



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, MARCH 5, 2024

**CITY COUNCIL CHAMBER, 455 E. CALAVERAS BLVD, MILPITAS, CA
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_ny-b_zwPT06fd-kpBJ_r3g

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 (7:00 PM)

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Phan)

PRESENTATIONS (7:05 PM)

- National Women's Heritage Month (Proclamation)
- Youth Art Month (Proclamation)

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 March 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for March 2024.

C2. Approve City Council City Council Meeting Minutes of February 20 and 22, 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Meeting minutes of February 20 and 22, 2024.

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

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

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

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

C5. Adopt Ordinance 298.1, An Ordinance of The City Council of the City of Milpitas Amending the Milpitas Municipal Code Title XI ("Zoning, Planning and Annexation"), Chapter 10 ("Zoning"), Section 13 ("Special Uses"), Subsection 13.15 ("Cannabis Uses") to Prohibit and Regulate

**Cannabis Uses, Establishments, and Operations to the Fullest Extent Allowed by State Law
(Staff Contact: Michael Motalipassi, City Attorney, 408-586-3040)**

Recommendation: Move to waive second reading and adopt Ordinance 298.1, which would amend Subsection XI-10-13.15 of the Milpitas Municipal Code consistently with Senate Bill 1186 by regulating the delivery of medicinal cannabis and cannabis products and otherwise preserve the City's prohibition against commercial cannabis to the fullest extent allowed after this change in State law.

- C6. Adopt a Resolution Approving Memorandum of Understanding between the City of Milpitas and Milpitas Employees Association (MEA) Covering the Period of July 1, 2023 through June 30, 2025 (Staff Contact: Kelli Parmley, Human Resources Director, 408-586-3086)**

Recommendation: Adopt a resolution approving Memorandum of Understanding between the City of Milpitas and Milpitas Employees Association (MEA) covering the period of July 1, 2023 through June 30, 2025.

- C7. Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch) (Staff Contact: Roberto Alonzo, Public Works Division Manager - Engineering, 408-586-3316)**

Recommendation: Adopt a resolution initiating proceedings for the annual levy and collection of assessments and ordering the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch).

- C8. Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon) (Staff Contact: Roberto Alonzo, Public Works Division Manager - Engineering, 408-586-3316)**

Recommendation: Adopt a resolution initiating proceedings for the annual levy and collection of assessments and ordering the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon).

- C9. Award IFB 24-056 and Authorize the City Manager to Execute the Purchase Order with Econolite Control Products, Inc. in the amount of \$100,017.01 for the Purchase of Traffic Detection Controllers, Cabinets, and Battery Backup Systems (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

Recommendation: Award IFB 24-056 and authorize the City Manager to execute the purchase order with Econolite Control Products, Inc. in the amount of \$100,017.01 for the purchase of traffic detection controllers, cabinets, and battery backup systems.

- C10. Receive an Update on Storm Drain System Emergency Repairs and Improvements at Evans Road and Piedmont Creek 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 storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

- C11. Adopt a Resolution to Approve Project Plans & Specifications; Reject a Bid Protest from Galaxy Construction Services, Inc., and Award Construction Contract to A&B Mechanical Inc, for Alviso Adobe House HVAC System, Project No. 5055 (Staff Contact: Michael Silveira, Public Works Division Manager - Engineering, 408-586-3303)**

Recommendation: Adopt a resolution to approve project plans & specifications; reject a bid protest from Galaxy Construction Services, Inc.; award the construction contract to the lowest responsible bidder submitting a responsive bid, A&B Mechanical, Inc., in the amount of \$127,900.00; authorize the City Manager to execute the construction contract with A&B Mechanical, Inc.; and authorize the Public Works Director to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$25,600.00 for Alviso Adobe House HVAC System, Project No. 5055.

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.

12. 2024 Weed Abatement Public Hearing and Resolution Adoption to Abate the Weeds (Staff Contact: Arthur Belton, Deputy Fire Chief/Fire Marshal, 408-586-3384)

Recommendation: Conduct a public hearing and adopt a resolution directing the County of Santa Clara Consumer and Environmental Protection Agency- Weed Abatement Program to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (8:00 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 (8:05 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: www.milpitas.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.milpitas.gov or at Milpitas City Hall. Contact the City Clerk's Office at 408-586-3001 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to CityClerk@milpitas.gov prior to the meeting. You may request a larger font agenda.

February 2024						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

Milpitas City Council Calendar

March 2024

April 2024						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 8:30 AM -Joint Venture Silicon Valley: 2024 State of the Valley Forum (CM, EC, HL)	2
3	4 5:00 PM -Monthly Mayor's Meeting with the Community Members 7:00 PM -Parks, Recreation & Cultural Resources Commission (HL)	5 6:00 PM -Closed Session 7:00 PM -City Council	6 1:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) 7:00 PM -Community Advisory Commission (EC)	7 4:00 PM -Treatment Plant Advisory Committee (CM) 5:30 PM -Santa Clara VTA Board of Directors (CM) 5:30 PM -Milpitas Chamber of Commerce Board (GB)	8	9 National League of Cities Conference – Washington, D.C. (HL)
10	11	12	13	14	15	16
National League of Cities Conference – Washington, D.C. (HL)					WELL Conference – San Jose, CA (CM)	
	4:30 PM -Economic Development and Trade Commission (CM)		7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino)	4:00 PM -SVRIA Board of Directors (GB) 5:30 PM -CASCC Legislative Action Committee (CM) 6:00 PM -Youth Advisory Commission (HL) 7:00 PM -Cities Assoc of SCC JPA Board of Directors (CM)		11:00 AM-2:00 PM - Holi Festival (Cardoza Park)
17	18 7:00 PM -Science, Technology, and Innovation Commission (GB) 7:00 PM -Library and Education Commission (EC) (Milpitas Public Library)	19 6:00 PM -Closed Session 7:00 PM -City Council	20 6:00 PM -Energy and Environmental Sustainability Commission (EC)	21 10:00 AM -VTA Congestion Management Program & Planning Committee (CM) 3:00 PM -CASCC Recycling & Waste Reduction Commission (CM) 4:00 PM -VTA Policy Advisory Committee (EC) 6:30 PM -Bay Area Water Supply Conserv Agency (CM) (Oak Room - San Mateo Main Library) 7:00 PM -Public Safety and Emergency Preparedness Commission (HL)	22	23 10:00 AM-1:00 PM - Big Bunny Scramble (Civic Center Plaza)
24	25 7:00 PM -Arts Commission (EC)	26	27 4:00 PM -City/School Collaborative Subcommittee (CM/EC) – (MUSD) 7:00 PM -Planning Commission	28	29	30
31						



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES

TUESDAY, FEBRUARY 20, 2024

CITY COUNCIL CHAMBER, 455 E. CALAVERAS BLVD, MILPITAS, CA

The City Council of the City of Milpitas convened on the regular City Council meeting day in a Meeting of the Milpitas City Council on February 20, 2024, in the City Council Chamber, 455 E. Calaveras Blvd, Milpitas, CA, and via teleconference/Zoom webinar.

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

Mayor Montano called the Regular City Council meeting to order at 6:01 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan (6:04 PM)

ABSENT:

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

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LEGAL COUNSEL - Existing Litigation

Pursuant to Government Code section 54956.9

Kevin Moscuza v. City of Milpitas, WCAB no. ADJ16972326

City as Defendant

(b) CONFERENCE WITH LEGAL COUNSEL - Existing Litigation

Government Code § 54956.9

County Sanitation District 2-3, et al. v. City of San Jose, et al., Santa Clara Superior Court Case number 18CV325480

City as Plaintiff

The City Council reconvened at 7:00 PM.

CLOSED SESSION ANNOUNCEMENT:

City Attorney Mutalipassi indicated there was nothing to report out.

PLEDGE OF ALLEGIANCE

Vice Mayor Chua led the pledge of allegiance.

INVOCATION

Councilmember Barbadillo provided the invocation.

PRESENTATIONS

Mayor Montano and the City Council presented certificates to the 2023 Synopsys STEM Championship Winners and a proclamation in recognition of Rare Disease Day.

PUBLIC FORUM

The following people spoke under Public Forum:

1. Charles Wright
2. Allysson McDonald
3. Voltaire Montemayor
4. Sophia Wright

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

READING OF THE CITY COUNCIL CODE OF CONDUCT

Councilmember Barbadillo read the City Council Code of Conduct.

APPROVAL OF AGENDA

After discussion, motion: to approve the agenda.

Motion/Second: Vice Mayor Chua/Councilmember Lien

Motion carried by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien,
Councilmember Phan

NOES: None

CONSENT CALENDAR

Vice Mayor Chua asked to pull Item C9. Mayor Montano asked to pull Items C5 and C6.

There were the following public speakers:

1. Allysson McDonald

After discussion, motion: to approve the consent calendar, pulling Items C5, C6, and C9.

Motion/Second: Vice Mayor Chua/Councilmember Lien

by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien,
Councilmember Phan

NOES: None

1. **Receive City Council Calendar of Meetings for February and March 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Received City Council Calendar of Meetings for February and March 2024.

2. **Approve City Council City Council Meeting Minutes of January 30 and February 6, 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Approved City Council Meeting minutes of January 30 and February 6, 2024.

3. **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.

4. **Consider Recommendations from Mayor Montano for Appointments to City Commissions (Contact: Mayor Montano, 408-586-3024)**

Received Mayor Montano's recommendation and confirmed the promotion of Suresh Sinha to a full voting seat with an unexpired term ending January 2026 on the Science, Technology and Innovation Commission.

7. **Approve an Amendment to the Agreement with Cornerstone Structural Engineering Group for Additional Design and Construction Services for S. Milpitas Boulevard Bridge at Penitencia Creek (Staff Contact: Michael Silveira, Public Works - Engineering Division Manager, 408-586-3303)**

Approved and authorized the City Manager to execute Amendment No. 1 to the Design Services Agreement with Cornerstone Structural Engineering Group in an amount not-to-exceed \$500,000.00 for additional design and construction services for S. Milpitas Boulevard Bridge at Penitencia Creek - Project No. 2016.

8. **FY 2023-24 2nd Quarter Financial Status Report for the Quarter Ended December 31, 2023 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

Reviewed the FY 2023-24 Quarterly Financial Status Report for the quarter ended December 31, 2023.

10. **Adopt a Resolution approving a new Memorandum of Understanding between the City of Milpitas and Milpitas Professional and Technical Group (ProTech) covering the period of July 1, 2023 through June 30, 2025 (Staff Contact: Kelli Parmley, Human Resources Director, 408-586-3086)**

Adopted **Resolution No. 9300** approving a new Memorandum of Understanding between the City of Milpitas and Milpitas Professional and Technical Group (ProTech) covering the period of July 1, 2023 through June 30, 2025.

11. **Adopt a Resolution Superseding Resolution No. 9286 to correct the Conditions of Approval for a previously approved Site Development Permit and PUD Amendment Permit to Develop a New One-and-a-Half Story Single-Family Residence and to Deviate from the Approved Designs, on a Vacant 1.1-acre Lot Located in the R1-H Single-Family Residential Zoning District with a Hillside Combining District at 1321 Terra Vista Court (Staff Contact: Jay Lee, Planning Director, 408-586-3077)**

Considered the exemption in accordance with CEQA and adopted **Resolution No. 9301** superseding Resolution No.9286 approving the corrected conditions of approval for Site Development Permit No. SD22-0013 and Planned Unit Development Amendment No. PA23-0001 to allow the development of a new single-family residence at 1321 Terra Vista Court, subject to the attached Conditions of Approval.

12. **Receive an Update on Storm Drain System Emergency Repairs and Improvements at Evans Road and Piedmont Creek 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 storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek; and (2) Determined by a four-fifths vote that the condition continues to constitute an emergency.

13. **Waive the Second Reading and Adopt Ordinance No. 239.8 to Amend Chapter 16 of Title XI of the Milpitas Municipal Code Relating to Storm Drainage Service Impact Fees (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

(1) Waived the second reading of **Ordinance No. 239.8**; and (2) Adopted **Ordinance No. 239.8** to amend Section 16 of Chapter 16 ("Stormwater and Urban Runoff Pollution Control") of Title XI ("Zoning, Planning and Annexation") of the Milpitas Municipal Code to be consistent with the newly adopted Storm Drainage Impact Fee and the City's Development Impact Fee Program.

14. **Approve Milpitas Arts and Culture Grant Request for Sunnyhills Neighborhood Association Juneteenth Event (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409; and Tegan McLane, Assistant Recreation and Community Services Director, 408-586-3212)**

Approved Milpitas Arts and Culture In-kind Grant request from Sunnyhills Neighborhood Association for the use of Sunnyhills Albert Augustine Jr. Memorial Park for a Juneteenth Celebration on June 15, 2024.

LEADERSHIP AND SUPPORT SERVICES

15. **Introduce Ordinance 298.1, An Ordinance of The City Council of the City of Milpitas Amending the Milpitas Municipal Code Title XI ("Zoning, Planning and Annexation"), Chapter 10 ("Zoning"), Section 13 ("Special Uses"), Subsection 13.15 ("Cannabis Uses") to Prohibit and Regulate Cannabis Uses, Establishments, and Operations to the Fullest Extent Allowed by State Law (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)**

City Attorney Mutalipassi introduced the item. Assistant City Attorney Creech presented the report.

There were the following public speakers:

1. Voltaire Montemayor

Assistant City Attorney Creech and Police Chief Hernandez responded to questions from the City Council.

After discussion, motion: to (1) waive the reading beyond the title and introduce **Ordinance 298.1**, which would amend Subsection XI-10-13.15 of the Milpitas Municipal Code consistently with Senate Bill 1186 by regulating the delivery of medicinal cannabis and cannabis products and otherwise preserve the City's prohibition against commercial cannabis to the fullest extent allowed after this change in State law; and (2) Make findings of exemption from environmental review pursuant to CEQA Guidelines Sections 15061(b)(3), 15183, 15305, and 15378.

Motion/Second: Vice Mayor Chua/Councilmember Barbadillo
by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien,
Councilmember Phan

NOES: None

16. **Review the List of Agenda Item Requests From Individual Councilmembers and Provide Direction to Staff Through the Council-Approved Prioritization Process (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)**

City Manager Thomas introduced the item. Assistant City Manager Cano presented the report, citing there being only one item for consideration, the Affordable Housing Ordinance update.

Mayor Montano recommended reviewing the percentage of units or changing the target to encourage building for very low income development. Vice Mayor Chua suggested keeping the percentage or lowering it to incentivize low or very low income development. Mayor Montano asked staff to present options to the City Council. Councilmember Lien suggested bringing in a consultant to examine feasibility and incentives for developers.

Economic Development Director Andrade provided additional comments regarding exploring a lower percentage to incentivize developers.

There were the following Public Speakers:

1. Voltaire Montemayor

There was unanimous consensus in support of the proposal.

ITEMS PULLED FROM CONSENT CALENDAR

- 5. Authorize and Approve Travel to Washington, D.C., for Councilmember Hon Lien from March 6 – 14, 2024; to Yosemite, CA, for Councilmember Anthony Phan from March 14 – 17, 2024; and to San Jose, CA, for Mayor Carmen Montano from March 15 – 16, 2024 (Staff Contact: Ned Thomas, City Manager, 408-586-3059)**

Mayor Montano asked questions regarding one of the travel items up for approval.

There were the following Public Speakers

1. Voltaire Montemayor

Council discussion ensued.

Councilmember Barbadillo left at 8:34 PM.

After discussion, motion: to (1) Authorize and approve travel to Washington, D.C., for Councilmember Hon Lien to attend the National League of Cities Congressional City Conference from March 9 – 14, 2024, for a total not-to-exceed amount of \$3,500 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings; (2) Authorize and approve travel to Yosemite, California, for Councilmember Anthony Phan to attend the CivicWell Policymakers Conference from March 14 – 17, 2024, for a total not-to-exceed amount of \$2,000 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings; and (3) Authorize and approve travel to San Jose, California, for Mayor Carmen Montano to attend the Water Education for Latino Leaders (WELL) 12th Annual Conference from March 15 – 16, 2024, for a total not-to-exceed amount of \$400 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.

Motion/Second: Mayor Montano/Vice Mayor Chua

Motion carried by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Lien, Councilmember Phan

NOES: None

ABSENT: Councilmember Barbadillo

6. Summary of 2023 Legislative Efforts (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)

City Manager Thomas provided a brief introduction to the item.

Mayor Montano thanked staff for their hard work.

There were no public speakers

After discussion, motion: to review and accept the 2023 Legislative Season Summary Report, including an update on potential 2024 State and Federal Earmark Requests.

Motion/Second: Vice Mayor Chua/Mayor Montano

Motion carried by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Lien, Councilmember Phan

NOES: None

ABSENT: Councilmember Barbadillo

9. Review Fiscal Year 2023-24 Mid-Year Report, Approve FY2023-24 Mid-year Budget Amendments, Adopt a Resolution Amending Resolution No. 1626, the Classification Plan, to Reclassify Positions, Approve and Adopt the Pay Schedule titled “New Job Classifications/Salary Table (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012; and Lauren Lai, Finance Director, 408-586-3111)

Fire Chief Schoonover responded to questions from City Council.

There were the following public speakers:

1. Voltaire Montemayor

After discussion, motion: to review Fiscal Year 2023-24 Mid-Year Report; Approve FY2023-24 Mid-Year Budget Amendments; and adopt **Resolution No. 9302** amending Resolution No. 1626, the Classification Plan, to reclassify positions, approve and adopt the pay schedule titled “New Job Classifications/Salary Table”, and amend budgeted allocated positions.

Motion/Second: Vice Mayor Chua/Mayor Montano
by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Lien, Councilmember Phan

NOES: None

ABSENT: Councilmember Barbadillo

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Vice Mayor Chua asked the City Manager and City Attorney to look into a catalytic converter theft prevention ordinance. There was unanimous support from those present to add the item to the prioritization list (Absent: Barbadillo)

Mayor Montano asked staff to look into a Friendship City with Guwahati, India to see if it's a possibility. The vote for consensus was two in support (Mayor Montano, Vice Mayor Chua) and two opposed (Councilmember Lien, Councilmember Phan) (Absent: Barbadillo). Mayor Montano also suggested staff look into a retreat for City Council.

ADJOURNMENT

Mayor Montano adjourned the meeting at 8:41 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta



SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

MINUTES

THURSDAY, FEBRUARY 22, 2024

BARBARA LEE SENIOR CENTER, 40 N MILPITAS BLVD, ROOM 140/141,
MILPITAS, CA

The City Council of the City of Milpitas convened in a Special Meeting of the Milpitas City Council, on February 22, 2024, in the Barbara Lee Senior Center, 40 N Milpitas Blvd, Room 140/141, Milpitas, CA, and via teleconference/Zoom webinar.

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

Mayor Montano called the Regular City Council meeting to order at 5:34PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien,
Councilmember Phan (6:02 PM).

ABSENT: None.

PLEDGE OF ALLEGIANCE

Councilmember Lien led the pledge of allegiance.

PUBLIC FORUM

There were the following public speakers:

1. Stephen Balsbaugh
2. Kulwant Singh

ANNOUNCEMENT OF CONFLICT OF INTEREST

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

READING OF THE CITY COUNCIL CODE OF CONDUCT

Vice Mayor Chua read the City Council Code of Conduct.

APPROVAL OF AGENDA

After discussion, motion: to approve the agenda.

Motion/Second: Vice Mayor Chua/Councilmember Barbadillo

Motion carried by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien

NOES: None

ABSENT: Councilmember Phan

AGENDA ITEMS

1. Receive Presentation on Proposed 5-Year 2025-2029 Capital Improvement Program and Provide Feedback to Staff (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012; and Michael Silveira, Public Works – Engineering Division Manager, 408-586-3303)

City Manager Thomas introduced the item. Public Works Engineering Division Manager Silveira and Assistant City Manager Cano presented the report, introducing the purpose of the CIP as a 5-year infrastructure planning and budgeting tool that is updated annually and outlining the presentation agenda and process for gathering council feedback on the proposed plan.

Staff highlighted recent key CIP projects completed across departments: Emergency Operations Center vehicle delivery, ARPA park improvement (phase 1), annual street resurfacing program maintaining a PCI score of 71, Penitencia Creek linear trail and park in Metro area, valley water creek flood protection improvement, citywide traffic safety study completion, gateway welcome signs installation, and wastewater treatment plant improvements, other notable projects.

Staff summarized key projects and milestones anticipated to be completed in 2024-2025 Fiscal Year: ARPA Park Improvement Phase 2, Street Resurfacing FY24/25 including Great Mall Parkway and Thompson Street, bicycle infrastructure improvements design, Adobe House HVAC replacement, Fire Station 1 modular building replacement, water line replacement design, and various plans/studies such as the Gateway Specific Plan.

Staff presented the 5-year CIP budget breakdown: \$243 million consisting of 149 projects, with \$165 million in projected available funding, leaving a \$58 million funding gap, noting that the first year CIP budget funds 47 projects totaling \$36 million, with general funds covering \$4.7 million for 11 projects. They then explained the criteria and process for evaluating project funding requests and prioritizations, including alignment with council priorities, health/safety issues, grants, efficiency gains, legal mandates, staff resourcing, schedules and budget impacts. Given projected budget deficits in later years, staff recommended utilizing some general fund facilities replacement reserves now to start addressing aging city infrastructure needs across buildings, parks, public safety systems and storm drains.

Vice Mayor Chua questioned the prioritization of CIP Parks projects with ARPA funding, highlighting the lack of work on certain parks. Public Works Director Di Renzo and Assistant City Manager Cano discussed the process for contracting to update parks. Vice Mayor Chua questioned if the CDBG funding requests for the roof replacement at the Library and Terrace Gardens and asked about the City's obligation to fund those repairs. Assistant City Manager Cano noted that they would follow up regarding Terrace Gardens. The Vice Mayor also suggested staff look into solar powered street lights on Main Street rather than underground construction. She asked staff to provide an update after conducting the research.

Mayor Montano offered additional comments on solar lighting on Main Street and questioned the delay in updating parks in poor condition. Assistant City Manager Cano noted that the parks in poor condition are part of Phase II due to the need for additional design work.

Councilmember Barbadillo questioned how money is allocated between the General Fund and CIP.

Councilmember Lien asked for clarification on notable projects including bicycle lane improvements and the 237 HOV Lane Improvements.

Mayor Montano questioned staff on grant opportunities to fund projects. She also spoke on street quality and asked what it would take to improve City street quality from a PCI of 71 to 80, and asked for

clarification regarding the CIP Well projects.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

There were no announcements.

ADJOURNMENT

Mayor Montano adjourned the meeting at 7:08 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

as of 2/29/2024

March 19, 2024 – Regular Meeting

CLOSED SESSION

- Labor Relations

INVOCATION (Councilmember Phan)

PRESENTATION

CONSENT CALENDAR

1. Receive City Council calendar for March and April 2024 (City Clerk)
2. Approve City Council Meeting minutes of March 5, 2024 (City Clerk)
3. Preview list of items for April 2, 2024 (City Clerk)
4. Councilmember Request List (City Clerk)
5. Commissioner Handbook Update (City Clerk)
6. Commercial Property Management Services for 1432-1488 Main Street (Parcels 1-3) (Economic Development)
7. Designation of Certifying Officer for National Environmental Policy Act (Housing)
8. Unhoused Reports for Q3/Q4 2022 (Housing)
9. Housing Element Annual Progress Report (Housing/Planning)
10. General Plan Annual Progress Report (Planning)
11. Street Vacation: 1752 Houret Ct (City Ventures) (Public Works/Engineering)
12. CIP 3501 ARPA Parks Contract Award (Public Works/Engineering)
13. Storm Drain System Emergency Repairs and Improvements (Public Works)

PUBLIC HEARINGS

14. St. John Bingo License (City Clerk)

COMMUNITY DEVELOPMENT

15. 1851 McCarthy Blvd Mixed-Use Pre-Application Study Session (Planning)

COMMUNITY SERVICES

16. Hall Park Tennis / Pickleball Recommendation (Recreation)

LEADERSHIP AND SUPPORT SERVICES

17. ARPA Quarterly Report (City Manager / Finance)

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

OPEN ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
None				

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Request that the Arts Commission explore alternatives for future of statue in front of City Hall	Phan	1/30/2024	An update was included in the February 20th Council prioritization reprt.
2	Update the Commissioner Handbook to include an option for outgoing commissioners to make presentations to other commissions	Chua	1/23/2024	An update was included in the February 20th Council prioritization reprt.
3	Workshop for retailers focusing on best practices and safety with plans for quarterly sessions	Chua	1/23/2024	An update was included in the February 20th Council prioritization reprt.
4	Explore possibility of naming the County library on Main Street	Phan	1/23/2024	An update was included in the February 20th Council prioritization reprt.
5	Consideration of the 20% Low Income Below Market Rate Housing	Montano	12/5/2023	This item was approved to move forward as part of the February 20th Council prioritization
6	Bring back Bingo and the Tour at the Senior Center	Chua	11/7/2023	An update was included in the February 20th Council prioritization reprt.
7	Referral for utility infrastructure cost on Main Street from Carlo to Corning Streets	Montano	10/17/2023	An update was included in the February 20th Council prioritization reprt.
8	Consider a possible ordinance or policy regarding solicitations at home	Barbadillo	10/3/2023	An update was included in the February 20th Council prioritization reprt.
9	Main Street International Festival	Lien	10/3/2023	An update was included in the February 20th Council prioritization reprt.
10	Have the Police Chief direct staff to complete an analysis in partnership with the County to	Chua	9/5/2023	An update was included in the February 20th Council prioritization reprt.
11	Explore taking steps towards becoming a Charter City	Phan	9/5/2023	An update was included in the February 20th Council prioritization reprt.
12	Human Resources Director to conduct a job fair specific to the job openings at City Hall	Chua	5/2/2023	An update was included in the February 20th Council prioritization reprt.
13	Pickleball Pilot Project	Chua	2/28/2023	An update was included in the February 20th Council prioritization reprt.
14	Main Street Infrastructure Projects	Montano	2/28/2023	An update was included in the February 20th Council prioritization reprt.
15	Main Street Flooding at Library	Chua	2/28/2023	An update was included in the February 20th Council prioritization reprt.
16	Satellite Consulate Office	Montano	2/28/2023	An update was included in the February 20th Council prioritization reprt.
17	Have the City look into the possibility of a Citywide Senior Discount	Barbadillo	2/7/2023	An update was included in the February 20th Council prioritization reprt.
18	City Manager to look into defining either a standalone teen center or updating information to indicate the Senior Center also functions as a Teen Center	Chua	9/20/2022	An update was included in the February 20th Council prioritization reprt.
19	Discuss converting vacant lot that was a basketball court into a community garden at Vasona and	Montano	8/16/2022	An update was included in the February 20th Council prioritization reprt.
20	City Manager look into implementing a workshop for small businesses on the bidding process for projects in the city	Chua	8/9/2022	An update was included in the February 20th Council prioritization reprt.
21	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	An update was included in the February 20th Council prioritization reprt.
22	Memorial Plaque in honor of youth skateboarder that passed away	Montano	6/7/2022	An update was included in the February 20th Council prioritization reprt.
23	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	An update was included in the February 20th Council prioritization reprt.
24	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	11/16/2021	An update was included in the February 20th Council prioritization reprt.

NOTE: Deferred and Completed Items are not listed

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
25	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	10/19/2021	An update was included in the February 20th Council prioritization rept.
26	Include a bust of Maria Lemire on the Mural in front of the Senior Center	Montano	8/17/2021	An update was included in the February 20th Council prioritization rept.
27	Consider Community Museum and Park on Main St.	Phan	8/20/2019	to Rules Subcommittee 8/23/2019. Moved to Specific Plan Community Conversation events.

NOTE: Deferred and Completed Items are not listed



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt Ordinance 298.1, An Ordinance of The City Council of the City of Milpitas Amending the Milpitas Municipal Code Title XI ("Zoning, Planning and Annexation"), Chapter 10 ("Zoning"), Section 13 ("Special Uses"), Subsection 13.15 ("Cannabis Uses") to Prohibit and Regulate Cannabis Uses, Establishments, and Operations to the Fullest Extent Allowed by State Law (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	3/5/2024
Recommendation:	Move to waive second reading and adopt Ordinance 298.1, which would amend Subsection XI-10-13.15 of the Milpitas Municipal Code consistently with Senate Bill 1186 by regulating the delivery of medicinal cannabis and cannabis products and otherwise preserve the City's prohibition against commercial cannabis to the fullest extent allowed after this change in State law.

BACKGROUND:

This Ordinance was discussed at the November 7, 2023, City Council meeting. The City Council deferred introduction of this Ordinance and directed staff to bring the Ordinance back for Council consideration in conjunction with a proposal to tighten enforcement on illegal cannabis distribution and delivery within Milpitas.

At the February 20, 2024, City Council meeting, by unanimous vote, the present version of this Ordinance was introduced for a first reading. This Ordinance is now ready for its second reading and adoption.

FISCAL IMPACT:

There is no cost to adopt the ordinance beyond incidental publication costs and staff time. There will, however, be minor costs associated with the enforcement of the amended ordinance. The City will expend law enforcement resources to register delivery services and to monitor the compliance of delivery services with any new regulations because the State only monitors and enforces compliance with State laws.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

This amending ordinance is not a project and is not subject to CEQA review because it does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change, particularly in that it does not alter the use of land or does a most does not do so inconsistently with uses already authorized, prohibited, or regulated by law. (Cal. Code Regs., tit. 14, § 15378.) Furthermore, even if considered a project, this amending ordinance is categorically exempt from CEQA review in that it comprises of non-land use regulations or at most minor alterations in land use limitations that do not result in any changes in land use or density (Cal. Code Regs., tit. 14, § 15305, 15378(a)(1)) and by common sense can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment particularly in consideration of the activities already permitted, prohibited, or regulated by law (Cal. Code Regs., tit. 14, § 15061(b)(3)). This amending ordinance is also exempt because it does not affect development density established by existing zoning and the City's General Plan, for which an Environmental Impact Report was already certified, and does not have any project-specific significant environmental effects peculiar to the project or any site. (Cal. Code Regs., tit. 14, § 15183.)

RECOMMENDATION:

Move to waive second reading and adopt Ordinance 298.1, which would amend Subsection XI-10-13.15 of the Milpitas Municipal Code consistently with Senate Bill 1186 by regulating the delivery of medicinal cannabis and cannabis products and otherwise preserve the City's prohibition against commercial cannabis to the fullest extent allowed after this change in State law.

ATTACHMENT(S):

- (a) [Proposed] Ordinance 298.1, an Ordinance of the City Council of the City of Milpitas Amending Subsection 13.15 ("Cannabis Uses") of Section 13 ("Special Uses") of Chapter 10 ("Zoning") of Title XI ("Zoning, Planning and Annexation") of the Milpitas Municipal Code

REGULAR

NUMBER: 298.1

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE MILPITAS MUNICIPAL CODE TITLE XI (“ZONING, PLANNING AND ANNEXATION”), CHAPTER 10 (“ZONING”), SECTION 13 (“SPECIAL USES”), SUBSECTION 13.15 (“CANNABIS USES”) RELATING TO THE PROHIBITION AND REGULATION OF CANNABIS USES, ESTABLISHMENTS, AND OPERATIONS TO THE FULLEST EXTENT ALLOWED BY STATE LAW, AND MAKING FINDINGS OF EXEMPTION FROM ENVIRONMENTAL REVIEW PURSUANT TO CEQA GUIDELINES SECTIONS 15061(b)(3), 15183, 15305, AND 15378

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of February 20, 2024, upon motion by Vice Mayor Chua 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

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, in November 2016, California voters passed Proposition 64, the “Control, Regulate and Tax Adult Use of Marijuana Act” (“Proposition 64” or the “Adult Use of Marijuana Act” or “AUMA”), which beginning January 1, 2017, legalized and regulated commercial cannabis for adult-use and medicinal-use; and

WHEREAS, in June 2017, the California Legislature passed a budget trailer bill, Senate Bill 94, the “Medicinal and Adult Use Cannabis Regulation and Safety Act” (“MAUCRSA”), which integrated prior laws with Proposition 64 to create a unified regulatory framework and system of business licensing at the State level for both adult-use and medicinal-use cannabis; and

WHEREAS, both MAUCRSA and Proposition 64 expressly recognize, preserve, and do not supersede or limit the authority of local jurisdictions to adopt and enforce ordinances that regulate cannabis businesses licensed at the State level, including by completely prohibiting the establishment or operation of one or more types of businesses licensed under MAUCRSA (Business & Professions Code, § 26200); and

WHEREAS, on January 17, 2017, the City Council adopted Urgency Ordinance No. 291 pursuant to Government Code Section 65858, establishing a forty-five (45) day moratorium on all cannabis uses to the extent allowed by law in light of the passage of Proposition 64; and

WHEREAS, on February 21, 2017, the City Council adopted Urgency Ordinance No. 291.1 pursuant to Government Code Section 65858, extending the moratorium on all cannabis uses for a period of 10 months and 15 days; and

WHEREAS, on January 16, 2018, the City Council adopted Urgency Ordinance No. 291.2 pursuant to Government Code Section 65858, extending the moratorium for an additional 12-month period for the full two years authorized under State law, to allow the City to complete its study of potential cannabis regulations; and

WHEREAS, during the time of that moratorium, the City Council established a Cannabis Subcommittee and in coordination with City staff conducted an extensive study of potential options for local cannabis regulations, including numerous meetings and substantial community outreach, polling, surveys, and analysis that the City Council again takes notice of now; and

WHEREAS, from that study and having fully considered the issues and potentials for regulation, the City Council duly passed by unanimous vote Ordinance No. 298 and enacted the currently operative version of Subsection XI-10-13.15 of the Milpitas Municipal Code, which to the fullest extent allowed by State law regulates cannabis cultivation for personal use and prohibits all commercial cannabis uses within the City’s jurisdiction, including cannabis delivery; and

WHEREAS, in September 2022, the California Legislature passed Senate Bill 1186 (“SB 1186”), which enacted the “Medicinal Cannabis Patients’ Right of Access Act” (“MCPRAA”) and, among other things, amended Business and Professions Code section 26200 to make the provisions of MCPRAA an exception to the broad reservation of local regulatory authority in subsections (a)(1) and (a)(2) of Section 26200; and

WHEREAS, MCPRAA prohibits local jurisdictions from adopting or enforcing any regulation that directly or effectively prohibits the retail sale by delivery of medicinal cannabis or medicinal cannabis products to medicinal cannabis patients or their primary caregivers in a timely and readily accessible

manner and in the types and quantities that are sufficient to meet the demand for medicinal cannabis patients within the local jurisdiction; and

WHEREAS, the City of Milpitas has a vested and legitimate interest in protecting the public health, safety, and welfare by adopting reasonable regulations, including prohibitions, on the retail sale and personal cultivation of commercial cannabis whether for medicinal or non-medicinal use; and

WHEREAS, the City of Milpitas has a vested and legitimate interest in regulating the delivery of medicinal cannabis to ensure such deliveries are conducted in a lawful and reasonable manner that affirmatively protects the health, safety, and welfare of the community and the peace, quiet, and enjoyment of all persons, including by prohibiting the delivery of anything other than the medicinal cannabis and medicinal cannabis products to the minimum extent now required by State law ; and

WHEREAS, if required to allow the delivery of medicinal cannabis and medicinal cannabis products, the City of Milpitas has a vested and legitimate interest in ensuring that such deliveries actually reach qualifying patients and do not fall into the hands of others, including minors; and

WHEREAS, the City of Milpitas has the lawful right to act upon the needs and wishes of the Milpitas community, including as expressed during the extensive surveys, polls, meetings, and public comment that led to the City's enactment of Subsection XI-10-13.15; and

WHEREAS, the City Council reaffirms and finds still true the study, consideration, deliberation, and discussions that formed the basis for the City's enactment of Ordinance No. 298; and

WHEREAS, the City Council finds and declares based upon a full consideration of all the facts before it that there exists and foreseeably will continue to exist a more than sufficient supply of medicinal cannabis and medicinal cannabis products capable of timely and readily accessible delivery from locations outside of the City's jurisdiction in the types and quantities meeting the demand by medicinal cannabis patients within the City's jurisdiction; and

WHEREAS, the City Council finds and declares based upon a full consideration of all the facts before it that there exist more than sufficient opportunities for the establishment of additional cannabis operations outside of the City's jurisdiction to meet any future increase in demand; and

WHEREAS, the City Council finds and declares that it's local regulatory scheme, as herein amended, is consistent with SB 1186 and will not prevent medicinal cannabis patients or their primary caregivers from obtaining medicinal cannabis in a timely and readily accessible manner in the types and quantities that are sufficient to meet demand within the City's jurisdiction; and

WHEREAS, all legal prerequisites to the adoption of this ordinance have been met.

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 TITLE XI (“ZONING, PLANNING AND ANNEXATION”), CHAPTER 10 (“ZONING”), SECTION 13 (“SPECIAL USES”), SUBSECTION 13.15 (“CANNABIS USES”)

Title XI, Chapter 10, Section 13, Subsection 13.15 of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-13.15 Cannabis Uses

- A. Purpose. The purpose of this Subsection is to prohibit to the fullest extent allowed by State Law the establishment and operation of all commercial cannabis uses within the City of Milpitas, including all cannabis dispensaries, cannabis retailers, cannabis manufacturers, cannabis microbusinesses, cannabis testing laboratories, cannabis distribution, cannabis cultivation, and delivery of cannabis. It is also the intent of this Subsection to regulate indoor cannabis cultivation, and to prohibit all outdoor cultivation, for personal use, including by qualified patients and primary caregivers. It is also the intent of this Subsection to entirely prohibit the delivery of non-medical cannabis and only allow the delivery of medicinal cannabis directly to medicinal cannabis patients or their primary caregivers to the minimum extent required by State law, subject to all laws and the additional regulations adopted here.
- B. Finding and Declaration. The City finds and declares that this local regulatory scheme will not prevent medicinal cannabis patients or their primary caregivers from obtaining medicinal cannabis in a timely and readily accessible manner and in types and quantities that are sufficient to meet demand within the City’s jurisdiction.
- C. Definitions. For purposes of this Subsection, the following definitions shall apply:
 - 1. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” includes “cannabis” as defined in Business and Professions Code, Section 26001 and in Section 11018 of the Health and Safety Code.
 - 2. “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
 - 3. “Cannabis delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Cannabis delivery” also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products. Whether made directly by the individual or entity or indirectly through a third-party service or other intermediary, an offer to deliver includes any communication, action, or conduct that could be reasonably understood to convey a willingness to engage in cannabis delivery irrespective of the person or entity’s actual or specific intent and includes advertisements, websites, or other media making the same suggestion.
 - 4. “Cannabis delivery service” or “delivery service” means any person or entity engaged in cannabis delivery or attempting or offering to engage in cannabis delivery.

5. "Cannabis distribution" means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the State distributor license(s), including, but not limited to, cannabis storage, quality control and collection of State cannabis taxes.
6. "Cannabis manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. Cannabis manufacture includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
7. "Cannabis microbusiness" means a commercial cannabis business that must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing using nonvolatile solvents, distribution, and/or retail.
8. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include "cannabis products" as defined in Business and Professions Code, Section 26001.
9. "Cannabis retailer" means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery. The term "cannabis retailer" includes any nonprofits that may be licensed under Business and Professions Code, Section 26070.5. For purposes of this Chapter, "cannabis retailer" also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program (Health and Safety Code, § 11362.7 et seq.), as may be amended.
10. "Cannabis testing laboratory" means a facility, entity, or site in the State that offers or performs tests of cannabis or cannabis products.
11. "Chief of Police" means the Chief of Police of the City of Milpitas or his or her designee.
12. "City Attorney" means the City Attorney of the City of Milpitas or his or her designee.
13. "City Clerk" means the City Clerk of the City of Milpitas or his or her designee.
14. "City Manager" means the City Manager of the City of Milpitas or his or her designee.
15. "Commercial cannabis use" includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis microbusinesses, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes "commercial cannabis activity" as defined in Business and Professions Code, Section 26001, and includes any activity that requires, or may require in the future, a license from a State licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Division 10), as may be amended. Commercial cannabis use does not include those activities allowed for personal use by persons 21 years of age or older, without any compensation whatsoever, in strict accordance with Health and Safety Code, Section 11362.1 and does not include the activities of a qualified patient or a primary

caregiver that are exempt from State licensure pursuant to Business and Professions Code, Section 26033.

16. "Enforcement Authority" means the Chief of Police, the City Attorney, or any other person or persons designated by the Milpitas Municipal Code or the City Manager to enforce this Subsection.
17. "Indoor" means any location that is totally contained within a fully enclosed and secure private residence or accessory building located on the grounds of the private residence.
18. "Medicinal cannabis" or "medicinal cannabis products" shall have the same meaning as the definition set forth in Business and Professions Code, Section 26001.
19. "Medicinal cannabis patient" means any one of the following:
 - a. A "qualified patient," as defined in Health and Safety Code, Section 11362.7, who possesses a currently valid physician's recommendation that complies with both Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code as well as all rules, regulations, and guidelines adopted by the Medical Board of California.
 - b. A "person with an identification card," as defined in Section 11362.7 of the Health and Safety Code, who possesses a currently valid identification card issued in compliance with Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.
20. "Non-medicinal cannabis" or "non-medicinal cannabis products" shall mean cannabis or cannabis products, respectively, that does not qualify as medicinal cannabis, including commercial cannabis intended to be sold for non-medicinal use by an adult 21 years of age or older pursuant to State law.
21. "Outdoor" means any location that is not totally contained within a fully enclosed and secure accessory building or primary residence.
22. "Personal cultivation" means cannabis cultivation for a natural person's own personal use and possession in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended, and such person does not sell or distribute cannabis to any other person. "Personal use" also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis.
23. "Primary caregiver" means the primary caregiver for a medicinal cannabis patient and shall have the same meaning as the definition set forth in Health and Safety Code, Section 11362.7.
24. "Private residence" means a house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes.

D. Personal Cultivation of Cannabis.

1. Indoor Personal Cultivation. The indoor personal cultivation of cannabis is prohibited except in compliance with the following:

- a. Cannabis cultivation shall only occur indoors at a private residence, or inside an accessory structure located upon the grounds of a private residence.
 - b. Cannabis cultivation shall be limited to six plants total per residence, whether immature or mature, regardless of how many residents reside at the private residence.
 - c. Persons engaging in indoor cultivation must comply with all State and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation, and with Health and Safety Code Sections 11362.1 and 11362.2.
 - d. The use of gas products (CO2, butane, propane, natural gas, etc.) or generators for cultivation of cannabis is prohibited. Use of gas products shall be limited to those allowed by the Building, Electrical, and Fire Codes as adopted and amended by the City of Milpitas.
 - e. The residence shall maintain fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident(s), and the premises shall not be used primarily or exclusively for cannabis cultivation.
 - f. All areas used for cannabis cultivation shall be located within a fully enclosed and secure structure. "Fully enclosed and secure structure" means a space within a building, greenhouse or other legal structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.
2. Outdoor Personal Cultivation Prohibited. Outdoor personal cultivation of cannabis is prohibited in all zoning districts in the City of Milpitas.

E. Commercial Cannabis Uses.

1. Commercial Cannabis Uses Prohibited. All medical and adult-use commercial cannabis uses as defined herein are prohibited from establishing or operating within the City of Milpitas. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of a commercial cannabis use in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

F. Cannabis Deliveries.

1. Deliveries Generally Prohibited. Except as set forth in Subsection XI-10-13.15(F)(2), the ban on commercial cannabis uses also prohibits the operation of a cannabis delivery service to customers in the City of Milpitas, including those deliveries originating from a physical location outside of the City. A cannabis delivery service may not deliver, attempt to deliver, or offer to deliver cannabis or cannabis products in violation of this Subsection. Nothing in this Subsection is intended to, nor shall it be construed to, permit and/or legalize any delivery operation, use, and/or activity that is otherwise prohibited under this Subsection and/or any other law. Rather, this Subsection is intended to prohibit the delivery of commercial cannabis to the fullest extent allowed by state law, including by entirely prohibiting the delivery of non-medicinal cannabis.
2. Direct Deliveries to Medicinal Cannabis Patients or Primary Caregivers Excepted. The direct delivery of medicinal cannabis to a specifically identified medicinal cannabis patient or the primary caregiver for a specifically identified medicinal cannabis patient within the City's jurisdictional limits from a location outside the City's jurisdictional limits is not prohibited by

this Subsection only if such deliveries fully comply with each and every one of the following operating conditions:

- a. All deliveries must be made directly to a specifically identified medicinal cannabis patient or the primary caregiver for a specifically identified medicinal cannabis patient by a duly licensed cannabis delivery service. Prior to delivery, the delivery service must obtain a copy of written documentation for the identified medicinal cannabis patient proving the patient possess a physician's recommendation for medicinal cannabis that is valid at the time of delivery.
 - i. For deliveries to a medicinal cannabis patient, that written documentation must include either a currently valid copy of a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code or a currently valid identification card issued in compliance with Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.
 - ii. For deliveries to a primary caregiver for a medicinal cannabis patient, that written documentation must include either a currently valid identification card for the identified patient issued to the primary caregiver in compliance with Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code or both a currently valid copy of a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code and proof that primary caregiver has consistently assumed responsibility for the housing, health, or safety of the identified patient.
 - iii. Written documentation received by a delivery service for this purpose shall be maintained confidentially and only disclosed in compliance with all applicable laws.
- b. All deliveries must be to a fixed address for a specifically identified medicinal cannabis patient.
 - i. For deliveries to a medicinal cannabis patient, that fixed address must be the patient's private residence.
 - ii. For deliveries to a primary caregiver for a medicinal cannabis patient, that fixed address must be the primary caregiver's primary business address.
 - iii. Deliveries cannot be to a post office box, any other form of mail, package, or parcel pickup location or locker, or to a mail, package, or parcel receiving agency or business.
 - iv. Delivery must be to a person 18 years of age or older. The delivery service must record the name of the person receiving the delivery.
 - v. Upon delivery, and prior to completing delivery, the delivery must be signed for by the identified medicinal cannabis patient or the primary caregiver for the identified medicinal cannabis patient.
- c. All deliveries must occur between the hours of 6:00 a.m. Pacific Time and 10:00 p.m. Pacific Time. Deliveries may not occur in a manner that would tend to disturb the peace, quiet, and/or enjoyment of a reasonable person of normal sensitivity residing nearby.

- d. The cannabis delivery service must maintain a log or other record stating the date, time, quantities, and products for each delivery as well as the name of the identified medicinal cannabis patient and the name of any primary caregiver for the delivery.
 - e. The cannabis delivery service must retain for a period of at least two years copies of all records, documentation, signatures, permits, and licenses required by this Subsection and present them to a law enforcement officer upon demand.
 - f. The cannabis delivery service must fully comply with all applicable laws, including this Subsection and Division 10 of the Business and Professions Code, all rules and regulations promulgated by the Department of Cannabis Control, including in Title 4, Division 19 of the California Code of Regulations, and all guidelines, procedures, and regulations promulgated pursuant to this Subsection by the City Manager and/or his or her designee.
 - g. Deliveries of medicinal cannabis may not include anything other than medicinal cannabis and medicinal cannabis products. Specifically, deliveries of medicinal cannabis may not include delivery of cannabis accessories or promotional materials, as defined by Section 15000 of Title 4, Division 19, Chapter 1, Article 1 of the California Code of Regulations, or branded merchandise of any kind.
3. Business Tax and License. A cannabis delivery service must obtain a business tax license from the City pursuant to Title III, Chapter 1 of this Code prior to commencing any delivery service within the City's jurisdiction or offering or attempting to deliver within the City's jurisdiction, even if delivering from a physical location outside of the City. A cannabis delivery service must pay all state and local taxes or fees for delivery services occurring within the City's jurisdiction, including taxes or fees imposed by or owed to the City.
4. Registration. A cannabis delivery service must register with the Milpitas Police Department in a form acceptable to the Chief of Police prior to commencing any delivery service within the City's jurisdiction or offering or attempting to deliver within the City's jurisdiction, even if delivering from a physical location outside of the City. That registration must be signed by the registrant averring the truth and accuracy of the information contained therein and include all of the following information:
- a. The name, address, and telephone number of the registrant and the delivery service. If the registrant or the delivery service has done business under any other name, including a fictitious name, the registrant must provide each name and all dates and jurisdictions of use.
 - b. The name, address, and telephone number of the person(s) who will manage and operate the delivery service.
 - c. The name, address, and telephone number for the person(s) authorized to accept service of process and legal notices for the delivery service.
 - d. The business name, license number, license type, license designation, license status, and expiration date for any applicable license issued by the Department of Cannabis Control.
 - e. Any other information required by the Chief of Police.

The delivery service must update its registration annually and within 72 hours of any change to the information contained in its registration or its cessation or suspension of medicinal cannabis delivery services within the City's jurisdiction. Registration may be conditioned, suspended, refused, or revoked under the procedure specified in Subsection XI-10-13.15(F)(7). A cannabis delivery service may not re-register, and no registration will be accepted, within one (1) year after its registration is revoked. Where a cannabis delivery service is sold, transferred, merged,

acquired, or any person or entity otherwise succeeds in whole or in part to any of the assets, liabilities, facilities, employees, managers, or officers of a cannabis delivery service, the registration of the successor business may be condition, suspended, refused, or revoked upon the same or similar terms as the previous business as the interests of justice require.

5. **Administrative and Criminal Violations.** In addition to all other remedies and actions allowed by law, any violation of this Subsection may be enforced by administrative citation, pursuant to Title I, Chapter 21 of this Code, or criminal prosecution, pursuant to Section I-1-4.09 of this Code. At the Enforcement Authority's sole discretion, violations of this Subsection may be charged as a misdemeanor, punished by a fine not to exceed the sum of five hundred dollars (\$500) or by imprisonment in the County Jail not to exceed six (6) months or by both such fine and imprisonment, or an infraction, punished by a fine not exceeding one hundred dollars (\$100) for a first violation, a fine not exceeding two hundred dollars (\$200) for a second violation within one year, or a fine not exceeding five hundred dollars (\$500) for each additional violation within one year. Each day such a violation continues shall be a new and separate violation.
6. **Rebuttable Presumption.** If a cannabis delivery service reports or otherwise discloses to a state, local, or federal governmental entity that it has delivered cannabis or cannabis products, whether for taxation, licensing, tracking, or other purposes, that report or disclosure shall create a rebuttable presumption for the facts and circumstances of each delivery referenced, including a prima facie case for any violation of this Subsection evidenced thereby.
7. **Suspension or Prohibition.** In addition to all other remedies and actions allowed by law, the Enforcement Authority may immediately suspend, revoke, or otherwise prohibit or condition any delivery service from delivering medicinal cannabis within the City's jurisdictions, or impose additional terms and conditions upon that delivery service, if it fails or has failed to fully comply with all laws, including this Subsection, fails or has failed to register with the Milpitas Police Department prior to delivering, attempting to deliver, or offering to deliver within the City's jurisdiction, fails or has failed to maintain its business license, or fails or has failed to remit any applicable state or local taxes or fees for delivery services occurring within the City's jurisdiction. Pursuant to Title I, Chapter 20, Section 2 of this Code, notice of this suspension, revocation, or imposition of additional terms and conditions may be served by mail to the address provided in the delivery service's registration or, if there is no current registration, any other address listed for the delivery service. Within fifteen (15) calendar days of that mailing, the delivery service may appeal that determination to a hearing officer appointed by the City Manager pursuant to the procedure provide in Title I, Chapter 20, Section 3 of this Code by filing with the City Clerk a written notice of appeal containing all factual and legal grounds for the appeals as well as all records or other evidence supporting that appeal. Within twelve (12) calendar days of being mailed notice of the hearing officer's decision pursuant to the same notice procedure, the delivery service may appeal the hearing officer's decision to the City Council pursuant to the procedure provided in Title I, Chapter 20, Section 5 of this Code.
8. **Transportation Through City.** This section shall not be construed to prohibit use of the public roads to pass through the City's jurisdiction without making a delivery within the City's jurisdiction pursuant to Business and Professions Code, Section 26090 or those activities allowed by Section 26054, subdivisions (c), (d), or (e).
9. **Implementing Regulations.** The City Manager, or his or her designee, with due consultation with the Chief of Police, shall have the authority to adopt all necessary guidelines, procedures, and regulations to implement the requirements and fulfill the policies and purposes of this Subsection related to the delivery of medicinal cannabis.

G. Public Nuisance; Effect of State Law.

1. It is hereby declared to be a public nuisance for any person owning, leasing, occupying, or having charge or possession of any real property in the City to cause or allow such real property to be used for a commercial cannabis use or for the cultivation of cannabis except in strict compliance with this Chapter. Any condition caused or permitted to exist in violation of any of the provisions of this Chapter may be abated as a public nuisance as provided in this Code and/or under State law.
2. In the event of any conflict between the penalties enumerated under this Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern. The City Attorney or prosecuting attorney has the authority to declare and prosecute the violation as the maximum penalty permitted by State law, including but not limited to, those penalties prescribed by Health & Safety Code, Section 11362.4. To the extent certain conduct is immune from arrest and criminal liability pursuant to State law, including the Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5) or the Medical Marijuana Program (Health and Safety Code Section 11362.7 et seq.), criminal penalties shall not apply.

SECTION 3. CONSISTENCY AND ENFORCEABILITY OF PRIOR LAW

Repeal or amendment of any provision of the Milpitas Municipal Code herein does not affect any penalty, forfeiture, or liability incurred before this ordinance's effective date or preclude prosecution and imposition of penalties for any violation occurring before this ordinance's effective date. Any such repealed or amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this ordinance.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City Council finds and determines that the adoption of this amending ordinance is not a project and is not subject to CEQA review because it does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change, particularly in that it does not alter the use of land or does a most does not do so inconsistently with uses already authorized, prohibited, or regulated by law. (Cal. Code Regs., tit. 14, § 15378.) Furthermore, even if considered a project, this amending ordinance is categorically exempt from CEQA review in that it comprises of non-land use regulations or at most minor alterations in land use limitations that do not result in any changes in land use or density (Cal. Code Regs., tit. 14, § 15305, 15378(a)(1)) and by common sense can be seen with certainly that there is no possibility that the activity in question may have a significant effect on the environment particularly in consideration of the activities already permitted, prohibited, or regulated by law (Cal. Code Regs., tit. 14, § 15061(b)(3)). This amending ordinance is also exempt because it does not affect development density established by existing zoning and the City's General Plan, for which an Environmental Impact Report was already certified, and does not have any project-specific significant environmental effects peculiar to the project or any site. (Cal. Code Regs., tit. 14, § 15183.)

SECTION 5. 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.

SECTION 6. 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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving Memorandum of Understanding between the City of Milpitas and Milpitas Employees Association (MEA) covering the period of July 1, 2023 through June 30, 2025 (Staff Contact: Kelli Parmley, Human Resources Director, 408-586-3086)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	3/5/2024
Recommendation:	Adopt a resolution approving Memorandum of Understanding between the City of Milpitas and Milpitas Employees Association (MEA) covering the period of July 1, 2023 through June 30, 2025.

BACKGROUND:

The Memorandum of Understanding (MOU) between the City of Milpitas and the Milpitas Employees Association (MEA), an affiliate of LIUNA/UPEC expired on June 30, 2023. Thus, the City needs to enter into a new MOU.

ANALYSIS:

City representatives and representatives from MEA met and conferred in good faith to negotiate a new Memorandum of Understanding. The City and MEA began negotiations on April 13, 2023 and met 17 times, which includes one mediation meeting and one fact-finding hearing. A Tentative Agreement has been reached with a new successor Memorandum of Understanding with an effective date of July 1, 2023 and will remain in effect through June 30, 2025. The MEA Bargaining Group voted in favor of the Tentative Memorandum of Understanding on February 14, 2024. The major items of the agreement are:

- 1) Two-year contract with wage adjustments of 4% retroactive to July 1, 2023 and 4% effective July 1, 2024.
- 2) Increased longevity pay for years of service:
 - a. 10 Years: Increase previous 0.5% to 1%
 - b. 15 Years: Increase previous 1% to 2%
 - c. 20 Years: Increase previous 1.5% to 3%

The Memorandum of Understanding is included in the City Council's agenda packet as Exhibit A to the Resolution to approve the MOU. The draft MOU document was available for public review for the 10-day period required by the City of Milpitas Open Government Ordinance starting on February 16, 2024.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt the Resolution in the Recommendation

Pros: The City would not have to incur additional costs due to wage increases.

Cons: The City would not have a current MOU with this bargaining group representing over 65 City employees who provide essential services to the Milpitas community.

FISCAL IMPACT:

There is sufficient funding the FY 2023-2024 budget to cover the costs for the proposed wage and benefit increases for this current fiscal year, which is \$104,534 on top of what has already been budgeted. The proposed wage and benefit increase for FY 2024-2025 and FY 2025-2026 will be incorporated in the budget adoption process.

The fiscal impact for the proposed increases for MEA will be approximately \$996,333 over two fiscal years.

California Environmental Quality Act (CEQA):

Approval of the recommendation is not an activity defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

RECOMMENDATION:

Adopt a Resolution approving a new Memorandum of Understanding between the City of Milpitas and Milpitas Employees Association (MEA) covering the period of July 1, 2023 through June 30, 2025

Attachment(s):

1. Resolution Approving MEA MOU
2. Exhibit A – Memorandum of Understanding
3. Exhibit B – Updated Salary Table

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADOPTING THE
MEMORANDUM OF UNDERSTANDING WITH THE MILPITAS EMPLOYEES
ASSOCIATION, AN AFFILIATE OF LIUNA/UPEC LOCAL 792, FOR THE PERIOD OF JULY
1, 2023, THROUGH JUNE 30, 2025 AND APPROVE AND ADOPT THE PAY SCHEDULE
TITLED “ALL JOB CLASSIFICATIONS/SALARY TABLE”**

WHEREAS, the most recent Memorandum of Understanding (MOU) between the Milpitas Employees Association (MEA), an affiliate of LIUNA/UPEC Local 792, and the City of Milpitas covered the period of July 1, 2020 through June 30, 2023; and

WHEREAS; representatives of MEA and UPEC Local 792 and the City of Milpitas met in good faith and negotiated a successor MOU; and

WHEREAS, the new MOU between MEA and the City of Milpitas shall be effective July 1, 2023, through June 30, 2025, a copy of which is attached as “**Exhibit A**.”

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The MOU between the Milpitas Employees Association and the City of Milpitas, attached hereto as **Exhibit A**, is hereby approved and the City Representatives are hereby authorized to execute it.
3. Approve and adopt **Exhibit B**, the pay schedule “ALL JOB CLASSIFICATIONS/SALARY TABLE effective March 5, 2024”.

PASSED AND ADOPTED this ____ day of _____, 2024, 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

MEMORANDUM OF UNDERSTANDING

BETWEEN

MILPITAS EMPLOYEES ASSOCIATION

*(An Affiliate of Laborers' International Union of North America
(LIUNA/UPEC))*

AND THE

CITY OF MILPITAS

July 1, 2023 – June 30, 2025

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**CITY OF MILPITAS AND MILPITAS EMPLOYEES' ASSOCIATION
COMPREHENSIVE MEMORANDUM OF UNDERSTANDING ON
SALARIES, FRINGE BENEFITS AND WORKING CONDITIONS**

July 1, 2023 through June 30, 2025

This Memorandum of Understanding (hereafter "Agreement") is made between the City of Milpitas ("the City") and the Milpitas Employees Association (hereafter "the Union"). The Union confirms that it is an affiliate of the Laborers' International Union of North America (LIUNA/UPEC), AFL-CIO, Local 792.

SECTION 1.00 PREAMBLE

- 1.01 The term of the prior MOU expired on June 30, 2023. This MOU is made and entered into on (TBD). The terms and provisions of the prior MOU and any amendments are continued in full force and effect in accord with law through the beginning date of this MOU of July 1, 2023.

The term of this Agreement shall commence at 12:01 a.m. on July 1, 2023 and terminate on June 30, 2025. The Agreement is subject to all ordinances, resolutions and personnel rules of the City, except as expressly provided to the contrary by this Agreement, and all applicable federal and state laws.

- 1.02 The Union and the City shall attempt to create a working environment free from hostility and intimidation. To that end, the Union and the City shall encourage all employees to treat their fellow employees with dignity and respect.
- 1.03 The terms and conditions of employment set forth in this Agreement have been discussed in good faith by the authorized representatives of the City and the authorized representatives of the Union. The authorized representatives of the Union agree to recommend acceptance by the employees of all terms and conditions set forth herein. Following said acceptance by the employees, authorized representatives of the City agree to recommend to the Milpitas City Council that all terms and conditions set forth herein be approved by resolution. Upon adoption of said resolution, all terms and conditions so incorporated shall become effective without further action by either party.

SECTION 2.00 - NO DISCRIMINATION

- 2.01 The City of Milpitas shall not discriminate in employment practice in regard to race, color, ancestry, national origin, religious creed, sex, sexual orientation, age, medical condition (cured or rehabilitated cancer), physical or mental disability, marital status, or political opinion or affiliation or union activity, unless such factor shall be a bona fide occupational qualification for the position, or such action is required to comply with federal or state law.
- 2.02 The Union shall not discriminate based on race, color, ancestry, national origin, religious creed, sex, sexual orientation, age, medical condition (cured or rehabilitated cancer), physical or mental disability, marital status, or political opinion or affiliation or union activity, unless such factor shall be a bona fide occupational qualification for the position, or such action is required to comply with federal or state law.

SECTION 3.00 - EMPLOYEE RIGHTS

3.01 Union Membership and Dues Deduction

- 3.01.1 Any employee in the City's competitive service may join, organize or maintain membership in a labor organization if the employee so desires. The City neither encourages nor discourages these activities, nor does membership or non-membership in any labor organization affect the employee's standing or right as a City employee. The right to join, organize, or maintain membership in a labor organization is also extended to any association of municipal employees not identified with any labor organization.
- 3.01.2 The right to join a labor union or any association of municipal employees also includes the right not to join. Any employee desiring to join, remain a member, or become independent of any such organization or association must be free to exercise their right without undue influence, coercion, intimidation, or pressure of any kind from any person. Any attempt by one City employee to unduly influence or pressure another employee regarding the employee's membership in any organization or association is contrary to this Memorandum of Understanding, and any offender shall be subject to disciplinary action. Undue influence or pressure for these purposes is an attempt to persuade an employee to change their mind by any means other than written or verbal discussion of the pros and cons of membership or non-membership.
- 3.01.3 For employees who may wish to belong to the employee's union, the City shall cause dues to be deducted from their paycheck based on written certification from the Union that it has and will maintain written authorization for the deduction from the employee. It is the responsibility of the Union to ensure that dues deductions have been authorized by the employees in writing. The employee may, for any reason, cancel his/her authorization for such a payroll deduction by providing written notice to the Union during the designated drop out period, which shall be June of each calendar year. The employee's cancellation of such authorized deductions shall in no way affect his/her job or standing as an employee. Any employee desiring to join, remain a member, or become independent of any such organization or association must be free to exercise their right without undue influence, coercion, intimidation or pressure of any kind from any person.
- 3.01.4 The Association, as defined in this Section, shall hold the City harmless, and shall fully and promptly reimburse the City for any fees, costs, charges, or penalties incurred in responding to or defending against claims, dispute, challenges which are actually brought against the City or any of its agents, in connection with the administration or enforcement of this subsection pertaining to Union dues. Such reimbursement shall include, but not be limited to, court costs, litigation expense, and attorney's fees incurred by the City.

3.02 New Employee Orientation

3.02.1 New employee orientation generally occurs once a month and is scheduled by the Human Resources Department. The Union will be provided not less than ten (10) calendar days' advanced notice of the time, date, and location of the Orientation. If a hire is made with less than ten (10) calendar days' notice, the Union will be notified as soon as the orientation is scheduled. Within their first pay period, the City will notify the Union of each new hire, and the Union will be granted thirty (30) minutes of orientation time, of which the time and place must be coordinated and agreed upon with the new employee's supervisor. Employee representatives conducting the orientation shall be granted up to thirty (30) minutes of paid release time to do so, including reasonable travel time, if needed.

3.02.2 The City will provide the Union a digital file via email to the Union President and Labor Relations Representative containing the following information for every employee:

- Name
- Job Title
- Department
- Work Location
- Work, home and personal cell phone numbers
- Personal email addresses on file with the employer
- Home address

The City shall not be required to supply information it does not have. Such information will be provided as follows:

1. For new hires, within thirty (30) days of the date of hire.
2. For existing bargaining unit employees, quarterly.

3.03 Union Activities

3.03.1 City employees participating in organizational or other labor union activities or similar activities of any employee association are required to conduct such activities on their own time and not during regularly assigned working hours, with the following exceptions:

3.03.2 A steward representing or assisting a fellow employee in the presentation of a grievance may utilize such time as is essential for the presentation of the grievance to management during working hours; however, solicitation of grievances shall be on the steward and employee's own time.

3.03.3 Officials of any organization representing City employees may meet on City time with the City Manager or other City officials when such meeting times are approved by the City Manager.

- 3.03.4 Business agents or representatives of the union or other association, or their affiliates, having business (other than recruiting of members) with the officers or individual members of the union or other recognized employee groups may meet and confer with such officers or members during the course of the working day for a reasonable period of time provided that permission is first obtained from the department head, if on duty, and the employee's immediate supervisor, and further provided that the conduct of such business shall in no way conflict with the performance of City business.
- 3.03.5 Use of the work place or premises for organizational activities other than the presentation of a grievance or the conduct of business as provided for above, is permitted before or after working hours only with the advance approval of the City Manager or designee; is subject to the availability of the desired facility, and shall in no way interfere with the performance of official duties of on-duty personnel. Official bulletin boards may be used only for notice of meetings of any employee organizations and for no other organizational purpose. The City shall, however, provide space upon request at any City facility for a union or employee association furnished, installed and maintained bulletin board for posting of notices and bulletins and a magazine rack for the distribution of union or association literature.
- 3.03.6 Time Off for Association Meeting/Training. The City shall provide annual paid release time for Association Business such as negotiations, conventions symposia, etc., excluding political activity, upon reasonable written notice to and prior approval by the appropriate department head. Release time shall not result in overtime by any employee. These events shall include but are not limited to:

Event	Personnel	Time
Labor Negotiations Training	2	5 days
LTD/Health Benefit Meetings	2	4 hours
PERS Meetings	2	1 day
Association Conferences	1	5 days
		Total 144 hours

SECTION 4.00 - CITY RIGHTS

- 4.01 The City continues to possess exclusively the rights listed below, plus all other rights to which by law the City is entitled. These rights may not be abridged or modified in any way, except by formal legislative action by the City Council (i.e. resolution or ordinance). The City has the right and may exercise its discretion:
1. To determine the mission of its constituent departments, commissions and boards;

2. To set standards of service;
3. To direct employees, make assignments, and require overtime work;
4. To take disciplinary action;
5. To relieve its employees from duty because of lack of work or other legitimate reasons;
6. To determine the methods, means, and personnel by which government operations are to be conducted;
7. To determine the procedure and standards for selection for employment and determine the content of job classifications;
8. To determine when an emergency exists and to take all necessary action to carry out its mission in emergencies, including recalling and deploying off-duty personnel and requiring that employees work overtime;
9. To exercise complete control and discretion over its organization and technology of performing its work;
10. To transfer or reassign employees, as outlined in the MOU;
11. To layoff employees by position as a result of: a material change in duties, organization, or shortage of work or funds in the Department or the City.

Any violation of the policies and procedures created by this MOU may be subject to disciplinary action as defined by this MOU. Any agreement between the City and the Association evidenced by a Memorandum of Understanding pursuant to Government Code section 3500 et. seq. shall take precedence over any of the above enumerated employee and management rights. Such a Memorandum of Understanding will be honored in good faith during the life of this contract.

Except in cases of emergency the City shall give written notice (30 days in advance of any contract with third parties) which shall result in the lay-off, demotion, or transfer of any employee represented by the Association and shall meet and confer with the Association regarding the same upon reasonable notice.

SECTION 5.00 - ADVANCE NOTICE

- 5.01 Except in cases of emergency as provided in this section, the City shall give reasonable written notice to each recognized employee organization affected by an ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation including actions taken under City Rights that affect wages, hours and other terms and conditions of employment proposed to be adopted by the City and shall give such recognized employee organizations the opportunity to meet with City representatives.

SECTION 6.00 - DISCIPLINARY ACTION/APPEALS PROCEDURE

- 6.01 The City may take disciplinary action against any Employee for just cause. The City recognizes the practice of progressive discipline; however, depending on the severity of the misconduct, the City may immediately impose more severe discipline.
- 6.02 Causes for Disciplinary Action:
 - 6.02.1 Grounds for Discipline: Discipline may be imposed for just cause, including without limitation for the following grounds:
 - (a) Fraud in securing appointment or falsification concerning records, fellow employees, or work performed.

- (b) Failure to satisfactorily perform the duties and responsibilities of an employee's position.
- (c) Neglect of Duty.
- (d) Insubordination.
- (e) Reporting for or performing duty under impairment as a result of alcohol and/or drug use.
- (f) Dishonesty or misuse of or misappropriation of City property and funds.
- (g) Conviction of any crime involving moral turpitude, or substantially relating to the function of an employee's position.
- (h) Unauthorized absence.
- (i) Non-observance of work hours, including tardiness, and abuse of sick leave privileges.
- (j) Discourteous or non-cooperative treatment of the public or other employees.
- (k) Conduct, either during or outside of duty hours, which is of such a nature that it causes discredit to the employee's department or the City.
- (l) Failure to abide by any condition of employment stipulated in the: Municipal Code; Personnel Rules and Regulations; any City or department policies or procedures; or Memoranda of Understanding approved by formal action of the Council;
- (m) Knowingly filing or pursuing a false charge;
- (n) Threats of violence or acts of violence towards fellow employees or members of the public in the workplace.
- (o) Abuse of any City and/or Department policies and procedures.
- (p) Abandonment of job (5 days absence without authorization).

6.03 Disciplinary Action:

- 6.03.1 Written Reprimand: Repeated and/or more severe misconduct may require a more formal response by the supervisor to the employee. In the event a Written Reprimand is warranted, the employee is provided with a written memorandum, which outlines the violation(s) and the expected actions to be taken by the employee in response to the memorandum. The Written

Reprimand contains an indication of subsequent disciplinary steps to be taken in the event that the employee fails to respond appropriately. A copy of the Written Reprimand shall be placed in the employee's official personnel record. A Written Reprimand is not subject to the procedures outlined in Section 6.05.

- 6.03.2 Suspension: In the event of more severe and/or repeated misconduct, the employee may be relieved of duty by the City for a specified period of time without pay. Such suspension shall not exceed thirty (30) calendar days. Suspensions shall be subject to the procedures outlined in Section 6.05.
- 6.03.3 Reduction in Salary Range: In the event of more severe and/or repeated misconduct, the employee's salary may be reduced by the City within the range for the position held. Such Reduction in Salary shall be subject to the procedures outlined in Section 6.05. Reduction in Salary shall be made on a permanent or temporary basis.
- 6.03.4 Involuntary Demotion: In the event of more severe and/or repeated misconduct, the employee may be reduced in rank and pay by the City. Such Involuntary Demotion shall be subject to the procedures outlined in Section 6.05. Involuntary Demotions shall be made on a permanent or temporary basis.
- 6.03.5 Termination of Employment: The City may terminate the employment of an employee for more severe and/or repeated misconduct. Termination shall be subject to the procedures outlined in Section 6.05.

6.04 Authority for Disciplinary Actions:

The Department Head, or designated representative, shall have authority to take disciplinary action.

6.05 Pre-Disciplinary Procedures:

- 6.05.1 Prior to taking any disciplinary action as defined in Section 6.03, except for Written Reprimand, against a permanent employee, the City shall notify the employee in writing of the following:
 - (a) The proposed disciplinary action;
 - (b) The nature of the charges and/or violation of Section 6.02 of this MOU, City ordinances, resolutions, written procedures, municipal code, or departmental regulations and policies;
 - (c) The reasons for the proposed action;
 - (d) The materials upon which the action is based;
 - (e) The opportunity of the employee to appear before a designated City representative and respond to the charges at a specified

place and time, or to respond to the charges in writing by a date certain;

(f) The right of the employee to be represented by an attorney or other representative at any disciplinary conferences or proceedings.

(g) The employee has the right to submit a written response within 10 days to the Human Resources Director. Responses will be attached to the Written Reprimand.

6.05.2 Any employee notified pursuant to 6.05.1 above who desires an opportunity to respond pre-discipline may do so orally or in writing. If the employee wishes to respond orally, the employee must appear at the appointed place and time. The employee is not entitled to an evidentiary hearing, and the sole purpose of the pre-discipline meeting shall be to hear the response of the employee to the charges. The employee shall be entitled to representation, but shall not be entitled to present witnesses, unless the City determines that the presentation of witnesses is necessary. If the City representative determines that he or she cannot be impartial, or upon timely written request by the employee, the Human Resources Director or designee may hear the employee's response.

In the event that the employee is unable to respond to the charges within the time permitted, and demonstrates the reasonableness of a continuance, the City may grant a continuance.

As soon as practical after the employee has had an opportunity to present a response, the City will notify the employee in writing of the nature and extent of the discipline, if any, and the date the discipline will commence. The notification will also advise the employee of any right of appeal.

6.06 Notification — Disciplinary Action: The City agrees that in any disciplinary action, except oral reprimand, taken against employees represented by the Association, the Association shall be notified by memorandum within forty-eight hours (48) hours following employees notification of pending disciplinary action, subject to employee's consent to such notification.

6.07 Right of Appeal:

6.07.1 Reprisals:

No party to the discipline process shall retaliate against any other party to the discipline process because the party participated in the discipline process.

6.07.2 Written Reprimand:

The Human Resources Director shall remove a Written Reprimand from a personnel file upon written request by the employee, provided there have

been no additional disciplinary actions of a similar nature during the subsequent twenty-four (24) months.

If the employee's performance appraisal review contains any reference to the Written Reprimand which has been removed from the employee's personnel file, that section or page of the employee's performance appraisal review shall be rewritten and any reference to the letter of reprimand shall be deleted at the written request of the employee.

Written Reprimands are not subject to the Discipline Appeal process covered in Arbitration (Section 6.07.3) and/or the Grievance Process (Section 10.00).

6.07.3 Appeals of Suspensions, Reduction in Salary, Demotion, Involuntary Termination: Arbitration

Within ten (10) working days of the receipt of notice of final disciplinary action, the disciplined employee may appeal the disciplinary action to arbitration by filing a written request to the Department Head with a copy sent to the Human Resources Director.

If either the City or the disciplined employee so requests, the arbitrator shall hear the merits of any issue raised regarding the arbitrability of the discipline appeal first. No hearing on the merits of the discipline appeal will be conducted until the issue of arbitrability has been decided.

The parties shall request a list of seven (7) arbitrators within ten (10) working days after receipt of the employee's request for arbitration from the California State Mediation and Conciliation Service.

The fees and expenses of the arbitrator and the certified court reporter shall be shared equally by the City and the employee organization, if the employee organization represents the disciplined employee at the arbitration. The services of the certified court reporter are optional. However, both parties must agree if a certified court reporter is employed. Financial responsibility shall be established before the selection of an arbitrator. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other.

The arbitrator's power and authority is limited to the issue of whether the grievant was disciplined for good or just cause, and if not, what the appropriate remedy should be. The arbitrator shall be without power or authority to make any decision or award that requires the City or the administration to do an act prohibited by law.

If, as a result of an arbitration award, an employee's disciplinary action is deleted or modified in any way and if the employee's performance appraisal review contains any reference to the disciplinary action, that section or page of the employee's performance appraisal review shall be rewritten and any reference to the disciplinary action shall be deleted.

Decision - Final and Binding: The decision of the arbitrator shall: (a) be made in writing within thirty (30) working days of the close of the hearing or submission of written briefs and (b) shall be final and binding upon both parties.

- 6.08 Every effort shall be made to schedule meetings for the processing of disciplinary actions/appeals procedure at times which will not interfere with the regular workday of the participants. If any disciplinary meeting or hearing must be scheduled during duty hours, any employee required by either party to participate in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time. Overtime is not provided for off-duty time except for witnesses requested by the City.
- 6.09 Waiver of Steps or Time Limits: Notwithstanding any provision in this section, any time limit or stage of procedure specified in this section may be waived or extended upon written consent of all parties.

SECTION 7.00 - LAYOFF

- 7.01 Any layoff shall be according to seniority and the procedures as defined and set forth in Municipal Code Section VI-102 et seq.
- 7.01.1 The City Manager, after review with the Department Head and the Human Resources Director, may lay off an employee because of material change in duties, organization, or shortage of work or funds in the department or the City.
- 7.01.2 The Human Resources Director shall notify the affected Employee(s) in writing at least thirty (30) days in advance of the intended layoff and of their option to accept a voluntary demotion in lieu of layoff.
- 7.01.3 Employees laid-off or accepting demotions in lieu of layoff shall be placed on a Re-Employment List in inverse order of displacement for an appropriate Class for three (3) years.

SECTION 8.00 - RESIGNATION

- 8.01 An employee wishing to resign in good standing shall file with the Department Head a written resignation at least two calendar weeks before the effective date of termination, stating the reasons for leaving. The resignation shall be forwarded to the Human Resources Director. Failure to comply with this requirement shall be entered in the service record of the Employee and may be cause for denying future employment with the City.

SECTION 9.00 - OTHER EMPLOYMENT

- 9.01 Employees may engage in other employment or business activity that does not conflict with the Employee's duties and which does not involve time demands that would reduce the Employee's efficiency or safe operation of equipment, such as sleep deprivation or physical exhaustion prior to start of employees' shift. In no case shall the employee conduct non-city business during city work hours.

9.02 An employee's outside employment, activity or enterprise may be prohibited if it:

- (a) Involves the use for private gain or advantage of City time, facilities, equipment and supplies; or the badge, uniform, prestige or influence of the City office or employment.
- (b) Involves receipt or acceptance by the Employee of any money or other consideration from anyone other than the City for the performance of an act which the Employee, if not performing such act, would be required or expected to render in the regular course of hours of City employment or as a part of regular duties.
- (c) Involves the performance of an act which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other Employee of the City.
- (d) Involves such time demands as would reduce the Employee's efficiency or safety.

9.03 Employees must notify the Human Resources Director of other employment or business activities in writing prior to engaging in such activities. Disapproval of other employment may be appealed to the City Manager whose decision shall be final. Documents concerning other employment shall be kept in the employee's personnel file.

9.04 Employees who engage in outside employment that conflicts with duties or who intentionally fails to submit a timely notice to engage in outside employment shall be subject to disciplinary action.

SECTION 10.00 - GRIEVANCE PROCEDURE

10.01 Definitions:

- (a) A grievance is any dispute which involves the interpretation or application of any provision of this MOU. A grievance does not include disciplinary actions, as a different review procedure for disciplinary matters is otherwise provided in this MOU. Performance appraisal reviews are not grievable.
- (b) A "grievant" is any employee, or union representative on behalf of an employee adversely affected by an alleged violation of the specific provisions of a Memorandum of Understanding.
- (c) A "working day" is any day in which the City Hall is open for business.
- (d) "Employee organization" is the Milpitas Employees Association, an affiliate of LIUNA/UPEC, Local 792.

10.02 Representation:

At any step in the grievance procedure, the employee concerned may choose to represent himself/herself; or be represented by the certified employee organization which has been recognized by the City for that representation unit to which the employee's classification is assigned; or by legal counsel. The employee concerned shall be personally present at all stages of the grievance procedure unless that employee specifically waives the right in writing.

10.03 Scheduling/Attendance:

Every effort will be made to schedule meetings for the processing of grievances at times which will not interfere with the regular workday of the participants. If any grievance meeting or hearing must be scheduled during duty hours, any employee required by either party to participate as a witness or grievant in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time. Overtime is not provided for off-duty time except for witnesses requested by the City.

10.04 Informal Grievance

It is the intent to deal with and settle grievances informally, at the nearest practical organizational level, and as promptly and fairly as possible. In any instance of grievance, the Grievant shall first raise the issue with their immediate supervisor within thirty (30) calendar days following the occurrence, or knowledge of the events on which the grievance is based. Employees waive the right to grieve beyond this thirty (30) day period. Every effort shall be made to resolve such grievance at this level.

10.05 Formal Grievance--Level I

If a mutually satisfactory solution of a grievance as specified in the paragraph above is not reached, then within ten (10) working days of the immediate supervisor's decision, the grievant shall submit a grievance statement in writing. The written grievance shall set forth all of the issues involved; shall be dated and signed by the grievant; and shall be submitted to the Department Head. The grievance shall contain each of the following (providing the grievant possesses the knowledge required in order to comply):

- (a) A description of the specific facts and grounds upon which the grievance is based including names, dates, and places necessary for a complete understanding of the grievance;
- (b) A specific explanation of how the grievant has been adversely affected;
- (c) A listing of the provisions of the MOU which are alleged to have been violated;
- (d) A listing of specific actions requested by the grievant of the City which will remedy the grievance, including a specific dollar amount, and the basis for the dollar amount, of any alleged damages at issue;
- (e) An explanation why the grievant believes the decision at the informal grievance step was unsatisfactory;
- (f) A statement declaring self-representation; and
- (g) The name, address, and telephone number of the person(s) to whom notices may be sent regarding the grievance.

The Department Head, or designated representative, shall investigate the facts and issues and reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the department's business. Upon reaching such conclusion, but in any event within ten (10) working days of the receipt of the grievance statement, the Department Head or designated representative shall reply in writing stating the department's view of the issue involved.

10.06 Formal Grievance--Level II

If the grievance has not been disposed of at Level I, the grievant, within ten (10) working days after receipt of the department's written reply at the completion of Level I, shall forward the said written grievance to the Human Resources Director or designated

representative. The Human Resources Director or designated representative shall review the facts and issues and further investigate as is necessary and will reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the City's business. Upon reaching such conclusion, but in any event, within ten (10) working days of the receipt of the grievance statement, the Human Resources Director or designee shall issue a written decision on the grievance appeal.

10.07 Formal Grievance--Level III

If the grievance has not been disposed of at Level II, the grievant, within ten (10) working days after receipt of the Human Resources Director's written reply at the completion of Level II, shall forward the said written grievance to the City Manager or designated representative. The City Manager or designated representative shall review the facts and issues and further investigate as is necessary and will reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the City's business. Upon reaching such conclusion, but in any event, within ten (10) working days of the receipt of the grievance statement, the City Manager or designee shall issue a written decision on the grievance appeal.

10.08 Arbitration

Within ten (10) working days of the receipt of City Manager's final decision, the Grievant may request arbitration by filing a written request to the Human Resources Director.

If either the City or the grievant so requests, the arbitrator shall hear the merits of any issue raised regarding the arbitrability of a grievance first. No hearing on the merits of the grievance will be conducted until the issue of arbitrability has been decided.

The parties shall request a list of seven (7) arbitrators within ten (10) working days after receipt of the employee's request for arbitration from the California State Mediation and Conciliation Service.

The fees and expenses of the arbitrator and the certified court reporter shall be shared equally by the City and the grievant, or employee organization, if the employee organization represents the grievant at the arbitration. The services of the certified court reporter are optional; however, if any party and/or the arbitrator desires a certified court reporter, a court reporter will be employed. The parties will share the cost of the Court Reporter, including the original transcript, and shall pay for their own copies of the transcript. However, if 1) the arbitrator does not desire a transcript or require a court reporter, and 2) a party states in writing before the beginning of the hearing both that the party (a) does not desire a court reporter and (b) will not order a transcript, that party shall not be responsible for paying any portion of the cost of the court reporter. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other.

The arbitrator's power and authority is limited to the interpretation of this Agreement. The arbitrator shall be without power or authority to render any decision or award that requires the City or the administration to do an act prohibited by law.

10.09 Decision - Final and Binding:

The decision of the arbitrator shall (a) be made in writing within thirty (30) working days of the close of the hearing or the submission of written briefs; and (b) shall be final and binding upon both parties.

10.10 Waiver of Steps or Time Limits:

Notwithstanding any provision in this section, any time limit or stage of the procedure specified in this section may be waived or extended upon written consent of all parties involved.

SECTION 11.00 - WORK SCHEDULES

11.01 Employees shall work a 40-hour workweek. The Department Head shall have the authority to review, and as necessary, modify the work schedule each April 1 and September 1. However, any such modification shall not include changing from a four-day work week to any alternative schedule without meeting and conferring on the specifics of the proposed change. Said schedule shall be circulated 30 calendar days prior to the beginning of each April 1 and September 1, respectively to all affected employees. In establishing the schedule, consideration shall be given to the staffing needs of the department and the concerns of the employees. It is understood and agreed, however, that this shall not restrict or limit the ability of the City to modify schedules to respond to emergencies or immediate service needs of the City. Management retains the sole right to determine scheduling needs.

Employees will work a 4-10 (four ten-hour shifts per work week) work schedule. The following conditions will apply for employees assigned to work the 4/10 work schedule:

- Employees on the same work crew will work the same work schedule.
- Employees will work ten-hour shifts on four consecutive days per week, unless both parties agree to exception(s).
- Standard work hours for the 4/10 work schedule will be:
 - Day Shift: 7:00AM – 5:30PM
 - Evening Shift: 2:00PM – 12:30AM
- Employees of a particular work crew with MEA consent may submit a request to their Manager for their start/end time to be adjusted for the entire work crew. The request will specify the crew(s) to be affected by the proposed adjustment. Upon the written approval of the Department Director, the start/end time of a crew's shifts may be adjusted for a specified duration and may be subject to change at any time based on operational needs
- Employees will have a 30-minute unpaid lunch break. Rest breaks will not be taken consecutively or combined with the lunch break, but shall be scheduled approximately midway between the lunch break and the beginning and end of each shift.
- An employee may request to change their day off on the regular schedule from Monday to Friday, or Friday to Monday, if approved by the Manager and/or Department Head. Intermittent trades of days off is discouraged. The Manager or Department Head must approve any change in advance and determine that the change will not disrupt workload or coverage.
- On a quarterly basis, the City and MEA will evaluate the efficiency of the 4/10 work schedule and identify areas for improvement during the regularly scheduled Labor-Management Meetings.

- 11.02 In all cases, employees who are assigned to shifts in which one-half of their hours fall between the hours of 6:00 p.m. and 8:00 a.m. three or more times within an established work week shall receive a five percent (5%) premium for all hours worked. The 5% premium shall be calculated on the employee's base hourly rate of pay.

SECTION 12.00 - WORKING TITLES

- 12.01 It is agreed that working titles may be adopted within established job classifications with approval of the Department head.

SECTION 13.00 - TEMPORARY APPOINTMENTS

- 13.01 Any employee receiving a temporary appointment to a vacant position shall serve in accordance with the City's Personnel Rules and Regulations. Any employee who has satisfactorily served in a temporary capacity for three months or longer and is selected for a permanent appointment to the same class by the appointing authority, shall receive credit towards completion of the probationary period for the duration of the temporary appointment from the first date of the assignment. A performance appraisal of the employee is required at the time of the permanent appointment.

SECTION 14.00 - ATTENDANCE

- 14.01 General:

Employees shall be in attendance at their work place in accordance with the rules regarding hours of work, holidays, and leaves.

- 14.02 Unauthorized Absence:

14.02.1 An employee whose absence is not authorized shall not receive pay or benefits for the absent period and may be subject to discipline. Failure on the part of the employee absent without leave to return to duty shall be grounds for discharge. It shall be the responsibility of an employee absent without leave to notify the Department Head of the reason the employee is absent and of the employee's availability for duty.

14.02.2 Any employee shall report his/her absence at or prior to the beginning of shift of the same day to the supervisor or higher authority. Failure to do so may result in unauthorized absence.

- 14.03 Breaks:

Employees shall be entitled to the privilege of two 15-minute breaks during each standard work day.

- 14.04 Responsibility to Maintain Service:

No employee shall schedule a break at such time as to leave the office in which the employee works unstaffed.

14.04.1 Persons whose responsibility includes public contact shall advise a responsible person in their office before leaving for a break.

- 14.04.2 Persons alone in an office should leave a sign on the door, lock the door, and advise the receptionist before leaving for a break, in order to ease the handling of incoming phone calls and customers that may call at the office.

14.05 Limitations for Breaks:

- 14.05.1 For work days from 8:00 a.m. to 5:00 p.m. or 7:00 a.m. to 5:30 p.m., the morning break shall be taken between 9:30 a.m. and 11:00 a.m., and the afternoon break shall be taken between 2:30 p.m. and 4:00 p.m.
- 14.05.2 For irregular work days, breaks shall be taken after the first one and one-half hours and before the last hour of each half shift.

SECTION 15.00 - PAY PLAN

- 15.01 Advancement shall not be automatic but shall depend upon increased service value of an employee to the City as exemplified by the recommendations of the supervising official, length of service, performance record, special training undertaken or other pertinent evidence. No salary advancement shall be made so as to exceed the maximum rate established in the pay plan for the class to which the advanced employee's position is allocated.

The following is the basis of compensation for Employees on a five-step range.

- 15.01.1 Step "A" is the minimum rate for a position and shall be the hiring rate for said position. Initial appointment at a rate higher than step "A" may be made in the case of an unusually well qualified person or where other special conditions warrant, but only with the approval of the City Manager.
- 15.01.2 Step "B" represents an incentive adjustment. An employee shall be eligible for step "B" only after completion of one year from the date of employment on recommendation from the Department Head and approval of the City Manager.
- 15.01.3 Step "C" represents the rate at which a qualified and experienced employee should be paid after a reasonable period of service. An employee shall become eligible for step "C" only after he/she has proven himself/herself satisfactory in the given classification for a period of at least one year after completion of his/her probationary period, upon recommendation of the Department Head and approval of the City Manager.
- 15.01.4 Step "D" represents an incentive adjustment for satisfactory performance and increased effectiveness. An employee shall become eligible for step "D" after completion of one year at step "C" upon recommendation of the Department Head and approval of the City Manager.
- 15.01.5 Step "E" represents an incentive adjustment for increasingly satisfactory performance. An employee shall be eligible for step "E" after completion of one year at step "D" upon recommendation of the Department Head and approval of the City Manager.
- 15.01.6 A merit increase prior to the normal anniversary date may be granted to a Permanent Employee for outstanding performance or unusual employment conditions at any time, on the recommendation of the Department Head and the approval of the Human Resources Director or City Manager.

- 15.02 Performance Appraisal Review - Performance appraisals are an important personnel tool, and the City should endeavor to conduct them in a timely manner.
- 15.03 The City shall evaluate employees annually, (1) from their date of hire, or (2) the date they entered their class (when promoted or demoted the classification date shall supersede the hire date). In any case, an employee shall be evaluated at the completion of probation, be it initial, or as a result of promotion. If an employee does not receive a performance appraisal on the date it is due and is not at top step of the salary range for his/her classification, the Human Resources Department shall process the forms necessary to advance the employee to the next step in the pay range effective with the nearest full pay period to eligibility. The nearest full pay period is defined in Section 15.06. Supervisors must complete a Performance Appraisal Review (PAR) on a timely basis if they intend to withhold a step advancement for the employee. If a supervisor subsequently finds that the employee would have been entitled to a step increase (under this Section) as of that due date, the step increase shall become effective retroactively as of the due date of the performance appraisal. If an employee does not receive a performance appraisal within at least 30 working days after it is due, the employee shall have the right to file a grievance under Section 10 of this Understanding.
- 15.04 Salary Following Promotion:
- Employees receiving a promotion shall receive at least a 5% increase in salary unless limited by the maximum salary range.
- 15.05 In the event an employee receives overpayment by the City, the employee shall reimburse the City for the total overpayment. Typically, such repayment shall occur over a schedule equal to the amount of time over which the overpayment occurred. However, at the employee's request, the City may extend such repayment over a longer period, to be determined by mutual agreement of the employee and the Director of Financial Services.
- 15.06 All salary advancements specified within this section shall be effective with the nearest full pay period to eligibility. The nearest full pay period shall be defined as follows:
- For eligibility dates which fall within the first seven (7) days of a pay period, any increase shall be effective at the beginning of that pay period.
- For eligibility dates which fall within the second seven (7) days of a pay period, any increase shall be effective at the beginning of the following pay period.
- 15.07 "Y" Rate Policy - Whenever an employee would sustain an actual decrease in salary as a result of downward reclassification or reorganization within an existing department unit, without fault or inability on the part of the employee, the City Council shall adopt a "Y-Rate" to apply only to the employee so attached. A "Y-Rate" is defined as a monthly salary rate for an individual employee, which is greater than the established range for the employee's class. An employee for whom a "Y-rate" is established shall not receive an increase in salary until such time as the employee's rate of compensation is within the established range for the employee's class. An employee who accepts a reassignment to a lower paid position in lieu of layoff shall not be "Y-Rated."

SECTION 16.00 - SALARY

- 16.01 The monthly salary schedule labeled Appendix "A" and attached hereto is hereby made a part of this Memorandum of Understanding.
- 16.02 Retroactive to July 1, 2023, the salary schedule previously in effect shall be increased by 4%.
Effective the first pay period in July 2024, the salary schedule previously in effect shall be increased by 4%.

SECTION 17.00 - OVERTIME

- 17.01 Where, in the course of performing their duties, it is necessary for an employee to work more than their standard 40-hour workweek, said employee shall be compensated as described in this section.
- 17.02 A minimum of three hours pay or its equivalent in compensatory time off at the option of the employee shall be guaranteed for any employee, at the rate of time and one-half, who after leaving their employee's place of duty is required without prior notice to return for emergency duties between the hours of 10 p.m. and 5 a.m.
- 17.03 All other overtime, scheduled or unscheduled, shall be compensated at the rate of time and one-half pay or the equivalent in compensatory time off at the option of the employee, however, that employees required to work up to eight (8) minutes beyond their normal work hours shall not receive overtime. For purposes of computing overtime pursuant to this section the City will apply a rounding up policy to the nearest quarter hour
- 17.04 Overtime occurring on a paid City holiday shall result in pay, or compensatory time off, at the rate of time and one-half in addition to base pay.
- 17.05 Compensatory time off (CTO) credits may be accrued by employees, up to a maximum of 240 hours on the last day of the pay period that includes June 1st of any year. Employees shall receive pay for the hours of compensatory time off earned which exceeds the 240-hour limit in pay period 12.
- 17.06 In the event an employee is required to work overtime beyond his/her regular shift and does not receive at least four (4) hours off before the next day's shift, he/she shall be deemed not to have left work and shall receive overtime compensation, until a break of four (4) hours or greater is taken.
- 17.07 After working overtime and not having at least eight consecutive hours of off duty, an employee shall not be required to report to work until eight hours after the completion of the overtime assignment, or such amount as may be required by federal or State of California authorities for employees holding a Commercial Driver License. The employee shall be paid from the beginning of the employee's next regular shift.
- 17.08 Permanent MEA employees will be given the first priority in the assignment of scheduled and unscheduled overtime. Temporary employees will not be assigned to scheduled or unscheduled overtime if appropriate permanent employees are reasonably available or except in the case of an emergency and/or immediate service need of the City.

- 17.09 Paid accrued leave, specifically sick leave, vacation leave, workers' compensation leave, or compensatory time off, taken by an employee during any work week shall be counted as hours worked for the purpose of calculating overtime.
- 17.10 In the event an employee is assigned to work overtime that is not pre-arranged, the City will provide meal allowance stipends under the following conditions:
- 17.10.1. An employee required to begin work two or more hours prior to the start of their regular work shift is eligible to receive a \$15 meal allowance stipend.
- 17.10.2. An employee required to work two or more hours past the end of their regular work shift is eligible to receive a \$25 meal allowance stipend.
- 17.11 All overtime is subject to prior authorization from the supervisor.

SECTION 18.00 - STANDBY ASSIGNMENT

- 18.01 The City reserves the right to assign employees to standby status during non-work hours, including week nights, weekends and holidays. Employees assigned to this status shall be required to be available for immediate return to work upon notification by their supervisor or the Police Department Communications Dispatcher. No employee shall be required to respond to a call back via cell phone, pager or other electronic device provided by the City unless they are compensated for such time waiting or on Stand-by.

When assigned to standby status, the following conditions shall apply:

- 18.01.1 Standby assignments shall be made to Maintenance Worker II's or higher with a Class B license and tanker endorsement.
- 18.01.2 A City vehicle shall be provided for use by the employee.
- 18.01.3 Substitutions must be done in accordance with the Standby SOP Section 4d.
- 18.01.4 Travel precluding reasonable response time shall not be permitted.
- 18.01.5 Failure to respond shall automatically result in a loss of compensation for the shift of standby during which the failure to respond occurred and may cause further disciplinary action if warranted when taking the circumstances into consideration.
- 18.01.6 Preliminary standby schedules for a six-month period shall be prepared six weeks in advance. The schedule shall be distributed to standby eligible personnel for a two-week review for changes prior to release.
- 18.01.7 Employees shall have the right to refuse a stand-by assignment only in the case of a personal emergency defined as a time-sensitive and serious or life-threatening medical situation for the employee or the employee's immediate family member, or in the case of the death of an employee's immediate family member. Employees have the right to execute changes (trades), 7 days prior to their scheduled standby shift. In the event of a trade, the originally assigned standby employee shall bear the responsibility for finding their replacement per the Standby SOP Section 4d.

18.01.8 No employee shall be assigned mandatory stand-by when at least two volunteers are available for assignment.

18.01.9

Standby shifts are Mondays starting at 5:00pm to Thursdays at 5:00pm and 5:00pm Thursdays to Mondays at 7:00am for a total of 2 shifts per week. Employees will be compensated \$240 for weekday shifts and \$360 for weekend shifts per week. For each holiday which occurs an employee is on stand-by, the employee shall receive an additional \$100 dollars.

18.01.10 Employees on stand-by who are contacted and consulted by telephone about a City emergency between the hours of 10 p.m. and 5 a.m. and who provide advice, shall be paid at an overtime rate or the equivalent in compensatory time off for the actual time on the phone, or one hour or the equivalent in compensatory time off, whichever is more.

18.01.11 Employees must complete lateral cross-training within a year to be considered for the stand-by program in an area outside of their assigned area (e.g. utility, facilities, signal, pump station alarm, etc.).

18.01.12 Employees on light duty or with a performance below standard (2 or less) will not be eligible for standby duty.

18.01.13 This section shall be administered in conjunction with the Standby SOP.

SECTION 19.00 - BILINGUAL ASSIGNMENT

19.01 Effective February 3, 2015, bilingual pay was eliminated. Those employees receiving bilingual pay at the time of the elimination shall retain the pay.

SECTION 20.00 - WORK OUT OF CLASS

20.01 The City agrees that upon specific assignment by the Department Head, or the designated representative, an employee may be required to perform the duties of a higher classification. Such assignment shall be made only to existing authorized positions.

20.02 Employees assigned to duties of a higher class for at least one shift shall be compensated at a rate of 10% above the employee's current base salary while working out of class, except where such increase exceeds the pay range allocated of the assigned position. The employee shall be compensated at the appropriate rate commencing with completion of one shift. Assignments shall not be made for less than one shift. Should an assignment be made for less than one shift, the 10% rate shall be paid for the full shift.

20.03 General:

- (a) Work out of class assignments shall be given on a rotational basis, when practical.
- (b) Work out of class assignments shall not, as a matter of routine practice, be given to probationary employees or Maintenance Worker I's.

- (c) Work out of class assignments shall not, as a matter of routine practice, be given to employees performing at less than a competent level as determined by the last performance appraisal.
- 20.03.1 Out of class Supervisor assignments shall be made (a) when a supervisor is unavailable for one shift, (b) usually to the next lower classification in the section, (c) for specific assignment where a lower classification must serve in a capacity of a higher class, (d) when required to perform the duties of a classification with a higher pay range and outside the bargaining unit (i.e., inspection work in lieu of a Public Works Inspector). Should an assignment be made for less than one shift, the 10% rate shall be paid for the full shift.
- 20.03.2 Out of class Maintenance Worker III assignments shall be made (a) in the scheduled or unscheduled absence of the III normally assigned, (b) when assigned to operate certain heavy equipment. Exception: Work out of class assignments may not be made where permanent schedules exist without an assigned Maintenance Worker II on duty.
- 20.04 Exceptions to this policy due to working conditions and/or the needs of the City may be approved by the Department Head.
- 20.05 An employee seeking additional training in another class may waive his/her right to work out of class pay in order to pursue desired training.

SECTION 21.00 – VACANT POSITIONS AND LATERAL TRANSFERS

- 21.01 Employees shall be considered for lateral transfer subject to the following conditions:
 - 21.01.1 The transfer must be recommended by both the outgoing and incoming supervisor and approved by the Department Head.
 - 21.01.2 The transfer must be approved by both the outgoing and incoming Department and/or Division Head. Employees hired on or after January 1, 2007 must be within the same classification to be eligible for a lateral transfer. Any employee within the same classification who can clearly demonstrate knowledge and experience would be eligible to apply.
 - 21.01.3 Probationary employees shall not be eligible for lateral transfer.
 - 21.01.4 Employees who are transferred by request between Departments or between different Classifications shall be subject to a new six-month Probationary Period. Employees failing to complete Probation following such a transfer shall be reinstated to the Position from which transferred.
 - 21.01.5 Employees who are performing “below expectations” or “unsatisfactory” shall not be considered. This shall be determined by examination of the most recent employee appraisal on file. If the appraisal on file is more than twelve (12) months old, a new appraisal shall be done prior to the time the transfer is finalized.
- 21.02 The City will make reasonable effort to fill vacancies within six (6) months of a position becoming open. All vacant permanent positions shall be opened to lateral transfer and/or

internal promotional candidates prior to consideration for filling that position from an outside source. Recruitments that do not yield at least three internal candidates may be open to recruitment from an outside source.

- 21.02.1 Written notice of a vacant permanent position shall be circulated by the Human Resources Department to all employees of the bargaining unit. The notice shall include the opening and closing dates for the acceptance of lateral transfer requests.
- 21.02.2 A period of ten (10) working days shall be allowed during which written requests for lateral transfer must be submitted by any interested employee.
- 21.02.3 Requests shall be reviewed, and all applicants notified of their status and scheduled for an oral interview within five (5) working days of the closing date.
- 21.02.4 Oral interviews of eligible employees shall be conducted by the hiring supervisor. Lateral transfer applicants shall be rated using a rating form pre-approved by the Department Head.
- 21.02.5 Written notice of the results of the interview process shall be made by the incoming supervisor within five (5) working days of the last interview.
- 21.02.6 Exceptions to the above process due to working conditions and/or the needs of the City may be approved by the Department Head.

SECTION 22.00 - HOLIDAYS

22.01 The following shall be paid holidays for employees:

- 1. January 1 (New Year's Day)
- 2. Third Monday in January (Observance of Dr. Martin Luther King Jr's Birthday)
- 3. February 12 (President Lincoln's Birthday)
- 4. Third Monday in February (Observance of President Washington's Birthday)
- 5. Last Monday in May (Observance of Memorial Day)
- 6. July 4 (Independence Day)
- 7. First Monday in September (Labor Day)
- 8. November 11 (Veteran's Day)
- 9. Thanksgiving Day
- 10. Day after Thanksgiving
- 11. Christmas Eve
- 12. Christmas Day
- 13. Each employee shall be credited with one (1) floating holiday each calendar year, which must be used by December 31, or it is lost without compensation. Section 22.03 applies in the case of the floating holiday.
- 14. In the event a holiday falls on a Sunday, the following Monday will be observed as the holiday instead.
- 15. In the event a holiday falls on a Saturday, the preceding Friday will be observed as the holiday instead.
- 16. Any other holiday declared by the City Council as a City holiday for City employees.

17. For other than 5-day work weeks, any work week which includes one or more holidays shall be reduced in hours commensurately. The number of days worked during the work week shall be subject to the approval of the Department Head.
 18. Employees shall be permitted to take Good Friday as a vacation day by submitting a written request at least two weeks in advance to the Department Head.
- 22.02 Where one of these holidays falls on a working day, employees shall be granted the day off with eight-hours of pay and City offices shall be closed except for such municipal services that must be maintained on an around-the-clock basis seven days a week. Employees who work less than full-time shall be entitled to credit for paid holidays on a pro-rated basis. Employees required to perform their regular duties on a holiday shall be granted pay or compensatory time off, at the rate of time and one-half in addition to base salary. For the purposes of this section, a holiday shall be deemed to begin and end at 12 midnight.
- 22.03 When a holiday falls on a full-time employee's scheduled workday, the employee is entitled to be paid only eight (8) hours of holiday pay. If the workday is a ten (10) hour day, the employee may use two (2) hours of vacation or CTO to receive pay for the full shift. If the employee does not have any available balances, the employee may use two (2) hours of unpaid leave.
- 22.04 Employees who work less than full-time shall earn holiday leave on a pro-rated basis based on their regularly scheduled assignment.

22.05 Holiday Closures

In addition to the recognized holidays, City Hall and selected operation will be closed to the public during the period beginning from the Christmas Eve holiday through the New Year's Day holiday. Essential services including, but not limited to Police and Fire, will continue to operate and certain events will be held as scheduled. Department Directors will determine which services and facilities will remain open. The MOU's provide that when a holiday falls on a Saturday, it is recognized on the preceding Friday, and when a holiday falls on a Sunday it is recognized on a Monday. When the recognized holidays of Christmas Eve and Christmas fall or New Year's Eve and New Year's Day fall on a Friday and Saturday, the holidays shall be recognized on Thursday and Friday of that week. When the recognized holidays of Christmas Eve and Christmas fall or New Year's Eve and New Year's Day fall on the Sunday and Monday, the holidays shall be recognized on the Monday and Tuesday of that week.

As this period of time is generally a slower time for conducting business and many employees enjoy taking this time off, it is an ideal time to close. However, we also understand that there are some employees who will want to work and some employees that will need to work, depending on the needs of the City and the employee's position. For instance, an employee from Finance and HR will be working on at least one of those days, possibly two to work on payroll.

City employees may participate in the Holiday Break on a voluntary basis. If employees prefer to work, they are to notify their supervisor in advance to make arrangements for an assignment. Employees may be assigned to perform work outside of their usual assignment and possibly outside of their department.

Employees will be permitted to work during this period of time, take vacation, compensatory time off or take leave without pay depending on the business needs of the City.

All requests to take time off will need to be approved by the Department Head as they will need to determine the business needs of the City.

The continuation of the holiday closure is subject to the sole discretion of the City Council. As City Council members change, the parties recognize the decision to continue the holiday closure period may also change. The City will give a 14- day notice of any such change.

SECTION 23.00 - VACATION LEAVE

- 23.01 All employees shall be entitled to paid annual vacation leave beginning at the end of the first six months of service with the City, unless expressly authorized. However, vacation credits shall be accrued beginning with the date of initial appointment. The accrual rates, in hours per pay period, are as follows:

	40 Hour Workweek <u>Hours/pay period</u>
From date of hire through the fourth year of employment	3.38
From fifth through ninth year of employment	4.92
From tenth through fourteenth year of employment	6.46
From fifteenth through nineteenth year of employment	8.00
From twentieth year of employment and on	9.53

- 23.02 Employees who work less than full time shall earn vacation credits on a pro-rated basis based on their regularly scheduled assignment.
- 23.03 Each employee shall be required to have served the equivalent of one year of continuous service in the City in order to be eligible for the employee's full annual vacation leave, provided however, that after six month of continuous service, the employee may be permitted to take vacation leave not to exceed 40 work hours, depending on the employee's regular work schedule.
- 23.04 The times during a calendar year at which an employee may take vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the municipal service. If the requirements of the municipal service are such that an employee must defer part or all of his/her annual vacation in a particular calendar year, the appointing power shall permit the employee to take such deferred vacation during the following calendar year or allow the employee to cash out said vacation at his/her option, to the extent of the deferred portion.
- 23.05 No employee may accumulate and carryover more than 300 hours of vacation as of the last day of the pay period that includes June 1st without the express written consent of the City Manager. All hours in excess of 300 hours will be cashed out in Pay Period 12. No employee shall be allowed to be on paid leave for a period of over 225 consecutive work hours.

- 23.06 In the event one or more municipal holidays fall within the annual vacation leave, such holidays shall not be charged as vacation leave.
- 23.07 Upon separation from the City for any reason, an employee shall be compensated for accrued vacation leave.
- 23.08 Approval shall be granted after the supervisor and department head give consideration to the employee's wishes and the needs of the City. Employees may change vacation dates with the approval of the department head. In the event, the needs of the City necessitate canceling of vacation scheduled for a minimum of 90 days in advance, which results in a financial loss to an employee, the City shall reimburse the employee the full amount of loss provided the employee demonstrates the impossibility of obtaining a refund and can document the amount of loss. At the time of making an expenditure, each employee shall advise the department head of the amount of said expenditure. In the event an employee fails to advise the department head, the employee may lose all rights to reimbursement.

An employee may elect to cash out vacation leave accruals as either (1) a Future Vacation Leave Accrual Cash-out or (2) an Emergency Vacation Leave Cash-out, in accordance with the provisions below:

1. An employee whose annual vacation leave accrual is 120 hours or less may elect to cash out a maximum of 40 hours of accrued annual vacation leave per calendar year.
2. An employee whose accrued annual vacation leave exceeds 120 hours may elect to cash out a maximum of 80 hours per calendar year.
3. An employee who cashes out the maximum vacation accruals under the Future Vacation Leave Accrual provisions shall not be eligible for Emergency Vacation Leave cash-out in the same calendar year.
4. Future Vacation Leave Accrual Cash-out Eligibility:
 - (a) The employee uses at least one full workday of paid vacation leave in the calendar year the election request is submitted.
 - (b) Between November 1st of each year through the end of the first full pay period in December, an employee wishing to cash out future vacation accruals in accordance with the provision above may make a request by completing and submitting an Irrevocable Vacation Cash Out request form to the Director of Human Resources. Forms that are received after the first full pay period of December shall be ineligible for receiving the cash out the following calendar year.
Once the election is made, it is irrevocable, meaning the employees must cash out the elected number of accrued vacation hours during that calendar year. If the employee does not select a date to receive the cash out, the employee will be paid with the paycheck coinciding with the last pay period of the calendar year.
 - (c) The employee will select either pay period 7, pay period 13, pay period 19 or pay period 24 to receive the cash-out; however, in no circumstances can an employee receive payment for future vacation accrual cash-out until the employee has actually accrued that number of vacation hours. For example, an employee earning 5 hours of vacation per pay period, who wishes to cash out 40 hours of vacation accruals, may receive their cash-out accrual any time after eight pay periods have passed.
 - (d) As a condition of applying for cash-out, an employee must consent to future payroll deductions (in accordance with Section 7 below) for necessary withholdings of required taxes.
 - (e) All cash-outs of future vacation accruals will be included in an employee's regular paycheck.
5. Emergency Vacation Accrual Cash-out
 - (a) An employee may request to cash-out vacation due to an unanticipated emergency that is caused by an event beyond the control of the employee and

when the employee can demonstrate that it would result in severe financial hardship to the employee if early withdrawal were not permitted. Severe financial hardship to the employee includes:

- i. Losses resulting from a sudden and unexpected illness or accident of the employee or of a qualified family member.
 - ii. Losses of the employee's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.
 - iii. Losses that can be resolved through reimbursement or compensation by insurance or otherwise, liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of voluntary deferrals to a 457 plan shall disqualify an employee from being eligible to receive Emergency Vacation Accrual Cash-out.
 - iv. Or any other reason as allowable per the IRS.
- (b) Emergency Vacation Accrual Cash-out shall be limited to the amount of leave necessary to address the nature of the emergency and shall not exceed the maximums identified in section 23.09 (1) through (3).
6. Vacation leave may not be carried-over to cash-out in subsequent years, except upon separation from City service.
7. The Union understands and agrees that employees have a responsibility to pay their taxes in accordance with IRS regulations. Therefore, any adjustments for prior taxes shall be deducted from an employee's paycheck. The City shall provide the employee a fourteen (14) calendar day notice before taking any payroll deductions for this purpose. For amounts greater than \$100, the employee may request the deductions be taken over a period of sequential pay periods, not to exceed eight (8) pay periods.

SECTION 24.00 - SICK LEAVE

- 24.01 Employees shall be granted paid sick leave credits beginning with the date of original employment at the rate of 3.69 hours for 40-hour employees on a bi-weekly basis. Employees become eligible to take accrued sick leave upon completion of one full month of continuous services. Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion but shall be allowed only in case of necessity and actual sickness or disability. Medical or dental appointments may be charged against sick leave but shall be limited to a maximum of four (4) hours per appointment and should be scheduled and approved in advance. Approval of sick leave for appointments in excess of four (4) hours are subject to the discretion of the Department/Division Head. The Human Resources Director shall direct and enforce such administrative control as may be necessary to prevent abuse of sick leave privilege.
- 24.02 Employees who work less than full-time shall earn sick leave on a pro-rated basis based on their regularly scheduled assignment.
- 24.03 The City agrees to provide CalPERS Credit for Unused Sick Leave (GC 20965) provision—see MOU section 31.0—for all employees retiring from the City through CalPERS.
- 24.04 Sick leave cash out for existing employee's "IRS Constructive Receipt": Employees hired on or before July 17, 1999, with five (5) or more years of service wishing to cash out

future sick leave accruals may make a request by completing and submitting an Irrevocable Sick Leave Cash Out request form to the Director of Human Resources. Forms will be accepted between November 1st of each year through the end of the first full pay period in December. Payout shall be in accordance with appropriate pay out formulas described in Section 24.05. However, the maximum annual amount shall not exceed 50% of employee's sick leave balance. Employees eligible for this benefit shall at all times maintain a sick leave balance of at least 240 hours.

- 24.05 For employees hired on or before July 17, 1999, the City agrees to provide CalPERS Credit for Unused Sick Leave (GC 20965) or pay an employee who is separating from the City in good standing with at least five (5) years of service an amount equal to 2.5% per year of service for unused accrued sick leave. The pay-out formula shall be $2.5\% \times \text{years of service} \times \text{highest hourly rate} \times \text{sick leave hours accrued}$. Good standing shall be based on the employee's overall work record and the decision of the Human Resources Director.

SECTION 25.00 - FAMILY LEAVE

- 25.01 Employees with available sick leave accruals may use such sick leave for family medical purposes when a member in the employee's immediate family is involved.
- 25.01.1 In this section, family medical purposes shall mean illness, accident, medical appointments or other related occurrences.
- 25.01.2 Immediate family is defined to include: mother, mother-in-law, father, father-in-law, spouse, domestic partner, brother, sister, son, daughter, grandparent, grandchild, adoptive parents or adoptive children, whether the immediate family is of the employee's or the employee's spouse's family.
- 25.01.3 Each employee shall be allowed to use a maximum of up to half (50%) of the employee's annual earned sick leave per calendar year for this purpose. Additional leave may be granted in unusual circumstances by the Human Resources Director.
- 25.01.4 Employees may use accrued sick leave up to fourteen (14) consecutive calendar days leave for birth or adoption of a child beginning with the day of adoption or birth.

SECTION 26.00 - COMPASSIONATE LEAVE

- 26.01 The City agrees to provide compassionate leave when death occurs due to the death of to a member of the employee's immediate family, not to exceed one work week (40 hours). Compassionate leave shall be used within 1 year from the date of the death unless otherwise authorized by the City Manager. An employee shall not be eligible to take compassionate leave during their last 40 hours of employment nor after they have submitted their resignation or notice of retirement.
- 26.02 Immediate family is defined to include: mother, mother-in-law, father, father-in-law, spouse, domestic partner, brother, sister, son, daughter, grandparent, grandchild, adoptive parents or adoptive children, whether the immediate family is of the employee's or the employee's spouse's family.

- 26.03 Salary paid during this leave is not deducted from any leave balance. Additional leave may be granted in special circumstances by the Human Resources Director.
- 26.04 In special circumstances, the Human Resources Director may allow an employee to utilize compassionate leave for individuals who are not members of the employee's immediate family.

SECTION 27.00 - MILITARY LEAVE

- 27.01 Military leave shall be granted in accordance with the provision of State and Federal law. All employees entitled to military leave shall give the appointing power an opportunity within the limits of military regulations to determine when such leave shall be taken. An employee shall notify and provide applicable orders to the Department Head of the need for military leave as soon as possible after learning of the need.

SECTION 28.00 - WORKERS' COMPENSATION LEAVE

- 28.01 Employees unable to work because of a work-related illness or injury are eligible for workers' compensation leave, provided that the Employee has notified superiors of the illness or injury and the claim has not been denied by the Human Resources Director or worker's compensation insurance administrator authorized by the City.

Workers' Compensation leave shall be 100% of regular pay for two (2) calendar weeks (80 hours or 75 hours, depending on the employee's regular work schedule), followed by 80% of regular pay for six weeks (32 hours or 30 hours per week, depending on the employee's regular work schedule) to a maximum of sixty (60) calendar days. This leave shall cover all time off from work related to the injury, including doctor's appointments and therapy treatments, provided that said hours do not exceed available workers' compensation leave. Leave accruals shall be prorated accordingly.

In addition, any employee incurring such an injury or disability shall be entitled to compensation to the extent provided in the State Workers' Compensation Insurance Act. An employee who is on an approved Workers' Compensation leave, may utilize their leave accruals to integrate pay so as to receive one hundred percent (100%) of their pay for the time they would have been normally scheduled to work. An employees who has exhausted eligible workers' compensation leave are required to utilize available leave accrual balances (such as sick, vacation, comp time, etc.) to cover any period of unpaid absences.

- a) Upon expiration of available workers' compensation leave, all time lost (including doctors' appointments and therapy treatments less than one full workday) shall be charged to earned vacation and sick leave, if available.
 - b) When an employee chooses to integrate leave balances, upon expiration of available earned comp time, vacation and sick leave, the employee shall only be entitled to receive Workers' Compensation payments, as specified by law.
- 28.02 An employee returning from a work-related injury shall submit a medical release by a medical practitioner indicating the employee is able to perform the essential job functions with or without restrictions. If the employee is cleared to return to their position without restrictions, the employee shall return to their previously held position. If the employee has medical restrictions, the City shall schedule a meeting with the employee to engage in the interactive process to determine if the restrictions can be accommodated. .

- 28.03 Injured employees designated permanent and stationary or accepted into a qualified rehabilitation program and unable to return to their prior occupations may retire (if eligible) or involuntarily terminated.

SECTION 29.00 - LEAVE OF ABSENCE

- 29.01 The Human Resources Director may grant a Permanent employee leave of absence one time per calendar year without pay not to exceed one year. Leave shall be considered upon written request of the Employee.
- 29.01.1 In evaluating employee requests, the Human Resources Director shall consider the recommendation of the Department Head, departmental workload, the best interests of the City, the employee's duration of employment, the employee's performance record, and the reason for the leave.
- 29.01.2 Any Permanent employee with a non-work-related injury or medical condition who has exhausted all sick leave may request a leave of absence with a doctor's certificate. At the City's discretion and expense, the City at any time may require a medical exam at a facility selected by the City.
- 29.01.3 An employee who is on leave without pay status shall not earn any employment benefits (including, but not limited to, such benefits as vacation leave, medical benefits, sick leave, retirement benefits, credit for time employed or seniority entitlements of any kind) for the period of such status. It is the intent of this subsection that one on leave without pay status is deemed unemployed for the period of such status in terms of earning benefits.
- 29.01.4 The Human Resources Director may authorize continuation of the employee's elected medical and/or dental coverage for all or part of the duration of leave without pay. This shall be done only in extraordinary circumstances and when it is deemed to be in the best interest of the City.
- 29.02 A department head shall have the authority to approve an unpaid leave not to exceed 150 work hours each fiscal year.
- 29.03 Nothing herein shall preclude an employee from waiving in writing the right to reinstatement as a condition to approval for a leave of absence. Any employee who waives the right may be reinstated in accordance with the City's Personnel Rules & Regulations as if they had been subject to a reduction in workforce, except that they shall be placed at the bottom of a reemployment list for any position for which they qualify.
- 29.04 Failure on the part of an employee on leave to report to duty on the date and time that leave terminates may be cause for discharge.

SECTION 30.00 - LIGHT DUTY

- 30.01 The City recognizes the importance of providing support and encouragement to employees who are recovering from an injury or illness in an effort to assist in making a complete and healthy recovery. Therefore, the City agrees to make every reasonable effort to temporarily provide light duty as follows:
- 30.01.1 Any assignment of light duty shall be conditioned upon receipt of a statement from a physician which either recommends or requires light duty.

- 30.01.2 No employee assigned to light duty shall be required to return to their regular duties without a written release from a physician.
- 30.01.3 The temporary assignment of light duty may be in any department of the City provided that the assignment is compatible with the employee's ability, consistent with the written recommendations of the employee's physician, and is subject to the approval of the Department Head.
- 30.01.4 Said employee shall not be increased nor reduced in pay or benefit solely by virtue of said temporary transfer.
- 30.01.5 Provided that the City may verify said disability by having said employee examined by a physician of the City's choosing at the City's expense.
- 30.01.6 In the event of conflicting medical opinions, no employee shall be required to accept a light duty assignment.
- 30.01.7 The City is currently developing a policy on the subject of light duty. MEA agrees to meet and confer with the City during the term of the MOU regarding the policy.

SECTION 31.00 - RETIREMENT

- 31.01 The City will provide the 2% at 62 CalPERS retirement plan based on the highest 3 year annual average pensionable compensation depending on the eligibility of the new hires, hired on or after January 1, 2013. Employee shall be responsible for the member portion of the contribution to CalPERS retirement.

The City will provide the 2% at 60 CalPERS retirement plan based on the highest 3-year annual average pensionable compensation plan to all new hires (Section 20475: Different Level of Benefits Provided for New Employees) hired on or after October 9, 2011 the effective date of PERS ordinance adopted by the City Council. Employees shall be responsible for the 7% member contribution to CalPERS retirement.

For employees hired before October 9, 2011, the City shall continue, during the term of this Understanding, the present retirement plan, commonly referred to as the 2.7% at 55 plan, including the final year compensation amendment and 1959 Survivors Benefit in full force and effect. Employees shall be responsible for 8% member contribution to CalPERS retirement.

- 31.02 Upon retirement, disability retirement or death, for those employees who were hired on or before July 17, 1999 only, and who had at least five (5) years of service, the City shall pay the separating employee, or his or her estate, for unused accrued sick leave. The amount paid shall be equal to 2.5% per year of service for unused sick leave. The pay-out formula shall be: $2.5\% \times \text{years of service} \times \text{highest hourly rate} \times \text{sick leave hours accrued}$; or
 - 31.02.1 Upon retiring with CalPERS, all eligible employees may participate in the PERS Credit for Unused Sick Leave (GC 20965) provision of the City's CalPERS retirement plan.

31.03 For the purpose of this section, an employee who is retiring is one who has submitted an application for retirement to the California Public Employees Retirement System (CalPERS) and had it approved.

31.04 Retiree Medical

31.04.1 For employees hired before June 30, 1996, the City agrees to pay the premiums for employee-only health coverage for all employees, with at least five (5) years of service, who retire after July 17, 1999 and as long as the employee maintains enrollment in one of the City health plans. Employees receiving disability retirements shall be eligible for retiree health coverage until they are covered by another health plan (such as another employer or through a spouse). Retirees may elect to continue coverage for a spouse under the retiree group medical plan provided that the spouse is covered by the group plan at the time the employee retires and maintains enrollment. The retiree is responsible for the additional monthly premium.

31.04.2 When the City contributes toward retiree premiums, the maximum allowable shall be based on the lowest single rate for active employees. This maximum allowable City contribution shall not apply to persons who retire prior to the date this MOU is adopted by the Milpitas City Council.

31.04.3 Employees hired after June 30, 1996, shall be subject to the following provisions with respect to the retiree health plan benefits:

Upon completion of the first through the ninth year of service, and upon retirement, the City shall provide 25% of the lowest cost single medical insurance premium payment for the employee only (no more than any active employee's single lowest cost premium rate), as long as the employee remains in one of the City sponsored health care programs.

Upon completion of the ninth year, this payment of the retiree's medical insurance shall increase to 50%.

Upon completion of the fourteenth year, this payment of the retiree's medical insurance shall increase to 75%.

Upon completion of the nineteenth year, this payment of the retiree's medical insurance shall increase to 100%.

31.05 PERS Contract Amendment - Credit for Unused Sick Leave

31.05.1 Effective July 18, 1999, the City has amended its PERS contract to provide for the Credit for Unused Sick Leave as set forth in Government Code Section 20862.8.

31.05.2 All employees hired on or after July 18, 1999 shall not be entitled to sick leave cash out. Sections 24.03 and 31.02 of the MOU shall not apply to them.

SECTION 32.00 - BENEFITS

32.01 The City shall provide active employees the CalPERS medical insurance for health benefits. The total monthly health benefit per employee shall be based on the Kaiser rates for employee, employee +1, and family plan. Only employees who have eligible dependents shall be compensated above the single rate plans.

1. The aforementioned health care plan is currently being offered by the City of Milpitas. The City reserves the right to discontinue offering CalPERS due to the following:
 - a. The plan imposes exorbitant costs upon the City;
 - b. The health care carrier refuses to provide services to the City;
 - c. The health care provider no longer offers the services; or
 - d. The health plan is discontinued.
2. If the City discontinues use of CalPERS Health, they will provide a health care provider with similar services.
3. The City will provide a life insurance policy in the amount of \$50,000.00 for each employee.
4. The City shall continue to provide a Short-Term Disability Plan at the current benefit level.
5. The City shall continue to provide a Long-Term Disability Plan at the current benefit level.
6. The City will provide a vision plan for each employee and eligible dependents.
7. Payroll deductions for benefit costs above the City benefit contribution shall be permitted, provided that the City shall not assume unreasonable administrative costs.
8. Employees who are covered as an eligible dependent under another health insurance plan may waive health coverage and receive a total of one hundred and twenty-five dollars (\$125.00) per month, paid bi-weekly (\$57.70) over 26 pay periods. Employees who wish to waive health insurance coverage must complete the City of Milpitas' "Health Insurance Waiver" indicating they agree to abide by the terms and conditions of the waiver.

32.02 Benefit Contribution Part Time Employees: The City agrees to contribute monthly premiums for medical, dental and life insurance in an amount to reflect hours budgeted, pro-rated against the amount contributed for full time employees. For example, if an employee is budgeted to work twenty (20) hours per week, the City will contribute fifty percent (50%) of the benefit contribution for full time employees. Similarly, if a part-time employee is budgeted to work thirty (30) hours per week, the City will contribute seventy-five percent (75%) of the benefit contribution. The City agrees to provide short-term disability and long-term disability insurance benefits, with similar coverage to the coverage employees possess, at no cost to part-time employees.

32.03

SECTION 33.00 - TRAINING

- 33.01 If an employee is directed to participate in a training program, which is related to their job, the City shall provide compensation for the following:
- a. Regular wages for time away from the job (if during working hours);
 - b. Overtime or compensatory time off whenever an employee's combined training time and work time exceeds the scheduled work day;
 - c. Costs of tuition and/or registration for the training;
 - d. Reimbursement for authorized transportation cost to and from the training. (i.e. Mileage reimbursement if an employee uses their personal automobile as allowed by the City. However, if employees car pool to a training session, only the employee who is the owner of the automobile shall be entitled to mileage reimbursement).
- 33.02 Participation in and successful completion of training course may be considered in making employment advancements and promotions.
- 33.03 The City of Milpitas provides a tuition reimbursement program for educational activities, which are job related and approved in advance by the Department Head and the Human Resources Director. The amount of the fund shall not exceed the amount budgeted for this purpose. Subject to the availability of monies in the fund, individual employees are subject to a total reimbursement of \$1,400 per fiscal year. Reimbursement is subject to the guidelines outlined in the Tuition Reimbursement Standard Operating Procedure (S.O.P. 6-13).

SECTION 34.00 - UNIFORMS

- 34.01 The City agrees to provide uniform work clothes for MEA employees who are required to wear such uniforms on an annual basis. Uniforms are to identify City employees. Shirts and hats shall have the city emblem, department name, and/or the words City of Milpitas.
- 34.02 The following laundered clothing shall be provided:
- (a) Nine (9) work pants
 - (b) Nine (9) may be the tailored shirts.
 - (c) Five (5) pair of coveralls
- 34.02.1 In the event a uniform becomes damaged in the course of work, the City shall replace the damaged item.
- 34.02.3 The City will provide one Gerber/Leatherman multi-tool to current members who have not been issued a multi-tool. In addition, all new members will receive a multi-tool as part of their uniform package. The City will replace multi-tools if needed, with Department Head approval.
- 34.02.1 The City agrees to provide a stipend of \$750 per employee for non-laundered uniform clothing. Employees shall purchase non-laundered uniform clothing from City approved vendor. Non-laundered uniform clothing will meet uniform and safety

requirements. The stipend will be included with the first pay period of the fiscal year for current employees and within the first pay period for new hires.

34.03 Exemption from wearing uniform:

34.03.1 If it is determined by a physician that there is a medical reason which prevents an employee from wearing a City uniform (i.e., fiber content), then such employee shall not be required to wear a uniform. To be eligible for this exemption, the employee must submit a physician's statement to his/her supervisor verifying the above. The City reserves the right to have the employee examined by the City physician (at the City's expense) at any time.

34.05 Uniform colors: All employees will wear same color uniforms, and the color and quality of uniforms shall be approved by the Department Head. The City is agreeable to two different colors to be determined by the Department Head.

SECTION 35.00 - HEALTH & SAFETY

35.01 The City shall reimburse up to \$300 (\$325 for bifocals) per employee per fiscal year towards the purchase of safety prescription eyeglasses provided that they are not covered by the employee's health plan. Replacement costs may be covered upon approval of the City Manager or his/her designee if there has been a significant change in the employee's prescription or damage occurred as a result of a work-related incident.

35.02 In addition, the City shall provide a maximum of \$300 reimbursement per employee per fiscal year for the purchase of safety shoes. If additional funds after the purchase of the shoes are available, the employee may use the funds for related footwear accessories or repairs. The wearing of said items is mandatory and said footwear must meet safety guidelines set by the City.

35.03 Employee Fitness Program:

35.03.1 Purpose: To provide employees the opportunity to voluntarily participate in City-sponsored recreation programs at no cost during non-work hours.

35.03.2 Scope of Services: This program shall allow employee participation in all adult fitness and sports related activities offered by the Recreation and Community Services Department. Employees shall be granted use of all sports facilities operated and/or maintained by the Recreation and Community Services Department at the Milpitas Sports Center.

35.03.3 Cost: Programs shall be offered at no cost to employees. Spouses shall be required to pay full registration and non-resident fees if applicable. Each non-employee participant in an organized team activity shall be required to pay a fee equal to the team registration fee divided by the number of participants. The City agrees to waive fees for use of City parks by employees for softball team practice, except for costs if field lights are used.

35.03.4 Restrictions:

(a) Each employee shall be required to complete a registration form, medical history card, and a contract and/or a participant waiver form limiting the

City's liability during the employee's participation in a particular program or activity.

- (b) Organized adult athletic programs and leagues, such as softball or basketball, require that employees register in advance. Employees choosing to participate in any of the drop-in programs shall either be issued a pass (for programs which utilize passes) or use their employee ID card (which is issued to all employees at the time of initial appointment) for admission purposes.
- (c) Employees shall not be afforded preferential treatment in instances where a program or activity has already reached its maximum enrollment and shall be added to an established waiting list as appropriate.
- (d) Participation in program requiring advanced registration shall follow the same time schedule as those established by the Department for local residents.
- (e) No limit shall be placed on the number of programs or activities in which an employee may participate except that the activity must be within the scope of services offered by the Recreation and Community Services Department.
- (f) Participation in the program is voluntary and must not conflict with normal work schedules and shall take place during off-duty periods.

35.04.5 These items are not meant to be an all-inclusive list of provisions and restrictions that shall otherwise need to be applied to this program, as it is likely that instances will arise that will require further adjustments. This program shall be evaluated annually with respect to its overall effectiveness and possible application to other Recreation Services programs outside of those offered at the Milpitas Sports Center.

SECTION 36.00 - MISCELLANEOUS

36.01 When available, the City shall furnish vehicles from the City's car pool to conduct official City business. In the event a pool car is unavailable, the employee shall use the employee's own vehicle on a temporary basis.

- (a) An employee shall receive authorization from their Department Head or their designee prior to using the employee's own vehicle.
- (b) Temporary basis shall be defined as no more than five (5) consecutive working days unless otherwise agreed to by the employee. Employees who use their car on a temporary basis shall be reimbursed by the City at the rate established by the IRS.
- (c) Any employee who drives their own vehicle on official City business must have a valid California driver's license and proof of valid insurance.

36.02 The City recognizes that air-conditioned City-owned/leased vehicles can contribute to a comfortable and productive working environment. When ordering new vehicles, the City intends within reason to order air-conditioning in said vehicles when said equipment is offered by the manufacturer as an option.

- 36.03 Experimentation, Working Hours - Any experimentation with hours of employment or other related criteria shall be subject to meeting and conferring.
- 36.04 Replacement of Personal Articles - The City shall replace, within reason, personal articles damaged during performance of duty upon recommendation of the individual's immediate supervisor and Department Head, and approval of the City Manager. The prior condition of the article, precautions taken to protect the article, and the exercise of proper judgment of wearing or using an expensive article on the job that has certain hazards connected with it shall be considered in determining the amount of replacement. An employee shall obtain approval from his/her supervisor to bring in and use personal articles in the line of work.
- 36.05 Seniority - The City agrees to recognize and consider seniority as a factor in approving requests for vacation leave, work schedules, work assignments, and lateral transfers, when all other factors for employees are equal. The needs of the City, however, shall also be considered, and may in some instances be the determining factor for approving such requests. If seniority is not the deciding factor, an employee not selected may within 10 days of the decision make a request in writing/email to the Human Resources Director for a meeting to discuss.
- 36.06 The City agrees to provide sick and vacation leave balances on employee's biweekly pay stubs.
- 36.07 Employees assigned as pesticide applicators shall be able to use required respirator equipment safely.
- 36.08 Copying Charges: The City agrees to waive copying charges for Association business that fall below \$10.00 per month providing that:
- (a) the Association shall not use City copying facilities or supplies to promote positions or causes which could be inflammatory or cause adverse reactions against the City;
 - (b) if the copying charge for any one month exceeds \$10.00, then the full amount shall be payable to the Accounting Office within 30 days of receipt of statement;
 - (c) the City shall have the right to withdraw this privilege for non-compliance with 1 and 2 above.
- 36.09 Special Equipment Operation: A field maintenance employee who is assigned to operate the ten- wheel dump truck or the hydraulic vacuum line cleaning truck shall be a Maintenance Worker III. In the event that an employee in a class with a lesser pay range is assigned to operate one of these pieces of equipment, that employee shall receive work out-of-class pay in accordance with Section 20.00 of the Memorandum of Understanding.
- 36.10 The Utilities Camera Truck (CCTV) and Sewer Truck will be operated by employees holding the classification of Equipment Maintenance Worker II or Equipment Maintenance Worker III.
- 36.11 The City shall provide for commercial drivers to obtain the required California Department of Motor Vehicles (DMV) medical examination through the City's health care provider. Employees who choose to obtain a DMV medical through their personal doctor

are eligible for reimbursement up to \$125 per employee per fiscal year towards the medical examination. Employees must submit receipts and Evidence of Benefit (EOB) coverage sheets to be eligible for reimbursement.

- 36.12 All employees shall be permitted release time to vote in public elections as provided for in Election Code 14000.
- 36.13 The City and MEA are aware that department heads and/or their designees do periodically promulgate SOPS. The City acknowledges that when the effect of any such SOP is a change regarding matters within the scope of representation, the SOP implementation shall be undertaken in accord with the Meyers-Milias-Brown-Act.
- 36.14. Insourcing of Work: During the term of the MOU, the City agrees to meet and confer upon request of the Union regarding insourcing Park and Landscape work that is currently being contracted out to a third party provider. The City agrees to meet with the Union within 30 days of the request.

SECTION 37.00 - NO LABOR ACTION

- 37.01 Neither the Association nor its agents or any employee, for any reason, shall authorize, institute, aid, condone, or engage in a work stoppage, slowdown, strike, sick-out, or any other interference with the work and statutory functions or obligations of the City while this Memorandum of Understanding is in effect. While this Memorandum is in effect, neither the City nor its agents for any reason shall authorize, institute, aid, or promote any lockout of employees covered by this Memorandum.

SECTION 38.00 - SEASONAL WORKERS

- 38.01 Seasonal workers shall be limited to nine hundred ninety-nine (999) hours of work per fiscal year. Seasonal workers shall be limited to the duties they may perform according to section. Seasonal workers may operate any class C vehicle that is not equipped for a special purpose. The only-power equipment they may operate is equipment in the 600 & 6000 series, with the exception of chain saws and augers.

SECTION 39.00 - RETIREE CONTRIBUTION FUND

- 39.01 Effective with the term of this MOU, the City shall contribute 1.11% of the bargaining unit's payroll with benefits figure for the MILPITAS EMPLOYEES TRUST fund.
- 39.02 The City's commitment to the fund will be determined as of the last full pay period of June of each year. At that time, the benefit figure will be recalculated. By approximately mid-August, the computed amount will be contributed to the MILPITAS EMPLOYEES TRUST fund.
- 39.04 This agreement does not guarantee or commit future City funding for retiree or retiree dependent health insurance premiums.

SECTION 40.00 - INCENTIVE PAY

- 40.01 Professional Certification Incentive Program

Employees shall be eligible for the Professional Certification Incentive Program when possessing an authorized license or certificate that reflects their achievement in attaining certification for professional excellence and experience as follows:

40.01.01 Qualifying License/Certification

The professional certificate or license must be of the highest measure and meet the following criteria:

- (a) The professional license or certification must be issued by either the State of California or a nationally recognized professional organization that administers a nationwide competency examination recognized by the City as a standard of excellence and professional competency.
- (b) The license or professional certification shall enhance the employee's ability to do their job and be over and above the basic job qualifications required for the position held.
- (c) The license or certification must be current and not expired.
- (d) All licenses or certifications must be evaluated and approved by the Public Works Director before they may be considered for this program. Decisions by the Public Works Director regarding eligibility are final.

40.01.02 Conditions and Exceptions

- (a) Employees possessing a license or certificate that meets the criteria established above, and that has been authorized by Public Works Director must submit a transmittal along with proof of license or certification.
- (b) In addition to proof of license or certification, an employee must maintain their certificate consistent with the certifying organization's criteria.
- (c) The qualified period for additional compensation under the Professional Certification Incentive Program is determined annually and is based on the month in which the license or certification is received. Once eligible, qualified employees will receive the incentive pay on the first pay period following the date that they were granted the license or certification.

40.01.03 Compensation

Incentive Pay shall be paid at a four percent (4%) base salary increase. At no time will an employee receive additional compensation for holding more than one qualifying license or certification.

40.02 Additional Pay Incentive

For the period of this Memorandum of Understanding, employees will be entitled to an additional 4% incentive pay if they hold the appropriate license or certificate listed under section 41.02.01 below. Employees are not eligible for the "Additional Pay Incentive" when the license or certification is required in the employee's existing job classification or if the license or certification is used to qualify for incentive pay under section 41.10 of this Memorandum of Understanding.

40.02.01 Grade D2 or higher Water Distribution Operation Certificate from California State Water Resources Board.

All employees receiving an Additional Pay Incentive under this section July 1, 2020, for obtaining and maintaining a California Water Distribution Operator certification under the terms and conditions of the 2017-2020 Memorandum of Understanding, are considered grandfathered in terms of the minimum certification requirement listed in section 41.02.01.

40.03 Longevity Pay

Effective the first full pay period in July, 2023, employees shall be eligible for longevity pay as follows:

- (a) Effective the first full pay-period after the employee's 9th year of service, a longevity incentive of one percent (1%) over base pay.
- (b) Effective the first full pay-period after the employee's 14th year of service, a longevity incentive of two percent (2%) over base pay,
- (c) Effective the first full-pay period after the employee's 19th year of service, a longevity incentive of three percent (3%) over base pay,

SECTION 41.00 – LIUNA NATIONAL (INDUSTRIAL) PENSION FUND

41.01 MEA members currently participate in the LIUNA National Pension Fund under terms set forth in former Section 42.00 of the Memorandum of Understanding approved by City Council on June 7, 2011, (hereafter "PRIOR MOU") and the Standard Form of Participation Agreement signed by the City and MEA in 2002. It is agreed between the Parties that this section 42.00 shall replace that earlier Section 42.00 part of the PRIOR MOU for now and in the future until such time as MEA, or its successor bargaining group or individual employee successors no longer participate in the LIUNA National Pension Fund and there exists no obligation on behalf of the City or MEA or its successor bargaining group or individual employee successors to contribute funds to the LIUNA National Pension Fund, or this Section 42.00 is rescinded or modified by mutual agreement.

41.02 It is further agreed between the Parties that all obligation to make payments to the LIUNA National Pension Fund (including the \$1.00 City contribution referred to in Section 42.01 of the PRIOR MOU) for pension coverage for MEA employees shall be paid by MEA employees and the City will have the right to deduct the payment from MEA employee wages and make such payments as are due directly to the LIUNA National Pension Fund. This shall include any obligation to make payments to the LIUNA National Pension Fund as now exist or increased amounts which may be imposed in the future for rehabilitation plans imposed, plan restructuring, election for "preferred" benefits under the current Rehabilitation Plan or any other reason. It is further agreed that the City as employer shall elect, if such option is available, the "preferred" payment option, allowing MEA employees enhanced benefits, payment for

which MEA employees will be responsible, as agreed and set forth above, but with the understanding that if payments are also due for past obligations under the “preferred” plan, then MEA employees shall be responsible for such amounts which the City may also deduct in reasonable payment amounts from MEA employee wages.

- 41.03 Employee liability for LIUNA pension payments as described in paragraph 42.02 above do not include any fund liability for the City’s unilateral withdrawal from the LIUNA National Pension Fund, were that to occur in the future. Responsibility for such liability, were it to occur, shall remain subject to future negotiations between the Parties.
- 41.04 Deductions from MEA employee wages, as set forth in paragraph 42.02 above, shall be processed and deducted as pre-tax pension benefit payments from current and future MEA employees and will include a pro rata share of the indebtedness owed for MEA employees, including retirees, for the period from January 1, 2012, through the present time, until such time as that indebtedness is satisfied.
- 41.05 This section does not constitute a change in conditions from those set forth in the PRIOR MOU and any LOU incorporated therein, governing MEA and the City. To the extent this Section is inconsistent with the PRIOR MOU and any LOU incorporated therein, this Section shall constitute the intent and govern the rights of the Parties.
- 41.06 By inclusion of this section in this MOU, all parties agree that this matter has been fully discussed amongst the Parties and all meet and confer obligations under the law, including the Meyers-Milias Brown Act, have been fully complied with.

SECTION 42.00 - SAVINGS CLAUSE

- 42.01 If any section, subsection, sentence, or clause or phrase of this MOU is for any reason held illegal, invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 43 – LABOR MANAGEMENT COMMITTEE

- 43.01 During the term of this agreement the parties agree to create a Labor Management committee tasked with the development of discipline specific maintenance worker classifications and job descriptions.

Date: _____

City Representatives:

Richard C. Bolanos

Vicky Lien

Ned Thomas

Union Representatives:

Robert DeLong

Martin Herrera

Jorge Cortes

Pete Scrempo

Paul Rubino

LaDondi Ceasar

John (Matt) Garcia Sr.

Ryan Heron, UPEC Local 792

Appendix A

Effective July 1, 2023 4% Salary Increase

Classification		Monthly
Assistant Water Operator	\$ 7,213.08	- \$ 8,767.56
Assistant Water Operator - 40	\$ 7,739.03	- \$ 9,409.29
Cross Connection Specialist	\$ 7,998.54	- \$ 9,820.12
Equip Maint Worker I - 40	\$ 7,038.04	- \$ 8,552.53
Equip Maint Worker II - 40	\$ 7,739.03	- \$ 9,409.29
Equip Maint Worker III - 40	\$ 8,719.12	- \$ 10,601.44
Equipment Maint. Worker I	\$ 6,557.31	- \$ 7,970.51
Equipment Maint. Worker II	\$ 7,213.08	- \$ 8,767.56
Equipment Maint. Worker III	\$ 8,127.19	- \$ 9,878.59
Fleet Maint Worker I -40	\$ 6,718.61	- \$ 8,167.36
Fleet Maint Worker II - 40	\$ 7,389.83	- \$ 8,982.55
Fleet Maint Worker III -40	\$ 8,499.60	- \$ 10,331.53
Fleet Maintenance Worker I	\$ 6,298.74	- \$ 7,656.04
Fleet Maintenance Worker II	\$ 6,928.64	- \$ 8,421.63
Fleet Maintenance Worker III	\$ 7,967.83	- \$ 9,684.98
Maint Worker III - 40	\$ 7,236.96	- \$ 8,797.22
Maintenance Assistant	\$ 4,412.93	- \$ 5,305.25
Maintenance Custodian I	\$ 4,832.81	- \$ 5,874.37
Maintenance Custodian I - 40	\$ 5,155.04	- \$ 6,265.93
Maintenance Custodian II	\$ 5,316.22	- \$ 6,461.77
Maintenance Custodian II - 40	\$ 5,670.63	- \$ 6,892.63
Maintenance Custodian III	\$ 6,113.52	- \$ 7,431.11
Maintenance Custodian III - 40	\$ 6,521.51	- \$ 7,925.87
Maintenance Worker I	\$ 5,316.22	- \$ 6,461.77
Maintenance Worker I-40	\$ 5,722.32	- \$ 6,954.89
Maintenance Worker II	\$ 5,847.76	- \$ 7,107.96
Maintenance Worker II-40	\$ 6,293.02	- \$ 7,649.26
Maintenance Worker III	\$ 6,724.83	- \$ 8,174.17
SCADA Technician	\$ 8,153.35	- \$ 10,010.19
Senior Public Works Lead	\$ 9,593.81	- \$ 11,661.63
Senior SCADA Technician	\$ 8,968.67	- \$ 11,011.21
Water Meter Technician I	\$ 5,316.00	- \$ 6,461.75
Water Meter Technician I -40	\$ 5,670.83	- \$ 6,893.65

Appendix A

Effective the first full pay period in July 2024 4% Salary Increase

Classification		Monthly
Assistant Water Operator	\$ 7,501.60	- \$ 9,118.26
Assistant Water Operator - 40	\$ 8,048.59	- \$ 9,785.66
Cross Connection Specialist	\$ 8,318.49	- \$ 10,212.92
Equip Maint Worker I - 40	\$ 7,319.56	- \$ 8,894.63
Equip Maint Worker II - 40	\$ 8,048.59	- \$ 9,785.66
Equip Maint Worker III - 40	\$ 9,067.88	- \$ 11,025.50
Equipment Maint. Worker I	\$ 6,819.61	- \$ 8,289.33
Equipment Maint. Worker II	\$ 7,501.60	- \$ 9,118.26
Equipment Maint. Worker III	\$ 8,452.27	- \$ 10,273.73
Fleet Maint Worker I -40	\$ 6,987.35	- \$ 8,494.06
Fleet Maint Worker II - 40	\$ 7,685.42	- \$ 9,341.85
Fleet Maint Worker III -40	\$ 8,839.58	- \$ 10,744.79
Fleet Maintenance Worker I	\$ 6,550.69	- \$ 7,962.28
Fleet Maintenance Worker II	\$ 7,205.79	- \$ 8,758.50
Fleet Maintenance Worker III	\$ 8,286.55	- \$ 10,072.38
Maintenance Worker III - 40	\$ 7,526.44	- \$ 9,149.10
Maintenance Assistant	\$ 4,589.45	- \$ 5,517.46
Maintenance Custodian I	\$ 5,026.13	- \$ 6,109.35
Maintenance Custodian I - 40	\$ 5,361.24	- \$ 6,516.57
Maintenance Custodian II	\$ 5,528.87	- \$ 6,720.24
Maintenance Custodian II - 40	\$ 5,897.45	- \$ 7,168.34
Maintenance Custodian III	\$ 6,358.06	- \$ 7,728.35
Maintenance Custodian III - 40	\$ 6,782.37	- \$ 8,242.91
Maintenance Worker I	\$ 5,528.87	- \$ 6,720.24
Maintenance Worker I-40	\$ 5,951.21	- \$ 7,233.09
Maintenance Worker II	\$ 6,081.67	- \$ 7,392.28
Maintenance Worker II-40	\$ 6,544.74	- \$ 7,955.23
Maintenance Worker III	\$ 6,993.82	- \$ 8,501.14
SCADA Technician	\$ 8,479.48	- \$ 10,410.59
Senior Public Works Lead	\$ 9,977.57	- \$ 12,128.10
Senior SCADA Technician	\$ 9,327.42	- \$ 11,451.65
Water Meter Technician I	\$ 5,528.64	- \$ 6,720.22
Water Meter Technician I -40	\$ 5,897.66	- \$ 7,169.39

Appendix B

Special Equipment Operation

Pursuant to MEA MOU Article 36.09, a field maintenance employee who is assigned to operate the following equipment shall be a Maintenance Worker III. In the event that an employee in a class with a lesser pay range is assigned to operate one of these pieces of equipment, that employee shall receive work out-of-class pay in accordance with Section 20.00 of the Memorandum of Understanding. This list of equipment will be periodically reviewed and may be updated during Labor-Management Meetings with approval of both parties.

- Ten- wheel dump truck
- Ten-wheel hydraulic vacuum line cleaning truck

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CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Projection - Protech / MEA +4%

				Step A			Step B			Step C			Step D			Step E		
Classification	Union Code	Occ Code	Pay Grade	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Accountant	50	2101	500	49.81	3,985.19	103,614.85	52.31	4,184.42	108,794.90	54.91	4,392.79	114,212.63	57.67	4,613.46	119,949.98	60.54	4,843.30	125,925.82
Accounting Technician I	50	6104	513	32.44	2,595.36	67,479.40	34.06	2,725.15	70,853.99	35.77	2,861.41	74,396.77	37.56	3,004.48	78,116.40	39.43	3,154.70	82,022.32
Accounting Technician II	50	6105	514	35.69	2,854.88	74,226.96	37.47	2,997.66	77,939.28	39.34	3,147.55	81,836.29	41.31	3,304.96	85,929.06	43.38	3,470.13	90,223.29
Administrative Analyst I	80	2102	801	42.02	3,361.82	87,407.32	-	-	-	-	-	-	-	-	-	55.32	4,425.62	115,066.12
Administrative Analyst II	80	2103	802	46.41	3,712.73	96,530.98	-	-	-	-	-	-	-	-	-	61.09	4,886.81	127,057.06
Administrative Assistant	80	6111	828	40.09	3,207.26	83,388.76	42.10	3,367.62	87,558.12	44.20	3,536.02	91,936.52	46.41	3,712.80	96,532.80	48.73	3,898.43	101,359.18
Adult Crossing Guard	70	8401	725	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	20.52	1,641.60	42,681.60
Adult Crossing Guard Superviso	70	8402	720	19.24	1,539.20	40,019.20	-	-	-	-	-	-	-	-	-	24.05	1,924.00	50,024.00
Assistant Chief of Police	60	1405	649	104.45	8,356.04	217,257.04	-	-	-	-	-	-	-	-	-	146.23	11,698.45	304,159.70
Assistant City Attorney	60	1113	645	78.46	6,276.93	163,200.18	-	-	-	-	-	-	-	-	-	106.21	8,496.84	220,917.84
Assistant City Manager	60	1104	666	98.45	7,876.34	204,784.84	-	-	-	-	-	-	-	-	-	137.84	11,026.88	286,698.88
Assistant Dir Recr & Comm Svcs	60	1121	659	67.18	5,374.71	139,742.46	-	-	-	-	-	-	-	-	-	94.06	7,524.59	195,639.34
Assistant Engineer	50	2201	502	53.97	4,317.88	112,264.94	56.67	4,533.77	117,877.91	59.51	4,760.44	123,771.54	62.48	4,998.50	129,961.00	65.61	5,248.45	136,459.79
Assistant Finance Director	60	1109	669	70.85	5,668.21	147,373.46	-	-	-	-	-	-	-	-	-	99.20	7,935.69	206,327.94
Assistant Fire Marshal	60	2501	632	81.30	6,503.96	169,102.96	-	-	-	-	-	-	-	-	-	113.82	9,105.56	236,744.56
Assistant Planner	50	2801	503	51.75	4,140.28	107,647.32	54.34	4,347.40	113,032.34	57.05	4,563.99	118,663.69	59.90	4,792.13	124,595.45	62.90	5,031.84	130,827.90
Assistant Pool Manager	70	5609	709	22.16	1,772.80	46,092.80	-	-	-	-	-	-	-	-	-	27.70	2,216.00	57,616.00
Assistant Water Operator	20	7212	221	44.39	3,329.11	86,556.93	46.61	3,495.58	90,884.96	48.94	3,670.35	95,429.03	51.38	3,853.84	100,199.96	53.95	4,046.57	105,210.75
Assistant Water Operator - 40	20	8611	226	44.65	3,571.86	92,868.34	46.88	3,750.62	97,516.24	49.23	3,938.33	102,396.69	51.70	4,136.04	107,537.00	54.28	4,342.75	112,911.47
Associate Civil Engineer	50	2202	504	62.07	4,965.54	129,104.10	65.17	5,213.85	135,560.17	68.43	5,474.55	142,338.29	71.85	5,748.28	149,455.22	75.45	6,035.71	156,928.53
Associate Planner	50	2802	505	59.51	4,760.57	123,774.79	62.49	4,999.24	129,980.20	65.62	5,249.46	136,486.02	68.89	5,511.25	143,292.53	72.33	5,786.71	150,454.35
Budget Manager	80	1115	839	61.26	4,900.49	127,412.74	-	-	-	-	-	-	-	-	-	80.63	6,450.48	167,712.48
Building & Housing Director	60	1802	658	85.63	6,850.13	178,103.38	-	-	-	-	-	-	-	-	-	119.88	9,590.18	249,344.68
Building Inspection Manager	80	3809	848	63.81	5,105.17	132,734.42	-	-	-	-	-	-	-	-	-	77.57	6,205.42	161,340.92
Building Inspector Apprentice	70	8610	770	28.00	2,240.00	58,240.00	-	-	-	-	-	-	-	-	-	35.00	2,800.00	72,800.00
Building Official	60	1804	676	75.32	6,025.48	156,662.48	-	-	-	-	-	-	-	-	-	105.45	8,435.67	219,327.42
Building Permit Technician	50	5801	508	39.52	3,161.65	82,202.95	41.50	3,320.08	86,321.96	43.58	3,486.64	90,652.68	45.75	3,660.32	95,168.36	48.04	3,843.14	99,921.72
Building/NP Inspector	50	3801	507	52.38	4,190.59	108,955.25	55.00	4,400.16	114,404.08	57.75	4,620.12	120,123.04	60.64	4,851.15	126,129.97	63.67	5,093.68	132,435.70
Business Systems Analyst/Dev	80	2119	853	56.02	4,481.54	116,520.04	-	-	-	-	-	-	-	-	-	73.74	5,899.08	153,376.08
Buyer	80	2106	803	41.64	3,331.34	86,614.84	-	-	-	-	-	-	-	-	-	54.81	4,385.08	114,012.08
Case Manager	50	5612	544	35.41	2,832.86	73,654.26	-	-	-	-	-	-	-	-	-	44.19	3,535.34	91,918.96
Chief Fire Enforcement Officer	60	1505	656	68.25	5,459.80	141,954.80	-	-	-	-	-	-	-	-	-	95.55	7,643.72	198,736.72
Chief of Police	60	1402	650	109.67	8,773.58	228,113.08	-	-	-	-	-	-	-	-	-	153.54	12,283.04	319,359.04
City Attorney	60	1112	644	99.96	7,997.00	207,922.00	-	-	-	-	-	-	-	-	-	124.95	9,996.27	259,903.02
City Clerk	60	1101	605	65.11	5,208.61	135,423.86	-	-	-	-	-	-	-	-	-	91.16	7,292.88	189,614.88
City Engineer	60	1201	606	75.95	6,076.04	157,977.04	-	-	-	-	-	-	-	-	-	106.33	8,506.46	221,167.96
City Manager	60	1102	697	134.13	10,730.77	279,000.02	-	-	-	-	-	-	-	-	-	134.13	10,730.77	279,000.02
Code Enforcement Officer	50	5804	515	45.80	3,664.13	95,267.33	48.09	3,847.39	100,032.05	50.51	4,040.58	105,055.00	53.03	4,242.60	110,307.52	55.68	4,454.58	115,819.08
Communications Dispatch Superv	40	6409	456	56.46	4,516.98	117,441.48	59.29	4,742.83	123,313.58	62.25	4,979.98	129,479.48	65.36	5,228.99	135,953.74	68.63	5,490.44	142,751.44
Communications Dispatcher	40	6408	455	48.89	3,910.97	101,685.22	51.33	4,106.50	106,769.00	53.90	4,311.81	112,107.06	56.59	4,527.36	117,711.36	59.42	4,753.74	123,597.24
Community Service Officer	50	5807	551	43.82	3,505.76	91,149.68	46.01	3,681.05	95,707.27	48.31	3,865.11	100,492.81	50.73	4,058.35	105,517.11	53.27	4,261.30	110,793.70
Councilmember	60	1107	699	20.87	417.40	10,852.40	-	-	-	-	-	-	-	-	-	20.87	417.40	10,852.40
Crime Analyst	80	2105	809	50.31	4,024.40	104,634.40	-	-	-	-	-	-	-	-	-	66.22	5,297.35	137,731.10
Cross Connection Specialist	20	8626	239	46.15	3,691.64	95,982.54	48.57	3,885.93	101,034.15	51.13	4,090.46	106,351.84	53.82	4,305.74	111,949.12	56.65	4,532.36	117,841.40
Customer Services Supervisor	80	2127	847	48.78	3,902.36	101,461.36	-	-	-	-	-	-	-	-	-	64.20	5,136.36	133,545.36
Deputy City Attorney	60	1114	646	61.30	4,903.84	127,499.84	-	-	-	-	-	-	-	-	-	84.97	6,797.43	176,733.18
Deputy City Clerk	80	6102	835	47.90	3,832.11	99,634.86	-	-	-	-	-	-	-	-	-	58.22	4,657.94	121,106.44
Deputy City Manager	60	1119	672	96.49	7,718.81	200,689.06	-	-	-	-	-	-	-	-	-	135.02	10,801.85	280,848.10
Deputy Director of IT	60	1123	679	77.97	6,237.69	162,179.94	-	-	-	-	-	-	-	-	-	99.85	7,988.17	207,692.42
Deputy Fire Chief	60	1504	633	102.44	8,195.58	213,085.08	-	-	-	-	-	-	-	-	-	143.42	11,473.81	298,319.06
Deputy Public Works Director	60	1207	654	75.95	6,076.04	157,977.04	-	-	-	-	-	-	-	-	-	106.33	8,506.46	221,167.96
Digital Media Specialist	80	2121	840	43.33	3,466.76	90,135.76	-	-	-	-	-	-	-	-	-	57.04	4,563.31	118,646.06
Dir of Recr & Community Svcs	60	1208	655	83.85	6,708.28	174,415.28	-	-	-	-	-	-	-	-	-	117.62	9,409.89	244,657.14
Economic Development Coord	80	8623	852	52.86	4,228.77	109,948.02	-	-	-	-	-	-	-	-	-	65.55	5,243.62	136,334.12
Economic Development Director	60	1206	653	78.76	6,301.09	163,828.34	-	-	-	-	-	-	-	-	-	110.27	8,821.50	229,359.00
Economic Development Spec	80	8606	850	50.34	4,027.05	104,703.30	-	-	-	-	-	-	-	-	-	60.76	4,861.06	126,387.56
Electrical/Building Inspector	50	3802	511	55.00	4,400.15	114,403.81	57.75	4,620.12	120,123.04	60.64	4,851.14	126,129.70	63.67	5,093.68	132,435.70	66.85	5,348.38	139,057.80
Emergency Services Coordinator	80	2502	836	55.62	4,449.24	115,680.24	-	-	-	-	-	-	-	-	-	73.20	5,855.80	152,250.80
Engineering Aide	50	3201	512	42.92	3,433.82	89,279.32	45.07	3,605.52	93,743.62	47.32	3,785.78	98,430.20	49.69	3,975.05	103,351.21	52.17	4,173.80	108,518.82

CITY OF MILPITAS - HUMAN RESOURCES
All Job Classifications/Salary Table Projection - Protech / MEA +4%

				Step A			Step B			Step C			Step D			Step E		
Classification	Union Code	Occ Code	Pay Grade	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual	Hourly	BiWeekly	Annual
Recreation Services Supervisor	80	2601	827	52.43	4,194.59	109,059.34	-	-	-	-	-	-	-	-	-	69.01	5,520.64	143,536.64
Recreation Svcs Assistant I	50	8601	527	18.34	1,467.01	38,142.35	19.25	1,540.34	40,048.94	20.22	1,617.41	42,052.61	21.23	1,698.24	44,154.16	22.29	1,783.19	46,363.05
Recreation Svcs Assistant II	50	8602	528	21.77	1,741.81	45,287.13	22.86	1,829.09	47,556.33	24.01	1,920.50	49,932.88	25.21	2,016.57	52,430.83	26.47	2,117.35	55,051.01
Recreation Svcs Assistant III	50	8603	529	25.03	2,002.18	52,056.60	26.28	2,102.24	54,658.12	27.59	2,207.36	57,391.32	28.97	2,317.71	60,260.53	30.42	2,433.64	63,274.68
Recreation Svcs Assistant IV	50	8604	530	29.36	2,349.09	61,076.33	30.83	2,466.53	64,129.69	32.37	2,589.85	67,336.09	33.99	2,719.36	70,703.38	35.69	2,855.31	74,238.05
Retired Annuitant - Extra Help	70	5107	747	50.00	4,000.00	104,000.00	-	-	-	-	-	-	-	-	-	125.00	10,000.00	260,000.00
Retired Annuitant - Interim	70	5108	748	50.00	4,000.00	104,000.00	-	-	-	-	-	-	-	-	-	125.00	10,000.00	260,000.00
Risk Analyst	80	2130	857	43.33	3,466.76	90,135.76	-	-	-	-	-	-	-	-	-	57.04	4,563.31	118,646.06
SCADA Technician	20	8627	240	47.04	3,763.08	97,840.18	49.51	3,961.14	102,989.68	52.12	4,169.63	108,410.39	54.86	4,389.08	114,116.10	57.75	4,620.09	120,122.23
Senior Accountant	80	2110	829	48.78	3,902.36	101,461.36	-	-	-	-	-	-	-	-	-	64.20	5,136.36	133,545.36
Senior Accounting Technician	50	6106	539	39.25	3,140.37	81,649.71	41.22	3,297.42	85,733.02	43.28	3,462.28	90,019.40	45.44	3,635.43	94,521.29	47.71	3,817.16	99,246.26
Senior Administrative Analyst	80	2112	834	53.88	4,310.29	112,067.54	-	-	-	-	-	-	-	-	-	70.92	5,673.86	147,520.36
Senior Building Inspector	50	3804	531	60.50	4,840.10	125,842.54	63.53	5,082.17	132,136.37	66.70	5,336.24	138,742.24	70.04	5,603.02	145,678.54	73.54	5,883.19	152,962.85
Senior Buyer	80	2129	856	51.78	4,142.10	107,694.60	-	-	-	-	-	-	-	-	-	63.04	5,042.86	131,114.36
Senior Executive Assistant	80	6123	855	46.41	3,712.73	96,530.98	-	-	-	-	-	-	-	-	-	61.09	4,886.81	127,057.06
Senior HR Analyst	80	2122	841	50.31	4,024.43	104,635.18	-	-	-	-	-	-	-	-	-	66.22	5,297.35	137,731.10
Senior Plan Check Engineer	50	3806	534	69.87	5,589.62	145,330.00	73.37	5,869.26	152,600.78	77.03	6,162.46	160,223.90	80.88	6,470.27	168,226.93	84.92	6,793.71	176,636.37
Senior Planner	80	2805	830	62.84	5,027.35	130,711.10	-	-	-	-	-	-	-	-	-	76.39	6,110.94	158,884.44
Senior Public Works Inspector	50	3203	535	60.50	4,840.13	125,843.35	63.53	5,082.17	132,136.37	66.70	5,336.25	138,742.51	70.04	5,603.02	145,678.54	73.54	5,883.19	152,962.85
Senior Public Works Lead	20	8609	225	55.35	4,427.91	115,125.77	58.12	4,649.31	120,882.05	61.02	4,881.78	126,926.30	64.07	5,125.85	133,272.05	67.28	5,382.29	139,939.57
Senior SCADA Technician	20	8628	241	51.74	4,139.39	107,624.07	54.47	4,357.26	113,288.68	57.33	4,586.59	119,251.27	60.35	4,827.99	125,527.79	63.53	5,082.10	132,134.48
Special Project Associate	70	5105	750	20.00	1,600.00	41,600.00	-	-	-	-	-	-	-	-	-	50.00	4,000.00	104,000.00
Special Project Associate	70	8605	750	20.00	1,600.00	41,600.00	-	-	-	-	-	-	-	-	-	50.00	4,000.00	104,000.00
Sr Code Enforcement Officer	50	5806	545	53.75	4,300.03	111,800.67	56.43	4,514.18	117,368.74	59.26	4,740.51	123,253.19	62.22	4,977.88	129,424.80	65.33	5,226.26	135,882.76
Sr. Public Services Assistant	50	5615	549	39.81	3,184.44	82,795.40	41.80	3,343.66	86,935.22	43.89	3,510.84	91,281.90	46.08	3,686.38	95,845.98	48.38	3,870.70	100,638.28
Sr. Special Projects Associate	70	5106	749	50.00	4,000.00	104,000.00	-	-	-	-	-	-	-	-	-	125.00	10,000.00	260,000.00
Staff Assistant	70	5104	745	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	26.62	2,129.60	55,369.60
Student Intern	70	5103	740	17.20	1,376.00	35,776.00	-	-	-	-	-	-	-	-	-	26.62	2,129.60	55,369.60
Water Meter Technician I	20	8104	216	32.71	2,453.54	63,791.96	34.35	2,576.29	66,983.49	36.07	2,705.11	70,332.93	37.87	2,840.30	73,847.86	39.76	2,982.35	77,540.99
Water Meter Technician I -40	20	8620	235	32.72	2,617.31	68,049.95	34.35	2,748.18	71,452.66	36.06	2,885.18	75,014.64	37.87	3,029.33	78,762.65	39.77	3,181.68	82,723.74
Water Meter Technician II	20	8105	217	35.99	2,698.97	70,173.13	37.79	2,833.88	73,680.76	39.67	2,975.55	77,364.41	41.66	3,124.35	81,233.03	43.74	3,280.60	85,295.52
Water Meter Technician II -40	20	8621	236	35.99	2,879.03	74,854.83	37.79	3,023.21	78,603.39	39.67	3,173.50	82,510.94	41.66	3,332.99	86,657.79	43.75	3,499.64	90,990.68
Water Systems Operator	20	7211	219	50.01	3,751.00	97,525.98	52.51	3,938.15	102,391.83	55.14	4,135.44	107,521.32	57.90	4,342.22	112,897.68	60.79	4,559.35	118,543.09
Water Systems Operator - 40	20	8622	237	50.30	4,024.21	104,629.39	52.82	4,225.92	109,873.80	55.47	4,437.63	115,378.33	58.24	4,659.31	121,142.17	61.16	4,892.97	127,217.25

Union Code	Union Description
10	IAFF - International Association of Firefighters
20	MEA - Milpitas Employee Association
40	MPOA - Milpitas Police Officers Association
50	Pro-Tech - Milpitas Professional and Technical Group
60	Unrep - Unrepresented
70	Temps - Temporary
80	Mid-Con - UPEC Mid-Mgmt-Confidential Unit



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch) (Staff Contact: Roberto Alonzo, Public Works Division Manager - Engineering, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	3/5/2024
Recommendation:	Adopt a resolution initiating proceedings for the annual levy and collection of assessments and ordering the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch)

BACKGROUND:

On May 2, 1995, the City Council completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, establishing the Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch) (LLMD 95-1) to provide for improvement and maintenance of public landscaping, irrigation, pedestrian lighting, gateway columns and entry signs along portions of North McCarthy Boulevard and the Ranch Drive gateway between State Route 237 and Dixon Landing Road as shown on the accompanying location map.

ANALYSIS:

The Landscaping and Lighting Act of 1972 requires adoption of a resolution directing preparation of the annual engineer's report evaluating LLMD 95-1 maintenance and improvement costs and generally describing any proposed new improvements or any substantial changes in existing improvements. At subsequent meetings, the City Council will be asked to approve the completed engineer's report and to schedule a public hearing for the proposed assessment in May and June 2024. Upon City Council approval, the assessment for the maintenance and improvement work will be added to the 2024-25 property tax bills of property owners within the boundaries of LLMD 95-1.

POLICY ALTERNATIVE(S):

Alternative 1:

Not adopt a resolution initiating proceeding for the annual levy and collection of assessments and ordering the preparation of the annual engineer's report for LLMD 95-1.

Pros: None

Cons: The Landscaping and Lighting Act of 1972 requires the legislative body adopt the resolution, therefore not adopting the resolution would jeopardize the City's ability to collect assessments for the maintenance and upkeep of LLMD 95-1.

Reason not recommended: To allow for the continued maintenance for LLMD 95-1, staff recommends ordering the preparation of the annual engineers' report to begin the proceedings for the levy and collection of assessments for fiscal year 2024-25.

FISCAL IMPACT:

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

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

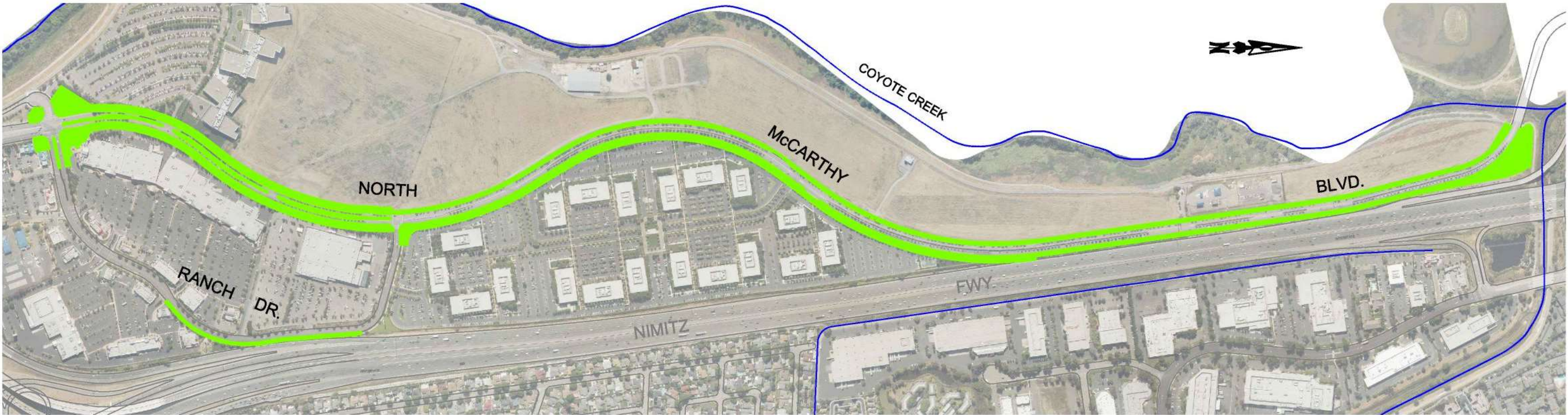
RECOMMENDATION:

Adopt a Resolution Initiation Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch).

ATTACHMENT(s):

- 1) Location Map
- 2) Resolution

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



 2024-2025 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, INITIATING PROCEEDINGS FOR THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1 (MCCARTHY RANCH) FOR FISCAL YEAR 2024/25, ORDERING THE PREPARATION OF THE ANNUAL ENGINEER'S REPORT, AND MAKING CERTAIN FINDINGS RELATED THERETO

WHEREAS, on May 2, 1995, the City Council (the "City Council") of the City of Milpitas (the "City") completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the "Act") to establish Landscaping and Lighting Maintenance Assessment District No. 95-1 (McCarthy Ranch) (the "Maintenance District"), for the purpose of paying for the installation, construction, maintenance and/or servicing of certain improvements authorized under the Act, and incidental expenses in connection therewith (collectively, the "Improvements"); and

WHEREAS, Section 22620, *et seq.* of the Act provides for the levy of annual assessments after formation of the Maintenance District; and

WHEREAS, the City has retained NBS Government Finance Group as assessment engineer for the purpose of assisting with the annual levy of the Maintenance District, and the preparation and filing of a report in accordance with Section 22565, *et seq.*, of the Act (the "Engineer's Report"); and

WHEREAS, pursuant to Section 22622 of the Act, the City Council wishes to initiate proceedings to provide for the levy of assessments for Fiscal Year 2024/25 in order to provide funding for the necessary costs and expenses pertaining to the maintenance of the Improvements within the Maintenance District.

NOW, THEREFORE, the City Council 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. Engineer's Report: The City Council hereby orders NBS Government Finance Group to prepare and file with the City Clerk the Engineer's Report concerning the levy and collection of assessments within the Maintenance District for the fiscal year commencing July 1, 2024, and ending June 30, 2025, in accordance with Section 22565, *et seq.*, of the Act.
3. New Improvements or Changes to Existing Improvements: There are no changes to existing Improvements nor are there any items being added to the list of Improvements previously approved at the formation of the Maintenance District.

PASSED AND ADOPTED this ____ day of _____, 2024 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 a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon) (Staff Contact: Roberto Alonzo, Public Works Division Manager - Engineering, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	3/5/2024
Recommendation:	Adopt a resolution initiating proceedings for the annual levy and collection of assessments and ordering the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon).

BACKGROUND:

On June 16, 1998, the City Council completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, establishing the Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon) (LLMD 98-1) to provide for improvement and maintenance of public landscaping, irrigation, and pedestrian walking path adjacent to Sinclair Frontage Road and Los Coches Creek abutting the Sinclair Horizon residential subdivision as shown in the accompanying location map.

ANALYSIS:

The Landscaping and Lighting Act of 1972 requires adoption of a resolution directing preparation of the annual engineer's report evaluating LLMD 98-1 maintenance and improvement costs and generally describing any proposed new improvements or any substantial changes in existing improvements. At subsequent meetings, the City Council will be asked to approve the completed engineer's report and to schedule a public hearing for the proposed assessment in May and June 2024. Upon City Council approval, the assessment for the maintenance and improvement work will be added to the 2024-25 property tax bills of property owners within the boundaries of LLMD 98-1.

POLICY ALTERNATIVE(S):

Alternative 1:

Not adopt a resolution initiating proceeding for the annual levy and collection of assessments and ordering the preparation of the annual engineer's report for LLMD 98-1.

Pros: None

Cons: The Landscaping and Lighting Act of 1972 requires the legislative body adopt the resolution, therefore not adopting the resolution would jeopardize the City's ability to collect assessments for the maintenance and upkeep of LLMD 98-1.

Reason not recommended: To allow for the continued maintenance for LLMD 98-1, staff recommends ordering the preparation of the annual engineers' report to begin the proceedings for the levy and collection of assessments for fiscal year 2024-25.

Fiscal Impact:

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

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

RECOMMENDATION:

Adopt a Resolution Initiating Proceedings for the Annual Levy and Collection of Assessments and Ordering the Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon).

ATTACHMENT(s):

- 1) Location Map
- 2) Resolution

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



 2024-2025 FISCAL YEAR LANDSCAPE AREA FUNDED FOR MAINTENANCE

ST

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, INITIATING PROCEEDINGS FOR THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1 (SINCLAIR HORIZON) FOR FISCAL YEAR 2024/25, ORDERING THE PREPARATION OF THE ANNUAL ENGINEER'S REPORT, AND MAKING CERTAIN FINDINGS RELATED THERETO

WHEREAS, on June 16, 1998, the City Council (the "City Council") of the City of Milpitas (the "City") completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (the "Act") to establish Landscaping and Lighting Maintenance Assessment District No. 98-1 (Sinclair Horizon) (the "Maintenance District"), for the purpose of paying for the installation, construction, maintenance and/or servicing of certain improvements authorized under the Act, and incidental expenses in connection therewith (collectively, the "Improvements"); and

WHEREAS, Section 22620, *et seq.* of the Act provides for the levy of annual assessments after formation of the Maintenance District; and

WHEREAS, the City has retained NBS Government Finance Group as assessment engineer for the purpose of assisting with the annual levy of the Maintenance District, and the preparation and filing of a report in accordance with Section 22565, *et seq.*, of the Act (the "Engineer's Report"); and

WHEREAS, pursuant to Section 22622 of the Act, the City Council wishes to initiate proceedings to provide for the levy of assessments for Fiscal Year 2024/25 in order to provide funding for the necessary costs and expenses pertaining to the maintenance of the Improvements within the Maintenance District.

NOW, THEREFORE, the City Council 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. Engineer's Report: The City Council hereby orders NBS Government Finance Group to prepare and file with the City Clerk the Engineer's Report concerning the levy and collection of assessments within the Maintenance District for the fiscal year commencing July 1, 2024, and ending June 30, 2025, in accordance with Section 22565, *et seq.*, of the Act.
3. New Improvements or Changes to Existing Improvements: There are no changes to existing Improvements nor are there any items being added to the list of Improvements previously approved at the formation of the Maintenance District.

PASSED AND ADOPTED this ____ day of _____, 2024 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:	Award IFB 24-056 and Authorize the City Manager to Execute the Purchase Order with Econolite Control Products, Inc. in the amount of \$100,017.01 for the Purchase of Traffic Detection Controllers, Cabinets, and Battery Backup Systems (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	3/5/2024
Recommendation:	Award IFB 24-056 and authorize the City Manager to execute the purchase order with Econolite Control Products, Inc. in the amount of \$100,017.01 for the purchase of traffic detection controllers, cabinets, and battery backup systems.

BACKGROUND:

The Public Works Department is responsible for the repairs, replacement, and improvements to streetlights, signage, and traffic control devices. Funding is programmed annually in CIP 3440 – Annual Street Light, Signal, and Signage project for the purchase and phased replacement of traffic detection controllers, cabinets, and battery backup systems in order to improve traffic safety and operations citywide.

On November 7, 2023, the City Council authorized the City Manager to enter into a funding agreement between the City of Milpitas and the Santa Clara Valley Transportation Authority for grant funds from the 2010 Measure B Vehicle Registration Fee Countywide Program. The City gathered equipment cost estimates and further negotiated with VTA to mutually agree on a project award of up to \$120,000.00 for the purchase of traffic detection controllers, cabinets, and battery backup systems for City traffic signals to support multi-modal operations on Tasman Drive (between I-880 and McCarthy Boulevard) corridor. This amount also includes a 10% administration fee which will support the oversight and administration of this project. The grant expires on December 31, 2024.

ANALYSIS:

On January 9, 2024, the City's Purchasing Division released Invitation for Bid (IFB) No. 24-056 for the purchase of traffic detection controllers, cabinets, and battery backup systems. The IFB outlined the City's need for these controllers, cabinets, and battery backup systems, as well as associated parts, materials, and components, for their successful implementation in the field.

The IFB was publicly noticed in accordance with the City's Municipal Code, advertised on the City's website, and emailed to companies registered with the City via OpenGov.com, the City's eProcurement system. One (1) bid was received by the published closing date of February 6, 2024. The bid received was reviewed by Purchasing staff for compliance and responsiveness and accepted. Econolite Control Products, Inc. submitted a base bid in the amount of \$100,017.01

Staff recommends that the City Council authorizes the City Manager to execute the purchase order with Econolite Control Products, Inc. in the amount of \$100,017.01 for the purchase of traffic detection controllers, cabinets, and battery backup systems.

POLICY ALTERNATIVE(S):

Alternative 1: Do not award IFB 24-056 to Econolite Control Products, Inc.

Pros: None.

Cons: If the purchase of traffic cameras is not awarded to Econolite Control Products, Inc., staff would have to rebid the project with little expectation of different results, further delaying the installation of traffic signals to support multi-modal operations on Tasman Drive (between I-880 and McCarthy Boulevard) corridor.
Reason for Not Recommending: Installation would be further delayed resulting in less than efficient traffic operations.

FISCAL IMPACT:

The City will receive up to \$120,000 (on a reimbursement basis) for the purchase and implementation of traffic detection controllers, cabinets, and battery backup systems for City traffic signals to support multi-modal operations on Tasman (between I-880 and McCarthy Boulevard) corridor, including 10% to support the City's administration of the project. The money will be appropriated in CIP 3440 Annual Street Light, Signal, and Signage project.

California Environmental Quality Act (CEQA):

The project entails the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use and is exempt from CEQA pursuant to Cal. Code Regs., tit. 14, § 15301.

RECOMMENDATION:

Award IFB 24-056 and authorize the City Manager to execute the purchase order with Econolite Control Products, Inc. in the amount of \$100,017.01 for the purchase of traffic detection controllers, cabinets, and battery backup systems.

Attachment(s):

1. Bid Results
2. City of Milpitas Purchase Order Terms and Conditions for Equipment



PURCHASING DIVISION

IFB FOR: Purchase of Traffic Cabinets,
Controllers, and Battery Backup Systems

IFB NO: 24-056

DUE DATE: February 6, 2024

BUYER: S. Pietrobono

**Econolite Control Products, Inc.
1250 N. Tustin Ave.
Anaheim, CA 92807**

	1	2	3	4	5	6	7
Base Bid (if applicable)	\$100,017.01						
* Disqualified – Reason							

****BID AWARD IN PROGRESS** City Council Date: (N/A)**

AWARD TO: (Put in company name) Lowest Most Responsive, Responsible Bidder Meeting Specifications

CODE KEY: INA = Information Not Available NS = Not Stated NB = No Bid DY = Days WK = Weeks HR = Hours

PURCHASE ORDER TERMS AND CONDITIONS FOR EQUIPMENT AND MATERIALS

1. Acceptance. This purchase order for equipment and materials issued by the City of Milpitas ("CITY") to the Vendor designated in the purchase order must be promptly accepted and acceptance is expressly limited to the terms of this order. Any additions or different terms in the Vendor's forms are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. Vendor's shipment of goods in response to this order shall be considered acceptance by the Vendor.

2. Entire Agreement. Unless Vendor and CITY have entered into a separate written contract covering the purchase of the goods described herein, the entire contract between the parties consists of this order and the Vendor's acceptance as above stipulated, and said contract shall not be changed or added to except in writing signed by authorized representatives of each party.

3. Price. The price invoiced for the goods on this purchase order shall be no higher than the price stated on the front of this purchase order unless prior notification is received from Vendor prior to shipment and the change is accepted by CITY. If the Vendor's established price for any item upon the date of delivery shall be lower than the price shown on this purchase order, CITY shall have the benefit of such lower price. Vendor shall deliver to CITY all invoices within 30 days of shipping or service delivery.

4. Payment. Payments will be made net 30 days unless otherwise specified as per agreements regarding discount terms. The period of computation will commence on the date of receipt of a correctly completed invoice. Payment may be withheld, in whole or in part, due to deficiencies in Vendor's performance. Payment of an invoice by CITY shall be without prejudice to any and all claims CITY may have against Vendor in connection with such goods. Invoices are paid on a weekly basis and such practice may result in minor deviations from payment terms otherwise cited herein.

5. Time of the Essence. Time is of the essence on this order. If delivery is not made in the quantity or quantities and at the time or times specified, CITY shall have the right, at its option, to cancel the entire order or that part of same not so delivered. If CITY accepts delayed delivery the time of payment shall be extended accordingly.

6. Delivery and Acceptance. Vendor expressly warrants that any article, material or work is free and clear of all liens and encumbrances whatsoever, and that Vendor has good and marketable title to same. Unless otherwise specified, all goods are to be shipped prepaid, F.O.B. destination. No charge will be allowed for packing, crating, freight, express or other carrier's charges, or cartage, unless specifically agreed to by CITY. Title to equipment and materials purchased hereunder shall pass to Vendor at the designated F.O.B. point, subject to Vendor's right to inspect and reject or revoke acceptance.

7. Warranty. Vendor warrants for a period of 12 months following start of use or 18 months from receipt, whichever occurs first, that the goods described herein will be free of defects in workmanship, design, materials, and title, and notwithstanding anything herein to the contrary, will conform to all applicable proposals, specifications, instructions, drawings, data, descriptions, and samples, and will be of good and merchantable quality and fit and sufficient for the purpose intended. Vendor shall obtain and provide to CITY Material Safety Data Sheets (MSDS) for each product that contains hazardous substances as defined by CalOSHA. ..

8. Rejection of Goods. CITY shall have the right, at its option, to reject or revoke acceptance of any goods which do not conform to these warranties or to the specifications. In case of such rejection or revocation of acceptance, transportation of the rejected goods, both to and from CITY, shall be at the expense of Vendor, said rejected goods are not to be replaced except upon specific instruction from CITY, and CITY shall have the right at its option to cancel the remainder, if any, of the order, by notice to Vendor at the time notice is given of rejection or revocation of acceptance. Vendor shall be liable to CITY for all damages proximately caused by breach of any of the foregoing warranties, including incidental damages but excluding special or consequential damages.

9. Returns. CITY reserves the right to return for full credit any excess over quantity called for in any order or orders. Vendor to bear the cost of transportation both ways.

10. Force Majeure. Vendor shall not be held responsible for failure or delay in shipping nor CITY for failure or delay in accepting goods described herein if such failure or delay is due to act of God, war, federal or state legislation or any regulations or orders, fire, accident, or other causes, either similar or dissimilar to the foregoing, beyond their control. In the event of any such excused interference with shipments, CITY shall have the option either to reduce the quantity provided for in the order accordingly or to exercise its right of cancellation as set forth in these terms and conditions.

11. Additional Fees. Unless otherwise required by law or provided herein, Vendor assumes exclusive liability for, and shall pay before delinquency, all sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on or with respect to, or measured by the article sold or material or work furnished hereunder on the wages, salaries or other remunerations paid to persons employed in connection with performance of this order.

12. No Waiver. No exercise by CITY of its rights hereunder shall constitute a waiver of any rights it may have for breach of contract. CITY's waiver of or failure to enforce its rights on account of Vendor's failure or delay in performing any obligation of Vendor hereunder, or on account of Vendor's breach of contract in any respect, shall not constitute a waiver of any subsequent failure, delay or breach.

13. Compliance with Law. Vendor shall comply with all applicable laws and regulations of the federal, state and local government. CITY shall assist Vendor, as requested, in obtaining and maintaining all permits required of Vendor by Federal, State and local regulatory agencies. Vendor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her Work. Vendor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Work is 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, Vendor agrees to fully comply with such Prevailing Wage Laws. Vendor shall defend, indemnify and hold CITY, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Any stop orders issued by the Department of Industrial

Relations against Vendor or any subcontractor that affect Vendor's performance of services, including any delay, shall be Vendor's sole responsibility and Vendor shall indemnify CITY from liability arising out of the same. It shall be mandatory upon the Vendor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 and to be registered with the Department of Industrial Relations 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 1771.4, 1725.5 and 1771.1.

14. Insurance. Vendor shall take out and maintain: A. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01; B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto); C. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and D. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by those Vendors transporting hazardous materials. Insurance carriers shall be licensed to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A:VII" rating according to the latest Best Key Rating unless otherwise approved by CITY. VENDOR SHALL ENSURE THAT THIRD PARTY SHIPPERS CONTRACTED BY VENDOR HAVE ADEQUATE INSURANCE COVERAGE. If attached, Vendor shall refer to Exhibit "A" – Insurance Requirements, for further insurance requirements applicable to Vendor.

15. Indemnification. The Vendor shall indemnify and hold harmless CITY, its officials, officers, agents and employees from and against any and all claims, liabilities, expenses or damages, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or patent infringement or fees for use of patented items, or any claim of the Vendor or sub-contractors for wages or benefits which arise in connection with the sale, delivery and/or installation of equipment or materials, except to the extent caused or resulting from the negligence or willful misconduct of CITY. The foregoing indemnity includes, but is not limited to, the cost of prosecuting or defending such action with legal counsel acceptable to CITY and CITY's attorneys' fees incurred in such an action.

16. Substitutions, Changes and Cancellation. No substitutions are acceptable unless expressly accepted in writing by CITY. CITY may make changes in the general scope of this order by giving written notice to Vendor. If any such change affects the cost of or time to deliver or perform under this order, an adjustment in price, delivery or both will be made as CITY determines to be equitable. Vendor may request changes; however, no such change shall be effective

unless accepted in writing by CITY. CITY may cancel this order in whole or in part at any time before acceptance of the equipment and materials due to Vendor's breach or for CITY's convenience.

17. Laws, Venue, and Attorneys' Fees. This purchase order 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 purchase order, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

18. Contract Terms. Nothing herein shall be construed to give any rights or benefits to anyone other than CITY and the Vendor. The unenforceability, invalidity or illegality of any provision(s) of this purchase order shall not render the other provisions unenforceable, invalid or illegal. Notice may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the parties to the addresses set forth in the purchase order. Vendor shall not assign, sublet, or transfer this purchase order, or any rights under or interest in this purchase order, without the written consent of CITY, which may be withheld for any reason. Vendor is retained as an independent contractor and is not an employee of CITY. No employee or agent of Vendor shall become an employee of CITY. This is an integrated agreement/purchase order representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. This Contract may not be modified or altered except in writing signed by both parties hereto.

19. Damage to City Facilities. Damage to CITY or public facilities or private property caused by the Vendor or by its subcontractors during delivery or installation shall be repaired and/or replaced in kind at no cost to the CITY.

20. Site Safety and Cleanup. The delivery and installation site shall be kept clean and free of hazards at all times during delivery and installation. After and installation is completed at the site, as applicable, Vendor shall clean the surrounding area to the condition prior to delivery and installation.

21. Installation. If the Vendor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the CITY.

22. Wage Theft Prevention. Vendor, and any subcontractor it employs to complete work under this purchase order, 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. By entering into this purchase order, Vendor 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 the date of this purchase order that Vendor or its subcontractor(s) has violated any applicable wage and hour laws. Vendor further affirms that it or its subcontractor(s) has either fully satisfied each judgment, decision or order, or, if any judgment, decision or order has not been fully satisfied, Vendor affirms that it or its subcontractor(s) is currently satisfying said judgment, decision or order through a payment or alternative plan approved by the applicable court/government agency and that Vendor or its subcontractor(s) are in compliance with

said plan as of the date of this purchase order. If at any time during the term of this purchase order, a court or investigatory government agency issues a final judgment, decision or order finding that Vendor or a subcontractor it employs to perform work under this purchase order has violated any applicable wage and hour law, or Vendor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Vendor 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. Vendor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the CITY, either (i) fully satisfy any such judgment, decision, or order and provide the CITY with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the CITY documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Vendor or its subcontractor is subject to a payment or other alternative plan, the Vendor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the purchase order demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied. For purposes of this provision, 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. Failure to comply with any part of this provision constitutes a material breach of this purchase order. Such breach may serve as a basis for immediate termination of this purchase order and/or any other remedies available under this purchase order and/or law. Notice provided to the CITY shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd., Milpitas, CA 95035. The notice provisions of this paragraph are separate from any other notice provisions in this purchase order and, accordingly, only notice provided to the above address satisfies the notice requirements in this provision.

***OPTIONAL TERMS:** Check box if applicable

- ☐ Custom Design: If the goods are produced by Vendor in accordance with designs, drawings or blueprints provided by CITY, Vendor shall return same to CITY upon completion or cancellation of this order. Any materials, equipment, tools, artwork, designs or other property furnished by or specifically paid for by CITY shall be CITY's property.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive an Update on Storm Drain System Emergency Repairs and Improvements at Evans Road and Piedmont Creek 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:	3/5/2024
Recommendation:	(1) Receive an update on the storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek; 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 November 21, 2023, the Public Works Director declared an emergency and authorized the City to contract with local contractor, Able Construction Inc., for the storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek. Further, within the required timeframe the Public Works Director informed the City Council via the attached [Information Memorandum](#) on November 21, 2023 regarding the emergency authorization, the reasons for the authorization, and the cost for repair in the amount of \$137,519.

Project Update(s):

Below is a current update on the status of the storm drain emergency repairs and improvements at Evans Road and Piedmont Creek.

The City entered into two agreements with Able Construction Group, Inc. (Contractor) on December 14, 2023 and December 18, 2023 for storm drain repairs and improvements at Evans Road and Piedmont Creek, respectively. Subsequently, the City issued a Notice to Proceed to the Contractor to commence work beginning December 18, 2023.

The contractor substantially completed improvements at Piedmont Creek, per project plans and specifications, the week of February 20th. Storm drain improvements at Evans Road commenced the week of February 20th. Improvements at Evans Road are scheduled to be substantially complete the week of March 11th.

Upon completion of the Evans Road improvements, the City will perform a site walkthrough to ensure the improvements at both project locations have been completed per project plans and specifications and the project site(s) have been satisfactorily restored to pre-project conditions. The City will subsequently issue a punch-list for any outstanding items prior to deeming the project complete.

Fiscal Impact:

Funding for these repairs is available in the City's Capital Improvement Program (CIP) budget. CIP Project 3715 - Storm Drain System Rehabilitation Project will fund \$137,519 for the storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek. Funding source comes from the Storm Drain General Fund and Storm Drain Fund. As of February 21, 2024, the balance in CIP 3715 is \$1,460,724.

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 storm drain system emergency repairs and improvements at Evans Road and Piedmont Creek.
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:	Adopt a Resolution to Approve Project Plans & Specifications; Reject a Bid Protest from Galaxy Construction Services, Inc., and Award Construction Contract to A&B Mechanical Inc, for Alviso Adobe House HVAC System, Project No. 5055 (Staff Contact: Michael Silveira, PW Division Manager-Engineering, 408-586-3303)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	3/5/2024
Recommendation:	Adopt a resolution to approve project plans & specifications; reject a bid protest from Galaxy Construction Services, Inc.; award the construction contract to the lowest responsible bidder submitting a responsive bid, A&B Mechanical, Inc., in the amount of \$127,900; authorize the City Manager to execute the construction contract with A&B Mechanical, Inc.; and authorize the Public Works Director to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$25,600 for Alviso Adobe House HVAC System, Project No. 5055.

BACKGROUND:

Project No. 5055 - Alviso Adobe House HVAC System ("Project") is included in the adopted 2024-2028 Capital Improvement Program (CIP). The Project provides for the design and installation of a new HVAC system to control the temperature of the house during public tours and protect the audio video system from premature failure.

The City purchased the historic Alviso Adobe property, located at 2087 Alviso Adobe Court, in 1997 with the intention of renovating the buildings which were originally constructed in the 1850 and constructing a new two-acre City park. The construction was to be completed in five phases over several years. Project phases include:

- Phase 1: Replacement of the Adobe house's roof – completed in 1999;
- Phase 2: Site and drainage improvements – completed in 2008;
- Phase 3: Adobe house exterior renovation and seismic upgrade – completed in 2010;
- Phase 4: Park construction, out building restoration – completed in 2013;
- Phase 5A (Interior Restoration): Restore interior of the Adobe house – completed in fall 2020;
- Phase 5B (Exhibits) Furnishings, exhibits, and visual media installation – completed in fall 2022.

After the completion of phase 5B, the City opened the historic Alviso Adobe house for tours to Milpitas residents and visitors. The heat generated from the recent installed audio video system and visitors increased the temperature within the house during the tours which become uncomfortable and posed a safety risk for the visitors and volunteers managing the tours, especially during warm days. The lack of air circulation and high temperatures also posed a risk of equipment failure of new audio video system. To provide a safe environment for visitors and prolong the service life of the new audio video system, City Council approved funding in adopted 2024-2028 CIP for a new HVAC system.

The Engineer's Construction Estimate for the work is \$125,000 and the Project Plan title sheet (Attachment 2) is included in the Council's agenda packet. The complete full-size set of plans and specifications are available electronically upon request to the Public Works Director.

ANALYSIS:

The Project was advertised on digital construction trade publications on December 15, 2023 and in the Milpitas Post on December 15 and 22, 2023, in accordance with the bidding requirements of the Uniform Public Construction Cost Accounting Act. Bid opening was held on January 30, 2024, and 2 sealed bids were received. The Summary of Bid Results is as follows and is included in the agenda as **Attachment 3**.

Bidder	Location	Base Bid
Engineer's Estimate	-	\$125,000
A&B Mechanical, Inc	Livermore, CA	\$127,900
Galaxy Construction Services, Inc	Pleasant Hill, CA	\$128,000

The bid pricing submitted varies between 2.3% to 2.4% over the Engineer's Estimate. The apparent lowest responsible bidder submitting a responsive bid is A&B Mechanical, Inc (A&B). A&B submitted a bid in the amount of \$127,900, but a bid protest was received from Galaxy Construction Services, Inc. (Galaxy).

On February 1, 2024, the City received a bid protest from Galaxy (**Attachment 4**). The protest was forwarded on to A&B for review and A&B issued a response letter dated February 7, 2024 (**Attachment 5**). The protest was reviewed by City staff in consultation with the City Attorney's office and determined it to be meritless. The City staff notified Galaxy in writing on February 16, 2024 of its intent to recommend rejection of the bid protest to the City Council ("City Protest Response") (**Attachment 6**).

City staff recommends that the bid protest from Galaxy be rejected as meritless for the reasons specified in the City Protest Response.

The following is a summary of the items raised in the protest and the City Protest Response:

1. Alleged Failure to List Subcontractors for Electrical, Framing, Plumbing and Balancing Work

The protest alleges that A&B failed to list subcontractors for four trades including electrical, framing, plumbing and balancing, thereby rendering A&B's bid nonresponsive. Per Public Contract Code section 4104, a bidder is only required to list subcontractors who will perform any work in excess of one-half of 1% of its total bid amount. If a subcontractor is not listed in the bid for a specific construction trade in excess of one-half of 1% of the bid amount, the Public Contract Code requires the bidder to self-perform the work. In response to the City's request for clarification regarding the subject matter, A&B stated they are a union company that is signatory to several trade unions and intends to self-perform the trades listed above under its C-20 license. The City has also contacted the Contractors State License Board (CSLB) on February 8, 2024 and received confirmation that a C20 license allows work in these trades incident to the installation of HVAC. Based on the foregoing, the City is under no obligation to reject A&B's bid as nonresponsive for failure to list subcontractors for electrical, framing, plumbing and balancing work.

2. Alleged Failure to Provide Proper Contractor License

The protest alleges that A&B's failure to hold a proper contractor C-20 license as required by the Contract Documents. The Contract Documents requires each bidder to possess a current license classification of A, B or C2-0 from the CSLB. Per the information obtained from the CSLB's website, A&B possesses a Class C-4, C-20, and C-38 licenses associated to its business, CSLB No. 740508, which are currently valid through 09/30/2025. Based on the foregoing, the City is under no obligation to reject A&B's bid as nonresponsive for failure to hold proper contractor license.

Staff recommends the City Council adopt a Resolution (**Attachment 1**) to approve the Project plans and specifications for the Project, reject the bid protest from Galaxy and to award a construction contract to A&B Mechanical, Inc., the lowest responsible bidder submitting a responsive bid, for a total contract amount not to exceed \$127,900. There is sufficient funding available in the Project budget to award this contract and no additional funding appropriation is required.

The recommended construction contingency for this Project is \$25,600 which is 20% of the total contract value due to the specialized nature of this work and potential unknowns in working on a historic building. Consistent with prior Council action, for the successful completion of projects with tight completion schedules, staff is requesting the use of the same change order policy used for previous projects (**Attachment 7**). This policy allows for a timely completion of the Project, while addressing the need to respond swiftly to construction conditions and approve necessary change orders to limit potential claims or risks to the City. The change order authority will not be exceeded without prior City Council Approval.

POLICY ALTERNATIVE(S):

Alternative 1: Deny approval of Project plans and specifications, not reject the bid protest, and not award the construction contract for the Installation of the HVAC system.

Pros: None.

Cons: A denial would cause delay in installation of the HVAC system which would pose a risk of safety to the visitors and staff, and premature failure of the new audio video system.

Reason for Not Recommending: It is recommended the Project be awarded to A&B to ensure the Project remains on schedule to start in June 2024 when there is no scheduled tours and provide a safety environment for visitors and staff and protect the new audio video system from premature failure.

FISCAL IMPACT:

Adequate funds are available in the Project budget and no additional funding appropriation is required.

As of 02/13/2024, uncommitted balance of the Project is as follows:

CP 5055	\$ 443,461
----------------	-------------------

Summary of Estimated Construction Cost:

Base Bid Amount	\$127,900
20% Construction Contingency	\$25,600
Administration	\$25,600
Total	\$179,100

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

City Staff determined the installation of a new HVAC system in the Alviso Adobe building consists of minor alterations to an existing public facilities that involve no expansions of the existing use per California Code Regulation Title 14 section 15301 and installation of small new equipment in a small structure where only minor modifications are made to the exterior of the structure do not exceed the maximum allowable on effected parcels per California Code Regulation Title 14 section 15303. Based on staff's findings, this project is under categorical exemption (Class 1 – Existing Facilities) from the requirement of CEQA.

RECOMMENDATION:

1. Adopt a Resolution to approve project plans & specifications, reject a bid protest from Galaxy Construction Services, Inc.; award the construction contract to the lowest responsible bidder submitting a responsive bid, A&B Mechanical, Inc. in the amount of \$127,900; authorize the City Manager to execute the construction contract with A&B Mechanical, Inc.; and authorize the Public Works Director to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$25,600 for the Alviso Adobe House HVAC System, Project No. 5055.

ATTACHMENT(S):

- (1) Resolution
- (2) Title Sheet & Location Map
- (3) Bid Results
- (4) Bid Protest from Galaxy Construction Services, Inc.
- (5) Response to Bid Protest from A&B Mechanical, Inc.
- (6) City Protest Response Letter
- (7) Change Order Policy

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PROJECT PLANS AND SPECIFICATIONS; REJECTING A BID PROTEST FROM GALAXY CONSTRUCTION SERVICE, INC. AND AWARDING THE CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIBLE BIDDER SUBMITTING A RESPONSIVE BID, A&B MECHANICAL INC., IN THE AMOUNT OF \$127,900; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSTRUCTION CONTRACT WITH A&B MECHANICAL, INC.; AND AUTHORIZING THE PUBLIC WORK DIRECTOR TO NEGOTIATE AND EXECUTE CONTRACT CHANGE ORDER(S) IN AN AGGREGATE AMOUNT NOT TO EXCEED \$25,600 FOR THE ALVISO ADOBE HOUSE HVAC SYSTEM, PROJECT NO. 5055

WHEREAS, Project No. 5055 - Alviso Adobe House HVAC System ("Project") is in the approved 2024-2028 Capital Improvement Program; and

WHEREAS, the Engineer's Estimate for the Project base bid is \$125,000; and

WHEREAS, the Project was advertised for bid on digital construction trade publications on December 15, 2023 and in the Milpitas Post on December 15 and 22, 2023, in accordance with the bidding requirements of the Uniform Public Construction Cost Accounting Act; and

WHEREAS, on January 30, 2024, two sealed bid proposals were received. The base bid pricing varies between 2.3% to 2.4% above the Engineer's Estimate; and

WHEREAS, one bid protest from Galaxy Construction Services, Inc. was filed with the City within five (5) days of the bid opening; and

WHEREAS, the bid protest from Galaxy Construction Services, Inc. was deemed meritless and notice of intent to reject the bid protest was delivered to Galaxy Construction Services, Inc. ("Notice"); and

WHEREAS, the lowest responsible bidder submitting a responsive bid is A&B Mechanical, Inc., in the base bid amount of \$127,900; and

WHEREAS, sufficient funds are available in the Project budget to award the base bid item under A&B Mechanical, Inc. bid in the amounts of \$127,900; and

WHEREAS, staff recommends the City Council approve the Project plans and specifications; and

WHEREAS, staff recommends the City Council reject the bid protest from Galaxy Construction Services, Inc., as meritless for the reason specified in the Notice, and award a construction contract for the Base Bid items to A&B Mechanical, Inc., the lowest responsible bidder submitting a responsive bid for the Project, and authorize the City Manager to execute a contract in the amount of \$127,900 in accordance with State law; and

WHEREAS, staff recommends the City Council authorize the Public Works Director to negotiate and execute change order(s) in an amount not to exceed \$25,600; twenty percent (20%) of the total contract value, due to the Project's tight completion schedule and staff's capability to respond swiftly to unanticipated construction conditions to limit potential claims or risk to the City; and

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves the Project Plans and Specifications.
3. The City Council hereby rejects the bid protest from Galaxy Construction Services, Inc. as meritless for the reasons specified in the Notice.
4. The City Council hereby awards the construction contract to and authorizes the City Manager to execute the contract and related documents with the lowest responsible bidder submitting a responsive bid, A&B Mechanical, Inc., in the amount of \$127,900 for the Project.
5. The Public Works Director is hereby authorized to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$25,600 for the Project.

PASSED AND ADOPTED this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

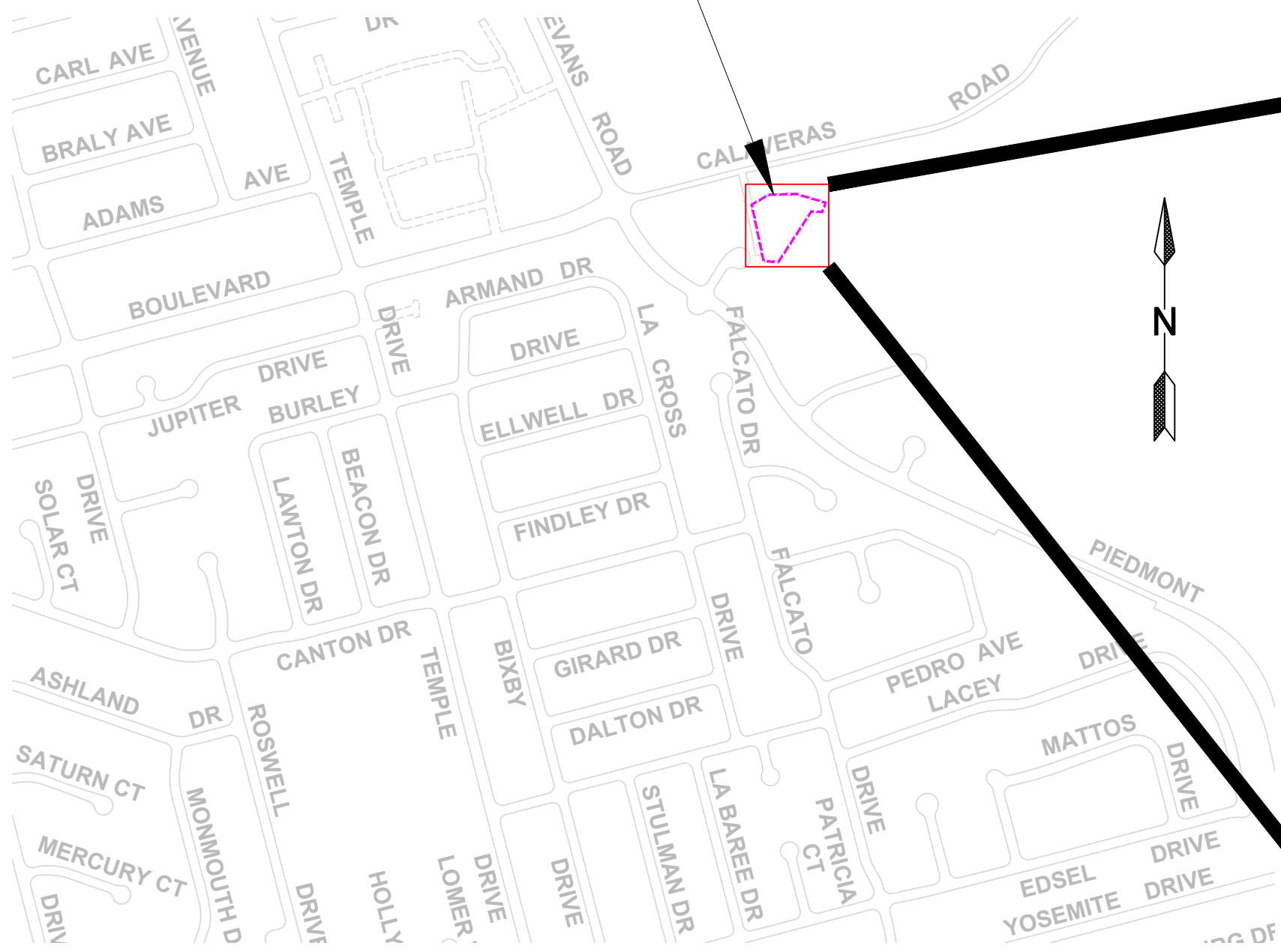
APPROVED AS TO FORM:

Michael Multalipassi, City Attorney

ALVISO ADOBE BUILDING HVAC INSTALLATION

CITY OF MILPITAS
2087 ALVISO ADOBE CT.
MILPITAS, CA 95035

PROJECT SITE



VICINITY MAP



ALVISO ADOBE BUILDING

Designer Stamp	Record Drawings		Revisions				CITY OF MILPITAS ENGINEERING DIVISION		PROJECT NO. 5055
	Drawn By: <u>JA</u> Date: <u>11/27/23</u>		Description				ALVISO ADOBE BUILDING HVAC INSTALLATION		Rec. Dwg No. G1
	Checked By: <u>AW</u> Date: <u>11/27/23</u>		Engr. Aprv.				COVER SHEET		SCALE: N.T.S.
	Designed By: <u>JA</u> Date: <u>11/27/23</u>		Date				RECOMMENDED FOR BIDDING BY: <u>Michael Silveira</u> DATE: <u>12/7/23</u>		RECOMMENDED FOR APPROVAL FOR BIDDING BY: <u>Matt Cano</u> DATE: <u>12/11/2023</u>
	Public Improvements Initially Accepted by the City Council on _____ Res. No. _____						Michael Silveira, P.E., CIP Manager		Matt Cano, P.E., Interim City Engineer



CITY OF MILPITAS
ENGINEERING DIVISION
BID SUMMARY

Project Name: Alviso Adobe HVAC Installation
Project No. : 5055
Bid Date: January 30, 2024 @ 2:00PM

		Apparent Low Bidder	
<u>BASE BID</u>	Engineer's Estimate	A&B Mechancial, Inc.	Galaxy Construction Services, Inc.
Total Bid Price	\$125,000.00	\$127,900.00	\$128,000.00

List of Sub-Contractors:

Description	A&B Mechancial, Inc.	Galaxy Construction Services, Inc.
Concrete	Cortez Bros Concrete Construction, Inc.	
Plumbing		EPS
Electrical		Electrical Source
Balancing		MTB

GALAXY CONSTRUCTION SERVICES INC.

3330 Vincent road, Suite "D"
Pleasant Hill, CA 94523
Office: (925)262-9154
State License #791356
Email: office@galaxysinc.com

To:

Andy Wong, P.E.
Associate Civil Engineer,
City of Milpitas

Date: 02/01/2024

Bid Protest

Galaxy Construction Services, Inc a Bidder of Alvico Adobe Building HVAC Installation project.

The Bid Was on Tuesday January 30, 2024

Hereby the low bidder is A&B Mechanical, Inc. I Request the bid proposal be rejected as non-responsive.

The protest is based on:

According to Project Specification, Section 002113 Instructions to bidders Notice # 9: Bidder shall listed all subcontractors with work amount in excess of 0.5% of a total bid price, and shall indicate the portion of the work to be done by such subcontractor in accordance with Public Contract Code Section 4104.

A&B Mechanical did not listed four trades such as: Electrical, Framing, Plumbing, Balancing. All four listed above trades cost much more then \$ 640(0.5% of \$127,900) each.

Per Specification each bidder shell hold current license classifications B or C20.

A&B Mechanical, Inc per CSLB information (see attached) license currently associated only with classification C38, classification C20 no longer associated with this license 740508.

Submitted by:

Michael Abramovich CEO

Contractor's License Detail (Personnel List)

Contractor License # 740508
Contractor Name A & B MECHANICAL INC

Click on the person's name to see a more detailed page of information on that person

Licenses Currently Associated With

Name GREGORY STUART BYRKIT
Title RMO / CEO / PRES
Association Date 09/17/1997
Classification C38
Additional Classification There are additional classifications that can be viewed by selecting this link.
Name DEBORAH GAIL BYRKIT
Title OFFICER
Association Date 10/19/2001

Licenses No Longer Associated With

Name JAMES ALAN CROWSON
Title RMO
Association Date 09/17/1997
Disassociation Date 01/12/1998
Classification C20
Name ROBERT FELIX ALDERETE
Title OFFICER
Association Date 09/17/1997
Disassociation Date 10/19/2001

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CONTRACTORS STATE LICENSE BOARD

Contractor's License Detail for License # 740508

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- ▶ CSLB complaint disclosure is restricted by law (E&P 7124-e). If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed (P&P 7071-17).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 1/31/2024 2:32:55 PM

Business Information

A & B MECHANICAL INC
24179 PARK STREET
HAYWARD, CA 94544
Business Phone Number: (510) 264-5800

Entity Corporation
Issue Date 09/17/1997
Expire Date 09/30/2025

License Status

This license is current and active.

All information below should be reviewed.

Classifications

- ▶ C38 - REFRIGERATION
- ▶ C20 - WARM-AIR HEATING, VENTILATING AND AIR-CONDITIONING
- ▶ C-4 - BOILER, HOT WATER HEATING AND STEAM FITTING

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with AMERICAN CONTRACTORS INDEMNITY COMPANY.

Bond Number: 10186852
Bond Amount: \$25,000
Effective Date: 01/01/2023

[Contractor's Bond History](#)

Bond of Qualifying Individual

The qualifying individual GREGORY STUART BYRKIT certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.

Effective Date: 03/02/2006

[BQI's Bond History](#)

Workers' Compensation

This license has workers compensation insurance with the GREAT AMERICAN ALLIANCE INSURANCE COMPANY

Policy Number: WCE66167401
Effective Date: 07/01/2023
Expire Date: 07/01/2024

[Workers' Compensation History](#)



2252 Railroad Ave, Livermore Ca 94550 Office: 510-264-5800 Fax: 510-264-5806
bnewby@abmechanical.com

DATE: 2-7-2024

Re: Alviso Adobe Building HVAC Installation – Project 5055; Bid Protest Response

Via Email To:

City of Milpitas-Engineering

Dear Andy Wong, P.E.
Associate Civil Engineer

awong@milpitas.gov

Hello Mr. Wong,

After review of the attached bid protest from Galaxy Construction Services, Inc.'s bid protest I see why they mistakenly thought our C20 license was not valid.

1. Attached below in Exhibit A you'll find the CSLB search result for A & B Mechanical, Inc. that clearly shows the valid licenses that we hold. C20 C4 and C38 and expires on 9/30/2025. This page was actually submitted with their protest. Then they selected the "personnel list" tab located at the bottom of that page. This page was also submitted by Galaxy in their protest as it's the page they circled the "Licenses No Longer Associated With" that list an old RMO that left the company in 1998.

What Galaxy failed to do is take it one step further and select the name directly above on that same page "Gregory Stuart Byrkit" who is the past and current founder and CEO of our company.

"Exhibit B" Shows this page labeled "Contractor's License Personnel Detail" where you'll see Gregory Stuart Byrkit is the RMO on all three of our licenses and all current and valid.

2. Regarding the not listing of the four trades. The page 17 of the specs states "Bidder shall list each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price or \$10,000, whichever is greater" which you'll see below in "Exhibit C" This limit is per trade not total of all trades.

3. A & B Mechanical, Inc. is also a union company that is signatory to several trade unions and under our C20 license is allowed to self-perform these trades. This is our intent except the carpentry that will be very minor work.

We appreciate your consideration.

Sincerely,

Debbie Byrkit, President

cc: Michael Silveira, P.E., Public Works – Engineering Division Manager Lyhak Eam, P.E., Principal Civil Engineer

"EXHIBIT A"



CONTRACTORS STATE LICENSE BOARD

Contractor's License Detail for License #
740508

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- ▶ CSLB complaint disclosure is restricted by law (B&P 7124.6). If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click here for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed (B&P 7071.17).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 2/7/2024 8:20:23 AM

Business Information

A & B MECHANICAL INC
24179 PARK STREET
HAYWARD, CA 94544
Business Phone Number: (510) 264-5800

Entity Corporation
Issue Date 09/17/1997
Expire Date 09/30/2025

License Status

This license is current and active.

All information below should be reviewed.

Classifications

- ▶ C38 - REFRIGERATION
- ▶ C20 - WARM-AIR HEATING, VENTILATING AND AIR-CONDITIONING
- ▶ C-4 - BOILER, HOT WATER HEATING AND STEAM FITTING

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with AMERICAN CONTRACTORS INDEMNITY COMPANY.

Bond Number: 10108852
Bond Amount: \$25,000
Effective Date: 01/01/2023
Contractor's Bond History

Bond of Qualifying Individual

The qualifying individual GREGORY STUART BYRKIT certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.

Effective Date: 03/02/2006
BQI's Bond History

Workers' Compensation

This license has workers compensation insurance with the GREAT AMERICAN ALLIANCE INSURANCE COMPANY
Policy Number: WCE86167401
Effective Date: 07/01/2023
Expire Date: 07/01/2024
Workers' Compensation History

"EXHIBIT B"

[Home](#) | [Online Services](#) | [License Detail](#) | [Personnel List](#) | [Personnel Detail](#)

▼ Contractor's License Personnel Detail

Contractor
License # 740508
Contractor
Name A & B MECHANICAL INC
Name GREGORY STUART BYRKIT

Title and Class History

Title	CEO / PRESIDENT
Classification	
Association Date	09/17/1997
Disassociation Date	01/07/1998
Title	RMO / CEO / PRES
Classification	C38 REFRIGERATION
Association Date	01/07/1998
Title	RMO / CEO / PRES
Classification	C20 WARM-AIR HEATING, VENTILATING AND AIR-CONDITIONING
Association Date	04/17/1998
Title	RMO / CEO / PRES
Classification	HIC HOME IMPROVEMENT CERTIFICATION
Association Date	10/12/1999
Disassociation Date	01/01/2004
Title	RMO / CEO / PRES
Classification	C-4 BOILER, HOT WATER HEATING AND STEAM FITTING
Association Date	03/02/2006

Bonding History

Effective Date	03/02/2006
Effective Date	04/17/1998
Cancellation Date	03/02/2006
Effective Date	01/07/1998
Cancellation Date	04/17/1998

"EXHIBIT C"

1.3 List of Subcontractors

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the Public Contract Code of the State of California and any amendments thereof, Bidder shall set forth below: (a) the name and the location of the place of business, (b) the California contractor license number, (c) the DIR public works contractor registration number unless exempt pursuant to Labor Code Sections 1725.5 and 1771.1, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the work or improvement to be performed under this Contract in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Bidder shall list each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount in excess of **one-half of one percent (0.5%) of the Bidder's Total Bid Price or \$10,000, whichever is greater.** No additional time shall be granted to provide the below requested information.

If a Bidder fails to specify a subcontractor or if a contractor specifies more than one subcontractor for the same portion of work, then the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself.

As stated in the Instructions to Bidders, Bidder is required to complete at least 50% of the contract value with its own forces. Bidder shall indicate the value of each subcontractor's work and the sum may not exceed the allowable amount.



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE: 408-586-3000, FAX: 408-586-3056, www.milpitas.gov

February 16, 2024

Via Certified U.S. Mail and E-mail

Galaxy Construction Services, Inc.
c/o Michael Abramovich, CEO
330 Vincent Road, Suite D
Pleasant Hill, CA 94523
office@galaxysinc.com

**Re: Notice of Intent to Reject Bid Protest by Galaxy Construction Services, Inc.
Alviso Adobe Building HVAC Installation, City of Milpitas Project No. 5055**

Dear Michael Abramovich:

The City of Milpitas ("City") has reviewed the bid protest letter dated February 1, 2024 ("Protest") you sent on behalf of Galaxy Construction Services, Inc. ("Galaxy") related to the Alviso Adobe Building HVAC Installation, City of Milpitas Project No. 5055 ("Project"). The City has also reviewed, among other things, the bid protest letter response dated February 7, 2024 from A & B Mechanical, Inc. ("A & B"). The City has also received confirmation from the California Contractors State License Board ("CSLB") that A & B's associated C20 license is presently valid and allows the licensee to perform all trades pertinent to HVAC Installation, including tasks of other trades incidental to those primary services.

In conformity with Milpitas Municipal Code section I-2-3.19, the City is providing you with this written response to your Protest. While the City thanks you for your interest in doing business, and reminds you that there will be future projects that you may wish to bid on, the City's Purchasing Agent has determined that your Protest is without substantive merit and should be rejected. The alleged errors in A & B's bid either are not errors at all or are at most immaterial deviations that do not amount to material mistakes justifying rejection of the bid as nonresponsive. Moreover, Galaxy does not factually support its protest with information that would justify a contrary finding in light of the response provided by A & B. Indeed, in some instances, the very information relied upon by Galaxy shows that the errors alleged do not exist.

State law directs the City to award public work contracts to the lowest responsive and responsible bidder after notice. (Pub. Contract Code, § 20162.) The Protest acknowledges that A & B is the lowest bidder after notice and does not dispute that A & B is a responsible bidder. While the Protest does contend that A & B's bid is "non-responsive," the two grounds stated for this assertion are unsubstantiated. Each ground stated in the Protest will be addressed in turn.

1. Galaxy Does Not Substantiate Its Assertion that A & B Lacks a C20 License

In its Protest, Galaxy first asserts that the Project Specifications state that bidders shall hold a current “B or C20” license. Galaxy asserts that printouts from the CSLB attached to the Protest show that A & B has only a C38 license, not a C20 license.

First, the Contract Documents and Specifications for the Project (“Project Specifications”) actually states as follows:

Unless otherwise provided in the Instructions for Bidders, each Bidder shall be a licensed contractor pursuant to section 7000 et seq. of the Business and Professions Code in the following classification(s) through the time it submits its Bid and for the duration of the contract: **Class A or Class C-20** from the Contractor’s State License Board.

(Project Specifications, p. 2 [emphasis in original].) A & B in its bid stated that it possesses Class C4, C20, and C38 licenses associated to its business, CSLB No. 740508. The last page of the printout from the CSLB website attached to the Protest similarly states and confirms that A & B has “current and active” licenses associated in the following classifications: C4, C20, C38.

Galaxy’s confusion seems to come from a mistaken reading of a printout of the Personnel List associated to this license on the CSLB website, which Galaxy attached with circles and highlights to the Protest. That associated Personnel List shows Gregory Stuart Byrkit, A & B’s CEO, as having a C38 license. That Personnel List also shows a former associate, James Alan Crowson, as having a C20 license but having disassociated from A & B on January 12, 1998. From this information, Galaxy erroneously arrives at the conclusion that no C20 license is currently associated with A & B.

To the contrary, Galaxy omits the fact that in the Personnel List immediately under the notation for Gregory Stuart Byrkit’s C38 license, there is a notation that “[t]here are additional classifications that can be viewed by selecting this link.” On the CSLB website that this printout comes from, the hyperlink associated to that notation takes a viewer to the Contractor’s License Personnel Detail for Mr. Byrkit associated to A & B’s CSLB No. 740508. That Personnel Detail page shows that his C20 license is valid and has been associated to this business since April 17, 1998. A true and correct copy of this Contractor’s License Personnel Detail for A & B and Mr. Byrkit is attached hereto. Thus, there appears to be no factual basis for this ground of Galaxy’s Protest. The very records Galaxy relies upon for making its Protest show that a presently valid C20 license has been associated to A & B through Mr. Byrkit for the better part of three decades.

A & B for its part responds consistently with the same publicly available information and confirms that it currently holds associated C4, C20, and C38 licenses.

In light of this information, this ground of Galaxy’s Protest is meritless and should be rejected.

2. Galaxy Does Not Substantiate Its Assertion that A & B Failed to List Subcontractors

Galaxy’s second and final ground for protest is that A & B allegedly failed to list in its bid subcontractors performing work in excess of 0.5% of its total bid price in conformity with Public

Contract Code section 4104 and pages 6 and 17 of the Project Specifications. In its Protest, Galaxy specifically contends that A & B failed to list subcontractors in four trades: electrical, framing, plumbing, and balancing. In its bid, A & B listed only one subcontractor for concrete work.

A & B's response to this ground of the Protest is simple and straightforward: A & B states that it intends to self-perform the work in these trades under its C20 license. The Project Specifications state that if a bidder does not specify a subcontractor, then it "shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself." (Project Specifications, pp. 6, 17.) A & B has therefore confirmed for a second time in writing what it already represented in its bid response. The City has also contacted the CSLB and received confirmation that a C20 license allows work in these trades incident to the installation of HVAC. Moreover, Galaxy mistakenly asserts that the failure to list subcontractors renders A & B's bid non-responsive. To the contrary, by operation of law, the consequence of not listing otherwise required subcontractors merely means that A & B must self-perform this work. (See Pub. Contract Code, § 4106.) A & B has confirmed in writing twice it is willing and able to do this work. Galaxy has failed to present any reason or evidence to question A & B's representations concerning the work it will self-perform. Because this ground for protest is unsupported, it should be rejected.

Again, the City thanks you for your interest in the Project and reminds you that there will be other projects in the future. As the Protest is without substantive merit, staff intends at the City Council meeting on March 5, 2024 to recommend rejection of the Protest and award of the Project contract to the lowest responsive and responsible bidder, A & B Mechanical, Inc.

Sincerely,

DocuSigned by:

859A4A9437F24A0...
Saradia Lehtinen
Purchasing Agent

cc: Michael Silveira, Public Works – Engineering Division Manager
Lyhak Eam, Principal Civil Engineer
Andy Wong, Associate Civil Engineer
Michael Mutalipassi, City Attorney
Debbie Byrkit, President A & B Mechanical, Inc.
enc: CSLB Contractor's License Personnel Detail for Gregory Stuart Byrkit

[Home](#) | [Online Services](#) | [License Detail](#) | [Personnel List](#) | Personnel Detail

Contractor's License Personnel Detail

Contractor License #	740508
Contractor Name	A & B MECHANICAL INC
Name	GREGORY STUART BYRKIT

Title and Class History

Title	CEO / PRESIDENT
Classification	
Association Date	09/17/1997
Disassociation Date	01/07/1998
Title	RMO / CEO / PRES
Classification	C38 REFRIGERATION
Association Date	01/07/1998
Title	RMO / CEO / PRES
Classification	C20 WARM-AIR HEATING, VENTILATING AND AIR-CONDITIONING
Association Date	04/17/1998
Title	RMO / CEO / PRES
Classification	HIC HOME IMPROVEMENT CERTIFICATION
Association Date	10/12/1999
Disassociation Date	01/01/2004
Title	RMO / CEO / PRES
Classification	C-4 BOILER, HOT WATER HEATING AND STEAM FITTING
Association Date	03/02/2006

Bonding History

Effective Date	03/02/2006
Effective Date	04/17/1998
Cancellation Date	03/02/2006
Effective Date	01/07/1998
Cancellation Date	04/17/1998

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Construction Change Order Policy for Alviso Adobe HVAC Installation, Project No. 5055.

2021 City Council Approved Construction Change Order Policy

<u>Construction Award Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
Less than \$100,000	\$10,000	\$15,000
Over \$100,000	10% of Award or \$20,000 whichever is less	15% of Award or \$40,000 whichever is smaller

Alviso Adobe HVAC Installation Project Change Order Policy

<u>Construction Award Award Amount</u>	<u>Individual Administrative Change Order Authority</u>	<u>Cumulative Change Order Authority</u>
\$127,900	N/A	\$25,600



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	2024 Weed Abatement Public Hearing and Resolution Adoption to Abate the Weeds (Staff Contact: Arthur Belton, Deputy Fire Chief/Fire Marshal, 408-586-3384)
Category:	Public Hearings-Public Safety
Meeting Date:	3/5/2024
Recommendation:	Conduct a public hearing and adopt a resolution directing the County of Santa Clara Consumer and Environmental Protection Agency- Weed Abatement Program to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code

BACKGROUND:

Fire risk in California with regards to climate has been steadily increasing each wildfire season. Much of the loss to property and life is attributed to areas known as Wildland Urban Interface (WUI) where housing development has been integrated into traditionally open land space, but some notable fire storms have not been limited to only WUI, resulting in rapid fire spread within fully developed city landscapes. Three factors that contribute to wildfire behavior and spread are weather, topography and fuel load. Of these factors, fuel load is the one that can be engaged proactively to reduce the risk of fire initiation and spread. As a result, community fire prevention efforts focus on factors such as fuel reduction and defensible space. Weeds are significant contributors to initial and escalating fire growth. Categorized as light, flashy fuels, they are an easily ignitable fuel source that burns rapidly, increasing fire risk both in frequency and size. For many years Milpitas has been successful in reducing the fire risk of these light, flashy fuels through a weed abatement program.

On February 2, 1976, an Agreement was established and approved to abate weeds by the County of Santa Clara for the City of Milpitas. On June 21, 2022, City Council approved an amended and restated agreement, authorizing the City Manager to execute and sign the updated agreement. The purpose of the Agreement is to promote the efficiency and economy of operations in the abatement of weeds by the City and the County. The major procedural functions to be performed by the County and / or City shall include but not limited to:

1. The County shall prepare the list of parcels requiring abatement of weeds in the City and transmit the said list to the City for review and approval for processing.
2. The County shall prepare the notice of weed abatement and cause such notice to be mailed to the owners of the parcels requiring weed abatement.
3. The City Council shall conduct public hearings on the proposed removal of weeds pursuant to the provisions of the City Ordinance when the City Fire Marshal presents such appropriate resolutions for adoption. The City Council may by resolution declare the weeds on the respective parcels of the land as nuisance and make the determination to proceed with the abatement of weeds and authorize the performance of the service to remove the weeds in accordance with the aforementioned Agreement.
4. Upon proper authorization by the City, the County shall remove the weeds on the designated properties.
5. The County shall render to the City an itemized assessment report for the cost of the weed abatement services performed per the respective parcels.
6. The City Council, after a public hearing, shall require the County Assessor's Office to include the costs of the weed abatement services performed for the City for the current year, as a special assessment on

bills for taxes levied against the affected parcels. Such special assessments shall be liens on the respective properties.

7. Pursuant to California Health and Safety Code 14915, a copy of the report, as confirmed, shall be turned over to the auditor of the county, on or before the tenth day of August following such confirmation, and the auditor shall enter the amounts of the assessments against the respective parcels of land as they appear on the current assessment roll, (Amended by Stats. 1939, Ch. 354).

ANALYSIS:

On February 6, 2024, the City Council adopted Resolution No. 9295 declaring weeds on certain described properties to be a public nuisance, and to set a public hearing for March 5, 2024. A copy of the resolution was forwarded to the County of Santa Clara Consumer and Environmental Protection Agency- Weed Abatement Program (County). A notice for the public hearing was sent by the City Clerk's Office to the local newspaper for publication. Additionally, the notice was mailed to owners of the properties proposed for abatement by the City of Milpitas and the County. The purpose of the public hearing is for the parcel owners who object to the removal of the weeds to state their objections before the weeds are removed and the costs made as a lien upon the property. A list of properties to be abated is included in the City Council's agenda packet along with a resolution directing the County to abate the weeds.

POLICY ALTERNATIVE(S):

Alternative 1: Not adopt a resolution

Pros: None

Cons: This would reverse a long-standing agreement with Santa Clara County to provide weed abatement service within the City of Milpitas

Reason for Not Recommending: Without a resolution, property owners will not be notified and weed abatement will not be conducted. Weeds covered under this program, classified as "light flashy fuels" are prone to easy ignition and contribute significantly to rapid fire growth. Left unmitigated, these weeds pose a significant public safety issue in terms of fire potential.

FISCAL IMPACT:

At a City Council meeting prior to August 10th of each year during a public hearing, the City's municipal code provides that the City Council hear the assessment report for the list of weeds abated within the City, together with any objections of the property owners liable to be assessed, and to make such modifications on the proposed assessment as it deems necessary. Following adoption by the City Council, the resolution will be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes.

California Environmental Quality Act (CEQA):

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION:

1. Open the Public Hearing and close following public comments.
2. Adopt a resolution directing the County of Santa Clara Consumer and Environmental Protection Agency- Weed Abatement Program to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

Attachment(s):

Council Resolution 9295 with Exhibit A - 2024 Weed Abatement Program Commencement Report (74 parcels)

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO CONTRACT WITH THE OFFICE OF SANTA CLARA COUNTY CONSUMER AND ENVIRONMENTAL PROTECTION AGENCY – WEED ABATEMENT PROGRAM TO ABATE WEEDS AND/OR CAUSE THE REMOVAL OF RUBBISH, REFUSE OR DIRT DECLARED TO BE A PUBLIC NUISANCE, TO KEEP AN ACCOUNT OF THE COSTS OF ABATING SUCH NUISANCE, AND TO FILE SUCH ACCOUNT IN A REPORT AND ASSESSMENT LIST WITH THE CITY COUNCIL

WHEREAS, the City Council of the City of Milpitas adopted Resolution No. 9215 on February 6, 2024, declaring weeds and/or the accumulation of rubbish, refuse or dirt on the properties listed on the annual list attached hereto as **Exhibit A** to be a public nuisance and setting a public hearing in accordance with Title V, Chapter 202 of the Milpitas Municipal Code; and

WHEREAS, a public hearing was duly noticed as required by law and such hearing was held on March 5, 2024, to hear public comments and consider any objections to the proposed removal of the weeds, rubbish, refuse and/or dirt; and

WHEREAS, the City Council duly considered and overruled any objections to the proposed nuisance abatement by the Office of Santa Clara County Consumer and Environmental Protection Agency – Weed Abatement Program.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is hereby ordered and authorized to contract with the Office of Santa Clara County Consumer and Environmental Protection Agency – Weed Abatement Program to abate such public nuisances existing on those properties included on the attached **Exhibit A**. The Office of Santa Clara County Consumer and Environmental Protection Agency – Weed Abatement Program shall keep an account of the cost of abatement on each listed parcel and submit to the City Clerk, for confirmation by the City Council, an itemized written report showing such costs to be assessed on the listed properties as provided for in the Milpitas Municipal Code, Sections V-202-7.00 through V-202-10.00.

PASSED AND ADOPTED this 5th day of March, 2024, 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

2024 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
CITY OF MILPITAS

EXHIBIT A

Situs					APN
636	N	ABEL	ST		022-06-010
7280		MARYLINN	DR		022-07-007
549	N	ABEL	ST		022-09-028
99	S	MAIN	ST		022-24-017
111	S	MAIN	ST		022-24-040
1735		CALIFORNIA	CR		022-37-002
1301		CALIFORNIA	CR		022-38-002
81		DIXON	RD		026-05-021
		DIXON	RD		026-05-023
1882	N	MILPITAS	BL		026-05-024
51		DIXON	RD		026-05-053
		DIXON	RD		026-06-012
1720		ARIZONA	AV		026-07-016
1840		ARIZONA	AV		026-07-051
1640		ARIZONA	AV		026-11-067
		BOTHELO	LN		028-23-017
		RAILROAD	AVE		028-24-006
1390		EL CAMINO HIGUERA			029-02-007
1327		CALLE ORIENTE			029-05-010
1301		CALLE ORIENTE			029-05-012
876		EVANS	RD		029-06-003
666		EVANS	RD		029-06-008
826		CALAVERAS RIDGE	DR		029-06-031
894		CALAVERAS RIDGE	DR		029-06-038
322		PARK VICTORIA	DR		029-16-006
1220		COUNTRY CLUB	DR		029-52-014
1039		CAMARILLO	CT		029-52-015
673		QUINCE	LN		029-59-014
517		VISTA RIDGE	DR		042-30-009
519		VISTA RIDGE	DR		042-30-010
1365		PLATT	AV		042-30-015
410		VISTA RIDGE	DR		042-30-024
350		VISTA RIDGE	DR		042-30-025
531		VISTA RIDGE	DR		042-30-029
		SERRA	WY		083-06-006
		MAIN	ST		083-07-015
540	S	ABEL	ST		083-13-013
91		MONTAGUE	EX		083-42-002
717		FOLSOM	CL		086-25-018
		MAIN	ST		086-25-028
		HAMMOND	WY		086-25-030

		HAMMOND	WY	086-25-032
808	S	MAIN	ST	086-25-051
		BOTHELO	AVE	086-26-039
		HAMMOND	WY	086-26-040
		HAMMOND	WY	086-26-042
		MILPITAS	BL	086-28-006
		VISTA	WY	086-29-005
		WRIGLEY	WY	086-29-036
		YOSEMITE	DR	086-29-047
876		YOSEMITE	DR	086-30-047
		YOSEMITE	DR	086-30-048
		AMES	AV	086-30-060
		SINCLAIR FRONTAGE	RD	086-31-003
		MILPITAS	BLVD	086-32-084
1528		CENTRE POINTE	DR	086-33-110
		MONTAGUE	EXPY	086-41-014
1001	S	MILPITAS	BL	086-42-033
		GARDEN	ST	086-94-014
375		DEMPSEY	RD	088-01-002
		DEMPSEY	RD	088-04-060
	S	PARK VICTORIA	DR	088-04-062
		DEMPSEY	RD	088-04-076
534	S	PARK VICTORIA	DR	088-06-039
1459		CANTON	DR	088-09-039
2013		YOSEMITE	DR	088-20-023
575		CARLSBAD	ST	088-20-102
632		CARLSBAD	ST	088-20-125
1791		ROCKY MOUNTAIN	AV	088-23-075
1966		YOSEMITE	DR	088-26-149
		OLD PIEDMONT	RD	092-34-008
1250		PIEDMONT	RD	092-34-014
2235		URIDIAS RANCH	RD	092-37-050