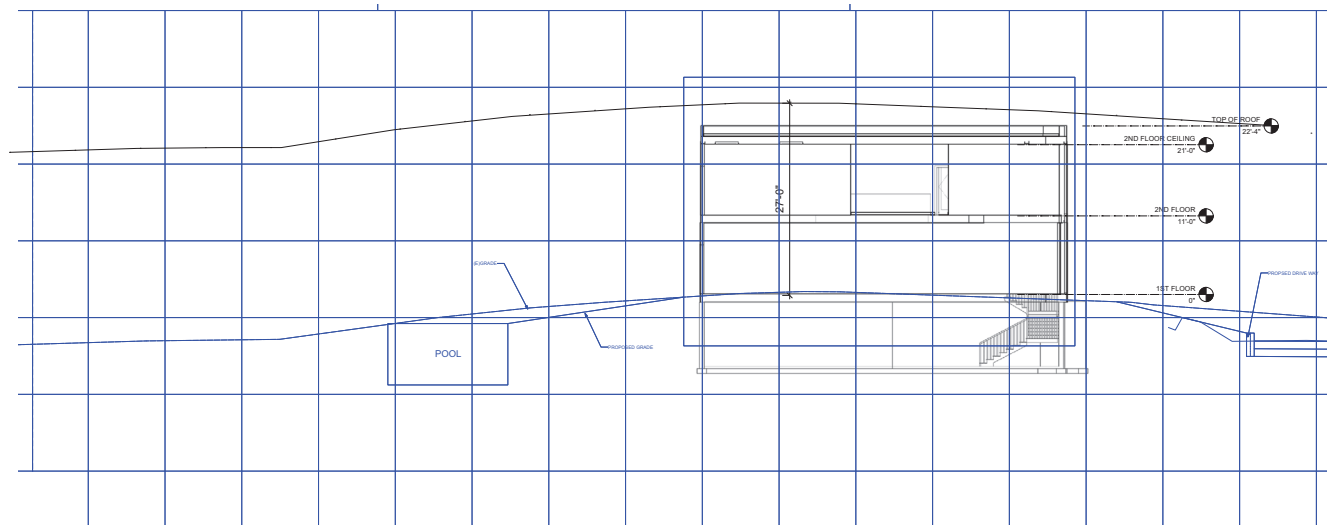
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A-5



1 SITE SECTION
Scale: 1/8" = 1'-0"

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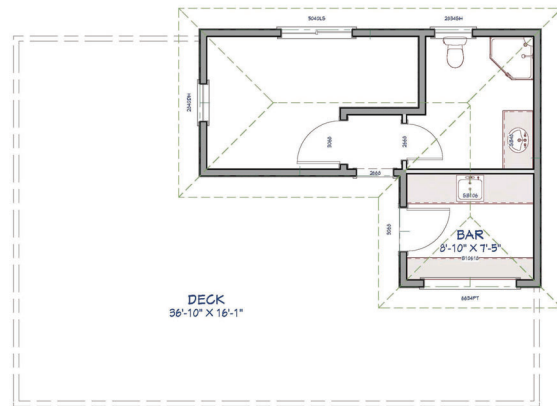
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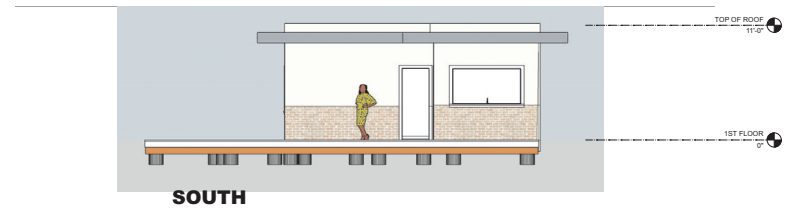
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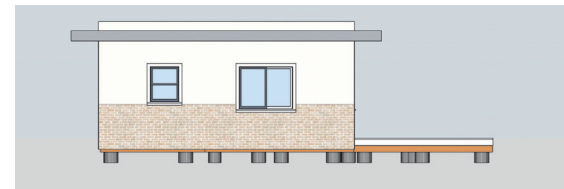
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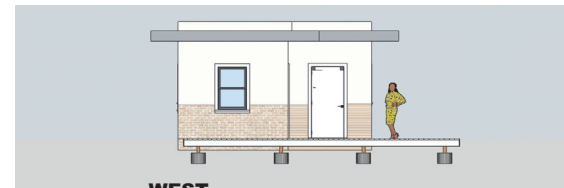
POOL CABANA PLAN 1/4"=1'-0"



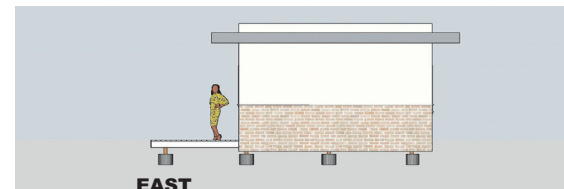
SOUTH



NORTH



WEST



EAST

EXTERIOR ELEVATIONS 3/16"=1'-0"



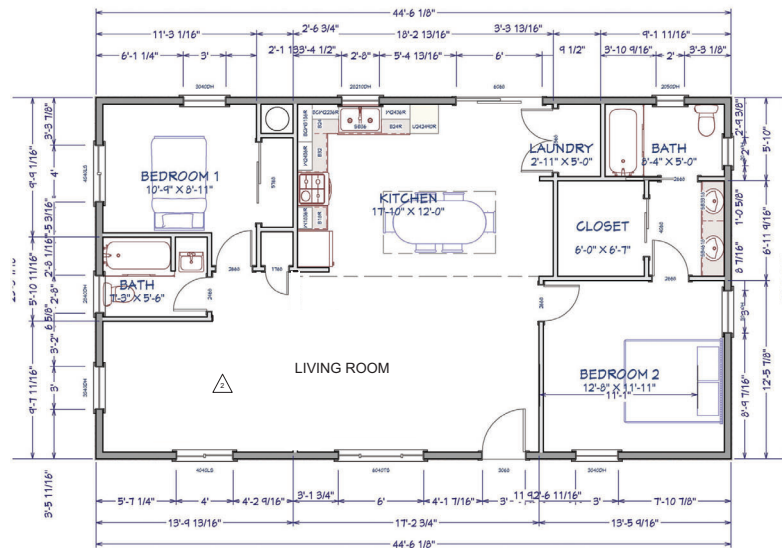
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PLAN CHECK
04-13-20

LICENSED ARCHITECT
FUMIO SUDA
NO C20386
Exp. 12/28/2023
STATE OF CALIFORNIA

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MUPPANANI RESIDENCE	
1339 TERRA VISTA CT, MILPITAS, CA95035	
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ADU PLAN $1/4"=1'-0"$



SOUTH



NORTH



WEST



EAST

EXTERIOR ELEVATIONS 3/16"=1'-0"

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A-10.1



Second Floor Acrylic Finish

First Floor Brick Veneer

Basement and Vertical Elements Slate

Driveway and Hardscaping Pavers

COLOR AND MATERIAL

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A-10.2

Public Comment 09.28.22.pdf

Public Comment 09.28.22 1.pdf

Public Comment 09.28.22 2.pdf

Public Comment 09.28.22 3.pdf

Liz Medina

From: Bill Chuan <[REDACTED]>
Sent: Thursday, September 29, 2022 7:15 AM
To: Ned Thomas; Liz Medina; Avery Stark
Subject: Fwd: Proposed Countryside Estates hillside development

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Regards,
 Bill

Begin forwarded message:

From: John Doll <[REDACTED]>
Date: September 28, 2022 at 6:12:34 PM PDT
To: [REDACTED]
Subject: Proposed Countryside Estates hillside development

Dear Commissioner Chuan:

Good evening.

As members of Milpitas Involved Citizens (MIC), my wife Barbara and I are writing to urge you in tonight's Planning Commission meeting to:

- Approve the proposed single-family residence on Countryside Estates, Lot 2, with the changes that the applicant and the Planning Department have negotiated for compliance with the standards of the Milpitas Hillside Ordinance.
- Deny approval of the proposed single-family residence on Countryside Estates, Lot 1, unless the applicant accepts the changes that have been proposed by the Planning Department to minimize deviations from the standards of the Milpitas Hillside Ordinance. This Ordinance was approved by voters to protect the hillsides from unnecessary, unwise, and unattractive development.

Regards,

John and Barbara Doll
 Milpitas residents for 32 years

Liz Medina

From: Bill Chuan <[REDACTED]>
Sent: Thursday, September 29, 2022 7:15 AM
To: Ned Thomas; Avery Stark; Liz Medina
Subject: Fwd: My vote

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Regards,
Bill

Begin forwarded message:

From: rekha <[REDACTED]>
Date: September 28, 2022 at 8:33:19 PM PDT
To: bill_chuan[REDACTED], Zmohsin13[REDACTED], soniayourrealtor1[REDACTED],
Dee.Awasthi[REDACTED], drglive[REDACTED], mercedesalbana[REDACTED], ciardellal@[REDACTED]
Subject: My vote

Deny approval of the proposed single-family residence on Countryside Estates, Lot 1, unless the applicant accepts the changes that have been proposed by the Planning Department to minimize deviations from the standards of the Milpitas Hillside Ordinance. This Ordinance was approved by voters to protect the hillsides from unnecessary, unwise, and unattractive development.

Thank you
Regards,
Rekha Pardeshi
[REDACTED]
Milpitas, CA95035

Liz Medina

From: Bill Chuan <[REDACTED]>
Sent: Thursday, September 29, 2022 7:15 AM
To: Ned Thomas; Avery Stark; Liz Medina
Subject: Fwd: Planning Commission Meeting, disapprove hill side development 1339 Terra Vista Court (LOT 1)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi All,

Sorry for late send in this. I received just before our meeting and seeing this now. Most were already provided verbally via public comment. I'm sending anyways for record keeping. There's some more as well.

Regards,
 Bill Chuan
 Chair, Planning Commission
 City of Milpitas

Begin forwarded message:

From: Frank Bush <[REDACTED]>
Date: September 28, 2022 at 6:12:20 PM PDT
To: bill_chuan[REDACTED], ciardella[REDACTED], mercedesalbana[REDACTED], drglive[REDACTED],
 Dee.Awasthi[REDACTED], soniayourrealtor1[REDACTED], Zmohsin13[REDACTED]
Subject: Planning Commission Meeting, disapprove hill side development 1339 Terra Vista Court (LOT 1)

Hello All,

There are already too many monster houses on the hillside now, any new project must comply with the current hillside standards. And variances should not be allowed, if they are unwilling to comply then you should not approve the project.

If they make changes to their plan to comply with the regulations, I'm fine with the approval of the project.

But that area is at risk, it was not that long ago we had the fire in the Milpitas hills above Summitpointe Golf course, not to mention it's proximity to the Hayward Fault.

Thank you,
 Frank

Liz Medina

From: Barbara Jo Navarro <[REDACTED]>
Sent: Wednesday, September 28, 2022 6:17 PM
To: Bill Chuan; Larry Ciardella; Mercedes Albana; Alexander Galang; Dipak Awasthi; Sonia Medina-Ashby; Zeya Mohsin
Cc: Liz Medina
Subject: Planning Commissioners-Agenda Item IX-2, Public Comment

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Good Evening

In reviewing the agenda and topics for tonight's meeting, the Milpitas Involved Citizens (MIC) group want to express our concern about Public Hearing Item IX-2.

Please consider denying the request for variance in Lot 1. Modifications to the house design are imperative to comply with the intent of the Hillside Ordinance Standards. These standards are important and have been put in place to protect our hillsides.

If you do approve the variance, we urge that you require the staff's recommendations be implemented for the sake of this project and to prevent setting a precedent for future excessive variances.

MIC has no concerns relative to Public Hearing Item IX-I.

Respectfully
Barbara Jo Navarro
Member, MIC



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Progress Report from Raimi and Associates and Staff on the Housing Opportunity Districts and Provide Direction on the Preferred Alternative (Staff Contact: Jay Lee, Interim Planning Director, 408-586-3077; and Avery Stark, Acting Senior Planner, 408-586-3288)
Category:	Community Development
Meeting Date:	10/17/2023
Recommendation:	(1) Receive progress report on the work completed and summary of community feedback from Raimi and Associates and staff on the Housing Opportunity Districts. (2) Provide direction on the preferred alternative for the Housing Opportunity Districts.

Background:

In the 2019-20 Budget Act, Governor Newsom signed into law a \$250 million allocation for California regional and local jurisdictions to prioritize planning activities to accelerate state-wide housing production as part of a broader mandate to address the State's affordable housing shortage and to end homelessness. This allocation includes \$119 million for the Local Early Action Planning Grant (LEAP), which provides one-time grant funding for cities and counties to update planning documents and implement process and policy improvements to accelerate housing production and meet their Regional Housing Needs Allocation (RHNA) obligations. The City of Milpitas was awarded \$300,000 in grant funds through the LEAP Program to establish Housing Opportunity Districts (HODs) in areas of the City prioritized for housing by the City's General Plan. Per the grant agreement, the HODs must be completed by June 30, 2024.

The key goals of the HODs are to:

1. Streamline the permitting of housing development to meet the housing goals of the City;
2. Allow by-right approval of housing projects if they meet certain objective criteria;
3. Incentivize development of on-site affordable housing; and
4. Encourage different types of special needs housing, including senior living, housing for persons with disabilities, and workforce housing.

The work completed to date includes:

- **Best Practices Memo:** The memo provides an overview of example HODs from other cities, especially as they relate to the creation of affordable housing units and housing for special needs populations.
- **Planning Documents and Process Assessment:** The assessment memo reviews and summarizes existing planning documents and ordinances that impact the development of housing across the City.
- **Existing Conditions Analysis:** The analysis of existing conditions examines each potential HOD area and estimates the feasible development capacity based on Milpitas' current land use and zoning policies and regulations.
- **Stakeholder Meetings:** Raimi and Associates and City staff presented an overview of HODs at the May 2022 Community Development Roundtable and subsequently conducted stakeholder interviews with non-profit and for-profit housing developers to better understand the constraints to building both mixed-income and 100 percent affordable housing projects.
- **Community Outreach:** Raimi and Associates and City staff developed a project webpage, created educational videos, administered an online survey, and tabled at key locations throughout the City to solicit community feedback on the HODs.

General Plan Implementation

The HODs will be a critical implementation tool of the 2040 General Plan, which identifies several opportunity areas throughout the City for future housing development. The HODs will apply to three of the Neighborhood Commercial Mixed-Use (NCMU) areas and the Town Center. However, the current policies and requirements of the NCMU and TWC land use designations need to be refined to facilitate mixed-use redevelopment.

The HODs will build upon new General Plan policies for the NCMU and TWC areas by providing a more implementable strategy to achieve the overall goal of creating vibrant mixed-use neighborhoods in key areas throughout the City. The HOZs will adopt a place-based approach to facilitate mixed-use redevelopment of specific sites within these areas while allowing viable commercial centers to remain.

Housing Element Implementation

The HODs will also be a critical implementation tool of the recently adopted 2023-2031 Housing Element, which identifies adequate sites for new affordable housing to fulfill the City's RHNA. In the current RHNA cycle (2023-2031), the City of Milpitas has been allocated 6,713 units, which is more than double the allocation from the previous cycle. Furthermore, 3,786 of the units must be affordable (i.e., below market rate) with 2,655 of those units at the low- or very-low-income affordability level, which the City has struggled to provide.

To address this challenge, the HODs will focus on providing practical and effective incentives for developers to build affordable housing, especially at deeper affordability levels. The 2023-2031 Housing Element identifies the HODs as a key program to help the City fulfill its housing goals and needs.

Analysis:

A brief overview of the preferred alternative, fiscal impact analysis, and next steps is provided below.

Preferred Alternative

Staff recommends utilizing a place-based and flexible approach by establishing multiple zoning districts in the NCMU areas and Town Center. The preferred alternative is further described below.

Neighborhood Commercial Mixed Use (NCMU)

The NCMU land use designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use, and residential uses, hotel, and office development allowed on a limited basis. The NCMU designation attempts to accomplish this vision by establishing a ratio of one residential dwelling unit per 1,500 square feet of neighborhood-serving retail and commercial services for new mixed-use developments. The NCMU designation also allows residential only projects if they are 100 percent affordable. While the purpose of this requirement is to increase vibrancy and incentivize the redevelopment of aging strip retail centers into new mixed-use projects, redevelopment is unlikely to occur under the current policy framework. Furthermore, new mixed-use projects would struggle to meet the minimum density requirement of 30 dwelling units per acre to qualify as a Housing Element site.

Based on the analysis completed for this HOD project, City staff recommends utilizing a place-based and flexible approach by establishing three distinct NCMU zoning districts (NCMU 1, NCMU 2, and NCMU 3), each with a clear allowable density range rather than a ratio between residential and nonresidential floor area. These zoning districts would apply to the Sunny Hills, Calaveras and North Park Neighborhood, and Landess Neighborhood commercial areas, which are currently designated NCMU in the 2040 General Plan.

While all NCMU zoning districts would allow for a maximum density of 65 dwelling units per acre and maximum building height of 75 feet or 6 stories, each NCMU zoning district would provide a different minimum commercial floor area ratio (FAR) requirement. A brief description of each NCMU zoning district is below.

- *NCMU 1.* The NCMU 1 zoning district would primarily apply to successful commercial centers with a big box retail anchor and require a minimum commercial FAR of 0.25 to establish a high threshold for redevelopment. These areas are unlikely to redevelop in the near future and would be required to maintain most of the existing commercial floor area if mixed-use redevelopment were to occur.

- *NCMU 2.* The NCMU 2 zoning district would apply to small parcels along major streets and require a minimum commercial FAR of 0.10 to facilitate mixed-use redevelopment while maintaining retail businesses along existing commercial corridors.
- *NCMU 3.* The NCMU 3 zoning district would apply to parcels further away from key intersections and adjacent to existing residential neighborhoods and allow for residential only development in certain areas.

Town Center

The TWC land use designation allows 40 residential dwelling units per acre for mixed-use developments but requires a high floor area ratio (FAR) of 0.35 for nonresidential uses. While the purpose of the nonresidential FAR requirement is to ensure that the Town Center retains its commercial activity over time, it presents a constraint to redevelopment. The current FAR of the Town Center north of Calaveras Boulevard is well below 0.35 and any redevelopment would require an additional 323,000 square feet of nonresidential floor area, which is highly unlikely in the current economic climate.

Similar to the NCMU areas, staff recommends utilizing a place-based and flexible approach by establishing three distinct Town Center zoning districts (TC 1, TC 2, and TC 3). While all Town Center zoning districts would allow for a maximum density of 55 dwelling units per acre and maximum building height of 75 feet or 6 stories, each Town Center zoning district would provide a different minimum commercial FAR requirement.

A brief description of each Town Center zoning district is below.

- *TC 1.* The TC 1 zoning district would apply to the majority of the Town Center north of Calaveras and the area south of Calaveras fronting Los Coches Street and require a minimum commercial FAR of 0.35. These areas are unlikely to redevelop and would be required to maintain or increase the existing commercial floor area if mixed-use redevelopment were to occur.
- *TC 2.* The TC 2 zoning district would primarily apply to the parcels south of Calaveras Boulevard fronting North Milpitas Boulevard and South Hillview Drive and require a minimum commercial FAR of 0.15 to facilitate mixed-use redevelopment while maintaining retail businesses along these commercial corridors.
- *TC 3.* The TC 3 zoning district would primarily apply to the eastern edge of the Town Center and parcels fronting the south side of Calaveras Boulevard and allow for residential only development in limited areas.

This context-sensitive and practical land use approach to the NCMU areas and Town Center would allow for financially feasible mixed-use redevelopment and more market-rate and affordable housing, which in turn would increase the demand for retail businesses. Overall, the HODs would result in a net increase in the City's total revenue, which is further discussed below.

Affordable Housing

In addition to facilitating mixed-income housing development by improving the financial feasibility of mixed-use developments in the HODs, staff recommends providing incentives to facilitate 100 percent affordable housing projects. Incentives could include the following:

1. Eliminate minimum commercial requirement;
2. Reduce Parks Fee requirement from 5 acres to 3.5 acres per 1,000, which would be consistent with the Metro Specific Plan; and
3. Reduce required usable open space from 20 to 15 percent of the site area.

Fiscal Impact Analysis

To understand the potential impact of the HODs on the City's revenue, the City hired Seifel Consulting Inc. to perform a fiscal impact analysis regarding proposed land use changes that would allow additional residential development to occur in the NCMU areas and Town Center. The analysis is performed for a representative development opportunity that might occur in these areas in the near term as a result of the HODs and evaluates the potential impact of future development on the City's fiscal revenues and expenditures.

Fiscal revenues include property taxes, sales and use taxes, licenses/permits/fees, franchise tax, other taxes, and other revenues. Fiscal expenditures were calculated by multiplying the City's average General Fund service cost per person serviced by the service population associated with each development scenario. The fiscal analysis utilizes the City's adopted General Fund budget for Fiscal Year 2022-23 as the basis for the City's fiscal revenues and costs and relies on the fiscal data and findings presented in the Milpitas Fiscal Benefits of Employment Lands Study.

The key findings of the analysis are below:

1. If no zoning changes are made, no redevelopment is likely as the current General Plan commercial to residential ratios are infeasible.
2. With implementation of a place-based strategy, which maintains a robust minimum commercial floor area requirement for much of the HODs, only small portions of the HODs are likely to redevelop in the near future.
3. The NCMU areas and Town Center only represent 9 percent of the total City sales tax revenue, which comprises approximately 30 percent of the general fund revenues.
4. New infill mixed-use and residential development is likely to have nearly a net neutral fiscal impact on the City overall. The projected increase in General Fund revenues is anticipated to be similar to the fiscal costs of providing services to future residents and employees for each of the development scenarios.

In summary, while residential development typically increases the cost of providing services relative to nonresidential development, it also results in greater property taxes and demand for retail. The full fiscal impact analysis is attached to this report.

Next Steps

Following the Council study session on the HODs, the consultant will prepare an internal Administrative Draft HODs document for staff review and initiate the environmental review process per the California Environmental Quality Act (CEQA).

Based on staff input, the consultant will refine the Administrative Draft HODs documents and prepare a Public Draft for public review and circulation. Finally, based on input received from the public, City staff, and Council, the consultant will prepare the Final HODs document and return to the Planning Commission and Council for adoption of the HODs and associated environmental document.

Policy Alternatives:

This is an informational item for Council feedback and direction and is one of several sessions for providing Council with the progress of the Housing Opportunity Districts.

Fiscal Impact:

This is an informational item. As such, there is no fiscal impact.

California Environmental Quality Act:

The additional development allowed through the HODs will be consistent with what was envisioned in the 2040 General Plan and analyzed in the associated Environmental Impact Report (EIR). Therefore, the required environmental review for the HODs is likely to be accomplished through an EIR Addendum to the 2040 General Plan EIR.

Recommendation:

1. Receive progress report on the work completed and summary of community feedback from Raimi and Associates and staff on the Housing Opportunity Districts.
2. Provide direction on the preferred alternative for the Housing Opportunity Districts.

Attachment:

1. August 8, 2022 City Council Agenda Report and Attachments
2. HODs Fiscal Impact Analysis



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Progress Report on The Work Completed and Existing Conditions Analysis from Raimi and Associates and Staff on the Housing Opportunity Zones, Discuss Project Objectives and Priorities, and Provide Direction on Key Planning Concepts and Land Use Strategies (Staff Contact: Ned Thomas, Planning Director, 408-586-3273 and Jay Lee, Principal Planner, 408-586-3077)
Category:	Community Development
Meeting Date:	8/9/2022
	<u>Recommendation:</u> Receive progress report on the work completed and existing conditions analysis from Raimi and Associates and staff on the Housing Opportunity Zones, discuss Project objectives and priorities, and provide direction on key planning concepts and land use strategies.

Background:

Since 1969, California law has required all cities and counties to plan to meet housing goals for residents at all income levels. Every eight years, the California Department of Housing and Community Development (HCD) and the Association of Bay Area Governments (ABAG) distribute the Regional Housing Needs Allocation (RHNA) to each City and County in the Bay Area. The City is then required to perform a comprehensive update to the Housing Element, which is a chapter in the General Plan. The Housing Element identifies specific programs and policies that the City commits to implement to help realize the City's RHNA goals and respond to related needs.

In the 2019-20 Budget Act, Governor Newsom signed into law a \$250 million allocation for California regional and local jurisdictions to prioritize planning activities to accelerate state-wide housing production as part of a broader mandate to address the State's affordable housing shortage and to end homelessness. This allocation includes \$119 million for the Local Early Action Planning Grant (LEAP) for cities and counties. LEAP provides one-time grant funding for cities and counties to update planning documents and implement process and policy improvements to accelerate housing production. LEAP is a non-competitive grant program and a State strategy to help local governments meet their legal obligation to plan for housing for all residents, including low-income residents, as per the City's RHNA obligations.

On June 29, 2020, the City applied to HCD for grant funding through the LEAP Program to create Housing Opportunity Zones (HOZs) in areas of the City prioritized for housing by the City's General Plan. The HOZs will establish various incentives through an overlay zoning district to facilitate and streamline affordable housing production in the City's two Specific Plan areas, four Neighborhood Commercial Mixed Use (NCMU) areas, and the Town Center Zoning District. Incentives include a supplemental density bonus beyond the State Density Bonus, relaxed development standards, streamlined by-right permitting and environmental review, and financial incentives. On September 2, 2020, HCD informed staff that the City of Milpitas has been awarded \$300,000 in grant funds through the LEAP Program to establish HOZs.

On December 12, 2021, the City Council approved and authorized the City Manager to execute a professional services agreement with Raimi and Associates to prepare the HOZs in close coordination with related efforts underway including the Metro and Gateway Specific Plans, the Housing Element Update, and a separate Assessment of Fair Housing. Per the grant agreement, the HOZs must be completed by June 30, 2024.

Analysis:

As identified in the City's LEAP grant application and scope of work with Raimi and Associates, the key goals of the HOZs are to:

1. Streamline the permitting of housing development to meet the housing goals of the City;
2. Allow by-right approval of housing projects if they meet certain objective criteria;
3. Incentivize development of on-site affordable housing; and
4. Encourage different types of special needs housing, including senior living, housing for persons with disabilities, and workforce housing.

The work completed to date includes:

- **Best Practices Memo:** The memo provides an overview of example HOZs from other cities, especially as they relate to the creation of affordable housing units and housing for special needs populations. Three of the examples focus on affordable housing and one on senior housing. Each precedent study identifies strengths and weaknesses that can inform the consideration and development of new HOZs in Milpitas.
- **Planning Documents and Process Assessment:** The assessment memo reviews and summarizes existing planning documents and ordinances that impact the development of housing across the City and identifies strengths that can be enhanced and weaknesses that can be overcome through HOZs.
- **Existing Conditions Analysis:** The analysis of existing conditions examines each potential HOZ area and estimates the feasible development capacity based on Milpitas' current land use and zoning policies and regulations. Topics covered include the existing land use pattern, parcel size, pipeline projects, access to multimodal transportation options, site constraints, and opportunity sites. Staff will present the analysis in greater detail at a future study session with the City Council.
- **Stakeholder Meetings:** Raimi and Associates and City staff presented an overview of HOZs at the May 2022 Community Development Roundtable and subsequently conducted stakeholder interviews with non-profit and for-profit housing developers to better understand the constraints to building both mixed-income and 100 percent affordable housing projects.

Key findings from the background research and analysis and preliminary community outreach include:

- **Development Standards:** Development standards such as low maximum densities, high parking ratios, and high commercial requirements for mixed-use projects are constraints on development of affordable housing for both for-profit and non-profit housing developers. Adjusting these development standards would allow developers to prioritize affordable housing and spread the subsidized cost of the affordable units over a larger number of market rate units.
- **Permitting Process and Impact Fees:** Development fees are higher in Milpitas compared to other jurisdictions in Santa Clara County owing to high entitlement fees for single-family development and high impact fees for multi-family developments. A streamlined permitting process and reduced impact fees for housing projects in HOZs that meet objective standards would help reduce initial development costs and facilitate both mixed-income and 100 percent affordable housing projects.
- **Affirmatively Furthering Fair Housing (AFFH) Compliance:** HOZs can help a local jurisdiction address the potential issue of having a large concentration of affordable units in certain geographic areas (e.g., specific plan areas), which run counter to AFFH requirements in the Fair Housing Act. The Fair Housing Act requires cities to take meaningful actions to overcome patterns of segregation and foster inclusive communities. HOZs will help the City comply with this federal law by promoting a more equitable distribution of affordable housing throughout Milpitas.
- **General Plan Land Use Designations:** The 2040 General Plan aims to create vibrant commercial neighborhood centers through mixed-use development within the Town Center Zoning District and by establishing the Neighborhood Commercial Mixed-Use (NCMU) land use designation to incentivize the redevelopment of older commercial retail centers. Establishing HOZs for these areas will remove

current constraints on mixed-use development in these areas by modifying current policies and development requirements.

General Plan Implementation

The HOZs will be a critical implementation tool of the 2040 General Plan, which identifies several opportunity areas throughout the City for future housing development. These areas include the two Specific Plan areas (Metro Specific Plan and Gateway-Main St. Specific Plan), four NCMU areas, and the Town Center. The City is currently updating its two Specific Plans, and the HOZs will apply to these areas where much of the future housing development is expected to occur. However, the current policies and requirements of the NCMU and TWC land use designations need to be refined to facilitate and incentivize mixed-use redevelopment.

The NCMU land use designation establishes a ratio of one residential dwelling unit per 1,500 square feet of neighborhood-serving retail and commercial services for new mixed-use developments. While the purpose of this requirement is to incentivize the redevelopment of older strip retail centers into new mixed-use projects, redevelopment is unlikely to occur under the current policy framework. Based on the analysis completed for this HOZ project, the consultant team and staff now favor a clear allowable density range rather than a ratio between residential and nonresidential floor area.

For example, the TWC land use designation allows 40 residential dwelling units per acre for mixed-use developments but requires a high floor area ratio (FAR) of 0.35 for nonresidential uses. While the purpose of the nonresidential FAR requirement is to ensure that the Town Center retains its commercial activity over time, it presents a constraint to redevelopment. The current FAR of the Town Center north of Calaveras Boulevard is well below 0.35 and any redevelopment would require an additional 323,000 square feet of nonresidential floor area, which is highly unlikely in the current economic climate. The HOZs will build upon new General Plan policies for the NCMU and TWC areas by providing a more implementable strategy to achieve the overall goal of creating vibrant mixed-use neighborhoods in key areas throughout the City. The HOZs will adopt a place-based approach to facilitate mixed-use redevelopment of specific sites within these areas while allowing viable commercial centers to remain.

Housing Element Implementation

The HOZs will also be a critical implementation tool of the ongoing Housing Element Update, which must be updated every eight years identify adequate sites for new affordable housing to fulfill the City's RHNA. In the upcoming RHNA cycle (2023-2031), the City of Milpitas has been allocated 6,713 units, which is more than double the allocation from the previous cycle. Furthermore, 3,786 of the units must be affordable (i.e., below market rate) with 2,655 of those units at the low- or very-low-income affordability level, which the City has historically struggled to provide.

To address this challenge, the HOZs will focus on providing practical and effective incentives for developers to build affordable housing, especially at deeper affordability levels. The Housing Element Update will rely on the HOZs as a key program to implement its policies and help the City fulfill its housing goals and needs.

Next Steps

Following the City Council study session, the project team will continue to engage the public through additional stakeholder meetings with property owners, community workshops, and online surveys. The project team will also prepare a series of design studies to test the potential effects of the HOZs and develop several alternatives based on the feedback and direction received from the City Council.

Once the alternatives are established, the project team will return to the City Council for another study session to determine the preferred alternative. The project team will continue to meet with the City Council and Planning Commission as the Draft HOZs are developed to ensure that the project meets the needs of the City and community.

Fiscal Impact:

This is an informational item. As such, there is no fiscal impact.

California Environmental Quality Act:

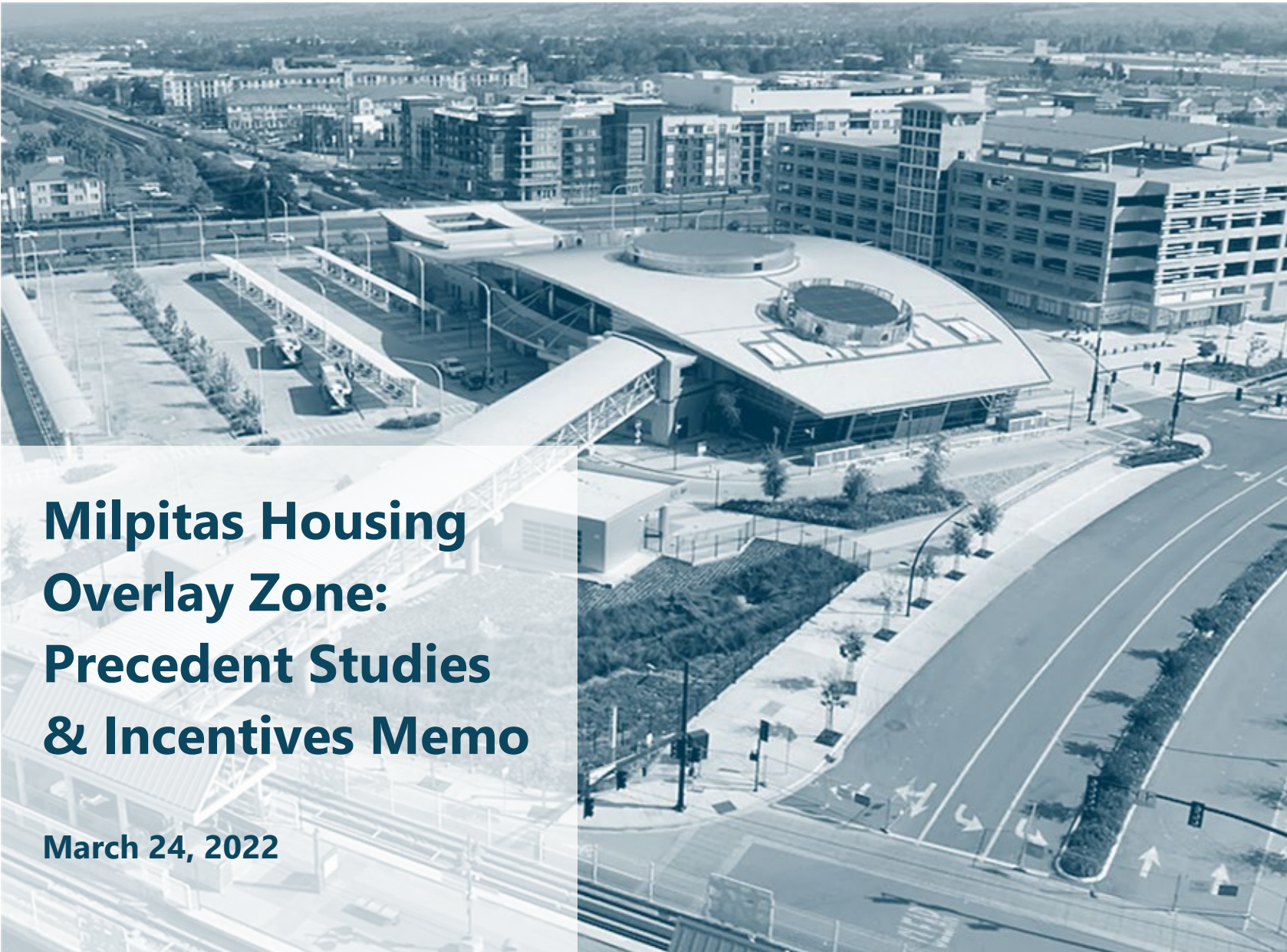
The additional development allowed through the HOZs will be consistent with the Housing Element sites inventory. Therefore, the required environmental review for the HOZs will be completed as part of the environmental review for the Housing Element Update.

Recommendation:

Receive progress report on the work completed and existing conditions analysis from Raimi and Associates and staff on the Housing Opportunity Zones, discuss Project objectives and priorities, and provide direction on key planning concepts and land use strategies.

Attachments:

1. Best Practices Memo
2. Planning Documents and Process Assessment



Milpitas Housing Overlay Zone: Precedent Studies & Incentives Memo

March 24, 2022

1. Introduction

This Precedent Studies & Provisions Memo is intended to provide an overview of example housing overlay zones from other cities, especially as they relate to the creation of affordable housing units and housing for special needs populations.

The memo provides a summary and analysis of four overlay zone frameworks (precedent studies), three focused on affordable housing and one on senior housing. Each precedent study identifies strengths and weaknesses that can inform the consideration and development of a new housing overlay in Milpitas. In addition to the development incentives and bonuses described in each precedent study, the Incentives Structures section of the memo describes the various development incentives and bonuses that could be included in a finalized housing overlay zone and how they interact with existing State housing development incentives. Some incentives can be tied to affordability or age requirements, depending on the population the overlay prioritizes.

2. Precedent Studies

As the City of Milpitas considers a potential new overlay zone designation to align with city-wide housing goals, several precedents have been established both locally in the Bay Area, and at the national scale. Since preserving and promoting affordable housing opportunities has been a priority shared by cities through California and beyond, jurisdictions have taken a number of different approaches to utilizing overlay zones as a regulatory mechanism for nesting standards related to the creation of new affordable units, income levels, construction and design standards, and several other topics. Overlay zones are not limited strictly to frameworks oriented around affordable housing but have also been adapted to address other planning challenges, such as provision of housing for senior residents or special needs populations.

This memo provides a summary and analysis of four overlay zone frameworks:

- Cambridge, MA. Affordable Housing Overlay (zoning)
- Berkeley, CA. Affordable Housing Overlay (Housing Element)
- Menlo Park, CA. Affordable Housing Overlay (zoning)
- Perris, CA. Senior Housing Overlay Zone (zoning)

Links to each precedent and their original language can be found in **6. Appendix**.

Comparative Matrix

The following table summarizes the regulatory language and framework of the four precedents. The information has been condensed in this memo.

Precedent Study	Applicability	Interactions with Underlying Zoning	Affordability Requirements	Deed-restriction or affordability agreement?	Incentives
100% Affordable Housing Overlay Cambridge, MA	- All zoning districts, except Open Space - Standards apply only to 100% affordable housing projects	Underlying zoning impacts density and height bonuses	- At least 80% of units for households with incomes 80% AMI or below - 50% of for-sale units should to households with incomes 80% AMI or below at initial occupancy	Continued affordability agreement	- No maximum FAR - Height bonus - No off-street parking minimums - Minimum of 30% open space to lot area ratio - Lower yard setbacks
100% Affordable Housing Overlay Zone Berkeley, CA (Proposed)	- R3, R4, MU-R, all C-prefixed districts - Potentially R-1, R-1A, R-2, R-2A - High fire risk area and historical landmarks are exempt - Projects must have 100% affordable units		Reserved for Extremely Low-, Very Low-, Low-, and Moderate-income households	Deed-restricted	- No maximum FAR - Density bonus - Height bonus

Affordable Housing Overlay (AHO) Menlo Park, CA	- Menlo Park El Camino Real and Downtown specific plan area; lots zoned R-4-S - Projects must have a mix of affordable and market rate units	Some Specific Plan development standards cannot be superseded by AHO standards	At least 25% of affordable units must be very low and/or extremely low-income, or at least 15% must be extremely low income	Continued affordability agreement (no less than 55 years)	- Density bonus - Height bonus - Parking space requirements per type of affordable unit - Common and/or private open space can be reduced by 50% - Setback reduced to 5' except when more is needed to accommodate increased density and when parcel is next to single-family residential - Possibility of waived processing fees
Senior Housing Overlay (SHO) Zone Perris, CA	- Can be combined with any residential or commercial zone district, and lots must be greater than 2 acres but not more than 75 acres	- Surrounding land uses must be compatible with the environment required by seniors - Level of affordability and percentage of affordable units are dependent on redevelopment area classification	- Minimum 1 household member must be age 55+ - Redevelopment area: at least 30% of units for low- and moderate-income households, at least 50% of the 30% for very low-income - Not redevelopment area: at least 3% of units for low- and moderate-income households, at least 40% of the 3% for very low-income households	Affordability in place for 30 years or how long the redevelopment area agreement specifies (whichever is longer)	- Density bonus (up to 50 units/acre) - Development fees waiver

A. Affordable Housing Overlay. Cambridge, MA

The City of Cambridge adopted the 100% Affordable Housing Zoning Overlay in October 2020. This overlay aims to help affordable housing developers build new, permanently affordable housing throughout the city, especially in areas where there are not enough affordable units, and areas where the current zoning makes it difficult to construct affordable housing projects. The standards and incentives of the overlay can only apply to projects where 100% of the units are affordable and available to households earning up to 100% of the Area Median income (AMI).

1. Development context

The Affordable Housing Overlay (AHO) developed from discussions between the City Council, Housing Committee, and Community Development Department (CDD) regarding how to address the housing crisis and was further mentioned during the “Envision Cambridge” citywide plan process from 2016-2019. CDD developed the overlay and gathered feedback from public hearings, community meetings, and open houses. The AHO was presented as a zoning amendment to the Planning Board and Ordinance Committee, and after several meetings and revisions, they recommended that the City Council adopt the AHO ordinance. The City Council adopted the ordinance on October 5, 2020. To date, approximately 350 new affordable units have been completed under the regulations, with the City currently reviewing projects that could result in additional 300 units.

2. Regulatory Framework

Cambridge’s AHO is an amended, new section in the City’s Zoning Ordinance. The ordinance contains income and affordability criteria, development and design regulations, and regulatory mechanisms for ensuring the continued affordability of an AHO project’s units.

3. Applicability/Area of Influence

The overlay zone applies to all zoning districts of Cambridge, except parcels zoned as Open Space. Regardless of the underlying zoning standards or density requirements, AHO projects can contain single-family, two-family, townhouse, or multi-family dwellings. Projects may also include active, non-residential uses on the ground floor, but only where the underlying zone or an additional overlay district already allow non-residential uses. An AHO project can feature the construction of a new building, or the retrofit of an existing building. The project is permitted “as-of-right” if the project meets all the standards within the overlay and the Design Guidelines established by the CDD.

4. Interaction with underlying zoning

The applicable development and design regulations of an AHO project are determined by the “District Dimensional Standards” of the underlying zoning district. The dimensional standards of the AHO apply in place of the District Dimensional Standards unless the AHO specifies otherwise. As previously stated, the AHO supersedes non-residential underlying zoning districts and allows for the development of housing in districts such as commercial or industrial. In addition, ground floor non-residential uses are allowed in new housing projects where the underlying zoning already allows such uses.

5. Development and Design Regulations

FAR. The floor area ratio (FAR) of an AHO project has no stated maximum or minimum.

- *Exception:* If the standards of the underlying zoning district specify a maximum FAR of less than 1.0, the AHO project cannot exceed an FAR of 2.0.

Lot Area. There is no minimum lot area per dwelling unit requirement for AHO projects.

Height. The height bonus for an AHO project is contingent on the underlying zoning district's allowable building heights.

Underlying zoning district allowable building height	Height Bonus	Exceptions
40 feet or less	Up to 45 feet (no more than 4 stories) if entirely residential; or	
	Up to 50 feet (4 stories above grade) if first floor has active, non-residential use	
Up to 50 feet	Up to 65 feet (no more than 6 stories) if entirely residential; or	• When AHO project is adjacent to a non-residential use, parts of the project within 35 feet of a zoning district that allows a maximum building height of 40' will be limited to the overlay provisions of that type of building (i.e., max build to 45' if residential, 50' if first floor is active non-residential) • When the AHO project parcel extends into that district, then the height limitation only extends 35' from the property line.
	Up to 70 feet (6 stories above grade) if first floor has active, non-residential use	
Greater than 50 feet	Up to 80 feet (no more than 7 stories)	• When AHO project is adjacent to a non-residential use, parts of the project within 35 feet of a district with zoning that allows a maximum building height of 40' will be limited to a maximum height of 60' (a minimum of 5 stories).

		When the AHO project parcel extends into that district, then the height limitation only extends 35' from the property line.
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Parking. AHO projects do not have an off-street parking minimum requirement. However, if a project does not provide off-street parking at a ratio of 0.4 spaces per dwelling unit, the developer must create a Transportation Demand Management program where they:

1. Offer a free annual membership to a bike share program, or a 50% discounted transit combined subway and bus pass for 6 months, to 2 individuals in each household upon their initial occupancy of a unit; and
2. Provide transit information to each household upon their initial occupancy of a unit or provide real-time transit service screen and information in the building lobby.

Open Space. The minimum percentage of open space to lot area of an AHO project is 30%, unless the standards of the underlying zoning district have a less restrictive requirement. This percentage can be lowered to a minimum of 15% if the AHO project includes the protection and preservation of an existing building that is in the State Register of Historic Places. The AHO contains additional guidelines for the placement and characteristics of an AHO project's open space.

Yard Setbacks.

Setback	Requirement	Exceptions
Front	Minimum setback of 15 feet	- The underlying zoning standards have a less restrictive requirement, - The project is on a corner lot (may be reduced to minimum of 10'), or - The developer chooses to reduce the setback to the average of the front yard setbacks of the four nearest pre-existing principal buildings that contain at least 2 stories above grade and directly front the same side of the street as the AHO project. - If there are different underlying zoning standards for residential and non-residential uses, the non-residential front yard setback requirement applies to an AHO project with an active non-residential ground floor.
Side	Minimum setback of 7.5 feet	Unless underlying zoning district's residential requirement is less restrictive.
Rear	Minimum rear setback of 20 feet	Unless the underlying zoning district's residential requirement is less restrictive.

Standards for Existing Buildings. Existing buildings used in an AHO project that do not match the development and design regulations can be altered, reconstructed, relocated, and/or enlarged to conform with the AHO regulations. Below are modification standards that are allowed "as-of-right."

- The addition of gross floor area within the interior of the existing building envelope that could violate FAR limitations set by the AHO
- An increase in the number of dwelling units within the existing building if the number of stories above grade is not greater than the existing number of stories above grade, or the existing height divided by 10 feet
- The relocation, enlargement, or addition of openings to the exterior of the building

- The addition of insulation to improve energy efficiency if the new exterior wall conforms to yard setback requirements, does not intrude more than 8 inches into the existing yard setback, or does not decrease the existing open space by more than 5%
- The addition of exterior features to meet accessibility requirements
- Alterations, additions, repair, reconstruction, or replacement of the existing building and pre-existing nonconforming features that do not violate the dimensional requirements set by the AHO

Building and Site Design Standards for New Development. The AHO contains design standards that apply to new construction and the additions to existing structures. Existing buildings that are a part of an AHO project do not have to follow these design standards if the alterations do not “create a condition that is in greater nonconformance with such standards than the existing condition.” The complete standards are available in **6. Appendix.**

5. Income and Affordability

An AHO Eligible Household has a gross household income upon initial occupancy of no more than 100% of AMI. Rental and for-sale AHO units are available for AHO Eligible Households, with a preference for Cambridge residents and former Cambridge residents who experienced a no-fault eviction in the last 12 months within Cambridge. This local preference can make projects ineligible from certain federal grants that can help finance the development of affordable housing.

Rental AHO dwelling units:

- The gross household income of the AHO Eligible Household at initial occupancy cannot be more than 100% AMI, but a household exceeding this limit after initial occupancy can continue to rent the unit (cannot exceed 120% AMI for more than one year).
- At least 80% of the units in an AHO project must be reserved for households with incomes no more than 80% AMI.
- Rent, utilities, and fees must be approved by the CDD and cannot be more than 30% of the gross household income of the unit occupants.
- The gross household income of an AHO Eligible Household will be verified annually, or at the times required by a CDD-approved housing subsidy program, to determine the household’s continued eligibility and rent.

Owner-occupied AHO dwelling units:

- The gross household income of the AHO Eligible Household at initial occupancy cannot be more than 100% AMI.
- At least 50% of the for-sale units in an AHO project must be reserved for households with incomes no more than 80% AMI.
- The initial sale price of a unit must be approved by the CDD, and the monthly housing payment cannot exceed 30% of the household’s monthly income.

6. Regulatory Mechanisms

Deed Restrictions. AHO units are “created and conveyed subject to recorded covenants approved by CDD” to guarantee the permanent availability of the dwelling units to AHO Eligible Households.

Application process and approval. Each AHO project must follow a review and community engagement process.

- The developer must schedule two design consultations with the Planning Board, who will determine if the project meets the regulations of the overlay.
- The developer must host at least two community meetings for the residents of the neighborhood surrounding the proposed project site. At the first meeting, the developer shares initial analysis and gathers feedback from the community before design begins. At the second meeting, the developer shares preliminary project designs and receives design feedback.

7. Strengths

- **AHO projects must contain 100% affordable units.** By requiring that all units of a project be reserved for household earning up to 80% and 100% of the AMI, the City commits to prioritizing low-income housing construction and ensuring that any additions to the housing stock utilizing the overlay’s incentives are affordable units.
- **Application and review process.** The review process includes mandatory community engagement procedures that allow community members to voice their opinions over changes occurring in their neighborhood. Additionally, the advisory design review process is straightforward and thoroughly explained in the AHO ordinance text.
- **Applicability of the overlay zone.** The AHO allows for the creation of affordable housing in zoning districts that have previously not allowed residential uses. In Milpitas, a housing overlay zone with similar regulations would allow areas of the city that are currently zoned and operate as commercial to accommodate new housing construction, without having to undergo a re-zoning process to amend the allowable uses in a commercial district. As an example, if all institutional-zoned parcels in Milpitas could accommodate housing, the City may be able to approve affordable housing projects for teachers and school staff much quicker, and without having to undergo the re-zoning process.

8. Weaknesses

- **100% AMI Standard.** Cambridge’s AMI is different from the AMI in Milpitas. Milpitas is located in Santa Clara, a county with high cost of living that can make 80% AMI unattainable for some Milpitas residents. In 2021, 80% AMI for a family of four was \$117,750 and 30% AMI (usually considered extremely low-income) was \$49,700. An overlay in Milpitas may need to use different affordability requirements that are more appropriate to the city’s context. Additionally, Cambridge requires the monitoring of income levels for rental and for-sale units. It may be difficult to enforce or monitor income requirements of certain units once they are sold.

- **Applicability of the overlay zone.** The AHO allows for the creation of affordable housing in all zoning districts, except Open Space. The overlay creates near-universal standards for parcels throughout the city, but each has different geographic contexts, transportation accessibility, and proximity to community services and amenities. Not all parcels in a city will be the best locations to place low-income housing and some may even contribute to the historic marginalization of low-income communities.
- **Affordable housing construction in Industrial Zoning Districts.** If AHO projects are constructed in areas with primarily industrial uses, these projects could contribute to the historical, unjust practice of placing low-income housing next to pollution-generating uses. Communities that have higher exposure rates to pollutants can lead to increased negative health impacts. Additionally, industrial zones may have underlying restrictive covenants related to the presence of hazardous waste and materials, which could prohibit the construction of housing. In Milpitas, there may be industrial districts that are more suitable for housing construction than others. A comprehensive study of industrial parcels would be needed to understand the socio-environmental effects of allowing low-income housing in these areas.
- **Modernization of older public housing.** For projects retrofitting existing buildings that already feature affordable housing, Cambridge's AHO standards lack anti-displacement measures to ensure future spaces for existing tenants. Consequently, the responsibility of ensuring housing security is left up to individual developers to voluntarily offer as a form of community benefits. For example, Jefferson Park Federal is a project that is replacing former federal public housing buildings with new fully, affordable housing units. The Cambridge Housing Authority has promised to ensure no permanent displacement of the buildings' original tenants and assisted in relocating the original tenants into other units while construction occurs. This assurance is not a product of a regulatory standard in the AHO, but a key value of the Authority when the project was initially being developed.

B. Affordable Housing Overlay. Berkeley, CA

1. Development context

In November 2021, the City Council of the City of Berkeley recommended the City Manager to consider a 100% Affordable Housing Overlay designation, and to integrate it into the ongoing Housing Element Update process. The implementation of the overlay would require the development of objective design standards, or form-based standards, and the development of an advisory Design Review process that will guide the design of qualifying affordable housing projects. Additionally, General Plan amendments would need to be created that allow 100% affordable housing projects, in order to remain consistent with existing densities described in the General Plan. As of March 2022 however, draft regulatory text has not yet been made publicly available, and the ongoing Housing Element work has not yet engaged fully with the topic of an overlay designation. The proposal that was presented to the City Council and City Manager has been released and contains goals, preliminary standards, and requirements that will be included in the final regulatory text.

2. Regulatory Framework

The overlay proposal includes preliminary requirements and standards for affordable housing projects that would utilize the overlay incentives.

3. Applicability/Area of Influence

The overlay would apply to parcels in the following zoning districts:

- Multiple-family Residential (R3)
- Multi-family Residential (R4)
- Mixed Use-Residential (MU-R)
- Commercial Districts (all C-prefixed districts)

The overlay could also apply to parcels in the following zoning districts, but would require further study to determine project feasibility:

- Single-family Residential (R-1)
- Limited Two-family Residential (R-1A)
- Restricted Two-family Residential (R-2)
- Restricted Multiple-family Residential (R-2A)

Parcels located in CalFire Very High Fire Hazard Severity Zones, City of Berkeley Fire Zones 2 and 3, or are designated City, State, and Federal Historical Landmarks, would be exempt from the overlay.

4. Development and Design Regulations

In R3, R4, MU-R, C-prefixed districts, the following standards and bonuses would apply:

- A local density bonus that reflects the provision of AB 1763 (in addition to any State density bonuses)
- No limits on FAR
- Up to 80% lot coverage

In R-1, R-1A, R-2, R-2A zones, the following standards and bonuses would apply:

- A local bonus inclusive of existing density bonuses
- No limits on FAR
- Up to 80% lot coverage

5. Regulatory Mechanisms

Deed Restrictions and Income Requirements. Units within qualifying 100% affordable housing projects would be deed-restricted for Low, Very Low, Extremely Low-, and Moderate-Income households.

Application process and approval. Projects that comply with the overlay’s design standards and income requirements would have ministerial approval. The advisory Design Review process would review if the project met the overlay’s guidelines. If the guidelines were not met, the Design board would provide suggested changes to the developer that would allow the project to meet the standards.

6. Strengths

- **Excluding parcels in fire hazard zones.** By not allowing affordable housing development in fire-risk areas, the City is decreasing the potential of low-income family displacement in the event of a wildfire.
- **Overlay as a part of the Housing Element.** The AHO proposal states that it will be a part of the state-mandated Housing Element, which describes the city’s plans to accommodate future housing growth. As a part of the Housing Element, it would better ensure that the overlay is implemented.

7. Weaknesses

- **Overlay language not yet finalized.** Berkeley’s AHO is still a proposal that will be incorporated into a different regulatory document, and it cannot be thoroughly compared to other overlay zones that have been adopted into zoning codes and ordinances.
- **100% Affordable Units.** Restricting the benefits of an Overlay to 100% affordable housing can be seen as a constraint. By limiting the pool of which types of projects can leverage the incentives can limit the overall production of affordable housing. In addition, constrained availability of public funds and the need for local municipalities to provide matching funds can be a limiting factor.

C. Affordable Housing Overlay. Menlo Park, CA

1. Development context

Menlo Park’s Affordable Housing Overlay (AHO) is meant to implement the goals of the Housing Element and encourage the development of affordable housing for low, very low, and extremely low-income households. The AHO was adopted by the City Council in June 2013 as a part of a settlement agreement (*Peninsula Interfaith Action, et al. v City of Menlo Park*) that also required the City to update its 1992 Housing Element. As of March 2022, the City’s 2023-2031 Housing Element Update is ongoing and has proposed updating the AHO to include a maximum density bonus of 100 dwelling units/acre for 100% affordable housing projects, extending the AHO coverage area, and modifying the fee waivers and development standards. These updates are not yet final, and the discussion presented below is based on the current, adopted overlay language.

2. Regulatory Framework

Menlo Park’s AHO contains income and affordability criteria, development and design regulations, and regulatory mechanisms for ensuring the continued affordability of an AHO project’s units.

3. Applicability/Area of Influence

The overlay applies to parcels within the Menlo Park El Camino Real and Downtown Specific Plan area and those zoned as R-4-S (AHO) (high density residential, special – affordable housing overlay). Qualifying projects must have at least 5 units and accommodate a full range of income levels.

4. Interaction with underlying zoning

The overlay has been applied to specific parcels as a zoning classification (R-4-S AHO) and applies to the parcels identified in the El Camino Real and Downtown Specific Plan. The Specific Plan establishes development standards that can be paired with the standards of the AHO, and the AHO identifies the Specific Plan guidelines that cannot be substituted.

- *Exceptions:*
 - For parcels within the Specific Plan boundaries, the maximum FAR will be limited to the public benefit levels for the area the parcel is in. Each Specific Plan area has a different maximum FAR depending on the parcel's land use and location within the area.
 - El Camino Real North: 1.10, 1.50 FAR
 - El Camino Real South: 1.50, 1.75 FAR
 - Station: 1.75, 2.25 FAR
 - Downtown: 1.0, 2.25 FAR
 - Front and side setback facing a public right-of-way.
 - Building facade height.
 - Massing and modulation standards including major portions of a building facing a street should be parallel to the street, building breaks, building facade modulation, and building profile, and upper story facade length.

5. Development and Design Regulations

Density bonus.

- An AHO project that provides 21% low-income units is entitled to a 36.5% density bonus. With each additional percentage of low-income units above 21% (or the percentage used for low-income units when there is a mix of low and very low-income units), project is entitled to an additional 1.5% density bonus up to a cumulative maximum bonus of 60%.
- An AHO project that provides 12% very low-income units is entitled to a 37.5% density bonus. With each additional percentage of very low-income units above 12% (or the percentage used for very low-income units when there is a mix of low and very low-income units), project is entitled to an additional 2.5% density bonus up to a cumulative maximum of 60%.

FAR. There is no stated maximum or minimum FAR. An AHO project can increase its floor area ratio “by an amount that corresponds to the increase in allowable density” determined by the density bonus guidelines.

- Projects can add an additional 5% or other increase that is “reasonably sufficient to make development of low and very low income multiple-bedroom units and family housing feasible.”

Coverage.

- “Any applicable maximum building coverage and/or allowable paving requirement shall be increased by 5% and the minimum open space requirement reduced by 10% from the underlying zoning designation.”

Height.

- An AHO project that can have up to a 45% AHO density bonus can have a maximum height of 4 stories (no more than 48’).
- An AHO project that can have an AHO density bonus greater than 45% and has at least 50% of its affordable units reserved for very low and extremely low-income households (or 25% of the affordable units reserved for extremely low-income households), can have a maximum of 5 stories (no more than 60’).

Parking. The parking requirements of the underlying zoning designation apply to AHO projects. The following guidelines only apply to the affordable units within a project:

Unit Type	Required Parking Space(s)
Studio	0.8
1-bedroom	1
2-bedroom or larger	1.5
Senior housing units	0.8 or less
<i>For projects within the Caltrain station area identified in the Specific Plan, each affordable unit can have a reduction of 0.2 parking spaces from the minimum listed here.</i>	

- AHO projects within the Specific Plan area can conform to the parking requirements listed in the AHO or adhere to the parking requirements of the specific plan, whichever is less.
- Parking spaces for affordable units do not need to be covered or located in a garage or carport.
- Provided long-term bicycle parking should not be more than 0.5 spaces per unit.
- Any requirement for electric vehicle parking or recharging stations can be reduced by 50% or project can provide an equivalent number of car sharing spaces.

Open Space. Common and private open space can be reduced by up to 50% from the underlying zoning requirements, in addition to reductions needed to “physically accommodate the increased density provided for” by the ordinance.

Setbacks. In addition to reductions needed to “physically accommodate the increased density provided for” by the ordinance, required setbacks can be reduced by 5 feet.

- *Exception:* When an AHO project parcel is next to a parcel zoned for single-family residential, the underlying zoning requirement still applies.

Design.

- AHO projects will be reviewed for compliance with adopted objective design standards, and projects within the **Specific Plan area must follow the** architectural control process described in the plan. No other review is required unless the developer requests a variance from the AHO requirements.
- Low and very low-income units must be built at the same time, and to the same quality standard, as market rate units. They must also be integrated into the project.
- The number of bedrooms in low and very low-income units must be consistent with the mix in market rate units.

6. Income and Affordability

To be eligible for bonuses and incentives, AHO projects with more than 5 but less than 100 units must have at a minimum: 21% of all units reserved for low-income households, or 12% of units reserved for very low-income households.

- If the project proposes to have both low and very low-income units, the minimum percentage of units shall be more than necessary to reach a 35% state density bonus.
- The below market rate units a project is required to include due to the City's Below Market Rate Housing Program cannot be counted to reach these AHO requirements.

To be eligible for the density bonuses and incentives, AHO projects with more than 100 units must have at a minimum: 21% of all units reserved for low-income households, or 12% of all units reserved for very low-income households.

- If the project proposes to have both low and very low-income units, the minimum percentage of units shall be more than necessary to reach *more than* a 35% state density bonus.
- The below market rate units a project is required to include due to the City's Below Market Rate Housing Program cannot be counted to reach these AHO requirements.

In addition to the aforementioned income criteria concerning low-income and very-low income households, the AHO also includes a secondary requirement, where:

- 25% of the affordable units must be reserved for very low and/or extremely low-income households, **or**
- 15% of the affordable units must be reserved for extremely low-income households

In practice, a 100-unit project would need to adhere to one of the following methods in order to qualify for the AHO bonuses:

- Method 1a: A minimum of 21 units reserved for low-income households (21% of all 100 units), where 6 of these units (25% of the 21 affordable units, rounded up) are reserved for very-low and/or extremely-low income households

- Method 1b: A minimum of 21 units reserved for low-income households, where 4 of these units (15% of 21 affordable units, rounded up) are reserved for extremely-low income households
- Method 2a: A minimum of 12 units (12% of all 100 units) reserved for very-low income households
- Method 2b: A minimum of 12 units reserved for very-low income households, where 2 of these units (15% of 12 affordable units, rounded up) are reserved for extremely-low income households

A key provision of the AHO is that the low or very low income percentage required to qualify for the AHO shall not include the below market rate units required to be provided by for-sale residential development project and commercial development projects pursuant to the city's below market rate housing program or Inclusionary Housing requirement.

7. Regulatory Mechanisms

Continued affordability.

- Project developers must create an agreement with the city to ensure the continued affordability of the affordable dwelling units for no less than 55 years.

Waivers.

- AHO projects with at least 50% of all project units reserved for low-income households (or 20% for very low-income households) are entitled to a fee waiver for all processing fees related to development applications.
- All AHO projects are entitled to a reduction in all other fees in an amount that corresponds to the increase in allowable density, though the waiving of certain fees is subject to discretionary review by the city council.

8. Strengths

- **Affordability requirements.** The AHO provides incentives to projects with 50% or less affordable units, an affordability percentage that can allow use of more private financing for these projects compared with 100% affordable housing projects.
- **Affordability agreement.** The overlay includes a 55-year continued affordability agreement, which allows the rental price of the unit to stay affordable and can lead to housing security for low-income families.
- **Fee waivers.** Fee waivers incentivize increases in the number of low (or very low) income units.
- **Design quality.** The AHO includes a condition that requires developer to construct affordable units to the same quality standard as market-rate units and for the affordable units to be integrated with the entire project building. This is an important aspect to include in the overlay that ensures that the lower and higher income units are fully integrated.

9. Weaknesses

- **Incentives.** Many of the development standard exceptions can be obtained by using the recently revised State Density Bonus Law provisions.
- **Parking requirements.** The reductions for parking could be higher, making the provision of additional affordable units more financially viable.

D. Senior Housing Overlay Zone. Perris, CA

The Senior Housing Overlay (SHO) Zone from the City of Perris is meant to encourage the development of senior housing in compatible neighborhoods and create more housing opportunities for very low- and moderate-income seniors.

1. Development context

The Senior Housing Overlay Zone was adopted by the City Council of Perris in 2013. Since then, [Perris Station](#) is an example project that made use of the SHO. The 84-unit senior housing project opened in 2015.

2. Regulatory Framework

Perris' SHO contains affordability requirements, density and parking incentives, and detailed building and site design guidelines.

3. Applicability/Area of Influence

The SHO Zone can be applied to a lot that is at least 2 acres, but not larger than 75 acres, in any residential or commercial district. The current and proposed surrounding land uses must be free from health and safety issues and be compatible with the environment required by seniors. SHO projects are allowed to have multifamily residential, attached single-family residential, and detached single-family residential units that can be rentals, condominiums, cooperative, or other fee-simple ownership units.

4. Interaction with underlying zoning

SHO projects can be on parcels in residential or commercial district. Projects must follow the standards of the underlying zone, except when the development and design regulations of the SHO say otherwise. Parts of the City are in a redevelopment area, and SHO projects within that area are subject to different SHO development and design regulations than those outside of the redevelopment area.

5. Development and Design Regulations

Density. The maximum allowable density of an SHO project is 50 dwelling units/acre. This incentive can override the underlying zone density requirements.

Parking. SHO projects must provide 1.15 parking spaces per dwelling unit.

Setback. The setback of the building along all street frontages must be half the length of the building wall but cannot be less than 20 feet.

Building and Site Design Standards. The SHO specifies development criteria that dictates the design of the building, site, accessibility features, circulation, landscaping, open space, and recreational facilities. It also lists security and maintenance considerations. For the full list of standards, refer to the original SHO language (link provided in **6. Appendix**)

6. Income and Affordability

Age requirement:

- At least one household member must be 55 years or older.

Projects within redevelopment area:

- At least 30% of the dwelling units will be reserved and affordable for low- and moderate-income households.
- At least 50% of the 30% mentioned above will be reserved and affordable for very low-income households.
- These dwelling units can be rental and/or for-sale units.
- The City may require more stringent income requirements if it has provided financial assistance to the development project.

Projects outside redevelopment area:

- At least 3% of the dwelling units will be reserved and affordable for low- and moderate-income households.
- At least 40% of the 3% mentioned above will be reserved and affordable for very low-income households.
- These dwelling units can be rental and/or for-sale units.

7. Regulatory Mechanisms

Deed Restrictions. The affordability restrictions must remain in place for 30 years or the time period specified by the land use controls of the redevelopment area, whichever is longer.

Waivers. The City can waive park development fees for qualified SHO projects.

Application process and approval.

- The Planning Commission will host a public hearing to consider the proposed project and determine whether to recommend approval or disapproval to the city council. They will recommend approval if the project meets the requirements of the SHO.
- The City Council will conduct a public hearing to determine whether the SHO should apply to the project. It must meet the following guidelines:
 - "The proposed project at its specific location is necessary and desirable to provide a facility that will contribute to the general well-being of seniors as well as the local neighborhood, community, and region.
 - The location of the project and the mix of uses is not detrimental to the health, safety, or welfare of its residents, employees, or those working or residing in the area.
 - The proposed project will provide a superior community that will support the unique needs and lifestyles of seniors.
 - That the granting of this permit will not adversely affect the public welfare and will be consistent with the city's general plan and any other relevant plans of any government agency."
- By granting an SHO project permit, the City Council reserves the right to modify the project plans or create conditions the project must meet to ensure public health, safety, and welfare and meet the objectives of the SHO Zone.

8. Strengths

- **Building and site design standards.** The Senior Housing Overlay includes detailed and specific design parameters developers must follow. With these guidelines, the City has clear expectations about the living environment senior housing developments should create and maintain.
- **Affordability agreement.** The overlay includes a 30-year continued affordability agreement, which allows the rental price of the unit to remain affordable.

9. Weaknesses

- **Affordability requirements.** The affordability requirements for projects outside of redevelopment areas of the city are very low and would not produce a substantial amount of affordable senior units or justify the benefits conferred to the project by the SHO. The affordability requirements for projects in redevelopment areas are even not very high given the objectives of this type of special zoning. Developers can see this low requirement as an incentive to prioritize housing construction in non-redevelopment areas, leaving other areas of the city without as much new senior housing. If the City's intention was to spur more senior housing in these other areas, this is unclear.
- **The project approval process is discretionary.** The project approval process is not as streamlined as other cities and it is discretionary to the City Council's interpretations of public health needs. In one way, the City has more oversight over what is built, but it could be seen as a disincentive by developers who would want to develop and construct projects on a faster timeline. Specific public health considerations could have been included in the building and site design standards section.

- **Limited applicability.** The minimum parcel size of 2 acres excludes the potential of projects on smaller sites. There are many examples of successful affordable or mixed-income senior housing projects with 50 units on one acre. The high minimum project size may be adequate in some areas but likely has the unintended consequence of excluding potential projects as infill in many older, more developed neighborhoods.

3. Incentives

It is important to note that Milpitas must also address a significant number of recently adopted state-level legislation and regulatory mechanisms pertaining specifically to affordable housing. Many of these laws establish a variety of incentives whose purpose is to encourage the construction of new housing, and in some instances have already resulted in significant revisions to local planning practices and regulatory language. Examples of relevant state law have been included throughout this section.

A. Streamlined Permitting Process

A streamlined, predictable permitting process can incentivize more developers to construct affordable housing. Many cities require a multistep discretionary review process to ensure a proposed project complies with the City's Zoning Code, and this approval process can extend the project timeline while adding more costs onto the developer. A clear permitting process can lower these initial development costs and expedite affordable housing projects. There are a variety of strategies municipalities can take to streamline their permitting process for affordable housing projects.

By-right/as-of-right approval

By-right (also known as "as-of-right," administrative review, ministerial review) development approval is granted to a project that has conformed to the zoning and building code requirements and qualifies for construction without having to go through a discretionary approval process. The project still needs to apply for permits but by qualifying for by-right development, the developer can cut down the time and money spent on having their proposed project approved. Some cities pair by-right approval with a design review.

For example, Cambridge's Affordable Housing Overlay "as-of-right" approval applies to projects that follow all the regulations and objective design standards of the overlay, go through a two-meeting advisory design review, and host two community engagement meetings. The expectations and requirements of the developer for these meetings are clearly listed in the Overlay ordinance.

In Menlo Park, Affordable Housing Overlay projects outside of the Downtown specific plan area only need a compliance review to determine the project's compliance with adopted objective design standards. Projects within the specific plan area must go through the architectural control process

described in the specific plan. If the developer requests a variance from adopted regulations and design standards, discretionary action will be required.

Milpitas could consider a streamlined permitting process specific to an overlay zone that is complementary and consistent with other existing regulations and state housing laws. Similar to the way that recent state legislation has already introduced mandated streamlined permitting processes related to specific types of development projects (among these, rooftop solar with AB 2188 in 2015 and streamlined residential review with SB 330 and changes to the Housing Accountability Act in 2019), the introduction of a new affordable housing overlay zone could provide a broader definition of projects eligible for a streamlined review.

B. Bonus Development

Density bonuses allow developers that prioritize affordable housing to construct more units to spread the subsidized cost of the affordable units over a larger number of market rate units. Accompanying height bonuses allow for the larger floor area to be accommodated on the site.

Additional Density/FAR Bonuses

Many cities build on the existing state density bonuses to further incentivize affordable housing development. A density bonus allows a project to have an increase in dwelling units per acre. A FAR bonus allows buildings to have an increase in the total floor area. To accommodate additional units allowed by density bonuses, some overlays have removed the maximum FAR limit for applicable projects. For example, Cambridge's overlay does not have a max FAR (unless the underlying zoning specifies a max 1.0 FAR, then applicable projects can have up to 2.0 FAR). Menlo Park also does not specify a max FAR, and notes that the FAR of projects can increase by the amount needed to accommodate increased density.

Beyond their inclusion in overlay zones however, Milpitas should first contend with prevailing state laws regarding density bonuses attributed to affordable housing. AB 1763 (2019) and AB 2345 (2020) constitute the most applicable and comprehensive examples, as they collectively establish several regulations that link ranges of density bonuses with affordability levels. AB 1763 more than doubles the density bonus for eligible projects where all units are affordable to low and very-low income level residents. AB 2345 accommodates density bonuses on a slide scale between 35% and 50%. The bonus is linked to several other conditions and criteria including income criteria, parking, and concessions for provision of senior housing.

For a new overlay zone to be meaningful, any provisions should be written to exceed the stated minimums, especially with regards to the required metrics for very low income- and low income-households; the bonuses in AB 2345 are currently triggered at 15% and 24% respectively.

Additional Height Allocation

Allowing additional building heights or stories in an overlay can incentivize developers to pursue a project because developers can meet “the economy of scale” needed to construct affordable housing. Increased height allowances can enable buildings to have additional uses on the ground floor, whether it be building amenities or community commercial uses. For example, Cambridge’s AHO increases allowable building heights from the underlying zoning’s requirements and allows an additional 5’ when the first floor has an active non-residential use.

Other overlays choose to link the new allowable building heights to the density bonus a project qualifies for and the number of affordable units it includes. In Menlo Park, a project with a 45% density bonus can have up to 4 stories (or 48’), while a project with a 45% density bonus and with 25% of the units reserved for extremely low-income households can have up to 5 stories (or 60’). Milpitas already has two precedents to consider when approaching additional height allocations. The High-Rise (-HR) Overlay District is an existing designation that can be combined with any zoning district along with infill projects located along freeways and expressways. While a new overlay zone oriented around affordable housing may be introduced, the City could first consider expanding the existing -HR designations onto new applicable parcels through a zoning map amendment, rather than nest such language into a new overlay regulation.

With the recent completion of the Milpitas BART station, AB 1763 (2019) also offers a unique perspective on regulating building height increases within an incentive structure. AB 1763 allows eligible 100% affordable housing developments built within a half-mile of a major transit stop an increase in building height by 3 additional stories or 33 feet. The bill allows this additional density to operate *atop* any other density bonuses. The result can be a substantial increase in total development potential, as seen in a recently approved housing development in nearby San Mateo where the application of AB 1763 allowed an initially proposed 164-unit, 5-story project to expand into a 225-unit, 7-story project. Although this stipulation may not apply city-wide, Milpitas could first consider the potential development capacity of parcels within a half-mile radius of the BART station, or other qualifying transit hubs, as an alternative to a new overlay zone.

Building & Site Design

Setback and off-street parking reductions can allow housing projects to increase their size and density, in turn creating more units. Setbacks create distance between a building and the property boundaries, and smaller setback minimum requirements mean that developers can use a greater area of the lot for the building.

Off-street parking requirements are usually met by constructing parking spaces underneath the building, on the ground floor, or in an adjoining parking lot. Reducing the required minimum parking spaces can allow for more development potential ((i.e., community amenities, green spaces, additional units) on a site as well as reduce development costs. With reduced or no minimum parking requirements, a developer can still choose to

provide more parking if needed. Additionally, removing parking minimums can incentivize building occupants to use alternative modes of transportation.

C. Fee Waivers

Development fees, permitting fees, and/or processing fees are typically required from developers when submitting a project proposal. Affordable housing overlays can be structured to waive certain fees for projects that reach specific affordability requirements. For example, Menlo Park waives processing fees for projects that have at least 50% of the units reserved for low-income households or 20% of the units reserved for very low-income households. The City of Perris' Senior Housing Overlay Zone waives the development fees for all projects that qualify under this overlay.

While Milpitas could waive some or all of the fees to incentivize housing projects, the City would need to evaluate how to fund the services that the fees are used to provide. Considerations may include waiving or reducing Planning Entitlement, Transit/Traffic Impact, or Parks fees, or revising the types of projects that are subject to these fees. In particular, the city should carefully assess whether qualifying multifamily projects within a newly proposed overlay zone would be subject to all typical fees – the prospect of a reduced set of mandatory fees could serve as an attractive incentive for developers.

D. Other Incentives

- **100% AHO vs not-100% AHO consideration.** Adopting a 100% Affordable Housing Overlay can incentivize non-profit and affordable housing developers to construct projects in Milpitas as it signals that the City is prioritizing the development of housing for its low-income residents, a demographic that struggles to find housing options that match their incomes. But having a mixed Affordable Housing Overlay allows other types of projects with different income mixes (and a broader variety of financing) to be constructed. Other types of possible incentives will be studied further after consultation with developers in Milpitas area to identify what would make it attractive to build more affordable housing.
- **Socio-economic benefits.** The creation of an affordable housing overlay zone can bring about socio-economic benefits for the city, and for the tenants and owners of affordable units. The Berkeley overlay proposal calls out how the intent of affordable housing overlays is not just to produce more housing, but to promote the more equitable distribution of affordable housing throughout a city. This is especially important in areas that have been shaped by class and racial segregation and where it persists to this day. When affordable housing is allowed to develop in high-opportunity neighborhoods, there are more opportunities than before for lower-income households to live and participate in those neighborhoods. More residents of a city can have the option to live in neighborhoods that typically have greater access to transit, education, and community amenities. Depending on the overlay's provisions, it can also incentivize a greater mix of incomes within individual buildings.

5. Conclusion

A housing overlay that is developed in Milpitas will have to consider the city's housing needs and environmental context to create an overlay that best suits the City's conditions and housing goals. There are a variety of incentives and strategies that an overlay can include to encourage the development of a particular type of housing, but it must be done in conjunction with existing state housing bonuses and incentives.

A few considerations for the city to consider in developing a AHO in Milpitas:

- The extent to which an AHO can build upon the SDBL and other recent State provisions for incentivizing housing production.
- The amount of financial incentives including fee waivers that the City can offer to prioritize the development of affordable housing.
- How to address the potential issue that the concentration of affordable units in certain geographic areas may run counter to AFFH requirements, especially if Housing Element sites are located with the overlay zone.

The precedent examples shall be helpful in informing the development of a Milpitas-specific overlay zone. Next steps include stakeholder interview and further analysis of target areas and applicable regulations.

6. Appendix

Overlay Zone Text and Resources

Cambridge, MA

- Regulatory text: <https://www.cambridgema.gov/-/media/Files/CDD/Housing/Overlay/adoptedahoordinance.pdf>
- Supporting Documentation:
 - https://www.cambridgema.gov/-/media/Files/CDD/Housing/Overlay/zngamend_aho_designguidelines_20200728v2.pdf
 - <http://rwinters.com/insideout/2018sept18/OverlayProposal2018Sept13.pdf>
 - <https://courbanize.com/projects/jeffersonparkfederal/information>
 - <https://www.wickedlocal.com/story/cambridge-chronicle-tab/2021/08/16/op-ed-cambridges-affordable-housing-overlay-already-producing-350-new-affordable-homes/8129618002/>

Berkeley, CA

- Regulatory text (DRAFT): <https://www.berkeleyside.org/wp-content/uploads/2021/11/2021-11-09-Item-09-Affordable-Housing-Overlay.pdf>

- Supporting Documentation:
 - <https://www.berkeleyside.org/2021/11/10/affordable-housing-berkeley>
 - <https://beyondchron.org/berkeley-s-next-big-step-a-100-affordable-housing-overlay/>
 - <https://www.dailycal.org/2021/11/11/berkeley-city-council-approves-affordable-housing-overlay-social-housing-measures/>

Menlo Park, CA

- Regulatory text: <https://www.codepublishing.com/CA/MenloPark/#!/MenloPark16/MenloPark1698.html>
- Supporting Documentation:
 - El Camino Real and Downtown Specific Plan: <https://www.menlopark.org/DocumentCenter/View/290/Specific-Plan---Complete?bidId=>
 - <https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/housing-element-update/20220212-housing-element-update-community-meeting-presentation.pdf>
 - <https://covid19.sccgov.org/sites/g/files/exjcpb766/files/Documents/santa-clara-county-2021-area-median-income-ami-chart.pdf>

Perris, CA

- Regulatory text: https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT19ZO_CH19.86SEHOOVZOSH
- Supporting Documentation:
 - <https://ktgy.com/work/perris-station-senior-apartments/>

Other sources

- [https://www.planetizen.com/definition/right-development#:~:text=A%20by%20right%20approval%20\(also,construction%20without%20requiring%20discretionary%20approval](https://www.planetizen.com/definition/right-development#:~:text=A%20by%20right%20approval%20(also,construction%20without%20requiring%20discretionary%20approval)

TECHNICAL MEMO

City of Milpitas Planning Documents and Process Assessment

March, 2022



Submitted by Raimi + Associates

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1. Introduction

i. Overview

Several factors have made the goal of creating and preserving housing, especially affordable and special needs housing, a challenge in the City of Milpitas. Along with increasing land and construction costs, current plans and regulations can also severely limit where and how much new affordable housing can be built. Zoning laws may impose standards such as density limits and parking requirements or delays in the permitting process can become burdensome for some housing projects.

This memo reviews and summarizes some of the existing planning documents and ordinances that impact the development of housing and identifies strengths that can be enhanced and weaknesses that can be overcome through the Housing Overlay Zone project. The HOZ aims to address these challenges through relaxing requirements, providing incentives, and streamlining the permitting process to help the City's developers and housing partners access new opportunities and allow for balanced and equitable growth in the city. This memo will help develop recommendations guiding land use, developmental standards, and processes in the next phase of the Housing Overlay Zone project.

ii. Key Takeaways

- The General Plan goals and actions aim to create vibrant commercial neighborhood centers through placemaking strategies and mixed-use development that encourage social gatherings.
- While the current General Plan designations NCMU and TWC allow mixed use, low FAR limits and the bundling of residential development with the amount of commercial space developed considerably limits the scope of constructing mixed use projects.
- The revised density limits in the draft Metro Specific Plan have the potential to be further intensified based on the proposed height limits taking advantage of the State Density Bonus Law. The Zoning Ordinance would need to be amended after the adoption of the Metro Specific Plan.
- Density Bonus and other State laws provide for additional floor area, additional density, and a reduction in parking requirements. The HOZ may need to go significantly beyond state legislation to be effective on properties where state density bonus laws apply.
- The City's current Affordable Housing Ordinance requires a minimum of 15% of units to be affordable, pay an in-lieu fee, or dedicate land. The HOZ could further incentivize inclusionary units, or it will need to relate to projects exceeding the 15% required by the AHO.
- Development Process timelines for Milpitas are in line with surrounding communities and not seen as a significant burden to development.
- Development Fees are higher in Milpitas compared to other jurisdictions in Santa Clara County owing to high entitlement fees for single-family development and high impact fees for multi-family developments. The high impact fees are due to the Transit Area Development Impact fee (TADIF) for sites within the TASP area and high park in lieu fees for sites outside the TASP area.

2. Documents and Policies Reviewed

This memo summarizes relevant planning legislation and processes that regulate the development of housing and will inform the development of the Housing Overlay Zone. Specifically, the following regulatory planning and policy documents have been included in this memo.

Table 2-1 Overview of Plans and Policies Reviewed

Name of Plan/Policy	Adoption Date/Status	Relevance
Milpitas General Plan	Adopted 2021	Outlines city-wide land use goals and actions and provides land use designations including the mix of residential and commercial use.
Milpitas Metro Specific Plan	Public Draft 2021	Proposes redevelopment of industrial uses near the Great Mall area with increased intensities and mix of uses.
Midtown Specific Plan	Adopted March 2002 Updated 2010	Provides a new vision for approximately 1,000 acres with a focus on housing and employment. An update to the plan was initiated in 2021 and is not covered under this memo.
Zoning Code		Establishes zoning districts and defines the type of development, use, densities, height, and parking requirement for each district.
City Density Bonus Ordinance & State of California's Density Bonus Law	City's DBO last amended in 2008	Provides density bonuses on a sliding scale for different affordability criteria.
Affordable Housing Ordinance	July 2018 Amended 2022	Requires all developments with 10+ units to provide 15% affordable units.

3. Planning Review

i. Milpitas General Plan

The Milpitas General Plan, adopted in 2021, includes multiple high-density residential designations, two specific plan areas, and two mixed-use zones. For the HOZ project, this report will review the Town Center (TWC) and Neighborhood Commercial Mixed-Use (NCMU) designations in detail and highlight other potentially relevant designations.

General Plan Goals, Policies, and Actions.

The General Plan Goals, Policies, and Actions set out three main goals for the commercial centers included in the TWC and NCMU plan areas -the first is to support and maintain commercial centers that serve residential neighborhoods, the second is to focus on placemaking in any redevelopment of these commercial centers to create public gather places and opportunities for outdoor uses such as outdoor cafes and other amenities, and the third is to encourage mixed-use development including residential multi-family development to “encourage social interactions.” While these goals reflect the positive outcomes of potential redevelopment and reinvestment in underperforming and aging commercial centers, there are other goals and policies that may be contradictory or limit potential redevelopment. Specifically, the NCMU and TWC designations have requirements that significantly limit the feasibility of mixed-use projects. Generally, the Goals and Policies outline that in the NCMU zone, redevelopment results in “no net loss of viable commercial space.” This language is ambiguous and as the retail market continues to evolve, the viability and type of commercial spaces come into question. In other jurisdictions, a net loss in commercial space is often witnessed when single use shopping centers are redeveloped as mixed-use projects, with commercial FAR ranging between 10% to 25%.

The Actions in the General Plan give direct guidance on the creation of new zoning standards to support the NCMU designation and update the TC zone to reflect the guidance of the TWC designation. The actions also outline research and flexibility in standards to develop a citywide Retail Strategy and update the Zoning Ordinance to help ensure that commercial centers remain competitive and successful, as well as undertake strategic initiatives and flexible development standards for the adaptive re-use of aging centers. These actions allow more flexibility in the ability to meet the goals and policies for redevelopment of the mixed-use centers.

EXCERPT FROM GENERAL PLAN

Goal LU-6 *Support commercial centers that serve residential neighborhoods and provide for a variety of convenient, successful and attractive commercial uses throughout the city.*

LU 6-1 *Ensure new development in Neighborhood Commercial Mixed Use (NCMU) areas includes adequate commercial components to retain commercial uses as the dominant use type, and that the redevelopment of aging centers results in no net loss of viable commercial space. The City Council may consider opportunities to waive commercial requirements in mixed use areas for 100% affordable projects that increase the affordable housing stock within Milpitas for “very low income” and “low income” categories.*

LU 6-2 *As commercial centers are proposed for redevelopment, create a vibrant public realm through placemaking techniques like public gathering places, features and focal elements including outdoor cafes and other outdoor uses and amenities.*

LU 6-3 *Minimize the visual impact of large parking lots by locating them away from public streets and reclaim unneeded and underutilized paved areas that could be converted to neighborhood-enhancing features such as, gathering areas, pocket parks, or other community focused amenities.*

LU 6-4 *Maintain viable neighborhood-serving commercial uses throughout the City in order to serve surrounding neighborhoods and minimize vehicle miles traveled. Encourage a diverse mix of commercial uses including retail, service, office, entertainment, and assembly uses.*

LU 6-5 *Promote reinvestment in strip commercial and shopping centers and maintain, revitalize, and redevelop aging and underperforming centers.*

LU 6-6 *Encourage redevelopment and intensification of mixed-use areas by allowing stand-alone vertical mixed-use, or integrated horizontal mixed-use projects in mixed use areas, consistent with the Land Use Map and policies and actions included in this element.*

CD 9-3 *Encourage the incorporation of publicly accessible spaces, such as plazas and pocket parks, into new and existing commercial, multi-family, and mixed-use developments to encourage social interaction. The spaces should be appropriately scaled and programmed and compliment the characteristics of the district and/or neighborhood and the surrounding development.*

EXCERPT FROM GENERAL PLAN

Action LU-1a *Update the City's Zoning Map as appropriate to ensure consistency with the land use designations shown on Figure LU-1.*

Action LU-1b *Review the Zoning Ordinance and update as appropriate to reflect Land Use goals, policies, and implementation actions included in this Plan. Specific updates include but are not limited to: 1) Creation of specific new zoning standards to support the Neighborhood Commercial Mixed-Use (NCMU) and Neighborhood Commercial (NC) land use designations to ensure that NCMU and NC areas remain primarily neighborhood serving.*

Action LU-6a *Continue to review development applications to ensure land use compatibility as new development applications are brought forward. Where potential impacts are identified seek opportunities to reduce impacts through site planning and design techniques including but not limited to buffering of uses, clustering, or other planning tools as necessary to reduce potential impacts to sensitive receptors.*

Action LU-6b *Monitor emerging trends in retail and other commercial uses, regularly engage representatives of the business community and citizen leaders, and update the Zoning Ordinance to help ensure that commercial centers remain competitive and successful.*

Action ED-1i Develop, implement and update at least every 5 years, a citywide Retail Strategy, to reduce retail vacancies and strengthen the City's retail tax base.

Action ED-1j To encourage redevelopment of underperforming commercial corridors and retail centers (i.e. Serra Center, Main St.), maintain flexible zoning standards allowing both vertical and horizontal mixed uses.

Action ED-3a Encourage the renovation and/or redevelopment of existing outdated facilities that have strong linkages to transit and nearby retail and recreational amenities.

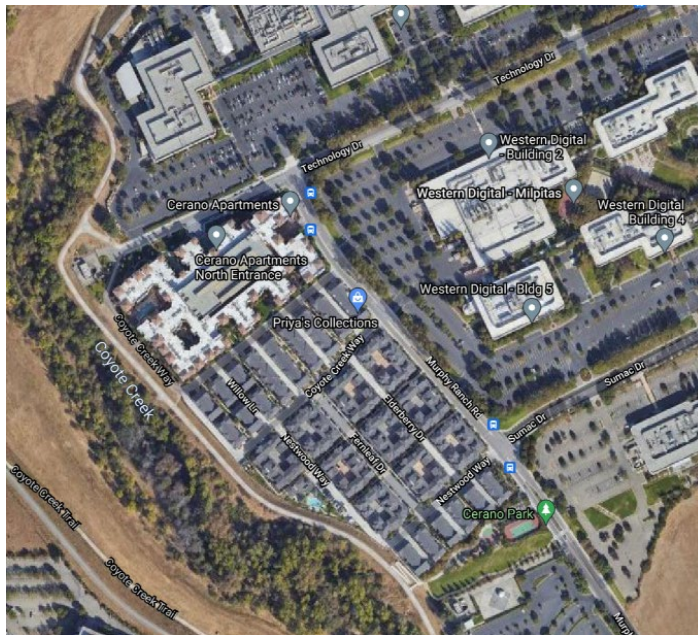
Action ED-3b Undertake strategic initiatives to attract private investment in well-located properties that are currently vacant and/or underutilized.

Action ED-3d Maintain flexible development standards to accommodate a wide range of commercial space needs and facilitate the adaptive reuse of older properties.

General Plan Designations

Residential Designations (LDR, MDR, HDR, VHDR). The residential GP designations are almost exclusively built at the upper end of the density for each designation. They are only relevant to the HOZ if other areas in Milpitas are rezoned to these designations through a Specific Plan or specific project. This seems to be a typical pattern in the City in multiple locations.

QUESTION: What is the history of non-residential properties being rezoned for housing? Should the HOZ look for these types of opportunities? Example: Cerano Apartments, Murphy Ranch Road (Previously zoned Light Industrial or Industrial Park, now zoned Urban Residential)



Neighborhood Commercial Mixed (NCMU). The NCMU designation is a new land use designation in the 2021 General Plan Update. The NCMU designation is located in four areas across the City and includes three different commercial and industrial zoning districts. The new designation allows for the development of housing on properties in the NCMU designation but includes strict limits on the amount of residential that is allowed in relation to the amount of commercial space provided. It is unlikely that a mixed-use project would be feasible if a new zoning district was created that instituted the residential to non-residential ratio requirements of the General Plan designation. The General Plan does not include a density for residential in the NCMU designation. Assuming 1,000 gross square feet per unit on average, the density of the NCMU designation would be 21 dwelling units per acre but would require 0.75 commercial to get to 21 dwelling units per acre. The General Plan does allow for discretionary approval for residential-only projects if the project is 100% affordable to the “low” and “very low” income categories.

“FLOOR AREA RATIO. Floor area ratio, referred to as FAR, is used to express the building intensity for nonresidential uses, such as commercial, industrial, community facilities, and the non-residential component of mixed-use projects. FAR refers to the ratio of the total floor area of a building or buildings on a site, excluding parking structures and outdoor storage areas, to the lot area of the site.”

EXCERPT FROM GENERAL PLAN

NEIGHBORHOOD COMMERCIAL MIXED-USE (NCMU) (FAR UP TO 0.75, AND UP TO 1 UNIT PER 1,500 SQUARE FEET OF NONRESIDENTIAL DEVELOPMENT). The Neighborhood Commercial Mixed-Use (NCMU) designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use, and residential uses, hotel, and office development allowed on a limited basis. The NCMU designation encourages active neighborhood serving uses at the ground level, including grocery stores, specialty retail, restaurants, plazas, or walk-in personal services such as banks and salons at FARs up to 0.75. This designation also provides opportunities for vertical or horizontal mixed-use residential development to provide for area vibrancy and to encourage the redevelopment of aging commercial centers by allowing Multifamily dwelling units at a rate of 1 unit per 1,500 square feet of new or rehabilitated neighborhood-serving retail and commercial services. The City Council may consider the approval of residential-only projects in the NCMU land use designation, provided the project is 100% affordable to the “low” and “very low” income categories, in order to increase the stock of affordable housing in Milpitas. Projects with a residential component are subject to additional policy direction (Policy LU 6-1) to ensure that NCMU areas continue to primarily serve surrounding neighborhoods with commercial services.

If FAR limit does not apply to residential floor area:

Assuming 1,000 gross sf per unit. 1,000 sf residential for every 1,500 sf of commercial. 40% residential:60% commercial. 0.5 FAR residential: 0.75 FAR commercial = 21 dwelling units per acre

Town Center (TWC). The TWC designation updates the previous Town Center designation to allow for residential use to occur within a horizontal or vertical mixed-use project. Residential only projects are not permitted. The purpose for allowing residential is to “increase economic support to the commercial uses.” This designation allows for up to 40 units per acre and requires a minimum of 0.35 FAR for non-residential uses. In our experience, we rarely see a 0.35 FAR in a vertical mixed-use project, the amount of parking needed typically makes this amount of commercial infeasible. A range of 0.10 to 0.20 FAR for commercial. Is more common vertical mixed-use or a mix of vertical and horizontal mixed-use projects. In addition to

the restrictive nature of the minimum commercial FAR requirement, the maximum density of 40 dwelling units per acre is not a typical density for vertical mixed-use projects. In a podium mid-rise building type, 40 dwelling units per acre can generally fit in typically 2 floors of residential, whereas a more typical mixed-use project includes 4 or 5 story residential floors. The above analysis is typical for single projects, the redevelopment of the large format shopping centers will require more analysis and site testing to understand the how the minimum commercial FAR and maximum density would play out in a more horizontally focused mixed-use project with structured or rooftop parking. If the zoning is set per the General Plan guidance, the HOZ may provide the opportunity to increase densities to a more typical building type while providing additional affordable housing above the AHO's 15% requirement. As part of this analysis, a more detailed economic analysis may be beneficial in the Existing Conditions phase of the project.

EXCERPT FROM GENERAL PLAN

TOWN CENTER (TWC) (UP TO 40 UNITS PER ACRE AND FAR UP TO 0.85). This designation provides for a variety of commercial, professional, civic, restaurants, hotels, residential, and entertainment uses. Projects may consist of a wholly non-residential development, or a mixed-use residential project that integrates residential and nonresidential uses vertically or horizontally. Residential-only projects are not permitted. Residential developments up to 40 units per acres may be permitted within the Town Center as part of a mixed-use development project to increase economic support to the commercial uses. Developers wanting to maximize the residential component of the parcel are required to provide a minimum FAR of 0.35 for the non-residential component. Sites developed with a mix of uses, or non-residential uses, must adhere to a FAR maximum of up to 0.85.

ii. Specific Plans

There are two specific plan areas in Milpitas. Both specific plan areas are currently undergoing an update. The Metro Specific Plan, formerly the Transit Area Specific Plan, has a Public Draft available for review. This document does not review content for the Midtown Specific Plan/Main Street Gateway Specific Plan since that update process has just started and new content is not yet available.

Milpitas Metro Specific Plan/Transit Area Specific Plan (2021 Admin Draft)

The Milpitas Metro Specific Plan (Metro plan) creates eight land use classifications and zoning districts that are specific to the Metro plan area. The Metro plan estimates an addition of 5,000 to 7,000 new residential units within its boundaries. The Metro plan does not have a specific affordable housing strategy that is different from city-wide inclusionary housing ordinance.

"The currently calculated draft capacity for additional residential units in Milpitas Metro is 5,000-7,000 total, with 2,000-4,000 units on the Great Mall site, and 3,000 units on other sites. When the Housing Element is developed, the City will determine which sites to include in the Housing Element."

Zoning Districts. Of the eight new zoning designations in the Metro Specific Plan, five districts allow residential development. The plan also identifies "Areas of Change" that include potential development

sites within the plan area since much of the land has been developed in the last 15 years under the TASP plan. Table 3-1 below is excerpted from the draft plan and shows preliminary densities and heights and associated zoning districts. The FAR's and densities are net, excluding required streets and open spaces. The plan also states that the HOZ may allow for increased housing densities in the plan area.

"The City is developing Housing Opportunity Zones (HOZ), which will designate opportunity areas for increased housing densities. Proposed development projects in the HOZ will be eligible for additional densities provided that they comply with City requirements including design standards and affordable housing requirements."

Many sites within the "Areas of Change" are located in the Great Mall site and designated Residential Retail High Density Mixed Use (RRMU) which allows for up to 85 units per acre on a residential only project or up to 2.5 FAR in mixed-use project with upper floor residential up to 85 feet in height. These numbers are in-line with the allowed FAR but a typical mid-rise residential only or mixed-use building with 5 residential floors could produce up to 120 to 140 dwelling units per acre. The difference between allowed density and estimated density per prototypical building type provides an opportunity for the HOZ to create an incentivized structure for additional density that is above what is allowed according to State Density Bonus law. Similarly, the housing densities in the MFH and VHD classifications are artificially low compared to the height limits. The URR classification's density of up to 120 units per acre is more in-line with a prototypical building type at 6 stories with associated affordable housing density bonuses.

Table 3-1 Metro Plan Residential Land Use Designations

Land Use Designation	Density (units per acre)	Maximum Height	Active Use Requirements	Zoning
Residential Retail High Density Mixed Use (RRMU)	Mixed Use ¹ : 1-2.5 FAR Residential Only: 40-85 units/ac	85 feet Within 60 feet of adjacent existing residential zoned parcels, building height shall be stepped down to be the same max height plus 10 feet of the adjacent parcel.	Ground floor retail and active uses are required on 80 percent of the ground floor facade along any Shopping Street.	Metro High Density Mixed Use (MXD2-Metro)
Boulevard Very High Density Mixed Use (BVMU)	Mixed Use ¹ : 2.5-5.0 FAR	275 feet 50 percent of base footprint above 85 feet and 25	Ground floor retail and active uses are required on 80 percent of the ground floor	Metro Very High Density Mixed Use

	Residential Only: 85-250 units/ac	percent of base footprint to a maximum height of 275 feet tall	facade along any Shopping Street.	(MXD3- Metro)
Multi-Family High Density Residential (MFH)	Residential: 30-40 units/ac	75 feet	N/A	Metro Multi- Family High Density Residential (R3-Metro)
Multi-Family Very High Density Residential (VHD)	Residential: 40-85 units/ac	35-85 feet	N/A	Metro Multi- Family Very High Density Residential (R4-Metro)
Urban Residential (URR)	Residential: 70-120 units/ac	6 stories and 75 feet	N/A	Metro Urban Residential (R5-Metro)

¹ On Housing Element opportunity sites, upper story non-residential uses are prohibited.

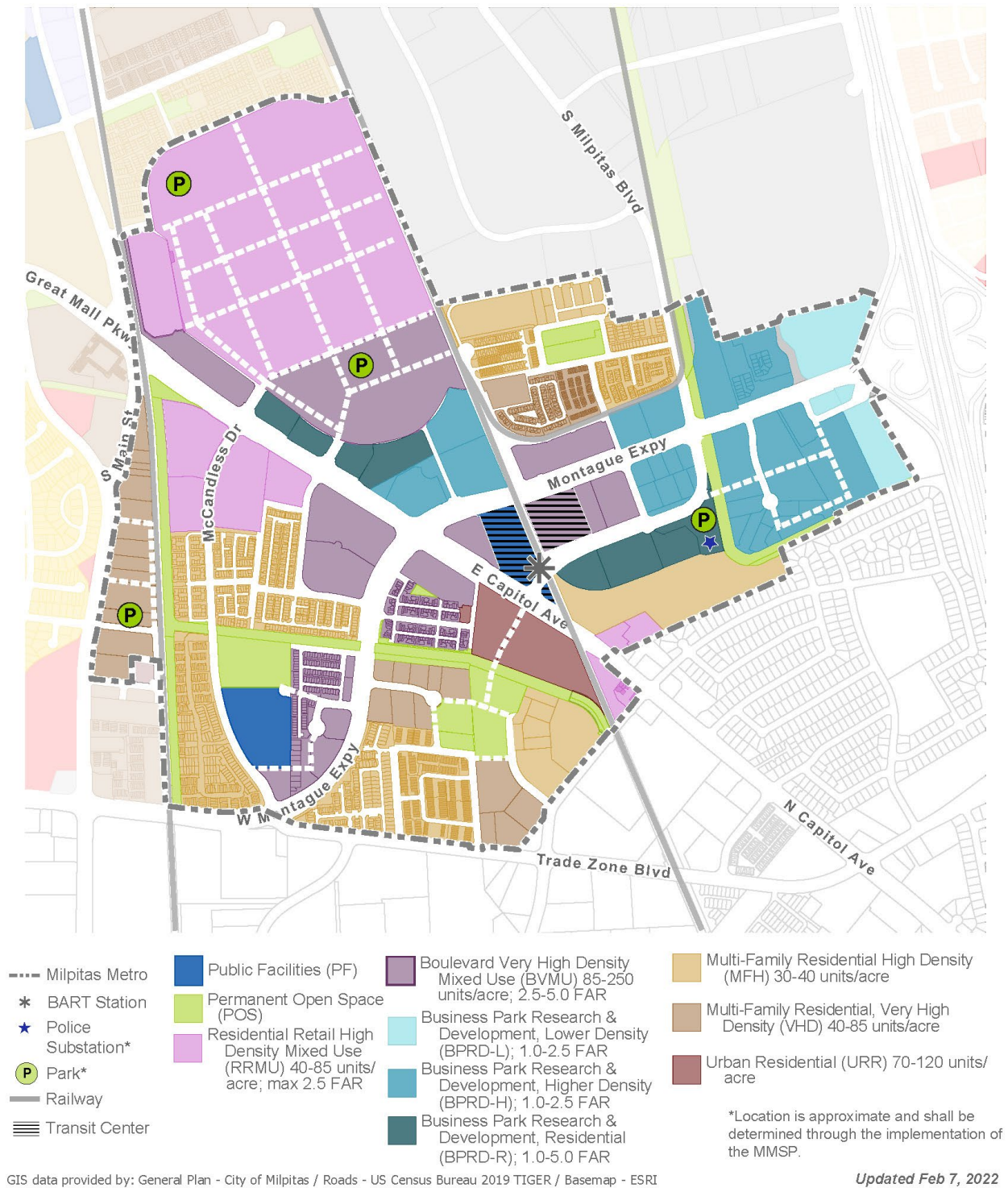
Parking. The Metro plan includes a significant reduction in parking requirements from the city-wide zoning code. The Metro plan introduces a maximum allowed parking ratio and a minimum number of spaces per unit without specifying number of bedrooms. In addition to the requirements in the table below, further reductions are possible conditionally.

Table 3-2 Metro Specific Plan Parking Requirement

Land Use	Minimum Requirement	Maximum Requirement
Residential/Lodging	0.5 spaces per unit	1.5 spaces per unit
Non-Residential	1 space per 1,000 sf	2 spaces per 1,000 sf

LAND USE

MILPITAS METRO



iii. Zoning/Municipal Code

Neighborhood Commercial Mixed-Use (NCMU)

The areas identified in the General Plan NCMU designation include three zoning districts (see table below). These zoning districts do not allow residential uses and have floor area and height limits that would be restrictive to developing residential and mixed-use residential projects. The zoning district will need to be updated within the HOZ process.

Town Center (TWC)

The TWC General Plan designation includes only one zoning district, TC (see table below). The maximum FAR in the zoning district is in line with the TWC designation at 0.85 FAR. The TC Zone does not allow residential uses, but three residential projects have been approved and built within the district. The zoning district will need to be updated during the HOZ process to allow for residential uses per the General Plan designation. As noted in the General Plan review, the maximum density of 40 dwelling units per acre may limit economic feasibility. The existing maximum building height of 35 feet would force projects into a horizontal mixed-use format. To achieve a vertical mixed-use product in the 40 dwelling units per acre density, a minimum of 4 stories and 50 feet of height would be needed. If through the HOZ or through the writing of new zoning greater densities were allowed, vertical mixed-use projects would be more feasible at 6 to 8 stories and up to 85 feet in height.

***EXCERPT FROM ZONING CODE** Town Center (TC) Zone. The purpose and intent of this zone is to provide for an area that supports a wide range of administrative, business, entertainment, dining, and cultural activities in the geographic center of the City to suit the varying lifestyles of residents and visitors alike. The area is easily accessible via the City's transportation network.*

Table 3-3 FAR and Height Requirement by Zoning District

Zone	Floor Area Ratio (FAR)	Building Height
Zoning Districts within NCMU		
Neighborhood Commercial (C1)	0.35 FAR	35 ft/ 2.5 stories
General Commercial (C2)	0.50 FAR	no building height maximum
Industrial Park (MP)	0.5 FAR	35 ft/3 stories
Zoning Districts within TWC		
Town Center (TC)	0.85 FAR	35 ft/3 stories or higher with conditional use permit

Parking

The following tables show minimum requirements for the different land uses in the zoning designations relevant to the HOZ. The zoning code does allow for shared parking through a conditional use permit.

Table 3-4 Parking Requirements for Mixed and Multi-family Zoning Districts

Mixed-Use + Multi-Family	Minimum Parking Spaces Required (parenthesis inclusive of guest parking)
<i>Studio</i>	<i>1 space per unit (1.15)</i>
<i>1 Bedroom</i>	<i>1.5 spaces per unit (1.75)</i>
<i>2-3 Bedroom</i>	<i>2 spaces per unit (2.15)</i>
<i>4 or more</i>	<i>3 spaces + 1 per additional bedroom (3.15)</i>
<i>Senior Housing</i>	<i>1 space per unit + 2 per manager's unit</i>
<i>Guest Parking</i>	<i>15% of the total required (structured) 20% of the total required (private garages)</i>
<i>Bicycle Parking</i>	<i>5% of the total required (Residential + Commercial Uses)</i>
<i>Ground Floor Retail</i>	<i>1 per 250 sq. ft.</i>
<i>Office</i>	<i>If building is 1,000 sq. ft. or smaller: 1 per 250 sq. ft.; If building is larger than 1,000 sq. ft.: 3.3 per 1,000 sq. ft.</i>
<i>Other Uses</i>	<i>Refer to specific uses in table</i>

Table 3-5 Parking Requirements for Commercial Zoning Districts

Commercial Use (single-use)	Minimum Parking Spaces Required
<i>Commercial Services ¹ (floral shops, barber shops, dry cleaners, Laundromats, photocopy shops)</i>	<i>1 per 200 sq. ft.</i>
<i>General Retail and Convenience Stores</i>	<i>1 per 200 sq. ft.</i>
<i>Financial institutions (banks, savings and loans, etc.)</i>	<i>1 per 180 sq. ft.</i>
<i>Offices, administrative and business services</i>	<i>1 per 240 sq. ft.</i>
<i>Bars, Drinking Establishments</i>	<i>1 per 30 sq. ft.</i>
<i>Restaurants (Sit Down)</i>	<i>1 per 39 square feet of dining area.</i>
<i>Restaurants (Take Out)</i>	<i>1 per 2.5 seats (indoor/outdoor) plus 1 per 60 sq. ft. GFA for the ordering or take out area.</i>

Shared parking may be applied in the following situations:

1. In mixed-use developments, which include one or more businesses that are complementary, ancillary, or support other activities. A typical mix of uses includes, but is not limited to: residential, office, restaurants, retail, colleges, churches, cinemas, and special event situations if they can demonstrate that demand patterns vary among uses.
2. In shopping centers, when more than twenty percent (20%) of gross leasable area is occupied by dining and entertainment uses, (not including pad restaurants, unless they are located within 300 feet of the main shopping center building) shared parking may be applied.

Required Review. Shared parking proposals may be allowed with the approval of a Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits, of this Chapter.

iv. Density Bonus Ordinance

(Title XI-10-54.15 of the Zoning Code and Sections 65915 – 65918 of Ca Government Code)

The City of Milpitas' Density Bonus Ordinance (DBO) was last amended in 2008. The State of California's Density Bonus Law (SDBL) explicitly supersedes any local ordinances and takes precedence when there is any conflict between the two, however, a city may provide additional density bonus over the minimum state requirement. The SDBL has been extensively amended over the last five years with multiple State laws. This report will primarily describe the SDBL and only the features of the DBO that are unique and not superseded by state law. The focus of this report is also primarily on aspects relevant to the goals of the HOZ.

Description of relevant City and State Density Bonus Regulations:

The State Density Bonus Law allows developers of projects with five or more dwelling units to obtain more favorable local development requirements in exchange for building or donating land for affordable or senior units. The SDBL (found in California Government Code Sections 65915 – 65918) provides incentives similar to what could be included in a Housing Overlay Zone to encourage the development of housing, including increase in project densities and reduction of parking or development standards depending on the amount of affordable housing or other specified community benefits (Nave, 2021).

Local jurisdictions are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units restricted to very low-income residents.
- At least 10% of the housing units restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development restricted to moderate income residents.
- 100% of the housing units (other than manager's units) restricted to very low, lower and moderate-income residents (with a maximum of 20% moderate).
- At least 10% of the housing units targeted for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low-income level.
- The project donates at least one acre of land to the city for very low-income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).

The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level. Base density allowed is calculated based on either the zoning district or General Plan land use designation, whichever allows higher density. Affordable projects with as little as 5% Very Low income or 10% Low Income units are eligible for up to 50% increase in density. Projects which have all affordable units are eligible for an 80% increase in density.

In Milpitas, If the housing development meets criteria- at least 5% of the housing units restricted to very low-income residents or at least 10% of the housing units restricted to lower-income residents, the density bonus shall be an increase of 20% over the maximum allowable residential density under the general plan and zoning ordinance. If the housing development meets criterion- Ten percent (10%) of the total dwelling units in a condominium project restricted to moderate income, the density bonus shall be an increase of five (5%) percent over the maximum allowable residential density under the general plan and zoning ordinance.

Parking

Upon the developer's request, the city or county may not require more than the following parking ratios for a density bonus project (inclusive of parking for persons with disabilities):

- Studio or 1 Bedroom – 1 space
- 2 or 3 Bedroom – 1.5 spaces
- 4 Bedroom 2.5 spaces

Even lower parking ratios apply to affordable housing projects that are within specific proximity of transit services and facilities (although local jurisdictions can require higher parking ratios if supported by a parking study).

Concession and Waivers

In addition to the density bonus, the city or county is also required to provide one or more "incentives" or "concessions" to each project which qualifies for a density bonus. A concession or incentive is defined as reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements, or other regulatory incentives or concessions which actually result in identifiable and actual cost reductions. The number of required incentives or concessions is based on the percentage of affordable units in the project, with the larger the percentage of affordable units and the higher.

If any other city development standard would physically prevent the project from being built at the permitted density and with the granted concessions/incentives, the developer may propose to have those standards waived or reduced. The city is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives other than those that would cause a problem for public health, safety, the environment, historical property, or would be contrary to law.

Bonus related to proximity to transit

Height or FAR limits in the local zoning are development standards for which waivers can be requested for a density bonus project. Eligible 100% affordable housing developments built within a half-mile of a major transit stop may increase building height by 3 additional stories or 33 feet over any prescribed zoning standard and have no other limit on density.

The SDBL also requires that cities and counties provide a “development bonus” to commercial developers who partner with affordable housing developers for the construction of affordable housing on the commercial project site, or offsite within the jurisdiction located near schools, employment and a major transit stop. Unlike the primary Density Bonus Law, there is no fixed amount of increased density available. Instead, the development bonus can be any mutually agreeable incentive, including up to a 20% increase in development intensity, floor area ratio, or height limits, up to a 20% reduction in parking requirements, or other exceptions (Meyers Nave, 2021).

Under new amendments effective in 2019, a local jurisdiction is also permitted under the SDBL to grant a floor area ratio bonus rather than a traditional density bonus to certain high density affordable housing projects adjacent to public transit. This option would need to be specifically adopted by the Milpitas City Council as an amendment to the City’s DBO since it is not automatically available. Eligible projects are also entitled to special parking ratios of one-tenth of a parking space per affordable unit and one-half space per market rate unit. To be eligible for the floor area ratio bonus, the project must restrict at least 20 percent of the units to very low-income tenants, must be located within a transit priority area or near a major transit stop, and must be in compliance with local height limits. (Meyers Nave, 2021).

Analysis of how these standards relate to HOZ goals

Milpitas has not had much affordable housing development of any type, so a variety of categories of incentives in the HOZ would be appropriate. The HOZ Existing Conditions Report, and the Housing Element are examining the inventory and pipeline of housing concurrently and the need for different types of housing. It is important to grant additional waivers from zoning standards to facilitate development that provides more affordability: One set of waivers in addition to the SDBL could apply to projects with 50% affordable housing, and a larger waiver could apply to 100% affordable projects. These waivers can exceed SDBL because the amount of affordable housing will exceed what is required in the State law.

In addition to amending the base commercial/mixed use zoning to have FAR density consistent with the NCMU and TWC, there is an opportunity for the HOZ to also consider an additional FAR bonus for residential projects with 50% or 100% Affordable units. This could include an amendment to Section XI-10-54.14 of the Zoning along with the creation of the HOZ section of the code.

v. Affordable Housing Ordinance

(Title XII-Chapter 1 of the Municipal Code – Housing Section)

The City of Milpitas' Affordable Housing Ordinance (AHO) came into effect in July 2018 and was recently amended in February 2022. The AHO sets out the minimum percentage of affordable dwelling units, compared to the SDBL and the HOZ provisions which are optional for developments providing much higher percentages of affordable housing onsite. The AHO requires all new residential projects with ten or more units to develop 15% of the total number of units as affordable units. This Report summarizes the most relevant provisions and identify issues that impact the HOZ goals and objectives.

Description of relevant AHO Regulations:

The required income levels for inclusionary units are very broad: rental developments may provide either very-low or low-income units, and ownership development may provide very-low-, low-, or moderate-income units.

The Ordinance provides incentives to developers to provide affordable housing units on site, however, a developer may satisfy the affordable housing requirement in other ways. All exceptions to the AHO requirement require City Council approval prior to the approval for development of the project.

- **Pay fees in lieu of creation of affordable units.** Ownership housing projects must request and secure approval from the City Council for paying fees in lieu of construction, whereas rental projects do not need special approval for this option. The affordable housing fees are adopted by City Council Resolution and adjusted annually for inflation. This section was updated after initial adoption to make it more likely for ownership projects to provide affordable units on site.
- **Construct affordable units off-site.** With the approval of the City Council, the developer may conditionally construct affordable units at another location within the city.
- **Dedicate land.** The City Council may conditionally permit an applicant to dedicate land to the City or a City-designated local non-profit housing developer in lieu of construction of some or all the required affordable units.
- **Transfer credit.** Affordable unit credits are issued for each additional affordable unit constructed over the required number. The applicant may then use the credits to satisfy the requirements for another project in the City.
- **Transfer equivalent square foot.** The applicant may choose to provide more units in an overall development; however, the gross square footage of the proposed affordable units cannot be less than the square footage of the required affordable units.

Table 3-6 Residential Projects Affordable Housing Fee

Building Permit Application Date	Ownership	Ownership	Ownership	Rental
	Single Family (Fee/Sq Ft)	Townhome (Fee/Sq Ft)	Condominium (Fee/Sq Ft)	Apartment (Fee/Sq Ft)
July 1, 2019 – June 30, 2020	\$33.00	\$33.00	\$33.00	\$33.00
July 1, 2020 – June 30, 2021	\$35.13	\$35.13	\$35.13	\$35.13
July 1, 2021 – June 30, 2022	\$37.11	\$37.11	\$37.11	\$37.11
Each Subsequent Fiscal Year	Adjusted by Rate Index per Affordable Housing Ordinance			

Non-Residential Affordable Housing Impact Fee

Any non-residential development in the City is subject to payment of a non-residential affordable housing impact fee. Some non-residential uses such as day care, nursery, school facilities, hospitals are exempt from this impact fee. Other uses not listed in the ordinance may be exempt if the City Council determines that the development will have a minimal impact upon the demand for affordable housing. The impact fee is calculated on a per square foot basis for net new gross floor area. Thus far, the pipeline non-residential projects have not reached the building permit approval stage, so no impact fee has been collected by the City. The non-residential requirement in the NCMU and TWC zone will lead to higher affordable housing impact fee for new projects in these zones.

Table 3-7 Non-Residential Projects Affordable Housing Impact Fee

Building Permit Application Date	Commercial (Office, Retail and Hotel) (Fee/Sq Ft)	Industrial (R&D, Manufacturing and Warehouse) (Fee/Sq Ft)
July 1, 2019 – June 30, 2020	\$4.00	\$1.00
July 1, 2020 – June 30, 2021	\$6.00	\$3.00

July 1, 2021 – June 30, 2022	\$8.00	\$4.00
Each Subsequent Fiscal Year	Adjusted by Rate Index per Affordable Housing Ordinance	

Incentives to Encourage On-Site Construction of Affordable Units

If an applicant provides affordable units in excess of 20 percent of the total number of units in the project the City provides the following incentives:

1. **Planning waivers:** Director of Planning shall grant up to two of the waivers listed below that help increase the feasibility of the construction of affordable units. The applicant will receive an additional two waivers from the list below for every additional 5 percent of affordable units provided above the 20 percent.

- Priority processing.
- Reduced setback requirements not to exceed 50 percent of the minimum required setback.
- Greater floor area ratio (FAR) not to exceed 50 percent of the maximum FAR for commercial space in mixed use zoning.
- Reduced landscaping requirements.
- Reduced interior or exterior amenities.
- A maximum 20 percent reduction in parking requirements.
- Height restriction waivers not to exceed 20 percent of the maximum zoning height limitations and in no event to exceed the general plan height limitations.

2. Fee deferral:

- **Development Processing Fees.** The City Manager may approve deferred payment of City processing fees applicable to the review and processing of the project. The terms and payment schedule of the deferred fees shall be subject to the approval of the City Manager.
- **Development Impact Fees.** The City Manager may authorize the deferred payment of development impact fees applicable to affordable units. Approval of this incentive requires demonstration by the Applicant that the deferral increases the project's feasibility. The applicant must provide appropriate security to ensure future payment of such fees.

Analysis of how these standards relate to HOZ goals

The AHO is a minimum requirement for projects with ten or more dwelling units, regardless of whether it is residential only or a mixed-use project. This ordinance is also applicable regardless of zoning district. If the income levels and number of affordable housing units meet the requirements for Density Bonus Law, the project would be eligible for the benefits under SDBL or any local density bonus.

vi. SB 35

California Senate Bill 35 (SB 35) is a state law (California Government Code Section 65400 and 65582.1) that streamlines the development review process for affordable housing projects in local jurisdictions that have not made adequate progress toward meeting their Very-Low- and Low-income Regional Housing Needs Allocations (RHNA). Projects in Milpitas with 50% affordable housing (as defined in the California Government Code) are eligible for SB 35 streamlining.

SB 35 requires jurisdictions to review applications within 60 days for developments with 150 or fewer units and within 90 days for developments with over 150 units to determine if the project qualifies for streamlined review. If the application is deemed eligible for streamlined review, the city must then review and approve the project within 90 days after application submittal.

Exemption from CEQA is one of the major benefits for projects using SB 35. However, If HOZ eligible projects are allowed to be approved by-right with no discretionary actions, this may eliminate the CEQA requirement for these regardless of SB 35 eligibility.

The City of Milpitas has not adopted any specific guidance regarding SB 35 projects. **Thus far, the City has only one project (112 below-market-rate, 100% affordable) in the pipeline that qualifies for SB 35 streamlined approval.** Other project details are discussed in the sections below.

Example SB 35 Project

Density Bonus

The City has only one project (112 below-market-rate, 100% affordable) in the pipeline that qualifies for SB 35 streamlined approval. The project site, located within the Transit Area Specific Plan (Milpitas Metro Plan) planning area and within one-half mile of high-quality public transit (Great Mall VTA light rail station), takes advantage of the State Density Bonus Law where there is no maximum density limit if the project is in close proximity to transit. The project is proposed at a density of 117 units per acre where the base density under the General Plan allows 41-60 units per acre. The project site is located in the R4-TOD Multi-family Very High-Density Residential Zoning District with a Transit-Oriented Development Overlay which allows 41-60 dwelling units per acre.

Parking

The proposed project includes no vehicular parking. Pursuant to Government Code Section 65913.4(e)(1)(A), the City is prohibited from imposing automobile parking standards on a project deemed eligible for streamlined review under SB 35 when it is located within ½-mile of public transit.

Concessions and Waivers

Per Density Bonus Law, the applicant requested the maximum four concessions allowed (modifications to Front Yard Setback, Side Yard Setback, Rear Yard Setback, and Residential Open Space) -- resulting in 'actual and identifiable cost reductions.' The applicant also requested two waivers (Private Open Space and On-Street Bicycle Parking) to enable the project to be built at the proposed density.

Development Fees

The project is required to pay the Transit Area Specific Plan Development Impact Fee (TADIF) set at \$44,009 per residential unit. Projects with more than 20 units are required to devote at least one half of one percent of the Building Development Cost towards the purchase and installation of public art at the project site. The project was not exempt from TADIF or the public art requirement.

4. Development Process Review

i. Project Review & Permitting

Standardized and transparent project review and streamlined permit processing are critical steps to assist the development of housing projects in the city. This section reviews the various steps in the project review process and analyzes estimated timelines for approvals to identify barriers or constraints to realize the housing goals stated in the General Plan and the Specific plans including the Housing Element. This review is based on information provided by City staff and the city website and will need to be corroborated and refined with discussions with housing developers. A summary of relevant issues and recommendations will be part of the HOZ Existing Conditions Analysis as well as the Constraints section of the Housing Element after stakeholder meetings with developers, both for-profit and not-for-profit.

Process

Project review in Milpitas is conducted in two phases: the first is the planning/zoning entitlement approval and second is the building permit approval. In the first phase, Planning staff and relevant City departments determine whether the project is consistent with the General Plan, Specific plans, the Zoning ordinance and other relevant regulatory requirements. Uses that are permitted by-right in a zoning district may only require administrative review by Planning staff. More complex development projects or uses that require a Conditional Use Permit are reviewed by the Planning Commission and/or the City Council.

Following the approval of the appropriate planning entitlements, the building permit applications are reviewed by different City departments to check for consistency in the design and requirements for safety and improvements. The developers are expected to pay all the associated planning fees, impact fees and other fees in advance of building permit approval.

The different stages outlined for a developer in the City's Development Review handbook are as follows-

1. **Pre-application Meeting and Review.** The City offers a pre-application meeting and review session to facilitate the processing of development proposals. The pre-application process provides an opportunity for applicants to receive early feedback from City staff before project plans are finalized.
2. **Planning Review and Processing.** After the application is formally submitted, Planning staff and other City Department staff review the submitted materials within 30 days to make sure all necessary information is included. For large projects, meetings with the community and with decision-makers may be recommended to receive feedback for public hearings.
3. **Noticing and Decision Making.** Prior to issuing the approval, Planning staff prepares the required staff report, conditions of approval, and findings of approval. A public hearing is scheduled where the Planning staff present the project to the hearing body with a staff recommendation and answer any questions related to the project.

4. **Permitting.** The Building Safety and Housing Department issues building permits by reviewing construction plans to make sure the project complies with applicable State and local laws. During this stage, other City Departments and Outside Agencies may need to review the project as necessary. The applicant is required to pay all the associated fees during the building permit application submission.
5. **Construction.** After procuring all the necessary planning and building permit, the project moves into the construction and inspection phase with the Milpitas Building Safety and Housing Department to ensure that the construction is as per approval and that the building is safe for occupancy. The Certificate of Occupancy is awarded at the end of this phase.

Timelines

Delays due to permitting can lead to increased project costs which can serve as a constraint to housing production and affordability. Table 4-1 below shows the average processing times for different residential development applications and building permits from 2019. In Milpitas, provided the project is consistent with the City's Zoning Ordinance, General Plan, or any applicable Specific Plan, simple projects' planning application permit reviews are estimated to take about 1 month. For complex projects, without CEQA requirements, the planning permit review process can take up to 6 months and with CEQA can take more than 11 months. The Planning Commission and City Council have two regularly scheduled public meetings every month.

Table 4-1 Processing Times for Applications and Building Permits

Type of Development	Months (Planning Application)*	Months (Building Permit)*
ADU Ministerial (by-right)	0 to 1 month	1 to 6 months
Ministerial (by-right) Includes projects that comply with applicable building, zoning and development regulations.	0 to 1 month	1 to 6 months
Discretionary (Staff) Includes coastal development permits, neighborhood development permits, neighborhood use permits	0 to 1 month	2 to 12 months
Discretionary (Hearing Officer) Includes variances, certain site development permits, and certain conditional use permits	2 to 4 months	6 to 18 months
Discretionary (Planning Commission)	3 to 12 months	12 to 24 months

Includes certain conditional use permits, certain site development permits, and planned development permits		
Discretionary (Planning Commission and City Council)	3 to 12 months	12 to 24 months
Includes tentative maps, condominium conversion maps, easement vacations, public right-of-way vacations, rezoning, and land use plan amendments		
<i>*Based on City of Milpitas submission to Santa Clara County Collaborative</i>		

Milpitas's review and approval timelines are longer than average times taken by other jurisdictions in Santa Clara County. Streamlining the permitting and approval processes further can assist developers and property owners interested in developing housing in Milpitas. Issues and opportunities to improve timelines will be further explored in discussions with developers in the next phase of the project.

California's Housing Accountability Act (HAA) requires local governments to process and review, approve, or disapprove housing developments within very tight timeframes if an applicant requests this (Government Code section 65589.5)

In these cases, a city must review and notify an applicant within 30 days as to whether the application is complete. After completeness, the City must determine if a project is consistent with objective standards (specifically defined) that must be identified and set at the time of Pre-application or Completeness review. The City must provide written notice of inconsistency (if applicable) to the applicant within 30 days of application for projects with 150 or fewer units (60 days for more than that). Any discretionary hearings or internal review must be completed within these timeframes. Projects qualifying for HOZ incentives will almost always qualify under the HAA provisions for "Housing for Very Low, Low- or Moderate-Income Households" which is subject to further streamlining provisions. Based on preliminary data from other cities in Santa Clara County, these processing times do not provide any extraordinary constraint to development but can be further streamlined.

A project meeting the Very Low/Moderate standard may not be disapproved, rejected, or otherwise made infeasible unless extensive findings are made including that the project would "have a specific, adverse impact upon public health or safety and there is no feasible method to mitigate or avoid the impact..." unless the local government has met or exceeded its RHNA, or project denial or conditions are required to comply with specific state or federal law. Compared to these HAA standards, the City of Milpitas' development review times most recently documented would likely need to be accelerated for projects that meet the criteria. The averages shown in the table above are not outside of the range of time frames reported by other cities in Santa Clara County and are not high enough to constitute a significant constraint to the typical development.

ii. Fees

Local governments collect fees from new developments to cover administrative costs and to provide improved infrastructure to serve the residents of that development. These payments are required upfront during the plan review period, however, a deferral may be provided to a developer if they provide on-site affordable units as stated in the AHO.

Table 4-2 Different Fees associated with Residential Developments

Fee Type	Single Family	Multifamily Small (per unit)	Multifamily Large (per unit)
Entitlement Fees	\$17,359	\$3,671	\$367
Building Permit Fees	\$23,110	\$13,111	\$6,616
Engineering Fees	\$25,000	\$5,000	\$1,000
Fire Fees	\$1,120	\$568	\$353
Impact Fees (non TASP)	\$0	\$29,064	\$29,064
Other	\$10,600	\$3,468	\$3,264
TOTAL	\$77,797	\$54,882	\$40,664
Santa Clara County Average*	\$74,831	\$34,752	\$27,563

*Based on Draft Presentation from Santa Clara County Collaborative Meeting March 10, 2022

Compared to other cities in Santa Clara County, Milpitas has higher fees per unit for single and multi-family developments. Milpitas has the highest Entitlement Fees in the County for single family developments and high impact fees for multi-family developments. Impact Fees and other Developmental Fees are explored in detail in the following sections.

Impact Fees

The Calaveras Widening Traffic Impact Fee is collected to widen Calaveras Boulevard to mitigate the traffic impacts caused by new development in the area outside the TASP. Additionally, the Transit Area

Development Impact fee (TADIF) is collected to fund the planning and development of the transit area outlined in the TASP near the Great Mall to support the community with appropriate utilities, parks, services, and roadways. This fee compensates the City for costs of roads and a significant amount of infrastructure that normally would have been paid by developers for off-site improvements required in this area. The different impact fees applicable for residential projects are explained below.

Table 4-3 Different Impact Fees for Residential Developments

Impact Fees	Amount (as of June 2021)	
	In TASP	Not in TASP
Transit Area Development Impact fee (TADIF)	\$44,090 per unit	\$0
Calaveras Widening Traffic Impact Fee (5 or more units)	\$0	\$314 per unit
Public Art Fee	0.5% of construction cost	0.5% of construction cost
Park-in Lieu Fee	\$4,500	\$28,750
Total	~\$48,590	~\$29,064
Based on City of Milpitas submission to Santa Clara County Collaborative		

The average impact fee per unit for a multi-family project in Milpitas in the TASP area is \$48,500 which includes the TADIF which applies to a limited area for very specific required infrastructure. The typical impact fee per unit in other parts of the city would be \$29,064 for traffic impacts and parks. The Park-in Lieu Fee makes up 99% of impact fees outside of the TASP. A comparison of impact across different jurisdictions is shown in the table below.

Table 4-4 Comparison of Impact Fees for Multi-family and Single-family Developments

Unit Type	Milpitas	Santa Clara*	Mountain View*	Fremont**
Multi-family	\$29,064	\$10,750	\$34,000	\$22,331
Single family	\$0	\$54	\$71,347	\$35,334
* Based on Draft Presentation from Santa Clara County Collaborative Meeting March 10, 2022 ** (Turner Center for Housing Innovation, Residential Impact Fees in California, 2019) https://www.hcd.ca.gov/policy-research/plans-reports/docs/impact-fee-study.pdf				

Optional: Other and Development Taxes

Table 4-5 Additional Fees and Taxes for Residential Developments

Type of Dwelling	Amount (as of June 2021)	
	Single Family	Multi-Family
Storm Drain Fee	\$1,100 to \$6,469 based on lot size	\$16,771 per acre
Water Connection Fee	\$1,910	\$1,164
Sewer Connection Fee	\$1,908	\$1,406
Wastewater Treatment Plant	\$880	\$690
School Fee	\$4.08 per sf	
Based on City of Milpitas submission to Santa Clara County Collaborative		

5. References

City of Milpitas General Plan 2040 https://www.ci.milpitas.ca.gov/wp-content/uploads/2021/05/Milpitas-General-Plan-Final_Online-Version.pdf

Milpitas Metro Specific Plan Public Draft October 2021
<https://static1.squarespace.com/static/5e75399ccb15c56a8859a18c/t/6165e2757e009e72675d5bdc/1634067068041/Milpitas+Metro+Specific+Plan+Public+Draft+10122021+%28Reduced+File+Size%29.pdf>

City of Milpitas Zoning Ordinance
https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITXIZOPLAN_CH10ZO_S3Z_ODI

City of Milpitas Affordable Housing Ordinance
https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITXIIHO_CH1AFHOOR

City of Milpitas City Council Meeting Minutes Feb 1, 2022
<https://www.ci.milpitas.ca.gov/pdfs/council/2022/020122/Attachments.pdf>

City of Milpitas Development Review Handbook https://www.ci.milpitas.ca.gov/wp-content/uploads/2022/01/DevReviewHandbook_FINAL_web_1-12.pdf

City of Milpitas Annual Report of Fees and Expenditures for the Fiscal Year ended June 30, 2021
<https://www.ci.milpitas.ca.gov/wp-content/uploads/2021/12/annual-development-fees-expenditures-fy2021.pdf>

Santa Clara County Collaborative Draft Presentation March 10, 2022
<https://storage.googleapis.com/proudcity/santaclaracountycities/uploads/2022/03/Collaborative-Meeting-3.10.22-.pdf>

Residential Impact Fees in California 2019, Turner Center https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Residential_Impact_Fees_in_California_August_2019.pdf

Meyers Nave, Guide to the California Density Bonus Law, 2021 https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law_2021.pdf



Memorandum

Date October 1, 2023

To: City of Milpitas

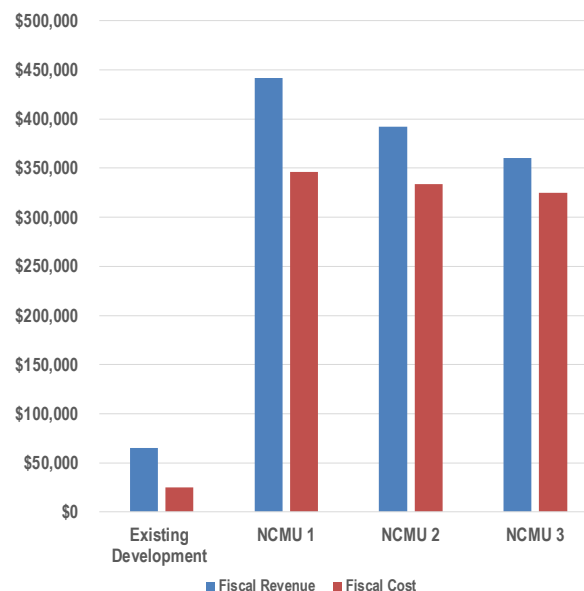
From: Seifel Consulting, Inc.

Subject: Fiscal Analysis of Proposed Housing Opportunity Districts

Seifel Consulting was retained by the City of Milpitas to perform a fiscal analysis regarding proposed land use changes that would allow additional residential development to occur within the Town Center (TC) and Neighborhood Commercial Mixed-use (NCMU) zones. These zones, referred to as Housing Opportunity Districts (HOD), will remain centers of local retail businesses while also incorporating more housing and amenities to foster the development of mixed-use neighborhoods.

The fiscal analysis is performed for a representative development opportunity that might occur in the Housing Opportunity Districts in the near term and evaluates what could occur if a typical property were to be redeveloped to include housing. As indicated in Figure 1 below, the fiscal analysis indicates that new infill mixed use and residential development is likely to have a positive fiscal impact on the City of Milpitas as total fiscal revenues are projected to exceed fiscal costs from future development at buildout.

Figure 1
Summary of Potential Fiscal Impact from Typical HOD Development Opportunity
In FY 2022/23 Constant Dollars

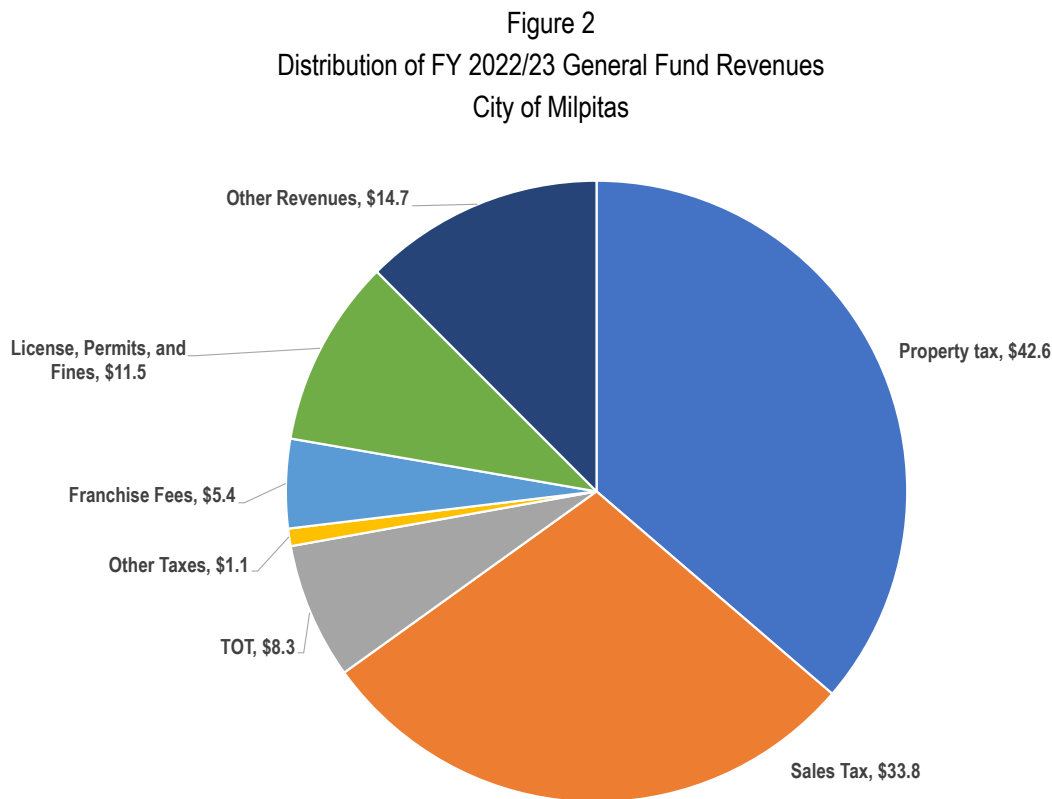


A. Overview of Fiscal Analysis

The fiscal analysis compares the potential impact of future development under the proposed land use changes in the HOD on the City's fiscal revenues and expenditures. As further described below, the fiscal analysis evaluates the projected fiscal impacts of alternative development scenarios for a typical existing site in the NCMU zone and provides insights into how different land use policies could affect the City's fiscal situation.

The General Fund is the City's primary fiscal fund where municipal revenues are deposited and where costs for key public services are reflected. The General Fund provides all or a significant proportion of funding for public services such as police, fire, public works, and economic development, among others.

The fiscal analysis utilizes the City's most recently adopted General Fund budget for Fiscal Year 2022/23 (FY 2022/23) as the basis for the City's fiscal revenues and costs. In FY 2022/23, the City's balanced budget for the General Fund is approximately \$117 million. The primary sources of revenues to the General Fund are property taxes and sales taxes as shown in the pie chart below.



Note: Other Revenues include charges for services and services provided to other funds.

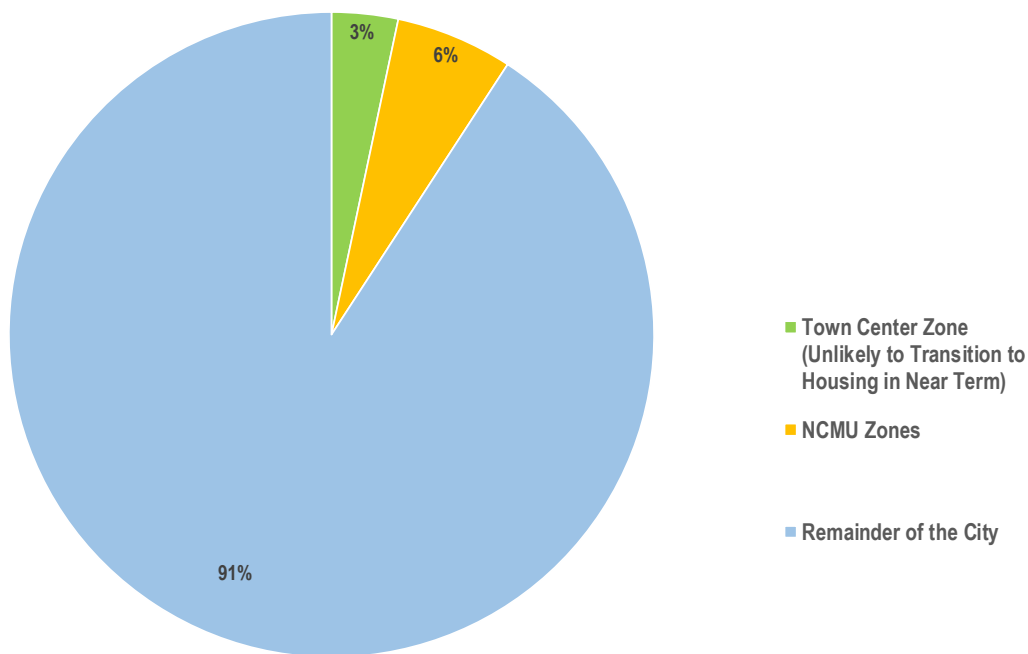
The fiscal analysis also relies on the fiscal data and findings presented in a recent study, Milpitas Fiscal Benefits of Employment Lands Study, performed for the City's Office of Economic Development Department by Economic & Planning Systems (EPS). The EPS fiscal study was performed to evaluate various policies and help guide the implementation of the City's Innovation District, which is located within the Milpitas Metro Specific Plan (MMSP).

B. Sales Tax Revenues from Housing Opportunity Districts

Existing commercial properties within the Housing Opportunity Districts contain retail development that generates sales tax to the City. According to the City's FY 2022/23 Budget, the General Fund received about \$34 million in revenues from sales tax, which consists of a one percent (1%) tax that is annually allocated to cities by the State of California and an additional local sales tax measure of 0.25%, Measure F which was authorized by local voters and will sunset in 2028.

Based on an analysis of confidential sales tax data provided by the City's Finance Department and HdL Companies for 2022, the Town Center zone within the Housing Opportunity Districts generated about 3% of the City's sales tax revenues, but this zone is not likely to have properties that will transition to housing in the future. The NCMU zones generated about 6% of the City's sales tax revenues. Only a small number of underutilized and vacant properties within the NCMU zones are likely to be redeveloped as housing or mixed use development.

Figure 3
Proportion of Citywide Sales Tax Generated by Housing Opportunity Districts in 2022
City of Milpitas



C. Typical HOD Development Opportunity

The fiscal analysis is performed for a representative development opportunity that might occur in the Housing Opportunity Districts in the near term. The potential fiscal impact is analyzed by evaluating alternative development scenarios for a typical property in the NCMU zone because several properties within this area are currently underutilized and have vacant commercial space. The fiscal analysis evaluates what could occur if a typical property were to be redeveloped to include housing.

Based on an analysis of acreage, land use, building, and assessed value data for parcels within the NCMU zone that was performed in collaboration with Raimi + Associates, the typical parcel size for an underutilized property is about 2.5 acres or 110,000 square feet of land. The fiscal analysis projects and compares the potential changes in City revenues and costs from this typical site as it is currently developed (Existing Development) with what might occur under three alternative redevelopment scenarios based on the proposed zoning changes:

- **Scenario NCMU 1 -Residential and Minimum 0.25 Commercial FAR**
 - Redevelopment of larger neighborhood commercial centers would provide a minimum of 0.25 FAR of new or rehabilitated neighborhood-serving retail and commercial services.
 - Future mixed use development would consist of 195 residential units and 27,500 square feet of retail space.
- **Scenario NCMU 2 - Residential and Minimum 0.1 Commercial FAR**
 - Parcels fronting major streets would provide a minimum 0.10 FAR of neighborhood-serving retail and commercial services.
 - Future mixed use development would consist of 195 residential units and 11,000 square feet of retail space.
- **Scenario NCMU 3 -Residential and No Minimum Commercial FAR**
 - Some areas of the NCMU zone would allow residential development that does not include any commercial space within the building.
 - Future development would consist of 195 residential units and no retail space.

As noted earlier, properties in the TC zone were not analyzed because they are not likely to transition in the near term given the large amount of occupied commercial, retail space.

D. Service Population for Typical HOD Development Opportunity

The City delivers services to residents and employees who work at local businesses, which is referred to as the service population. Existing and future residents may require City services and are also key contributors to the City's fiscal revenues and local economy, as they spend money in local businesses.

According to the California Department of Finance, the City of Milpitas is currently estimated to have a citywide population of about 81,000 residents. Local businesses are estimated to provide about 43,000 jobs within the City based on US Census OnTheMap data.

The service population is estimated based on the sum of 100% of residents, as residents may need services throughout the entire year, plus 40.9% percent of employees, reflecting the fact that employees only work part of the time in the City and some employees live and work in the City. (The 40.9% adjustment is based on an analysis presented in the Milpitas Fiscal Benefits of Employment Lands Study.) Based on this calculation, the City's current service population is about 98,600.

Consistent with the analysis in the Milpitas Fiscal Benefits of Employment Lands Study, fiscal revenues for several of the City's budget items and its fiscal costs are calculated by dividing the respective budget revenue or cost line item by the service population to estimate future revenues or costs per person served.

Table 1 presents the existing service population for the typical NCMU site of 2.5 acres and future service population under the three scenarios and calculates the growth in service population. This analysis conservatively assumes that both existing and new development would have the same intensity of retail employees, 350 square feet per employee based on data from the MMSP.

Table 1
Existing and Future Service Population
Fiscal Analysis of Typical HOD Development Opportunity

	Assumption	Existing Development	NCMU 1	NCMU 2	NCMU 3
Proposed New Development					
Residential					
Total (units)	<i>See Table 1</i>	N/A	195	195	195
Occupied (units)	<i>5.0% Vacancy Rate</i>	N/A	185	185	185
Retail (GSF)	<i>See Table 1</i>	33,000	27,500	11,000	0
Estimated Population^a					
Residents	<i>2.7 residents per unit</i>	N/A	500	500	500
Retail Employees	<i>350 SF/employee</i>	<u>94</u>	<u>79</u>	<u>31</u>	<u>0</u>
Estimated Service Population	<i>equals total resident population and 40.9% of employee population</i>	38	532	513	500
Growth in Service Population^b	<i>equals difference between existing and new development</i>	N/A	494	475	462
Existing Citywide Service Population^b	<i>(Resident + 40.9% of Employee Population)</i>	98,639			
<i>Percent Growth from Development</i>			<i>0.50%</i>	<i>0.48%</i>	<i>0.47%</i>

a. Resident population is based on the General Fund fiscal impact analysis in the Milpitas Fiscal Benefits of Employment Lands Study.

Retail employment factor per square foot is from the Metro Specific Plan Supplemental EIR.

b. Growth in service population represents the increase from the existing retail development onsite. Existing citywide service population is based on recent estimates for population and employment from the California Department of Finance and US Census Bureau.

Source: City of Milpitas, California Department of Finance (DOF), US Census Bureau On the Map, Economic and Planning Systems (EPS).

D. Fiscal Impact for Typical HOD Development Opportunity

The fiscal analysis compares the potential change in General Fund revenues and costs from future development under the proposed land use changes in the HOD.

1. Fiscal Revenues

As described earlier, property taxes and sales taxes generate the largest share of revenues to the City of Milpitas, but the City also receives revenues from licenses, permits, fines, franchise taxes, as well as other taxes and revenues. The fiscal analysis projects revenues from all major revenue sources to the City.

a. Property Taxes

Based on an analysis of Santa Clara County assessor data, the average assessed value for properties in the NCMU zone is about \$228 per square foot of building area. Thus, a typical NCMU site with about 33,000 square feet of existing development would have an existing assessed value of about \$7.5 million.

Property taxes are calculated based on assessed value multiplied by the 1% basic property tax rate according to Proposition 13, and the City's average property tax share is 16.2% of the basic 1%.¹ Thus, existing development is estimated to currently generate about \$12,000 per year in property taxes.

New residential development of 195 dwelling units would significantly increase the assessed value of a typical property, which would increase potential property tax revenues to the City. Although retail development on the site would decrease under each of the alternative development scenarios, the net increase in assessed value is projected to increase annual property tax revenues to the City by about \$200,000 to \$220,000 per year, as shown in Table 2 at the end of this memorandum.

b. Sales Tax

As new mixed use development occurs and attracts new retail tenants, retail sales per square foot will likely increase from these new retailers. In addition, new residents will frequent local businesses and buy taxable products in Milpitas that will generate "point of sale" tax revenues, and they will also purchase products online that will increase the City's share of the countywide pool of sales and use taxes.²

Sales taxes revenues generated by on-site retail establishments are anticipated to decrease as the amount of commercial development is reduced on the typical NCMU site. As shown below in Table 2, the fiscal analysis projects an overall decline in sales tax revenues under the two alternative redevelopment scenarios (NCMU 2 and NCMU 3) that would significantly reduce the amount of onsite retail.

c. Other Tax and Revenue Sources

The City's General Fund would also receive other revenues from new development. The fiscal analysis divides the citywide FY 2022/23 General Fund revenues for each of the other tax and revenue sources by the citywide service population to estimate the General Fund revenue per person served. (See Table 1 for the estimate of current citywide service population.)

¹ The distribution of the basic one percent of property taxes to the City and other taxing entities is based on the property tax distribution for the Tax Rate Area (TRA) where the property is located. This fiscal analysis uses the Citywide share of 16.2% as indicated in the Milpitas Fiscal Benefits of Employment Lands Study. The General Fund would also receive additional revenues from the growth in property taxes in lieu of vehicle license fee (PTIVLF) revenues, which would be based on the growth in assessed valuation from new development. This analysis conservatively omits this potential revenue growth.

² Under current California State Board of Equalization (BOE) regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools now constitute over 15% of local sales and use tax revenues.

This revenue factor is then multiplied by the service population associated with each development scenario. The projected growth in these revenues is based on the change in service population associated with each development scenario, as these revenues are anticipated to increase as development occurs. Total fiscal revenues generated from new development is then calculated based on adding the incremental growth in fiscal revenues to what is currently generated from the property.

2. Fiscal Costs

The City's General Fund would need to serve future residents and employees. As indicated in the Milpitas Fiscal Benefits of Employment Lands Study, the City's average General Fund service cost is about \$650 per person served. The fiscal analysis multiplies this cost factor by the service population associated with each development scenario. The projected growth in General Fund costs is based on the change in service population associated with each development scenario. Total fiscal costs from new development is then calculated by adding the incremental growth in fiscal costs to what it currently costs the General Fund to provide services to existing development on the property.

3. Fiscal Impact

Projected total General Fund revenues from new development is anticipated to exceed the total fiscal costs of providing services to future residents and employees for each of the development scenarios. This analysis indicates that new infill mixed use and residential development is likely to have a positive fiscal impact on the City of Milpitas.

Table 2
Comparison of Total Fiscal Revenues and Costs from Typical HOD Development Opportunity
In FY 2022/23 Constant Dollars

	Existing Development	Total Impact From New Development		
		NCMU 1	NCMU 2	NCMU 3
General Fund Revenue^a				
Property Tax	\$12,000	\$233,000	\$219,000	\$210,000
Sales and Use Taxes	\$44,000	\$74,000	\$43,000	\$22,000
License, Permits, and Fines ^b	\$4,000	\$62,000	\$59,000	\$58,000
Franchise Tax ^b	\$2,000	\$29,000	\$28,000	\$28,000
Other Taxes ^b	\$0	\$5,000	\$5,000	\$5,000
<u>Other Revenues^b</u>	<u>\$3,000</u>	<u>\$39,000</u>	<u>\$38,000</u>	<u>\$37,000</u>
Other Taxes	\$65,000	\$442,000	\$392,000	\$360,000
General Fund Cost^c	\$25,000	\$346,000	\$334,000	\$325,000
Net Fiscal Impact	\$40,000	\$96,000	\$58,000	\$35,000
<i>Net Fiscal Impact as Percent of City Budget</i>	<i>0.034%</i>	<i>0.082%</i>	<i>0.049%</i>	<i>0.030%</i>

Note: Dollar figures rounded to the nearest thousand. Numbers may not add up precisely due to rounding.

- a. The supporting fiscal analysis was prepared in collaboration with City of Milpitas staff and Raimi + Associates.
- b. The total revenue to the General Fund is \$117,476,970 per the City's FY 2022/23 Adopted Budget. Consistent with typical fiscal analysis and based on a review of the City's budget, these revenues are projected to increase based on the growth in service population from new development. "Other Taxes" consist of Real Estate Transfer Tax, Business License Tax, and Motor Vehicle In-Lieu. "Other Revenues" consist of "Operating Transfers In" to the General Fund from various funds, such as the Sewer Fund.
- c. The General Fund cost estimate is based on the fiscal cost analysis in the Milpitas Fiscal Benefits of Employment Lands Study.

Source: City of Milpitas, Santa Clara County, HdL Companies, EPS, Seifel Consulting.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider the Authorization of the Final Application for the \$301,516.00 Land and Water Conservation Fund Grant from the State Department of Parks and Recreation and associated Land Protection for Delano Manongs Park (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/17/2023
	<u>Recommendation:</u> Authorize the Final Application for the \$301,516.00 Land and Water Conservation Fund (LWCF) Grant from the State Department of Parks and Recreation and associated Land Protection for Delano Manongs Park which places the entire Delano Manongs Park in the LWCF boundary map of protected open space, in perpetuity.

BACKGROUND:

The California Department of Parks and Recreation Office of Grants and Local Services (OGAL) strives to address California's diverse recreational, cultural and historical resource needs by developing grant programs, administering funds, offering technical assistance, building partnerships and providing leadership through quality customer service. The Land and Water Conservation Fund (LWCF) was established by Congress in 1964 to fulfill a bipartisan commitment to safeguard natural areas, water resources and cultural heritage, and to provide recreation opportunities to all Americans. The fund helps strengthen communities, preserve history and protect the national endowment of lands and waters. On August 4, 2020, the Great American Outdoors Act (GAOA) was signed into law, authorizing \$900 million annually in permanent funding for LWCF.

LWCF grants provide funding for the acquisition or development of land to create new outdoor recreation opportunities for the health and wellness of Californians.

Staff submitted the grant application and have been working with LWCF grant staff on follow-up questions and information as is normal to the process. The Milpitas grant application is near finalized and LWCF grant staff have asked the City of Milpitas to confirm their acceptance of the grant rules regarding LWCF open space preservation. The LWCF grant application states that the grant project area and surrounding park acreage must be placed under LWCF protection in perpetuity, therefore no other uses, aside from parks and open space would be allowed at the project site.

On June 6, 2023, the Milpitas City Council approved adopting a resolution approving the submittal of an application for Land and Water Conservation Grant Funds from the State Department of Parks and Recreation.

ANALYSIS:

Per the OGAL LWCF (Program), eligible projects must be direct project costs for recreational purposes, either park acquisition or development, and can only have only have one location. Grantees must use the grant funds for the development of outdoor recreation features, supplementing planned project expenditures. The Program has a match requirement of a minimum of 50% of the total project cost. Projects serving disadvantaged communities including persons with disabilities are weighted more favorably in the grant approval process.

Considering the Program project eligibility and matching requirement, staff applied for a grant project that would complete the Delano Manongs Park Dog Park, a 7,200 square foot section in the 4-acre park. Staff submitted an initial grant application on May 31st, prior to the June 1st deadline. Completion of the Delano Manongs Park Dog Park will allow for the completion of all recreation features at the park.

Per the OGAL LWCF Program, if awarded the grant, Delano Manongs Park would be placed in the LWCF boundary map of protected open space, in perpetuity.

Existing Delano Manongs Park Restrictions

Santa Clara County All Inclusive Playground Grant

The Delano Manongs Park project is the recipient of a Santa Clara County All-Inclusive Playground Grant (AIPG) for approximately \$780,000, helping to build all the playground areas and most bench seating areas in the park. The 2018 agreement between the County and City for the AIPG, required that the City commit to the use of the property for the all-inclusive playgrounds for 20 years.

Milpitas Measure K Parkland Rezoning Voter Approval Requirement

In 2016, Measure K was passed by Milpitas residents. This Measure prohibits the rezoning of parkland in Milpitas in two ways:

- 1) any construction of any residential, commercial or industrial buildings or structures on any land designated on the General Plan Land Use Map as "Parks and Open Space (POS)" unless the proposed construction is first approved by a two-thirds vote of the voters of Milpitas at a general or special municipal election; and
- 2) Prohibit any land designated on the General Plan Land Use Map as "Parks and Open Space" from being redesignated for any other land use unless the proposed redesignation of that land is first approved by a two-thirds vote of the voters of Milpitas at a general or special municipal election.

Delano Manongs Park is designated in the General Plan Land Use Map as parks and open space.

Due to existing parks and open space restrictions, staff is recommending City Council authorize the Final Application for the \$301,516.00 Land and Water Conservation Fund Grant from the State Department of Parks and Recreation and associated Land Protection for Delano Manongs Park.

POLICY ALTERNATIVE(S):

Alternative 1: Do not Authorize the Final Application for the \$301,516.00 Land and Water Conservation Fund Grant from the State Department of Parks and Recreation and associated Land Protection for Delano Manongs Park

Pros: Delano Manongs Park will not be under restriction of the State of California Land Water Conservation Department.

Cons: The City will not receive \$301,516.00 for the completion of the Delano Manongs dog park.

Reason for Not Recommending: There is no plan to use Delano Manongs Park for any purpose other than parkland at any time in the future.

FISCAL IMPACT:

There is no fiscal impact with the adoption of the authorization of the submitting the grant application. Should the grant be awarded to the City, staff will bring back to the City council a report to request acceptance of the grant and the necessary budget appropriation. Sufficient funding for this project is included as part of Project 5102 in the Adopted Capital Improvement Program.

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:

Authorize the Final Application for the \$301,516.00 Land and Water Conservation Fund (LWCF) Grant from the State Department of Parks and Recreation and associated Land Protection for Delano Manongs Park which places the entire Delano Manongs Park in the LWCF boundary map of protected open space, in perpetuity.

Attachment(s):

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Introduce Ordinance 196.12, an Ordinance of the City Council of the City of Milpitas Amending Section 4.05 of Chapter 9 (“Parks”) of Title V (“Public Health, Safety, and Welfare”) of the Milpitas Municipal Code and Introduce Ordinance 196.13 an Ordinance of the City Council of the City of Milpitas Adding Section 2.13 to Chapter 9 (“Parks”) of Title V (“Public Health, Safety, And Welfare”) of the Milpitas Municipal Code and Amending Section 4.00 of Chapter 9 (“Parks”) of Title V (“Public Health, Safety, And Welfare”) of the Milpitas Municipal Code (Staff Contact: Michael Mutalipassi, City Attorney, 408-858-3040)
Category:	Leadership and Support Services
Meeting Date:	10/17/2023
Recommendation:	(a) Following the City Attorney’s reading aloud the titles, move to waive the reading beyond the title and introduce Ordinance 196.12. (b) Decline to introduce Ordinance 196.13.

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.

On September 19, 2023 the question of the ambiguous language was brought before the City Council. The Council directed that staff bring back an ordinance that corrects the ambiguity set forth in the Municipal Code. Council requested that the regulation allow for respectful use of the park that considers both the needs of th

users of the park and the community surrounding the park so that both groups will be able to enjoy the park more respectfully.

ANALYSIS:

Staff recommends the adoption of Ordinance 196.12 amending section 4.05 of chapter 9 of title V of the municipal code to delete the ambiguous language adopted in Ordinance 196.8. This deletion will effectively conform the use of amplified sound in Gill Park with the use of amplified sound in other parks in Milpitas. Generally, the use of amplified sound in Gill Park will be prohibited. However, if a user wishes to use amplified sound in Gill Park, then the user must apply for a permit through the City Manager or his designee. The issuance of that permit can be reasonably restricted by time, place, and manner. No permit will issue if the City Manager or his designee determines that the requested use of amplified sound will pose a disruption to the community surrounding the park. In this way, the City will be able to evaluate the requested uses on a case by case basis and ensure that a balance is struck between the respectful use of the park and the needs of the surrounding community.

POLICY ALTERNATIVE(S):

Alternative 1: Adopt Ordinance 196.12 to prohibit the use of amplified sound in Gill Park except by permit.

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. The use of amplified sound can be evaluated on a case by case basis to strike a balance between the respectful use of the park and the needs of the surrounding community.

Cons: The Council will not be addressing the issues brought to it in 2006 by residents of homes adjacent to Gill Park.

Alternative 2: Adopt Ordinance 196.12 to remove the ambiguous language from the code and adopt Ordinance 196.13 to create an outright prohibition on the use of 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. This will not align with the direction provided by the Council to balance the needs of respectful use of the park with the needs of the surrounding community.

Alternative 3: Do not take action to amend Ordinance 196.9.

Pros: Staff will not expend additional 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:

(a) Following the City Attorney's reading aloud the titles, move to waive the reading beyond the title and introduce Ordinance 196.12.

(b) Decline to introduce Ordinance 196.13.

Attachment(s):

1. Ordinance 196.12, An Ordinance of the City Council of the City of Milpitas Amending Section 4.05 of Chapter 9 ("Parks") of Title V ("Public Health, Safety, and Welfare") of the Milpitas Municipal Code
2. Ordinance 196.13, An Ordinance of the City Council of the City of Milpitas Adding Section 2.13 to Chapter 9 ("Parks") of Title V ("Public Health, Safety, And Welfare") of the Milpitas Municipal Code and Amending Section 4.00 of Chapter 9 ("Parks") Of Title V ("Public Health, Safety, And Welfare") of the Milpitas Municipal Code

REGULAR**NUMBER: 196.12****TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION 4.05 OF CHAPTER 9 (“PARKS”) OF TITLE V (“PUBLIC HEALTH, SAFETY, AND WELFARE”) OF THE MILPITAS MUNICIPAL CODE****HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:**APPROVED:**_____
Suzanne Guzzetta, City Clerk_____
Carmon Montano, Mayor**APPROVED AS TO FORM:**_____
Michael Mutalipassi, City Attorney**BE IT ORDAINED BY THE CITY OF MILPITAS AS FOLLOWS:**

WHEREAS, it is the priority of the City Council of the City of Milpitas to continue to provide parks and amenities for people of all ages and abilities to enjoy higher levels of physical and mental health; and

WHEREAS, it is the priority of the City Council of the City of Milpitas to promote a sustainable community and protect the natural environment; and

WHEREAS, on November 7, 2006, the City Council of the City of Milpitas adopted ordinance number 196.8 amending section V-9-4.05 of the Milpitas Municipal Code to add “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.”, and

WHEREAS, the language added to section V-9-4.05 is vague such that it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, and

WHEREAS, in order to avoid problems with constitutional due process, the City Council wishes to amend section V-9-4.05 of the Milpitas Municipal Code to remove the vague clause.

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

SECTION 1. RECORD AND BASIS FOR ACTION: The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2 AMENDMENT OF MILPITAS MUNICIPAL CODE: That Section 4.05 of Chapter 9 (“PARKS”) To Title V (“Public Health, Safety, and Welfare”) of the Milpitas Municipal Code is 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. SEVERABILITY: The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part shall not affect the validity of the remainder.

SECTIN 4. EFFECTIVE DATE AND POSTING: In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

REGULAR**NUMBER: 196.13**

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING SECTION 2.13 TO CHAPTER 9 ("PARKS") OF TITLE V ("PUBLIC HEALTH, SAFETY, AND WELFARE") OF THE MILPITAS MUNICIPAL CODE AND AMENDING SECTION 4.00 OF CHAPTER 9 ("PARKS") OF TITLE V ("PUBLIC HEALTH, SAFETY, AND WELFARE") OF THE MILPITAS MUNICIPAL CODE

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk_____
Carmon Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney**BE IT ORDAINED BY THE CITY OF MILPITAS AS FOLLOWS:**

WHEREAS, it is the priority of the City Council of the City of Milpitas to continue to provide parks and amenities for people of all ages and abilities to enjoy higher levels of physical and mental health; and

WHEREAS, it is the priority of the City Council of the City of Milpitas to promote a sustainable community and protect the natural environment; and

WHEREAS, on November 7, 2006, the City Council of the City of Milpitas adopted ordinance number 196.8 amending section V-9-4.05 of the Milpitas Municipal Code with the intention of banning amplified sound in Gill Park at all times by adding “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.” to that section, and

WHEREAS, the language added to section V-9-4.05 is vague such that it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, and

WHEREAS, in order to avoid problems with constitutional due process, the City Council amended section V-9-4.05 of the Milpitas Municipal Code to remove the vague clause.

WHEREAS, in order to enact the prohibition on amplified sound in Gill Park as intended by the City Council in 2006, the City Council adds section V-9-2.13 and amends section V-9-4.00 of the Milpitas Municipal Code to prohibit amplified sound in Gill Park.

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

SECTION 1. RECORD AND BASIS FOR ACTION: The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2 AMENDMENT OF MILPITAS MUNICIPAL CODE: That Section 2.13 is added to Chapter 9 (“PARKS”) To Title V (“Public Health, Safety, and Welfare”) of the Milpitas Municipal Code is amended to read as follows:

V-9-2.13 – Prohibition on Loudspeakers in Gill Park

The use of any loudspeaker or other noise-amplifying device in Gill Park is prohibited at all times. No permit may be issued for the use of a loudspeaker or other noise-amplifying device in Gill Park.

SECTION 3 AMENDMENT OF MILPITAS MUNICIPAL CODE: That Section 4.00 of Chapter 9 (“PARKS”) To Title V (“Public Health, Safety, and Welfare”) of the Milpitas Municipal Code is amended to read as follows:

V-9-4.00

Unless a written permit is first obtained from the City Manager or his authorized agent, and subject to such conditions as may be imposed in connection therewith, it shall be unlawful for any person, firm or corporation to do any of the following acts within any park in the City of Milpitas. No permit shall issue for any activity expressly prohibited in section 2 or section 3 of this Chapter.

SECTION 4. SEVERABILITY: The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part shall not affect the validity of the remainder.

SECTIN 5. EFFECTIVE DATE AND POSTING: In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.