

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
DECLARING ITS INTENTION TO GRANT FRANCHISES TO NITROGEN GAS COMPANIES  
TO INSTALL FACILITIES WITHIN THE CITY OF MIPITAS RIGHT OF WAY**

**WHEREAS**, the City Council on January 8, 1985, approved Ordinance 220 to allow nitrogen gas companies to install facilities within the City of Milpitas, which Ordinance was subsequently amended on May 16, 2000; and

**WHEREAS**, the City Council on March 5, 1985, approved Ordinance 222 to allow Air Products a non-exclusive franchise to install and maintain its facilities including the right for transmission and distribution of nitrogen gas under and across public streets and easements within the City of Milpitas; and

**WHEREAS**, the City Council on March 5, 1985, approved Ordinance 223 to allow Union Carbide (now Praxair) a non-exclusive franchise to install and maintain its facilities including the right for transmission and distribution of nitrogen gas under and across public streets and easements within the City of Milpitas, and subsequently amended that Ordinance on May 16, 2000; and

**WHEREAS**, the agreements with Air Products and Praxair have expired; and

**WHEREAS**, City staff has made proposed ordinance amendments to reflect terms for a new non-exclusive franchise for both Air Products and Praxair; and

**WHEREAS**, City Ordinance and State law require notification of a time and place of a public hearing where objections to the granting of the franchises may be heard and considered by the City Council before adoption of ordinance amendments granting the franchises.

**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 declares its intent to amend the ordinances and grant the franchises for the distribution of nitrogen gas over, under and across City streets and easements upon the terms and conditions described in the notice attached hereto as Exhibit A.
3. A public hearing shall be held on June 4, 2013, at City Council Chambers located at 455 East Calaveras Boulevard., Milpitas CA, as part of the ordinance adoption process. At that time and place all persons having objections to the granting of the franchises may appear and be heard.
4. The City Clerk is directed to publish the notice at least once within fifteen (15) days after

the passage of this Resolution in a newspaper of general circulation within the City of Milpitas.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



## **NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the City Council will hold a public hearing on Tuesday, June 4, 2013, commencing at 7 p.m. in the City of Milpitas Council Chamber, located at, 455 E. Calaveras Blvd., Milpitas, CA 95035, to amend Ordinances related to nitrogen gas franchise and grant Air Products Inc. and Praxair, Inc., each a fifteen year franchise and authorize the City Manager the authority to renew future fifteen year extensions of such franchises.

NOTICE IS FURTHER GIVEN, pursuant to Public Utilities Code Sec. 6233, that incident to such granting of franchises, Air Products Inc. and Praxair, Inc., and their successors and assigns will during the life of said franchises pay to the City of Milpitas the percentage specified in their applications, as reflected in the agreements on file with the City Clerk, which percentage will be paid annually from the date of granting of the franchise, and in the event such payment is not made the franchise will be forfeited.

NOTICE IS FURTHER GIVEN, pursuant to Government Code Sec. 65009, that any challenges of this matter in court may be limited to only those issues raised at the public hearings described in this notice or in written correspondence delivered to the City Council at or prior to these hearings.

Those who wish to comment may attend the public hearing in person or may submit written comments to the City Council prior to the hearing. Written comments may be sent to the Milpitas City Clerk via US mail to 455 E. Calaveras Blvd., Milpitas, CA 95035, delivered to City Hall 3<sup>rd</sup> floor, sent by fax to 408-586-3030 or via e-mail to: [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov).

Mary Lavelle  
City Clerk  
5/7/2013