



**JOINT MEETING OF THE MILPITAS CITY COUNCIL
AND PUBLIC FINANCING AUTHORITY
AGENDA**

TUESDAY, FEBRUARY 17, 2015

**455 EAST CALAVERAS BOULEVARD, MILPITAS, CA
6:00 P.M. (CLOSED SESSION) 7:00 P.M. (PUBLIC BUSINESS)**



SUMMARY OF CONTENTS

- I. CALL TO ORDER by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
 - 1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9
 - a) City of Milpitas’ appeal of City of San Jose’s approval of Planned Development Permit PD14-014, before the City of San Jose Planning Commission
 - b) City of Milpitas’ opposition to proposed Solid Waste Facility Permit for Newby Island, before the Department of Resources Recycling and Recovery (CalRecycle)
 - 2) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Pursuant to California Government Code Section 54956.9
City as defendant
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Giordano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – February 3, 2015**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS February and March 2015**
- VIII. PRESENTATIONS**
 - Certificate of Appreciate to Engineers 4 Tomorrow
 - Presentation of the Milpitas “Artist of the Year”
- IX. PUBLIC FORUM**

Members of the audience are invited to address the Council on any subject not on tonight’s agenda. Speakers must come to the podium, state their name and city of residence for the Clerk’s record, and limit their remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. However, the Council may instruct the City Manager to place the item on a future meeting agenda.

- X. ANNOUNCEMENTS**

- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR (Items with asterisks*)**

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 member of the City Council, 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. If removed, this item will be discussed in the order in which it appears on the agenda.

XIV. PUBLIC HEARING

- 1. Conduct a Public Hearing and Introduce an Ordinance Approving a Development Agreement Vesting and Deferring Transit Area Specific Plan Fees for the Citation I and Citation II Projects, Amalfi I, Amalfi II and the Edge (Staff Contact: Steve McHarris, 408-586-3273)**

XV. UNFINISHED BUSINESS

- 2. Receive the Monthly Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

XVI. REPORTS OF MAYOR AND COMMISSION

- * 3. Consider Mayor's Recommendation of Re-Appointments and Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**
- * 4. Approve Milpitas Art and Culture In-Kind Grants for FY 2014-15 (Staff Contact: Renee Lorentzen, 408-586-3409)**
- 5. Per Recommendation of the Milpitas Arts Commission, Approve the Public Art Electrical Box Painting Project (Staff Contact: Renee Lorentzen, 408-586-3409)**

XVII. NEW BUSINESS

- 6. Receive Oral Report on Current Crime Data for the City of Milpitas (Staff Contact: Steve Pangelinan, 408-586-2426)**

XVIII. RESOLUTIONS

- * 7. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for, Street Resurfacing Project 2015 – Street Cape and Slurry Seal, Projects No. 4275 and No. 3412, and Grant Authorization to the City Engineer to Issue Notice of Final Acceptance after One-Year Warranty Period and Release the Performance Bond (Staff Contact: Steve Chan, 408-586-3324)**
- * 8. Adopt a Resolution Amending the Classification Plan to Eliminate Two Assistant Civil Engineer Positions and Add One Associate Civil Engineer and One Engineering Permit Technician Position Within the Land Development Section of the Engineering Department (Staff Contact: Steven Machida, 408-586-3355)**
- * 9. Adopt a Resolution Amending the Classification Plan to Establish the New Classification of Building Inspection Manager (Staff Contacts: Keyvan Irannejad, 408-586-3244 and Carmen Valdez, 408-586-3086)**

- * 10. **Adopt a Resolution Amending the Classification Plan to Establish New Classification of Marketing Assistant and Eliminate One Program Coordinator Position within the Administration Section of the Recreation Services Department (Staff Contact: Renee Lorentzen, 408-586-3409)**

XIX. AGREEMENTS & BIDS

- * 11. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for the Main Street Pavement Reconstruction, Project No. 4277 (Staff Contact: Steve Erickson, 408-586-3301)**
- * 12. **Approve Amendment No. 1 to the Agreement with Triple HS, Inc. doing business as H.T. Harvey and Associates to Increase Compensation in the Additional Amount of \$21,055 for the Wrigley-Ford and Ford Creek Maintenance Project No. 3700 (Staff Contact: Steve Erickson, 408-586-3301)**
- * 13. **Approve a Consultant Agreement with NBS Government Finance Group and a Budget Appropriation for Updating Annual Engineers Reports for City Lighting Landscape Maintenance Districts in the Amount of \$29,900 (Staff Contact: Steve Erickson, 408-586-3301)**
- * 14. **Approve Amendment No. 2 to the Agreement with Norma Nelson for Part Time Buyer Services in the Not-To-Exceed Amount of \$19,800 (Staff Contact: Emma Karlen, 408-586-3145)**

XX. JOINT MEETING OF CITY COUNCIL AND PUBLIC FINANCING AUTHORITY

FA1. Call to Order/Roll by the Mayor/Chair

FA2. Approval of Agenda/Consent Calendar

***FA3. Adopt Resolutions of City Council and the Public Financing Authority Board Authorizing Investment of Monies in the Local Agency Investment Fund and Updating Officers Information (Staff Contact: Emma Karlen, 408-586-3145)**

FA4. Adjourn Joint Meeting

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 3, 2015**

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 agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the 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: mogaz@ci.milpitas.ca.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.ci.milpitas.ca.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 the City website.

All City Council agendas and related materials can be viewed online here:
www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies on:
Community Advisory Commission
Sister Cities Commission

Commission application forms are available online at www.ci.milpitas.ca.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, call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

AGENDA REPORTS

XIV. PUBLIC HEARING

1. **Conduct a Public Hearing and Introduce an Ordinance Approving a Development Agreement Vesting and Deferring Transit Area Specific Plan Fees for the Citation I and Citation II Projects, Amalfi I, Amalfi II and the Edge (Staff Contact: Steve McHarris, 408-586-3273)**

Background: The Milpitas City Council opened a public hearing on this matter on February 3, 2015 and it was continued to this date, February 17.

City Council adopted Resolution No. 8132 on November 11, 2011 approving the Citation I project. The Citation I project consists of up to 732 dwelling units, public parks, streets and infrastructure improvements located at 1200 Piper Drive within the Transit Area Specific Plan (TASP). Of these 732 units, 638 were allocated to two wrap buildings, which comprise the Amalfi I and Amalfi II development. Amalfi I, consisting of 378 apartment units is currently under construction. Amalfi II consists of 260 apartments, but construction has not commenced for this project. Additionally, 94 townhomes are under construction as part of the Citation I project approvals, but the 94 townhomes will not be a part of the development agreement.

On June 17, 2014, Council adopted Resolution No. 8382 approving the Citation II project. That project consisted of 381 apartments and 8,100 square feet of commercial and office space that fronts Montague Expressway.

The following table summarizes the approved development projects.

Use/Standards	Citation I	Citation II
	Amalfi I and Amalfi II	The Edge
Acres	7.0 acres	5.6 acres
Commercial / Retail s.f.	0	8,100 sq ft
Residential Units	638 apartments	381 apartments
Parking Required	1,207 spaces	634 spaces
Parking Provided	1,260	634 spaces
Residential Density	45 dwelling units per acre	68 dwelling units per acre
Commercial FAR	n/a	0.03

The Planning Commission conducted a public hearing on January 14, 2015 and adopted a resolution by a 4 to 3 vote recommending the City Council approve the proposed Development Agreement between the City of Milpitas and SCS Development Co., Amalfi Milpitas, LLC., and DPD Investments, LLC. The proposed Development Agreement is for a five-year term with the ability of the parties to mutually extend for another five years. The proposed Development Agreement would reduce and vest the Transit Area Specific Plan Development Impact Fees for each residential unit from the current amount of \$32,781 to \$29,012 per unit. Additionally, the Development Agreement will allow the developers to pay the fees at time of issuance of Certificate of Occupancy as opposed to issuance of building permits. The fees would increase after five years if full payment is not received.

The Planning Commission found the proposed Project is consistent with the City of Milpitas General Plan, the TASP and the Zoning Ordinance and recommended approval of the Development Agreement with a 4-3 vote based on findings that the Development Agreement would result in a public benefit to the City of Milpitas because it would prioritize the development of retail and commercial uses that increase revenues to the City. The Commission discussed the responsibilities for public improvements, increases in TASP fees and timing of payments. Ultimately, the Development Agreement would benefit the City by installing

infrastructure to facilitate this development, including retail and commercial mixed-use developments.

Conclusion Based on the analysis described above and in the Planning Commission staff report, the Planning Commission recommended the City Council adopt an ordinance approving the Development Agreement between the City of Milpitas and SCS Development, Inc.

California Environmental Quality Act (CEQA): The proposed development agreement is exempt from the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15061(b)(3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The development agreement will not expand the range or intensity of uses permitted on the subject properties. The development agreement does not authorize any construction and will not result in any physical change in the environment. Therefore, it can be seen with certainty that the project will not have an effect on the environment.

The project is further exempt from environmental review pursuant to CEQA Section 15183(a). The development of Amalfi I, Amalfi II, and the Edge projects was previously analyzed in the Transit Area Specific Plan Environmental Impact Report (SCH 2006032091). The EIR analyzed all impacts associated with the development of these properties and anticipated the intensity of this development. The development agreement does not increase the intensity beyond that previously analyzed in the certified EIR. Further, the projects, as approved under Resolution No. 8132 and 8382 were found to be consistent with the Transit Area Specific Plan. Therefore, the proposed agreement is exempt from CEQA review because it can be seen with certainty, there is no possibility it will have a significant adverse on the environment and the project is consistent with a specific plan for which an EIR was certified.

Fiscal Impact: The Development Agreement would result in a reduction in TASP fees of approximately \$3.8 million. However, the Development Agreement would ensure that the Edge project is constructed prior to Amalfi II building. As a result, the Edge of project would be completed to coincide with the opening of the Milpitas BART Station. The 8,100 square feet of commercial and retail uses in the Edge would provide commercial services to transit riders and increase revenues to the City.

Attachments (part of the agenda packet):

- A) Development Agreement per Ordinance No. 38.819
- B) Exhibit A to Development Agreement
- C) Amalfi I – Legal Description and Plat
- D) Amalfi II – Legal Description and Plat
- E) The Edge – Legal Description and Plat
- F) 01-14-15 Planning Commission Staff Report
- G) 01-14-15 Planning Commission Meeting Minutes
- H) Adopted Planning Commission Resolution 15-003

Recommendations:

1. Re-open the continued public hearing for any additional comments.
2. Move to close the public hearing.
3. Following the City Attorney's reading of the title of Ordinance No. 38.819, move to waive the first reading beyond the title.
4. Introduce Ordinance No. 38.819 in order to approve a development agreement between City of Milpitas and SCS Development Co., Amalfi Milpitas, LLC, and DPD Investments, LLC.

XV. UNFINISHED BUSINESS

2. **Receive the Monthly Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

Background: From December 9, 2014 through January 11, 2015, the Bay Area Air Quality Management District (BAAQMD) received 310 odor complaints originating in Milpitas. 105 complaints identified a garbage odor, 21 complaints identified a sewage odor, 180 complaints did not identify an odor source, and four complaints identified a mixed odor source. As of the last Council update, the City's odor reporting website has received 286 reported complaints. The City Engineer will provide an oral update on the status of activities related to odor at the Council meeting.

Recommendation: Receive an oral update report on odor issues from the City Engineer.

XVI. REPORTS OF MAYOR AND COMMISSION

*** 3. Consider Mayor's Recommendation of Re-Appointments and Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the following appointments:

Arts Commission:

Re-appoint three Commissioners Larry Voellger, Cyd Mathias, and Bob Gill as regular members to terms that expire in October of 2017.

Bicycle Pedestrian Advisory Commission:

Appoint Vice Mayor Montano to serve as the Council liaison to this Commission.

Community Advisory Commission:

Re-appoint Jose Rosario as a regular member to a term that will expire in January 2019.

Recycling and Source Reduction Advisory Commission:

Appoint school district staff Brian Shreve as the MUSD school representative on the RSRAC to a seat (currently vacant) with a term that would expire in October 2015.

Senior Advisory Commission:

Re-appoint Jae Kuk Wi as a regular member to a term that will expire in December 2016.

Telecommunications Commission:

Re-appoint Kurt Bohan as a regular member to a term that will expire in January 2017.

Recommendation: Receive Mayor's recommendations and move to approve re-appointments and appointments to Milpitas Commissions.

*** 4. Approve Milpitas Art and Culture In-Kind Grants for FY 2014-15 (Staff Contact: Renee Lorentzen, 408-586-3409)**

Background: The Milpitas Arts and Culture Grant Program is a competitive grant program offering in-kind support to individuals and organizations hosting cultural or artistic events in the City of Milpitas. In-kind support includes performance space (i.e. Community Center, Senior Center) and City staff support. All grant events are held in Milpitas and are open to the public at either little or no cost.

One application was submitted for Milpitas Arts and Culture Grant Program (MACG) application for the 2014-15 grant cycle from the Filipino American Association of Milpitas, Inc. (Fil-Am). The Milpitas Arts Commission voted to recommend the application for City Council's final approval. The estimated value of the in-kind grant is \$500 - \$2,200.

Fiscal Impact: None.

Recommendation: Approve the Milpitas Arts and Culture Grant awarded to the Fil-Am for in-kind performance space and City staff support.

5. Per Recommendation of the Milpitas Arts Commission, Approve the Public Art Electrical Box Painting Project (Staff Contact: Renee Lorentzen, 408-586-3409)

Background: On March 19, 2013, the City's Public Art Master Plan was approved by the City Council which outlined public art installations and maintenance projects through 2015. The Electrical Box Painting Public Art project is included in the approved FY 2014-15 budget in the amount of \$4,200.

After researching other local cities where Public Art Programs have been completed for utility box painting, Milpitas Arts Commissioners voted unanimously on September 22, 2014 to ask the Milpitas High School Art Department to partner with the Arts Commission on this project. Ms. Irene Hentschke, Milpitas High School Art Department Lead, agreed to the partnership which would have herself, fellow art teacher Jeff Albrecht and twelve students painting twelve City-owned electrical boxes. All artists will receive honorariums of \$200 - \$600 at the completion of the project.

At the November 24, 2014 Arts Commission meeting, participating teachers and students presented their painting sketches for recommendation to City Council for final approval. Commissioners unanimously recommended all twelve sketches. The proposed electrical box locations and their corresponding painting themes are as follows:

1. Jacklin & Escuela SE - Tsunami Wave
2. Jacklin & Milpitas NW – Milpitas Library
3. Jacklin & Hillview SE – Metal Gear Box with Portal
4. Jacklin & Oliver Jones Park SW – Calaveras Hills
5. Yosemite & Dempsey – Cresting Wave
6. Yosemite & Sinclair Frontage – Peach Labels
7. Landess & Yellowstone – Old Ford Truck in wheat fields
8. Calaveras & Gadsden - Egret
9. Calaveras & Park Victoria – Palm trees
10. Dixon Landing & Milpitas Blvd. – Milpitas City Hall
11. Milpitas Blvd. & Beresford Ct. – Ed Levin Lake
12. Milpitas Blvd. & Los Coches – Milpitas Seal with Cornfield

At the January 26, 2015 Arts Commission meeting, Commissioners approved a recommendation for an additional \$1,000 for project supplies (paint, brushes, anti-graffiti treatment, etc.) in addition to the already allocated \$4,200 budget for a total project budget of \$5,200. The painting will begin in the spring of 2015 and are scheduled for completion by the end of the school year.

Fiscal Impact: None. Sufficient funds are available and allotted for this project in the FY 2014-15 budget and Public Art Fund.

Recommendation: Approve the Arts Commission's recommendation for twelve Electrical Box Painting Art project designs at the dozen locations specified throughout the City of Milpitas for a total project budget of \$5,200.

XVII. NEW BUSINESS

6. Receive Oral Report on Current Crime Data for the City of Milpitas (Staff Contact: Steve Pangelinan, 408-586-2426)

Background: Recently, Councilmember Giordano requested a report on crime from the Chief of Police, for the benefit of City Council and residents. She sought current crime statistics for 2014.

Recommendation: At the City Council meeting, receive a report on crime in Milpitas from the Chief of Police.

XVIII. RESOLUTIONS

- * **7. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for, Street Resurfacing Project 2015 – Street Cape and Slurry Seal, Projects No. 4275 and No. 3412, and Grant Authorization to the City Engineer to Issue Notice of Final Acceptance after One-Year Warranty Period and Release the Performance Bond (Staff Contact: Steve Chan, 408-586-3324)**

Background: The City Council awarded the Street Resurfacing Project 2015 – Street Cape and Slurry Seal, Projects No. 4275 and No. 3412 to O’Grady Paving, Inc. on June 17, 2014. The project consists of localized repair of failed asphalt concrete pavement, removal and replacement of asphalt concrete, cape seal, slurry seal, installation of ADA compliant sidewalk ramps, and striping in the Sunnyhills neighborhood. The project was successfully completed on time and within budget. Staff recommends the City Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor’s faithful performance bond to \$340,862, which is 10% of the final contract value. Staff also recommends the City Council authorize the City Engineer to issue the Notice of Final Acceptance and to release the performance bond after the one year warranty period without further City Council action, provided all warranty work is completed to the satisfaction of the City Engineer.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the Street Resurfacing Project 2015 Street Cape and Slurry Seal, Projects No. 4275 and No. 3412, subject to a one-year warranty period, and reduction of the faithful performance bond to \$340,862; and grant authorization to the City Engineer to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further Council action.

- * **8. Adopt a Resolution Amending the Classification Plan to Eliminate Two Assistant Civil Engineer Positions and Add One Associate Civil Engineer and One Engineering Permit Technician Position Within the Land Development Section of the Engineering Department (Staff Contact: Steven Machida, 408-586-3355)**

Background: There is currently an emerging increase in the work load in the Engineering Land Development Section, primarily due to an increase in in-fill development project submittals and associated construction. The complexity of these projects requires the skills of a licensed Engineer to manage the submittals and review process. A higher skilled Engineer will be better able to assist the developments to meet the timelines and deliver a good work product. The Associate Civil Engineer position requires the possession of a valid California Professional Civil Engineer’s license. The Permit Technician will provide technical support in the processing, plan checking and record keeping functions related to the issuance of Engineering/construction, planning, and public works permits; and to screen submitted plans for accuracy and completeness.

There are two vacant funded Assistant Engineer positions in Land Development which can be eliminated. No additional budget will be required to add the Associate Engineer and Engineering Permit Technician positions.

Fiscal Impact: None. Funding for these positions is reimbursable through the private development projects.

Recommendations: Adopt a resolution amending the Classification Plan to eliminate two Assistant Civil Engineer positions and to add one Associate Civil Engineer and One Engineering Permit Technician position within the Land Development Section of the Engineering Department.

- * 9. **Adopt a Resolution Amending the Classification Plan to Establish the New Classification of Building Inspection Manager (Staff Contacts: Keyvan Irannejad, 408-586-3244 and Carmen Valdez, 408-586-3086)**

Background: Amendments to the Classification Plan are periodically required to account for organization changes and equity adjustments to salary ranges and/or other related changes or conditions. In order to be able to attract qualified candidates to meet the City's business needs and to be competitive with comparable neighboring cities, staff recommends creation of a new classification of a Building Inspection Manager in the Building & Safety Department. The Human Resources Department surveyed other local agencies and compared internal classifications and determined that there is a need for the proposed classification of Building Inspection Manager. This newly created classification would oversee all construction inspection activities and assist in plan check activities. The proposed annual salary range of the Building Inspection Manager is \$109,034 - \$132,533. A copy of the newly created job specification is included in the Council agenda packet.

City Council is also asked to authorize filling one vacant Building Inspector position funded by developers. Proposed annual salary range of the Building Inspector is \$ 84,396.26 - \$102,583.76.

Fiscal Impact: None. There are sufficient funds allocated in the Building & Safety Department FY 2014-15 budget.

Recommendations:

1. Adopt a resolution amending the Classification Plan to establish a new classification of a Building Inspection Manager in the Building & Safety Department with an annual salary range of \$109,034 - \$132,533.
2. Authorize funding a vacant Building Inspector position with an annual salary range of \$84,396 - \$102,583.

- * 10. **Adopt a Resolution Amending the Classification Plan to Establish New Classification of Marketing Assistant and Eliminate One Program Coordinator Position within the Administration Section of the Recreation Services Department (Staff Contact: Renee Lorentzen, 408-586-3409)**

Background: The Recreation Services Department offers services to the Milpitas residential and commercial community through a variety of classes, programs, special events and facility rentals for parties, meetings and celebrations. Community participation and subsequent revenue is derived primarily from marketing efforts through print, email and social media. To adequately create and distribute marketing materials for the department, Recreation Services is seeking to add the newly created position of Marketing Assistant to the City's Classification Plan.

A skilled Marketing Assistant will be able to create marketing materials and effectively distribute and inform the public about programs, classes and events. The Marketing position requires experience in the marketing field and proficiency in design software. The position will design and distribute the following for Recreation Services: Recreation Activity Guide (Fall, Spring, Summer), Senior Center Newsletter (bi-monthly), Sports Center Class/Program brochures, all department events, class and program flyers, press releases, e-blasts, manage the social media

page(s) and assist with any other citywide special projects or campaigns. The Marketing Assistant will also seek sponsorships and donations.

The Human Resources Department surveyed local agencies and did an internal comparison for positions that are similar in nature and determined there is a need for a Marketing Assistant in the Recreation Department. The proposed annual salary range of the Marketing Assistant is \$57,495 - \$69,886. A copy of the newly created job specification is included in the City Council Agenda packet for review. There is a vacant funded Program Coordinator position that can be eliminated so no additional budget will be required to add this newly-created classification to the Recreation Services Department.

Fiscal Impact: None. Funding for this position is available in the Recreation Services 2014-15 operating budget.

Recommendations: Adopt a resolution amending the Classification Plan to establish a new classification of a Marketing Assistant in the Recreation Services Department for an annual salary range of \$57,495 - \$69,886.

XIX. AGREEMENTS & BIDS

- * 11. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for the Main Street Pavement Reconstruction, Project No. 4277 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: Plans and specifications have been completed for the Main Street Pavement Reconstruction Project No. 4277. The project provides for the partial reconstruction of South Main Street from Carlo Street to Great Mall Parkway. The work includes the removal and replacement of roadway pavement, installation of new Americans with Disabilities Act (ADA) sidewalk ramps, curb, gutter, sidewalk, and driveway repairs, drainage system improvements, replacement of missing street trees, and modifications to the traffic signal detection system at four intersections along Main Street. An asphalt overlay of Serra Way, Curtis Avenue, and Corning Avenue from South Main Street to Abel Street is also included. The Engineer's Estimate for the project is \$3,600,000. A copy of the title sheet of the project plans is included in the Council's agenda packet, while the complete set of plans and specifications are available for review in the office of the City Engineer.

California Environmental Quality Act: The project is exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines.

Fiscal Impact: None. Sufficient funds are available in the project budget for these services.

Recommendation: Approve plans and specifications for Main Street Pavement Reconstruction Project No. 4277 and authorize advertisement for bid proposals.

- * 12. Approve Amendment No. 1 to the Agreement with Triple HS, Inc. doing business as H.T. Harvey and Associates to Increase Compensation in the Additional Amount of \$21,055 for the Wrigley-Ford and Ford Creek Maintenance Project No. 3700 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On February 19, 2013, the City entered into a consultant agreement with H.T. Harvey and Associates in the amount of \$97,000 to provide ecological monitoring and compliance reporting for state and federal agency permits issued for a City project completed within Wrigley-Ford and Ford Creek in 2012. The agreement is from February 19, 2013 to February 19, 2023. The City project provided debris, vegetation, and sediment removal to restore the creek channel and improve conveyance capacity. Permits were issued by the Regional Water Quality Control Board (RWQCB), U.S. Department of the Army Corps of Engineers (ACOE),

and Department of Fish & Game, and require ongoing ecological monitoring, compliance reporting, and maintenance of native plant species for a ten year period within the limits of the City's project.

The mid-December 2014 storms caused considerable erosion damaged to the reach of the creek within the City's project limits, and the City is now required by permit to make repairs. Staff recommends using H.T. Harvey and Associates to provide the additional design and construction support services required for the repairs to the creek channel, and to devise a strategy for controlling the establishments of the Giant Reed, which is a non-native species that is prospering within the creek area.

Amendment No.1 with H.T. Harvey is proposed for these additional services. Staff negotiated a fee for these services not to exceed \$21,055. Approval of this amendment to the agreement brings the total agreement amount to \$118,055.

Fiscal Impact: None. Sufficient funds are available in the project budget.

Recommendation: Approve Amendment No. 1 to the consultant agreement with Triple HS, Inc. doing business as H.T. Harvey and Associates for Project No. 3700 and increase the agreement amount by \$21,055.

- * 13. **Approve a Consultant Agreement with NBS Government Finance Group and a Budget Appropriation for Updating the Annual Engineer's Reports for City Lighting Landscape Maintenance Districts in the Amount of \$29,900 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The City administers two Landscaping and Lighting Maintenance Assessment Districts (LLMD) that improve and maintain public landscaping, irrigation, and pedestrian lighting within certain areas of the City. District No. 95-1 is located along McCarthy Boulevard from State Route 237 north to Dixon Landing Road including portions of Ranch Drive. District 98-1 is located along portions of Los Coches Street from Hillview Drive to Sinclair Frontage Road including portions of the landscaped trail adjacent to Berryessa Creek.

The City is required to prepare annual engineers reports which verify changes in district parcel boundaries, evaluate maintenance and improvement costs and budgets, and compute proposed assessment rates for property tax bills for properties within the district boundary. The format and content of the engineers report is guided by the requirements of State law. It has been fifteen years since the City's engineer's reports and LLMD administration practices have been thoroughly reviewed and updated.

Through the City's consultant selection process, the firm of NBS Government Financial has been selected to provide the assistance in updating the engineer's reports. Staff negotiated a scope and fee with NBS for the updated reports in the amount of \$29,900.

Fiscal Impact: A budget appropriation is requested in the amount of \$29,900 from LLMD Funds to the Engineering Department to cover the expenses associated with the contract with NBS for updates to the two annual engineer's reports.

Recommendations:

1. Approve consultant agreement with NBS Government Finance Group in the not-to-exceed amount of \$29,900, and for a term from February 17, 2015 to February 18, 2016 for updates to the annual Lighting Landscape Maintenance Assessment District Engineer's Reports.
2. Approve a budget appropriation in the amount of \$29,900 from the LLMD Funds 235 and 236 to the Engineering Budget.

- * 14. **Approve Amendment No. 2 to the Agreement with Norma Nelson for Part Time Buyer Services in the Not-To-Exceed Amount of \$19,800 (Staff Contact: Emma Karlen, 408-586-3145)**

Background: On August 6, 2014, the City entered in to an agreement with Norma Nelson to provide contractual services as a part time Buyer in the amount of \$19,965.00 for the period August 6, 2014 to December 5, 2014. On December 2, 2014, the parties entered into Amendment No. 1 to extend the agreement to February 27, 2015 and increased the compensation by \$14,300. The Finance Department is in the process of recruiting and hiring a full time buyer, but has so far not been able to find a qualified candidate necessitating the extension of the recruitment period. During the recruitment period, additional services are needed to assist the Purchasing Agent to fulfill the purchasing function Citywide. Staff recommends extending the contract with Norma Nelson to June 30, 2015 for the not to exceed amount of \$19,800 bringing the total amount of the contract to \$54,065.

Fiscal Impact: \$19,800. Funds for this purchase are available from the Finance Department operating budget.

Recommendation: Approve Amendment No. 2 to the agreement with Norma Nelson for services as a Buyer for the City in the not-to-exceed amount of \$19,800 00 for the period from February 27, 2015 to June 30, 2015.

XX. JOINT MEETING OF CITY COUNCIL AND PUBLIC FINANCING AUTHORITY

- *FA3. **Adopt Resolutions of City Council and the Public Financing Authority Board Authorizing Investment of Monies in the Local Agency Investment Fund and Updating Officers Information (Staff Contact: Emma Karlen, 408-586-3145)**

Background: The City of Milpitas and the Milpitas Public Financing Authority have been participating in the State's Local Agency Investment Fund (LAIF) since 1977. LAIF periodically requests participants to update their investment resolutions. Staff reviewed the existing resolutions of the two entities and determined that these resolutions need to be updated due to administration and personnel changes.

Fiscal Impact: None.

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

- FA4. Adjourn Joint Meeting**

January 2015						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

March 2015						
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22	23	24	25	26	27	28
29	30	31				

MILPITAS CITY COUNCIL CALENDAR

February 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 7:00 PM-Parks, Recreation & Cultural Resources Commission (GB)	2 7:00 PM-Closed Session 7:00 PM-City Council	3 6:30 PM-Closed Session 7:00 PM-City Council	4 7:30 AM-Santa Clara VTA Northeast Group (JE) 5:30 PM-Veterans Commission (DG) 7:00 PM-Community Advisory Commission (CM)	5 5:30 PM-Santa Clara VTA Board of Directors (JE)	6	7 11:00 AM Council meeting with Assemblybr K. Chu (Committee Room)
8 6:00 PM-Economic Development Commission (CM)	9 4:00 PM-Milpitas Oversight Board Meeting 7:00 PM Youth Advisory Commission (DG)	10 7:00 PM-Planning Commission	11 LINCOLN'S BIRTHDAY HOLIDAY 4:00 PM-VTA Policy Advisory Committee (CM) 4:30 PM-Treatment Plant Advisory Committee (JE) (San Jose) 7:00 PM-Cities Assoc of SCC (JE)	12	13	14
15 PRESIDENTS' DAY 	16 6:00 PM-Closed Session 7:00 PM-City Council	17	18 10:00 AM-Santa Clara VTA Congestion Management & Planning Committee (JE) 5:00 PM Campaign Finance Reform Committee	19	20	21
22 7:00 PM-Telecommunications Commission (GB)	23 1:30 PM-Senior Advisory Commission (JE)	24 7:00 PM-Planning Commission	25 12:00 PM-Terrace Gardens Board of Directors (DG) 1:30 PM-County Library JPA Board (CM) 5:30 PM-Milpitas Chamber of Commerce Board (DG) 6:00 PM-Sister Cities Commission (MG)	26	27	28

February 2015							April 2015						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14				5	6	7	8
15	16	17	18	19	20	21				12	13	14	15
22	23	24	25	26	27	28				19	20	21	22
										26	27	28	29
											30		

Milpitas City Council Calendar

MARCH 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 7:00 PM -Parks, Recreation & Cultural Resources Commission (GB)	3 6:00 PM -Closed Session 7:00 PM -City Council	4 7:30 AM -VTA Northeast Group (JE) 7:00 PM -Community Advisory Commission (CM)	5 5:30 PM -VTA Board of Directors (JE) 7:00 PM -Bicycle Pedestrian Advisory Commission (CM)	6	7
8	9 6:00 PM -Economic Development Commission (CM)	10	11 7:00 PM -Planning Commission	12 4:00 PM -VTA Policy Advisory Committee (CM) 4:30 PM -Treatment Plant Advisory Committee (JE) (San Jose) 7:00 PM -Cities Assoc of SCC (JE) 7:00 PM -Youth Advisory Commission (DG)	13	14
15	16 7:00 PM -Telecommunications Commission (GB) 7:00 PM -Library Advisory Commission (CM)	 17 6:00 PM -Closed Session 7:00 PM -City Council	18	19 12:00 PM -Santa Clara Congestion Management Program & Planning Committee (JE) 7:00 PM -Bay Area Water Supply Consv. Agency 7:00 PM -Emergency Preparedness Commission (MG)	20	21
22	23 7:00 PM -Arts Commission (DG)	24	25 7:00 PM -Planning Commission	26 5:30 PM -Milpitas Chamber of Commerce Board (DG) 6:00 PM -Sister Cities Commission (MG)	27	28
29	30	31				

Minutes of: Joint Meeting of Milpitas City Council, Successor
Agency and the Public Financing Authority

Date: Tuesday, February 3, 2015

Time: 7:00 PM

Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

Mayor Esteves called the meeting to order at 6:31 PM. The City Clerk noted the roll.

City Council convened in Closed Session to discuss litigation matters.

None out of Closed Session.

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

Vice Mayor Montano offered a prayer to start the meeting.

Motion: to approve the minutes of the January 20, 2015 City Council meeting

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to approve Council Calendar/Schedule of Meetings for February 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

Mayor Esteves presented certificates to:

1) Performers from the City's December 1, 2014 Tree Lighting Ceremony

2) Health for Humanity Yogathon sponsored by the Hindu Swayamsevak Sangh group. Four men from the group accepted the certificate and showed a video to promote “Sun Salutations” in yoga exercise. They also gave a physical demonstration of the exercises.

Tom Valore, Milpitas resident, spoke out against resident Rajeev Madnawat, whose behavior he found reprehensible during the past election season, particularly on the internet. Mr. Valore commented on the Mayor's new campaign finance reform committee, and that he applied but never heard from the Mayor. He felt the Council could not get an objective result from the committee, as it was biased from the start so he objected to the whole purpose of the committee.

Robert Marini, Milpitas resident, referred to a letter from Sunnyhills Neighborhood Association about requesting that all future utility rate increases provide specific information. The city was in violation of a section of the state constitution, related to fees charged for utility rates.

Councilmember Giordano handed a packet of information from the state Fair Political Practices Commission to Mr. Marini, which she explained included several letters ruling that she did not have any conflict of interest in voting on matters related to real estate.

Rob Means, 1421 Yellowstone resident, commented on the overall human family. He talked about climate change, fossil fuels, temperatures and other related topics.

Robert, a Milpitas resident, said every year was a dumber idea than last year. Get rid of the landfill, he urged. He made comments about the land for the current landfill and sewage treatment plant he believed was just given to the City of San Jose by Milpitas.

City Manager Tom Williams responded to the last speaker that the land was in the City of San Jose, as it always had been, not Milpitas. Mayor Esteves disagreed with the last speaker.

Voltaire Montemayor, Milpitas resident, suggested exercise could be applied city-wide on specific days. Water conservation should be observed, he said.

ANNOUNCEMENTS

City Manager Tom Williams announced that on Saturday, February 14 and Sunday, February 15, Dixon Landing Road would be closed (at railroad) for a short period for the BART building project. Also, he announced two City holidays this month on February 12 and February 16.

Mayor Esteves noted the 50th anniversary of the Civil Rights March and legislation, upon the occasion of Black History Month observed during the month of February. Resident Demetress Morris accepted a plaque from the Mayor and invited all to Sunnyhills Church on Saturday, February 7 at 9:00 AM at the Methodist Church.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar items (noted by *asterisk), as amended

Mayor Esteves requested to remove agenda item no. 9 (approve mid-year budget) from consent.

Councilmember Giordano asked to place item no. 10 (receive Financial Status report) onto consent. Vice Mayor Montano asked for a graph or pie chart or bar graph for the next time the financial report was provided by staff.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

*** 5. Appointments**

Upon Mayor Esteves' recommendation:

1) City Engineer Steven Machida, staff alternate to Councilmember Barbadillo on the Santa Clara Valley Water District Water Commission, had a term expired in December 2014 so Council re-appointed Mr. Machida in the same capacity.

- 2) Appointed Councilmember Marsha Grilli as the Milpitas representative and Councilmember Giordano as Alternate to the Santa Clara County's Expressway Plan Policy Advisory Board.
- 3) Appointed Councilmember Garry Barbadillo as the Alternate to Vice Mayor Montano on the Santa Clara Valley Transportation Authority's Policy Advisory Committee.

- * 6. Commission appointments Economic Development Commission: newly appointed Milpitas Unified School Board member Bob Nunez as school board member on the Economic Development Commission to a term that will expire in April of 2016.

Parks, Recreation and Cultural Resources Commission: newly appointed Samu Tiumalu to serve as Alternate No. 2 on the PRCRC to a term that will expire in June of 2015.
- * 7. Youth Advisory Work Plan Approved the Youth Advisory Commission Work Plan for 2015.
- * 8. Investments status Received the investment report for the quarter ended December 31, 2014.
- *10. Financial Status Report Received the financial status report for the six months recently ended on December 31, 2014.
- *11. Resolution – By-Laws Adopted Resolution No. 8442 approving revisions to the Senior Advisory Commission Bylaws.
- *12. Resolution approve MOU Adopted Resolution No. 8443 approving the Memorandum of Understanding with the Mid-Management and Confidential Unit covering the period of February 4, 2015 through June 30, 2016.
- *13. Resolution approve MOU Adopted Resolution No. 8444 approving the Memorandum of Understanding with the Milpitas Professional and Technical Group covering the period of February 4, 2015 through June 30, 2016.
- *14. Resolution approve MOU Adopted Resolution No. 8445 approving the Memorandum of Understanding with the Milpitas Association (MEA) covering the period of February 4, 2015 through June 30, 2016 unless extended, upon condition that MEA dismiss the Public Employees Relations Board (PERB) charge.
- *15. Community Center Audio Visual upgrade Approved plans and specifications for Project No. 3406, and authorized advertisement for Bid Proposals for Community Center Auditorium Audio Visual Systems upgrade.
- *16. Legal Services from Burke, Williams & Sorensen Approved the First Phase Agreement with the law firm of Burke Williams & Sorensen, LLP for legal services regarding the elimination of odors in the City of Milpitas.

PUBLIC HEARINGS

- 1. Resolution related to Land Use Conversions Senior Planner Adam Petersen provided background on why the City Council was requested to repeal a section of a previously adopted resolution resulting in a policy regarding exemption to industrial land conversions to residential land at California Circle, and also specified for a part of the McCarthy Ranch area. He displayed drawings of two approved projects for residential projects along California Circle in an otherwise industrial area that were approved based on the existing exemption.

No comments were received about this proposed change, despite extra outreach efforts including to property owners. On January 14, the Milpitas Planning Commission recommended that City Council adopt the resolution.

Councilmember Grilli asked questions about the Waterstone residential project. It was not high density, staff explained. Now, a more consistent neighborhood was sought for California Circle ultimately.

Mayor Esteves expressed his intent for this change. He wanted the land in the middle never to change to residential use at California Circle.

Councilmember Barbadillo asked about progress in the Transit Area and the MidTown areas, and questioned the motivation for this exemption in the resolution.

Vice Mayor Montano asked for further details on the map and why the McCarthy Blvd. area was on it and recommended for exemption. Staff responded that this segment was to remain as zoned, if the resolution was adopted.

Mayor Esteves asked staff to explain “compatibility” as mentioned in the explanation for this change.

Next, Mayor Esteves opened the public hearing for comments

Robert Marini, Milpitas resident, commented on exemptions from the rules and lack of consistency. He talked about Councilmembers satisfying developers.

Rob Means, Milpitas resident, said it sounded like the City was making it easier to convert this property from industrial to residential. He did not understand that when trying to build out the TASP area. People would still be driving their vehicles in that area.

Bob Nunez, California Villas resident, saw this as a change that would be helpful. He understood a desire for some conformity in his neighborhood with the new developments coming in. He supported the staff recommended change in the resolution.

Voltaire Montemayor, Milpitas resident, agreed on it and urged a decision.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

Mayor Esteves said he was serious about drastic changes to job sites, commercial land, being changed to residential land. There was no problem of compatibility, as he did not see that with the two approved California Circle developments. He did not view California Circle as a good site for residential development.

Councilmember Grilli understood the staff recommendation but did not support it. She did not want further conversion and cared about the impact to schools.

Councilmember Barbadillo agreed with consistency. All needed to assess what was going on currently: the resolution exempted the two areas from conversions. He supported the removal of the exemption. It would thus encourage development of the two specific plan areas that were underway.

Vice Mayor Montano felt the BAPS land near California Circle should be exempted. She had a split idea, not to exempt for McCarthy Ranch while leaving in an exemption for California Circle.

Councilmember Giordano supported staff and Planning Commission recommendations, since it made sense to her and was good planning.

Vice Mayor Montano moved to adopt a resolution allowing for an exemption for the BAPS land near California Circle and to remove it for the McCarthy Ranch land. There was no second to her motion.

Councilmember Barbadillo made a motion to adopt the resolution as staff recommended.

(2) Motion: to adopt Resolution No. 8441 repealing Paragraph 7 in the previously adopted Resolution No. 8220

Motion/Second: Councilmember Barbadillo/Councilmember Grilli

City Attorney Ogaz commented further that the City Council could delete the final sentence in the last paragraph in the Resolution if the goal was to not allow any exemption for California Circle. Councilmembers agreed.

Mayor Esteves clarified that no other lots would be exempted if adopted in this manner, and he accepted this change, as did motion maker Councilmember Barbadillo.

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano, Montano)

2. Zoning Amendment Prohibiting Ground Floor residential in Town Center

Senior Planner Adam Petersen reviewed the city-initiated zoning change text amendment written primarily to prohibit ground floor residential use in the Town Center zone, and to limit live/work units to 10% of a mixed use project, along with other changes. He explained the outreach conducted including a notice mailed to 850 property owners and residents. The Milpitas Planning Commission recommended that the Council approve this Town Center zone text amendment.

Councilmember Giordano stated her view that this was an excellent proposal. It would keep the initial intent of the Town Center so she was glad.

Vice Mayor Montano did not like mixed-use in this development, and the City should keep it for business uses primarily. She remarked on high volume of traffic on Calaveras Blvd.

Mayor Esteves explained the reason this proposed change came forward, to allow limited residential where ground floor commercial required. No 100% residential was allowed.

Councilmember Barbadillo opposed any residential development at all in Town Center, and he was not okay with the idea of mixed use.

Councilmember Giordano proved some history about this site and the overlay district at Town Center.

Vice Mayor Montano agreed with Councilmember Barbadillo. Housing was not part of the equation when Town Center was first built so she urged to change it back to the original conception with no residential there at all, with only commercial uses. Heavy traffic was an issue.

Mayor Esteves asked how staff assessed the economic impact to development that would be only commercial. He felt a need to support economic trends.

Councilmember Barbadillo asked how large in size was the entire Town Center area? Staff did not know by square feet but it was roughly two miles square.

Mayor Esteves opened the public hearing for comments.

Steve Sidell, resident, had lived in this area of Town Center on Sinclair and hoped new residents would be respected when moving into the Town Center area. He felt the recommendation was well thought out by Planning staff and the Planning Commission. He agreed walking across E. Calaveras Blvd was dangerous out there. He supported the recommendation and enjoyed living in this city.

Heidi Wolf-Reed, resident, said that if you want vibrant commercial you need residents to support that. Around the bay, people could see dead downtowns where residences were denied. There was a need for good mixed-use buildings to save from blight.

Robert Marini, resident, felt the city was overcrowded now, so just keep Town Center with no residential built there. He also suggested building a hotel at the former Mervyn's store site.

Voltaire Montemayor, resident, said the Council could consider no more residential at all in Town Center, and it could keep mixed use.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

Mayor Esteves stated he possibly wanted to change his mind, after asking many questions about where residential or commercial development was currently located. He wanted to save job sites and tax-generating sites. The focus on housing in Milpitas was in the Transit Area now.

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.820

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

(3) Motion: to introduce Ordinance No. 38.820 (to disallow any ground-floor residential development in the mixed-use Town Center Zoning area)

Motion/Second: Councilmember Giordano/Councilmember Grilli

Councilmember Grilli was happy with this change and would like to see limiting purely residential while mixed use was a good concept. The City should encourage a vibrant community there.

Councilmember Barbadillo commented on live/work units, with only two approved and not yet built; this concept was not yet tested. The same thing was true about mixed use, with no solid example of how this worked in Milpitas.

Mayor Esteves asked about the height limit of buildings in Town Center. Staff responded that the City Council could limit height of a specific proposed building.

Vice Mayor Montano agreed with Councilmember Barbadillo that it was a good idea to keep the Town Center area all commercial, with no residential development at all.

Motion carried by a vote of: AYES: 2 (Grilli, Giordano)
NOES: 3

Councilmember Barbadillo then made a new motion to direct staff to come back with a proposed ordinance eliminating all residential development in the Town Center zone, and be presented at next Council meeting. Vice Mayor Montano seconded.

City staff noted the need to re-notice this action, so staff could bring it back on March 3.

Councilmember Giordano responded that she would vote no on the motion, as she thought what was on agenda tonight was good planning.

(4) Motion: to direct staff to return to City Council on March 3 with a new ordinance and necessary actions to eliminate all residential development in the Town Center zone

Motion/Second: Councilmember Barbadillo/Vice Mayor Montano

Motion carried by a vote of:

AYES: 3

NOES: 2 (Grilli, Giordano)

City Council then took a break at 9:50 PM and then reconvened at 10:02 PM.

3. Development Agreement with SCS/Citation, et al.

Planning Director Steve McHarris presented the development agreement proposed for the Citation projects in the Transit Area Specific Plan: Amalfi I & II, The Edge. Fees were requested to be deferred for impact fees. Staff provided history on fees in the TASP. Three projects by Citation would be affected in the development agreement for newly constructed apartments in the Transit Area with commercial uses mixed in.

Mayor Esteves asked questions about the value City would receive from constructing the units up front. He questioned the need for the fee reduction.

Vice Mayor Montano asked if the developer would pay the TASP impact fees and Mr. McHarris replied yes.

Councilmember Grilli asked about the performance schedule, as mentioned by staff.

Vice Mayor Montano felt no one would live in those units if the park did not get built. A community benefit included the new park getting built by the developer (as opposed to solely paying park-in-lieu fees).

Mr. McHarris identified benefits and findings for the ordinance recommending adoption of the Development Agreement with Citation.

Councilmember Barbadillo tried to summarize the issue at hand, which was a special exemption for one developer. He objected to changing facts when the fees had been determined by a nexus study, successfully.

City Manager Williams responded about the density of development in the Transit Area, the adopted fee, and that maybe it would be adjusted again, due to the dynamics of the fluid market.

Mark Tiernan, representing the developer, was at the podium for developer suggesting it would be acceptable to continue or delay the hearing.

Mayor Esteves then asked to continue this matter to the next meeting.

First, Mayor Esteves opened the public hearing for comments. It was pointed out that those who spoke at this public hearing on this date would not be permitted to speak again at the next public hearing date.

Rob Means, 1421 Yellowstone resident, spoke about the \$3.8 million the City seemed willing to allow the developer, and he asked, in exchange for what? Did the citizens get fair value for that dollar figure? The developer was going well beyond what other developers in the city had done, with other benefits identified.

Tom Valore, Cardiff Place resident, agreed with what Mr. Means expressed. He asked the Council how it would expect anyone to play a game with floating or changing fees. A developer needed to know what the fees were once established.

Motion: to continue the public hearing on the Development Agreement to the next City Council meeting date of February 17, 2015

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS

4. Odor Report This item was not heard.

NEW BUSINESS

9. Mid-Year budget adjustment Motion: to approve the identified five Fiscal Year 2014-15 mid-year budget appropriations as itemized:

- 1) Increase the budget appropriation to the General Fund and Transit Area Impact Fee Fund by \$6 million to pay for the final installment payments to Mission West Properties related to the purchase of the McCandless property.
- 2) Increase the budget appropriation for various Transit Area infrastructure projects by \$7,838,901.
- 3) Increase the budget appropriation for the 2014 Road Rehabilitation Project (CIP 4270) by \$115,920 to include the rehabilitation work needed at Aspen Village on Main St. Transfer \$23,100 from Gas Tax Fund to fund the 2015 Street Resurfacing Project (CIP 4275).
- 4) Increase the budget appropriation for the Engineering Department by \$13,750 to cover expenses associated with the contract with NBS Government Finance Group for the required annual administration of the City's Lighting Landscape Maintenance Districts.
- 5) Increase the budget appropriation for the Fire Department by \$1,500 for food purchased for residents sheltered at the Sport Center during the December 11, 2014 storm.

Motion/Second: Mayor Esteves/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

The City Council portion of the joint meeting was then adjourned at 11:22 PM.

JOINT MEETING

CITY COUNCIL, SUCCESSOR AGENCY & PUBLIC FINANCE AUTHORITY

SA1 Call to Order The Joint Meeting was called to order at 11:22 PM with all members present.

SA2 Approve Agenda Motion: to approve the agenda of the joint meeting

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

SA3. Joint Resolution
Adopting Policies and
Procedures

Finance Director Emma Karlen explained the need for policy and procedures to be approved.

Jones Hall legal counsel Chris Lynch presented information to the City Council and explained why the training this evening was needed per federal securities law. He gave background on regulations and provided training to the Council, designed primarily to prohibit fraud by public agencies including municipalities. There were many SEC rules to follow, including the adoption of written policies and procedures. Important material facts

about the city must be included in bond disclosure documents - for example, if a large employer leaving the city was known or if pension fund obligations were larger than described.

Mayor Esteves requested a copy of the powerpoint presentation given by Mr. Lynch.

Vice Mayor Montano asked whether the city was audited. Mr. Lynch agreed the City had an annual audit, however the policies and procedures approved at this meeting were specific to bond issuance regulations.

Motion: to adopt a joint resolution No. 8446 / SA 7 / PFA 16 of the City Council of the City of Milpitas, the Board of the Successor Agency to the former Milpitas Redevelopment Agency and the Board of the Milpitas Public Financing Authority approving the adoption of Disclosure Policies and Procedures

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

SA4. Resolution of Successor Agency

Finance Director Emma Karlen reviewed the explanation for action by the Agency board to permit the refunding bonds to be issued along with the required Preliminary Official Statement. She reviewed the terms of bonds, and other details considered for investment purposes. These were rated AA- which was fairly high for the city, following dissolution of the Redevelopment Agency.

Motion: to adopt Resolution No. SA 8 of the Board of the Successor Agency confirming the issuance of tax allocation refunding bonds pursuant to an indenture of trust, approving preliminary and final official statements and providing other matters relating thereof, including approving a depository agreement.

Motion/Second: Agency Vice Chair Montano/Board member Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the joint meeting at 11:37 PM.

*Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk*

List of Attachments for Public Hearing No. 1

Conduct a Public Hearing and Introduce an Ordinance Approving a Development Agreement Vesting and Deferring Transit Area Specific Plan Fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge (Staff Contact: Steve McHarris, 408-586-3273)

Attachments:

- 1-A. Ordinance No 38.819 Approving A Development Agreement by and between the City of Milpitas & SCS Development Co.; Amalfi Milpitas, LLC; and DPD Investments, LLC
- 1-B. Development Agreement, Exhibit A to Ordinance No. 38.819
- 1-C. Amalfi I Legal Description
- 1-D. Amalfi II Legal Description
- 1-E. The Edge Legal Description
- 1-F. Planning Commission Staff Report – 01/14/2015
- 1-G. Planning Commission Meeting Minutes – 01/14/2015
- 1-H. Adopted Planning Commission Resolution No. 15-003

REGULAR

1-A

NUMBER: 38.819

TITLE: AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MILPITAS AND SCS DEVELOPMENT CO., AMALFI MILPITAS, LLC, AND DPD INVESTMENTS, LLC, RELATING TO THE CITATION I (ALMALFI I AND AMALFI II) AND CITATION II (THE EDGE) RESIDENTIAL AND MIXED-USE DEVELOPMENT PROJECTS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the Milpitas General Plan and Transit Area Specific Plan land use designation for the area that is subject to the proposed Development Agreement (the “Agreement”) is Boulevard Very High Density Mixed Use, Multi-Family Very High Density, and Multi-Family High Density and the Subject Project is consistent with the General Plan and Transit Area Specific Plan; and

WHEREAS, SCS Development Company, Amalfi Milpitas, LLC and DPD Investments, LLC (collectively “Developer”) proposes to develop on certain Subject Property more particularly described in the Agreement, consistent with the General Plan, Transit Area Specific Plan and the Development Approvals set forth in the Agreement, the “Amalfi I Building” consisting of up to three hundred and seventy-eight (378) multi-family residential units and “Amalfi II Building” consisting of up to two hundred sixty (260) multi-family residential units (collectively “Citation I Project”), and up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements (the “Edge Project” or “Citation II Project”) (collectively, all the “Project”), all as more specifically set forth in the Agreement; and

WHEREAS, Developer requests a Development Agreement to enable and assure phased and orderly development of the Project on the subject Property site; and

WHEREAS, consistent with the information contained in the Agreement:

- a. Development of the Project as set forth in the Agreement is consistent with the General Plan and all applicable specific and area plans and policies, as amended;
- b. Development of the Project should be encouraged because it will help meet important economic, social, environmental and planning goals of the City, including but not limited to locating housing near jobs to reduce commutes for City residents, redeveloping underutilized property near transit investment with housing and jobs so as to encourage use of transit, providing for an extraordinary contribution towards housing and jobs in the City;
- c. The Agreement will facilitate the development of the Project in the manner proposed in the Agreement for the further reasons set forth in the accompanying staff reports and Agreement;
- d. Developer will incur unusually substantial costs in order to provide public improvements, facilities or services, in particular extraordinary funding for housing in the City, from which the public will benefit, as set forth in more detail in the accompanying staff report and Agreement, and Developer has made commitments to a very high standard of quality for the Project and has agreed to development limitations beyond that required by the existing laws, as set forth in the Agreement and Development Approvals; and
- e. Development of the Project will make a substantial contribution to the economic development of the City of Milpitas in that the Project will create additional, transit-oriented housing to support transit infrastructure investments, as well as provide extraordinary tax revenues to the City.

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 herein are found to be true and correct and are incorporated herein by reference.

SECTION 2. AUTHORITY

This Ordinance is adopted under the authority of California Government Code Section 65868 and pursuant to the provisions of the City Council Resolution No. 6642 (the “Enabling Resolution”), both of which provide for the ability of City to adopt development agreements and set forth procedures and requirements for the consideration of those agreements.

SECTION 3. INCORPORATION BY REFERENCE

This Ordinance incorporates by reference as though fully set forth herein that certain “Development Agreement By and Between the City of Milpitas and SCS Development Co., Amalfi Milpitas, LLC, and DPD Investments, LLC” relative to the Development of the Citation I (Amalfi I and Amalfi II) and the Citation II (the Edge) multifamily residential and mixed-use projects in the City of Milpitas (the “Agreement”), the substantive form of which is attached hereto as Exhibit “A.”

SECTION 4. ENVIRONMENTAL IMPACTS

The environmental impacts of the residential development project described within the Agreement were disclosed, analyzed and evaluated as a part of that certain Final Environmental Impact Report prepared for the Transit Area Specific Plan (the “EIR” State Clearinghouse No. 2006032091) in conformance with the California Environmental Quality Act of 1970, together with state and local guidelines implementing CEQA, all as amended from time to time, which Project Environmental Clearance was considered by the Planning Commission of the City Council City of Milpitas and was considered and approved by the City Council prior to taking any approval actions on this Ordinance.

SECTION 5. FINDINGS ADOPTED

Based upon the foregoing facts, findings, and conclusions, and as required by the Enabling Resolution, the City Council hereby adopts the following as its findings based on the record:

1. The proposed Developer Project development is consistent with the General Plan, as amended, and all applicable specific or area plans of the City.
2. The proposed Developer Project development should be encouraged in order to meet important economic, social, environmental or planning goals of the City.
3. The proposed Agreement will facilitate the development of the Project on the Subject Property in the manner proposed in the Agreement.
4. The proposed Developer Project development will make a substantial contribution to the economic development of the City in that:
 - a. Developer will incur unusually substantial costs to provide public improvements, facilities or services, including without limitation an extraordinary contribution towards housing in the City, all as more specifically described in the Agreement, from which the public will benefit, and Developer has made a commitment to a very high

standard of quality for the Project and has agreed to development standards beyond that required by applicable existing laws.

- b. The Project will create additional, transit-oriented housing to support transit infrastructure investments, as well as provide extraordinary tax revenues to the City.

5. The proposed Agreement is consistent with the provisions of the Enabling Resolution and is in the public interest.

SECTION 6. APPROVAL

The City Council hereby approves the proposed Agreement in substantially the form attached hereto as EXHIBIT "A" and hereby authorizes and directs the City Manager to execute the Agreement, substantially in the form attached hereto as EXHIBIT "A," on behalf of the City as soon as this ordinance becomes effective.

SECTION 7. 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 8. 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.

EXHIBIT A

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Milpitas
Department of Planning and Neighborhood Services
455 East Calaveras Boulevard, Second Floor
Milpitas, CA 95035

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MILPITAS

AND

SCS DEVELOPMENT CO., AMALFI MILPITAS, LLC, AND

DPD INVESTMENTS, LLC

REGARDING

**THE CITATION I (AMALFI I AND AMALFI II) AND CITATION II (THE EDGE)
RESIDENTIAL AND MIXED-USE DEVELOPMENT PROJECTS**

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Milpitas, a California municipal corporation, (hereinafter "**City**"), and SCS DEVELOPMENT CO., a California corporation, Amalfi Milpitas, LLC, a California limited liability company, DPD Investments, LLC, a California limited liability company, and all of their successors and assigns (hereinafter, collectively, "**Developer**"), pursuant to section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its City Council Resolution No. 6642 adopted on May 6, 1997 ("**Enabling Resolution**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Resolution.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. City Council Resolution No. 7830 adopted on February 17, 2009 approving Major Tentative Map No. MT08-0004, Site Development Permit No. SD08-0002, and Conditional Use Permit No. UP08-0049 for the development of up to Six Hundred and Thirty-Nine (639) residential units located near 1200 Piper Drive within the Piper-Montague Subdistrict of the Transit Area Specific Plan.

2. City Council Resolution No. 8132 adopted on November 1, 2011 approving Major Tentative Map Amendment No. TM11-0001, Site Development Permit Amendment No. SA11-0005, and Conditional Use Permit Amendment No. UA11-0008 for the development of up to seven-hundred and thirty-two (732) residential units located in the Piper-Montague Subdistrict of the Transit Area Specific Plan ("Citation I Project"). The Citation I Project includes the "Amalfi I Building" consisting of Three Hundred and Seventy-Eight (378) apartment units, "Amalfi II Building" consisting of Two Hundred and Sixty (260) apartment units, and ninety-four (94) townhomes. The ninety-four (94) townhomes is under construction on the Effective Date and is not a part of this Agreement; and

3. City Council Resolution No. 8382 adopted on June 17, 2014 approving Major Tentative Map No. TM13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit

No. UP13-0011 for the development of up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements on approximately 5.6 acres located at 765 Montague Expressway (the "Edge Project" or "Citation II Project").

E. For the reasons recited herein and in the accompanying staff report, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On January 14, 2015, following a duly noticed and conducted public hearing, the Milpitas Planning Commission ("**Planning Commission**"), the hearing body for purposes of the Development Agreement Statute and the Enabling Resolution, adopted Resolution **No. 15-003** that affirmed the CEQA exemption for this Agreement, adopted findings that this Agreement is consistent with the City's General Plan and the Existing Approvals and recommended that this Agreement be approved by the City Council.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On February 3, 2015, following a duly noticed and conducted public hearing, the Milpitas City Council ("**City Council**") introduced Ordinance No. 38.819, an ordinance that affirms CEQA compliance, that adopts findings that this Agreement is consistent with the City's General Plan and the Existing Approvals, that approves this Agreement, and that directs this Agreement's execution by City ("**Approving Ordinance**"). The City adopted the Approving Ordinance on February 17, 2015, the Approving Ordinance became effective thirty (30) days later, and the Parties signed the Agreement. The "Effective Date" in this Agreement shall be the date that the Approving Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) "**Existing Approvals**" shall have that meaning set forth in Recital Paragraph D of this Agreement.

(2) "**Existing City Laws**" shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(3) "**Impact Fees**" shall mean those fees, excluding Transit Area Specific Plan Development Impact Fee, imposed so that developments bear a proportionate share of the **cost of** public facilities and service improvements that are reasonably related to the impacts and burdens of the

Project, adopted pursuant to Milpitas Municipal Code Title VIII, Chapter 4 and California Government Code Section 66001 et seq.

(4) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(5) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "Legal Effect" after the Effective Date of this Agreement, and that applies City wide.

(6) **"Project"** shall mean the developments as described in (i) City Council Resolution No. 8132 adopted on November 1, 2011 approving Major Tentative Map Amendment No. TM11-0001, Site Development Permit Amendment No. SA11-0005, and Conditional Use Permit Amendment No. UA11-0008 for the development of up to seven-hundred and thirty-two (732) residential units located in the Piper-Montague Subdistrict of the Transit Area Specific Plan ("TASP"), excluding the ninety-four (94) townhomes residential units as further depicted in **Exhibit A**; and (ii) City Council Resolution No. 8382 adopted on June 17, 2014 approving Major Tentative Map No. TM13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit No. UP13-0011 for the development of up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements on approximately 5.6 acres located at 765 Montague Expressway. Any reference in this Agreement to the "Project" shall mean and include the "Property"; provided however, that the Project to which this Agreement applies may be only occupying a part of the Property and may be only a phase of a larger development on the Property.

(7) **"Project Approvals"** shall mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(8) **"Property"** shall mean that certain real property consisting of approximately 12.6 acres located within the City, as more particularly described and shown on **Exhibit A** to this Agreement.

(9) **"Subsequent Approvals" and "Subsequent Approval"** shall mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Approving Ordinance (defined below), including without limitation, a City Resolution of Application for Annexation and subdivision maps and any subdivision document.

(10) **"Transit Area Specific Plan Development Impact Fee"** shall mean the impact fee established by the City Council as set forth in City Council Resolution No. 7778 adopted on September 2, 2008, as may subsequently be updated or amended, to pay for public infrastructure within the Transit Area Specific Plan Area.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.03 Term.

(a) The term of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated as provided in this Agreement) until the date of March 20, 2020 (“**Initial Term**”), provided the Parties may mutually agree to extend this Agreement for an additional five (5) years by written amendment to this Agreement (“**Extended Term**”).

ARTICLE 2

RIGHTS AND OBLIGATIONS

2.01 Transit Area Specific Plan Development Impact Fees and Continued and Future Obligations.

(a) During the Initial Term or Extended Term of this Agreement, Developer shall pay the Transit Area Specific Plan Development Impact Fee for each residential unit located within the Project to the City as follows:

(1) Prior to the issuance of any Certificate of Occupancy (temporary or final) for any residential unit located in Amalfi I Building during the Initial Term of the Agreement, Developer shall fully pay the City the amount of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) for each residential units constructed in the Amalfi I Building. If this Agreement is mutually extended beyond the Initial Term of five (5) years, Developer agrees and acknowledges that the Transit Area Specific Plan Development Impact Fee of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) shall immediately be adjusted by the City for inflation and park land value as set forth in City Council Resolution No. 7778, as may be amended, and shall further be adjusted on an annual basis thereafter for the remaining duration of the Extended Term. Developer shall then be obligated to fully pay the City the adjusted amount prior to any Certificate of Occupancy (temporary or final) for the Amalfi I Building during the Extended Term. Full payment of the Transit Area Specific Plan Development Impact Fee for all residential units located in the Amalfi I Building is a condition precedent to the issuance of any Certificate of Occupancy (temporary or final) for that building.

(2) Prior to the issuance of any Certificate of Occupancy (temporary or final) for any residential unit located in Amalfi II Building during the Initial Term of the Agreement, Developer shall fully pay the City the amount of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) for each residential units constructed in the Amalfi II Building. If this Agreement is mutually extended beyond the Initial Term of five (5) years, Developer agrees and acknowledges that the Transit Area Specific Plan Development Impact Fee of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) shall immediately be adjusted by the City for inflation and park land value as set forth in City Council Resolution No. 7778, as may be amended, and shall further be adjusted on an annual basis thereafter for the remaining duration of the Extended Term. Developer shall then be obligated to fully pay the City the adjusted amount prior to any Certificate of Occupancy (temporary or final) for the Amalfi II Building during the Extended Term. Full payment of the Transit Area Specific Plan Development Impact Fee for all residential units located in the Amalfi II Building is a condition precedent to the issuance of any Certificate of Occupancy (temporary or final) for that building.

(3) Prior to the issuance of any Certificate of Occupancy (temporary or final) for any residential unit located in the Edge Building during the Initial Term of the Agreement, Developer shall fully pay the City the amount of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) for each residential units constructed in the Edge Building. If this Agreement is mutually extended beyond the Initial Term of five (5) years, Developer agrees and acknowledges that the Transit Area Specific Plan Development Impact Fee of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) shall immediately be adjusted by the City for inflation and park land value as set forth in City Council Resolution No. 7778, as may be amended, and shall further be adjusted on an annual basis thereafter for the remaining duration of the Extended Term. Developer shall then be obligated to fully pay the City the adjusted amount prior to any Certificate of Occupancy (temporary or final) for the Edge Building during the Extended Term. Full payment of the Transit Area Specific Plan Development Impact Fee for all residential units located in the Edge Building is a condition precedent to the issuance of any Certificate of Occupancy (temporary or final) for that building.

(b) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to the Transit Area Specific Plan Development Fee amount for the Project in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable city, state or federal law. Further, Developer agrees acknowledges that other than the vesting of the Transit Area Specific Plan Development Impact Fee for the Project as set forth in Section 2.01(a) above, this Agreement shall **not** vest any **Existing Approvals, Existing City Laws, Impact Fees, New City Laws, Project Approvals, Subsequent Approvals**, or shall in any way whatsoever vest any other rights, interests, fees, laws, policies or otherwise related to the Project.

2.02 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the then currently adopted California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis and the plan check application has not expired.

2.03 Timing of Development.

(a) **Securing Building Permits and Beginning Construction.** The Amalfi I Building is under construction as of the Effective Date of this Agreement. In exchange for the vesting of the Transit Area Specific Plan Development Impact Fee and public benefit to the City to enter into this Agreement, Developer agrees to secure building permits, begin construction, and receive Certificate of Occupancy (temporary or final) for all residential units and commercial-retail space located in the Edge Building prior to receiving Certificate of Occupancy (temporary or final) for any residential unit located in the Amalfi II Building.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, Developer shall comply with the City's Municipal Code, rules, regulations, policies, guidelines or customary practice for such Subsequent Approvals. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by law.

3.02 Amendments.

Any request by Developer for an amendment or modification to this Agreement shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification application is deemed complete.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the City (unless such period is extended by written mutual consent) ("Notice of Default"), shall constitute a default under this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. If the alleged failure is cured, then no Default shall exist and the City shall take no further action. If the alleged failure is not cured, then a Default shall exist under this Agreement and the City may exercise any of the remedies available under law.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Resolution of Disputes.

(a) In the event Developer is in Default under the terms of this Agreement and fails to cure as set forth in Section 4.01 above, the City may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided under law; (iii) pursue judicial remedies as provided for under law; and/or (iv) terminate this Agreement.

4.03 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.04 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any proposed assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be subject to approval by the City Attorney.

(b) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs,

successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project (“**Consumer**”) unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.05 Compliance with Government Code Section 65867.5.

In accordance with the requirements of Government Code section 65867.5, City and Developer agree that any tentative subdivision map(s) for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be secured in accordance with the provisions of Government Code section 66473.7.

4.06 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara County Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(c) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(d) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's

contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the sole active negligence of the City. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed under this agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$2,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$2,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed under this Agreement and before permitting any Contractor or Subcontractors to perform work under this Agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(e) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(f) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City: City Manager

455 East Calaveras Boulevard
Milpitas, CA 95035
Tel: (408) 586-3003

With a Copy To: City Attorney
455 East Calaveras Boulevard
Milpitas, CA 95035
Tel: (408) 586-3041

If to Developer: Stephen C. Schott, President
SCS Development Co.
404 Saratoga Ave. Suite 100
Santa Clara, CA. 95050
(408) 985-6000

Stephen C. Schott, Manager
Amalfi Milpitas, LLC
404 Saratoga Ave. Suite 100
Santa Clara, CA. 95050
(408) 985-6000

Stephen C. Schott, Manager
DPD Investments, LLC
404 Saratoga Ave. Suite 100
Santa Clara, CA. 95050
(408) 985-6000

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address.

(g) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(h) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(i) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(j) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(k) Signatures and Joint Liability. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement

may be executed in multiple originals, each of which is deemed to be an original. Developer, individually, agrees and acknowledges, that each Developer Party is jointly and severally responsible and liable for all terms, conditions and obligations under this Agreement.

(l) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(m) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Project and Plat Maps.

5.02 **Limitations on Time to Challenge Validity of this Agreement.** Developer shall have ninety (90) days from the date that the City Council approved this Agreement to commence and effect service of summons of any action or proceeding to attack, review, set aside, void or annul this Agreement or any part of this Agreement. Thereafter, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision of the proceedings, acts or determinations, including any provision of this Agreement or the enforcement hereof.

5.03 **Notice of 90-day Right to Protest.** Developer is hereby notified that Developer shall have ninety (90) days from the date of the imposition of any fees, dedications, reservations, or other exactions, to file a protest of the imposition of any such fees, dedications, reservations or other exactions; provided however that any challenge to the validity of any provisions of this Agreement, including Project Mitigations, or Project Specific Requirements, shall be subject to Section 5.02 and that this notice of the right to protest shall not supplant, extend or start anew any protest period already commenced pursuant to previous notices.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MILPITAS:

DEVELOPER:

SCS Development Co.

Tom Williams
City Manager

Stephen C. Schott, President

Date: _____

Amalfi Milpitas, LLC

Stephen C. Schott, Manager

DPD Investments, LLC

Stephen C. Schott, Manager

Approved as to Form:

Michael J. Ogaz
City Attorney

Date: _____

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT AND PLAT MAPS

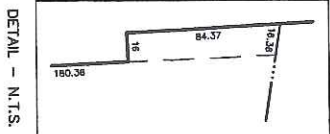
Legal Description

1-C

Amalfi I

Parcel 1 of Tract 10060 filed the 2nd day of October, 2013 in book of maps 864 at pages 48-53 series numbers 22404820 in Santa Clara County.

A.P.N. 86-32-49



TRACT 10060
FOR CONDOMINIUM PURPOSES
WAUKESHA PROPERTY
BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON, CALIFORNIA
JUNE 2013

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS IN FEE FOR PUBLIC USE FOR ROADWAY PURPOSES, OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

1. GARDEN STREET AND MERRY LOOP

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS AN EASEMENT FOR PUBLIC USE FOR OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

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2. EASEMENTS "B" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE).

THE ABOVE MENTIONED EASEMENTS (PSUE & EVAE) SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE AND PUBLIC UTILITY STRUCTURES AND THEIR APPURTENANCES, IRRIGATION SYSTEMS AND THEIR APPURTENANCES AND LAWFUL FENCES. UNOBSTRUCTED CONTINUOUS ACCESS SHALL BE MAINTAINED AT ALL TIMES.

WE ALSO HEREBY RETAIN FOR THE PRIVATE USE OF THE LOT OWNERS WITHIN THIS SUBDIVISION, THEIR LICENSES, VISITORS, AND TENANTS WITH MAINTENANCE THEREOF BY THEIR LOT OWNERS IN ACCORDANCE WITH THE SUBDIVISION RESTRICTIONS GOVERNING THIS SUBDIVISION THE FOLLOWING:

1. LOTS 'C' AND 'D' FOR PRIVATE STREET PURPOSES. PRIVATE STREET IS TO BE KNOWN AS AMALFI LOOP.

THE DESIGNATED PRIVATE STREETS ON THIS MAP ARE NOT PART OF THE CITY OF MILPITAS STREET SYSTEM AND ARE NOT ACCEPTED FOR PUBLIC MAINTENANCE.

PARCELS 1 AND 3 ARE FOR CONDOMINIUM PURPOSES (545 UNITS).

PARCEL 2 TO BE RETAINED BY OWNER FOR FUTURE SUBDIVISION.

LOT J TO BE RETAINED BY THE OWNER AND DEDICATED TO THE CITY OF MILPITAS FOR PARK PURPOSES BY SEPARATE INSTRUMENT.

LOTS A, E, F, G, H, & K ARE TO BE RETAINED BY OWNER.

OWNER:
SCS DEVELOPMENT CO. A CALIFORNIA CORPORATION

BY: Stephen E. Schott
NAME: Stephen E. Schott
TITLE: Vice President

ACKNOWLEDGMENT CERTIFICATE (OWNER'S)

STATE OF California
COUNTY OF Santa Clara

ON September 10, 2013, BEFORE ME, Pamela M. Takeshita, A NOTARY PUBLIC, PERSONALLY APPEARED Stephen E. Schott, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE/HEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: Pamela M. Takeshita

NAME (PRINT): Pamela M. Takeshita

PRINCIPAL COUNTY OF BUSINESS: Santa Clara

MY COMMISSION NUMBER: 1924873

MY COMMISSION EXPIRES: March 8, 2015

SURVEYOR'S STATEMENT

I, CHRISTOPHER S. HARMISON, HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, THAT THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION IN JUNE 2011, AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF SCS DEVELOPMENT CO., IN MARCH 2008, AND IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT THIS FINAL MAP COMPLIES WITH FINAL MAP PROCEDURES OF THE CITY OF MILPITAS AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED TENTATIVE MAP AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE REQUIRED TO BE FULFILLED PRIOR TO THE FILING OF THE FINAL MAP, AND IT IS TECHNICALLY CORRECT. I HEREBY STATE THAT THE MONUMENTS WILL OCCUPY THE POSITIONS INDICATED BY DECEMBER 2014, AND ARE OF THE CHARACTER INDICATED, AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATED: 9-9-2013

Christopher S. Harmison
CHRISTOPHER S. HARMISON
L.S. NO. 7176



RECORDER'S STATEMENT

FILED THIS 2nd DAY OF October, 2013 AT 2:49 PM, IN BOOK OF
MAPS 864, AT PAGES 48-53, SERIES NUMBERS 22404820
AT THE REQUEST OF FIRST AMERICAN TITLE INSURANCE COMPANY.

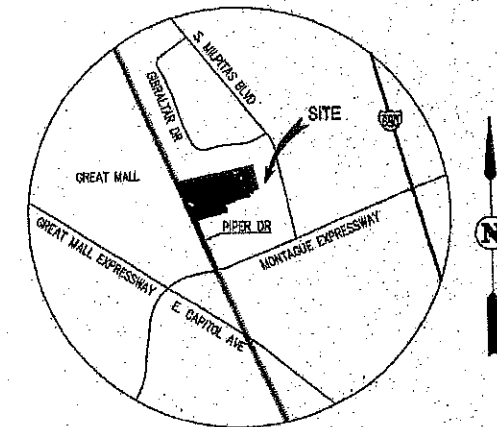
FEE \$18-

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
BY: June Wilson
DEPUTY

22404820

48

TRACT 10060
FOR CONDOMINIUM PURPOSES
WAUKESHA PROPERTY
BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21822854 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON, CALIFORNIA
JUNE 2013



VICINITY MAP
NOT TO SCALE

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN FINAL MAP; THAT THE SUBDIVISION AS SHOWN THEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT THIS SUBDIVISION COMPLIES WITH PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES, APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

SIGNED: Ebrahim Sohrabi DATE: 9/21/2013
EBRAHIM SOHRABI
PRINCIPAL CIVIL ENGINEER, CITY OF MILPITAS
R.C.E. NO. 42982, EXPIRATION DATE MARCH 31, 2014



CITY CLERK'S CERTIFICATE

I, MARY LAVELLE, CITY CLERK OF THE CITY OF MILPITAS, CALIFORNIA, HEREBY CERTIFY THAT SAID CITY COUNCIL, AS GOVERNING BODY OF SAID CITY AT A REGULAR MEETING HELD ON Sept. 17, 2013, HAS TAKEN THE FOLLOWING ACTIONS:

1. APPROVED THIS TRACT MAP NO. 10060
2. ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC THOSE PARCELS OF LAND OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF OFFER OF DEDICATION TO WIT:
 1. EASEMENTS "A" FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE).
 2. EASEMENTS "B" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE).
 3. GARDEN STREET AND MERRY LOOP IN FEE.

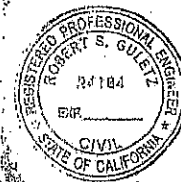
DATED: 9/30/2013 Mary Lavelle
MARY LAVELLE
CITY CLERK, CITY OF MILPITAS



CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREIN MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

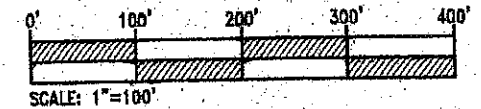
SIGNED: Robert S. Guletz DATE: 9/25/13
ROBERT S. GULETZ
ACTING CITY SURVEYOR, CITY OF MILPITAS
HARRIS & ASSOCIATES
R.C.E. NO. 24184
EXPIRATION DATE: DECEMBER 31, 2013



864
/49
/53

49

TRACT 10060
FOR CONDOMINIUM PURPOSES
WAUKESHA PROPERTY
BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON, CALIFORNIA
JUNE 2013



BASIS OF BEARINGS:

THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF RIVER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49 SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

POINT MIL-BC(1)(7)(8)(9)
FOUND BRASS DISK IN WELL
N: 1978866.733 (GRID, NAD83)(9)
E: 6158634.219 (GRID, NAD83)(9)
Z: -00°50'59"

REFERENCES

- (#) INDICATES REFERENCE NUMBER.
- (1) PARCEL MAP (580 M 49)
- (2) RECORD OF SURVEY (79 M 43)
- (3) LOT LINE ADJUSTMENT (DN 14843238)
SEE ALSO DEEDS DN 14835097
AND DN 18592170
- (4) PARCEL MAP (294 M 35)
- (5) DEED (2967 OR 175)
- (6) PARCEL MAP (502 M 30)
- (7) RECORD OF SURVEY (432 M 30)
- (8) PARCEL MAP (484 M 13)
- (9) CITY OF MILPITAS BENCHMARK SYSTEM,
DATED FEBRUARY 21, 2002.
- (10) LOT LINE ADJUSTMENT (DN 21922654)

LEGEND

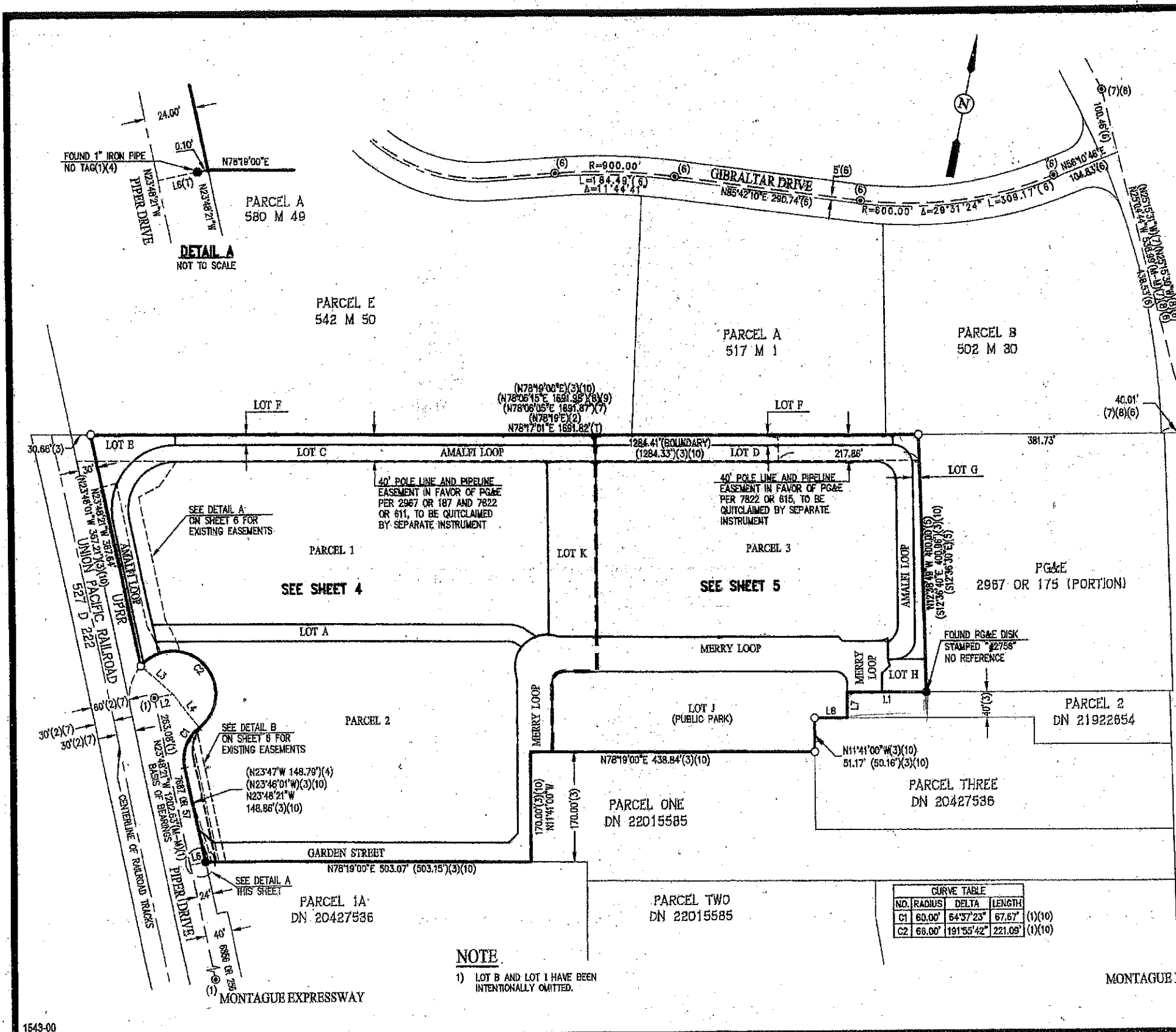
SEE SHEETS 4 AND 5

NO.	BEARING	LENGTH	
L1	N78°17'01"E	122.24'	(S78°19'00"W 122.37')(10)
L2	N68°54'48"E(R)	30.00'	
L3	N61°06'40"W(R)	56.00'	(N61°04'20"W(R))(10)
L4	N49°10'58"W(R)	65.00'	(1)
L6	N66°11'39"E	24.00'	(23.83')(1)
L7	N11°41'00"W	40.00'	(10)
L8	N78°17'01"E	50.33'	(S78°19'00"W)(10)

NO.	RADIUS	DELTA	LENGTH	
C1	60.00'	64°37'23"	67.67'	(1)(10)
C2	66.00'	191°55'42"	221.09'	(1)(10)

NOTE

- 1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.



BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21822654 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON, CALIFORNIA

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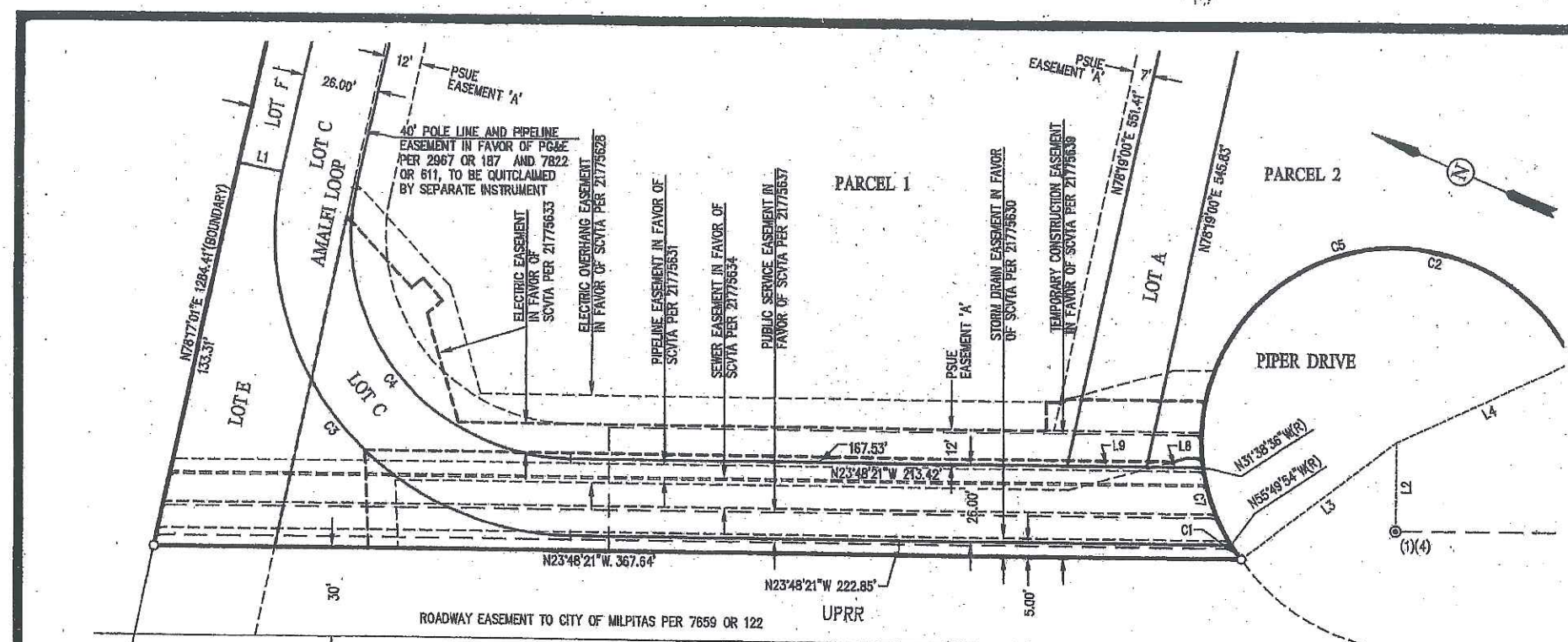
_____ BOUNDARY LINE
 _____ LOT LINE
 _____ MONUMENT LINE
 _____ CENTER LINE
 _____ EASEMENT LINE

(T) TOTAL
 (R) RADIAL
 (M-M) MONUMENT TO MONUMENT
 (M-PL) MONUMENT TO PROPERTY LINE
 (C) FOUND STANDARD STREET MONUMENT
 (C) FOUND MONUMENT, AS NOTED
 (C) SET 5/8" REBAR AND CAP, LS 7176
 (C) SET STANDARD STREET MONUMENT;
 LS 7176
 (C) STANDARD STREET MONUMENT
 TO BE SET PER TRACT 18037
 PSUE PUBLIC SERVICE UTILITY EASEMENT
 EAVE EMERGENCY VEHICLE ACCESS EASEMENT
 AC ACRE
 SF SQUARE FEET
 SCVTA SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
 (F) RECORD DATA
 (CL-CL) CENTERLINE TO CENTERLINE

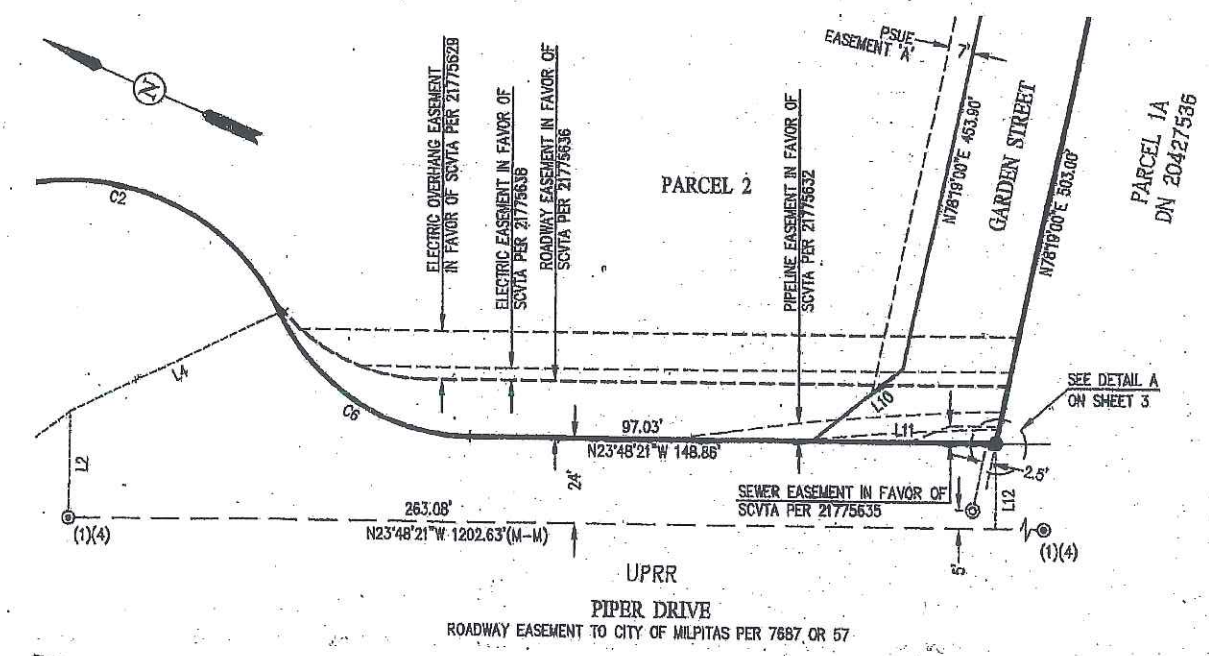
1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.

LINE TABLE		
NO.	BEARING	LENGTH
L1	N11°24'59"W	15.00'
L2	N66°54'48"E	30.00'
L3	N84°06'40"W	66.00'
L4	N45°10'58"W	66.00'
L5	N11°41'00"W	26.00'
L6	N68°20'16"W	18.36'
L7	N58°20'16"W	8.44'
L8	N23°48'21"W	19.29'
L9	N23°48'21"E	26.59'
L10	N62°43'41"W	32.68'
L11	N23°48'21"E	51.83'
L12	N66°11'39"E	24.00'
L13	N33°18'00"E	20.40'

864
51
53

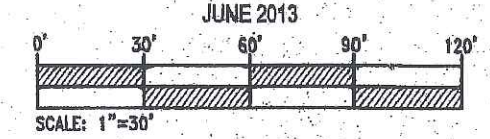


DETAIL A



DETAIL B

TRACT 10060
FOR CONDOMINIUM PURPOSES
WAUKESHA PROPERTY
BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21822654 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON, CALIFORNIA



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LEGEND

- BOUNDARY LINE
- LOT LINE
- MONUMENT LINE
- CENTER LINE
- EASEMENT LINE
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- (M-PL) MONUMENT TO PROPERTY LINE
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- FOUND MONUMENT, AS NOTED
- SET 5/8" REBAR AND CAP, LS 7176
- SET STANDARD STREET MONUMENT, LS 7176
- STANDARD STREET MONUMENT TO BE SET PER TRACT 10037
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- EVAE EMERGENCY VEHICLE ACCESS EASEMENT
- AC ACRE
- SF SQUARE FEET
- SCVTA SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- (#) RECORD DATA
- (CL-CL) CENTERLINE TO CENTERLINE

NOTE

1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	66.00'	05°16'46"	6.08'
C2	66.00'	191°55'42"	221.09'
C3	101.00'	102°07'21"	180.02'
C4	75.00'	102°07'21"	133.68'
C5	66.00'	162°27'38"	187.14'
C6	60.00'	64°37'23"	67.67'
C7	66.00'	24°11'16"	27.86'

LINE TABLE		
NO.	BEARING	LENGTH
L1	N11°42'59"W	15.00'
L2	N86°54'48"E(R)	30.00'
L3	N61°08'40"W(R)	66.00'
L4	N49°10'58"W(R)	66.00'
L5	N23°48'21"W	19.29'
L6	N23°48'21"W	26.59'
L7	N62°43'41"W	32.88'
L8	N23°48'21"W	51.83'
L9	N66°11'39"E	24.00'

864
53
53

53

Legal Description

1-D

Amalfi II

Parcel 3 of Tract 10060 filed the 2nd day of October, 2013 in book of maps 864 at pages 48-53 series numbers 22404820 in Santa Clara County.

A.P.N. 86-32-51

LLA. 14643238
LLA. 21922653

TRACT NO. 10060
864-M-48

19
UNION PACIFIC CORP.
S.B.E. 843-43-2 PCL. 2

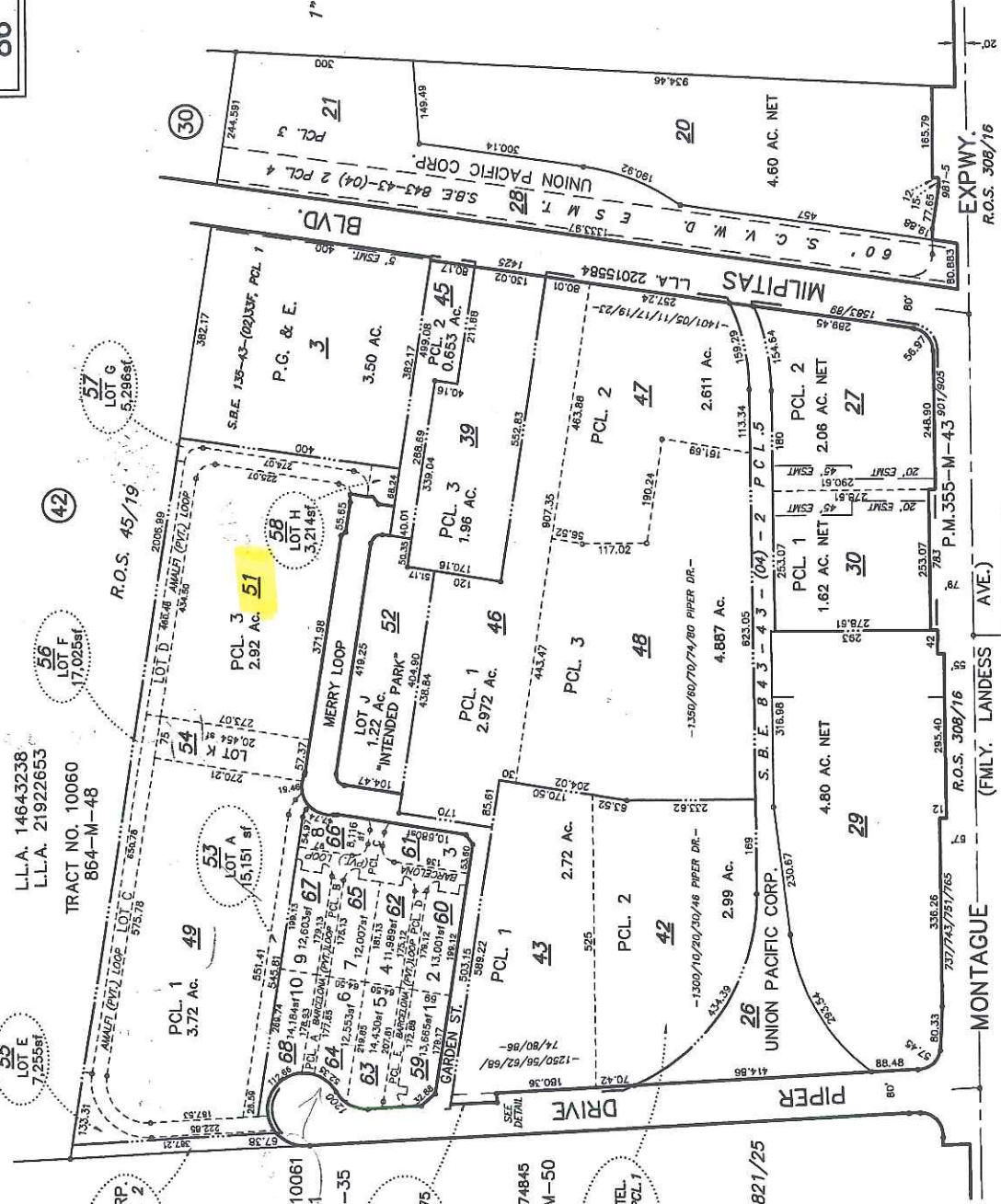
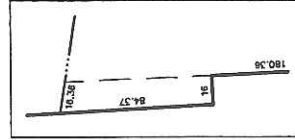
TRACT NO. 10061
865-M-1
P.M. 294-M-35

S.C.V.T.A.
ESMT.
1,322 sf.
DOC. 22213975

24
LLA. 20274845
P.M. 580-M-50

32
BAY AREA CELLULAR TEL.
S.B.E. 2502-43(22) PCL. 1
2,500 sf.

DETAIL - N.T.S.



PTN. LOT 30 — MILPITAS RANCHO PARTN.

BOOK
92

TRM REF. MAP 112
LAWRENCE E. STONE — ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2014-2015

TRACT 10060
FOR CONDOMINIUM PURPOSES
WAUKESHA PROPERTY
BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922854 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
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JUNE 2013

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PARCELS 1 AND 3 ARE FOR CONDOMINIUM PURPOSES (545 UNITS).

PARCEL 2 TO BE RETAINED BY OWNER FOR FUTURE SUBDIVISION.

LOT J TO BE RETAINED BY THE OWNER AND DEDICATED TO THE CITY OF MILPITAS FOR PARK PURPOSES BY SEPARATE INSTRUMENT.

LOTS A, E, F, G, H, & K ARE TO BE RETAINED BY OWNER.

OWNER:
SCS DEVELOPMENT CO. A CALIFORNIA CORPORATION

BY: Stephen E. Schott
NAME: Stephen E. Schott
TITLE: Vice President

ACKNOWLEDGMENT CERTIFICATE (OWNER'S)

STATE OF California
COUNTY OF Santa Clara

ON September 10, 2013, BEFORE ME, Pamela M. Takeshita, A NOTARY PUBLIC, PERSONALLY APPEARED Stephen E. Schott, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE/HEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: Pamela M. Takeshita

NAME (PRINT): Pamela M. Takeshita

PRINCIPAL COUNTY OF BUSINESS: Santa Clara

MY COMMISSION NUMBER: 1924873

MY COMMISSION EXPIRES: March 8, 2015

SURVEYOR'S STATEMENT

I, CHRISTOPHER S. HARMISON, HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, THAT THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION IN JUNE 2011, AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF SCS DEVELOPMENT CO., IN MARCH 2008, AND IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT THIS FINAL MAP COMPLIES WITH FINAL MAP PROCEDURES OF THE CITY OF MILPITAS AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED TENTATIVE MAP AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE REQUIRED TO BE FULFILLED PRIOR TO THE FILING OF THE FINAL MAP, AND IT IS TECHNICALLY CORRECT. I HEREBY STATE THAT THE MONUMENTS WILL OCCUPY THE POSITIONS INDICATED BY DECEMBER 2014, AND ARE OF THE CHARACTER INDICATED, AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATED: 9-9-2013

Christopher S. Harmison
CHRISTOPHER S. HARMISON
L.S. NO. 7176



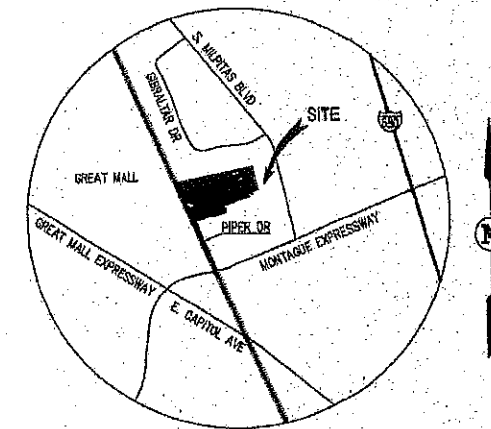
RECORDER'S STATEMENT

FILED THIS 2nd DAY OF October, 2013 AT 2:49 PM, IN BOOK OF
MAPS 864, AT PAGES 48-53, SERIES NUMBERS 22404820
AT THE REQUEST OF FIRST AMERICAN TITLE INSURANCE COMPANY.

FEE \$18-

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
BY: June Aliason
DEPUTY

TRACT 10060
FOR CONDOMINIUM PURPOSES
WAUKESHA PROPERTY
BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON, CALIFORNIA
JUNE 2013



VICINITY MAP
NOT TO SCALE

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN FINAL MAP; THAT THE SUBDIVISION AS SHOWN THEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT THIS SUBDIVISION COMPLIES WITH PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES, APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

SIGNED: Ebrahim Sohrabi DATE: 9/21/2013
EBRAHIM SOHRABI
PRINCIPAL CIVIL ENGINEER, CITY OF MILPITAS
R.C.E. NO. 42982, EXPIRATION DATE MARCH 31, 2014



CITY CLERK'S CERTIFICATE

I, MARY LAVELLE, CITY CLERK OF THE CITY OF MILPITAS, CALIFORNIA, HEREBY CERTIFY THAT SAID CITY COUNCIL, AS GOVERNING BODY OF SAID CITY AT A REGULAR MEETING HELD ON Sept. 17, 2013, HAS TAKEN THE FOLLOWING ACTIONS:

1. APPROVED THIS TRACT MAP NO. 10060
2. ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC THOSE PARCELS OF LAND OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF OFFER OF DEDICATION TO WIT:
 1. EASEMENTS "A" FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE).
 2. EASEMENTS "B" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE).
 3. GARDEN STREET AND MERRY LOOP IN FEE.

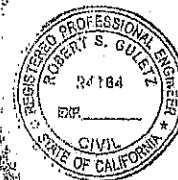
DATED: 9/30/2013 Mary Lavelle
MARY LAVELLE
CITY CLERK, CITY OF MILPITAS



CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREIN MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

SIGNED: Robert S. Guletz DATE: 9/25/13
ROBERT S. GULETZ
ACTING CITY SURVEYOR, CITY OF MILPITAS
HARRIS & ASSOCIATES
R.C.E. NO. 24184
EXPIRATION DATE: DECEMBER 31, 2013

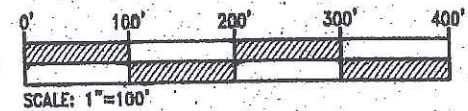


804
/49
/53

49

TRACT 10060
FOR CONDOMINIUM PURPOSES
WAUKESHA PROPERTY
BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON, CALIFORNIA

JUNE 2013



BASIS OF BEARINGS:

THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF RIVER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49, SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

POINT MIL-BC(1)(7)(8)(9)
FOUND BRASS DISK IN WELL
N: 1978866.733 (GRID, NAD83)(9)
E: 6158634.219 (GRID, NAD83)(9)
Z: -00°50'59"

REFERENCES

- (#) INDICATES REFERENCE NUMBER.
- (1) PARCEL MAP (580 M 49)
- (2) RECORD OF SURVEY (79 M 43)
- (3) LOT LINE ADJUSTMENT (DN 14843238)
SEE ALSO DEEDS DN 14835097
AND DN 18592170
- (4) PARCEL MAP (294 M 35)
- (5) DEED (2967 OR 175)
- (6) PARCEL MAP (502 M 30)
- (7) RECORD OF SURVEY (432 M 30)
- (8) PARCEL MAP (484 M 13)
- (9) CITY OF MILPITAS BENCHMARK SYSTEM,
DATED FEBRUARY 21, 2002.
- (10) LOT LINE ADJUSTMENT (DN 21922654)

LEGEND

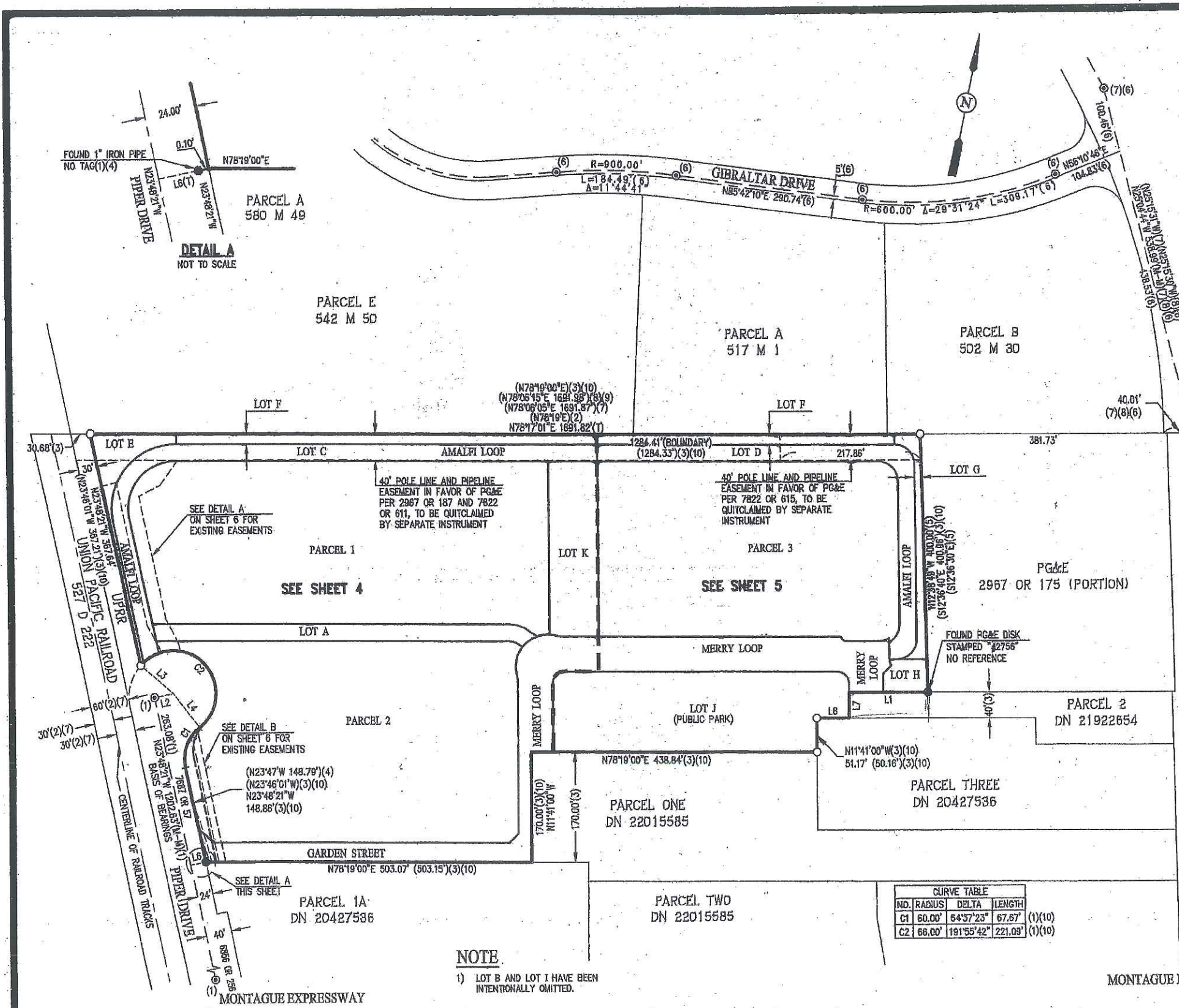
SEE SHEETS 4 AND 5

LINE TABLE		
NO.	BEARING	LENGTH
L1	N78°17'01"E	122.24' (S78°19'00"W 122.37')(10)
L2	N86°54'48"E(R)	30.00'
L3	N61°06'40"W(R)	66.00' (N61°04'20"W(R))(10)
L4	N49°10'58"W(R)	66.00' (1)
L6	N66°11'38"E	24.00' (23.93')(1)
L7	N11°41'00"W	40.00' (10)
L8	N78°17'01"E	50.35' (S78°19'00"W)(10)

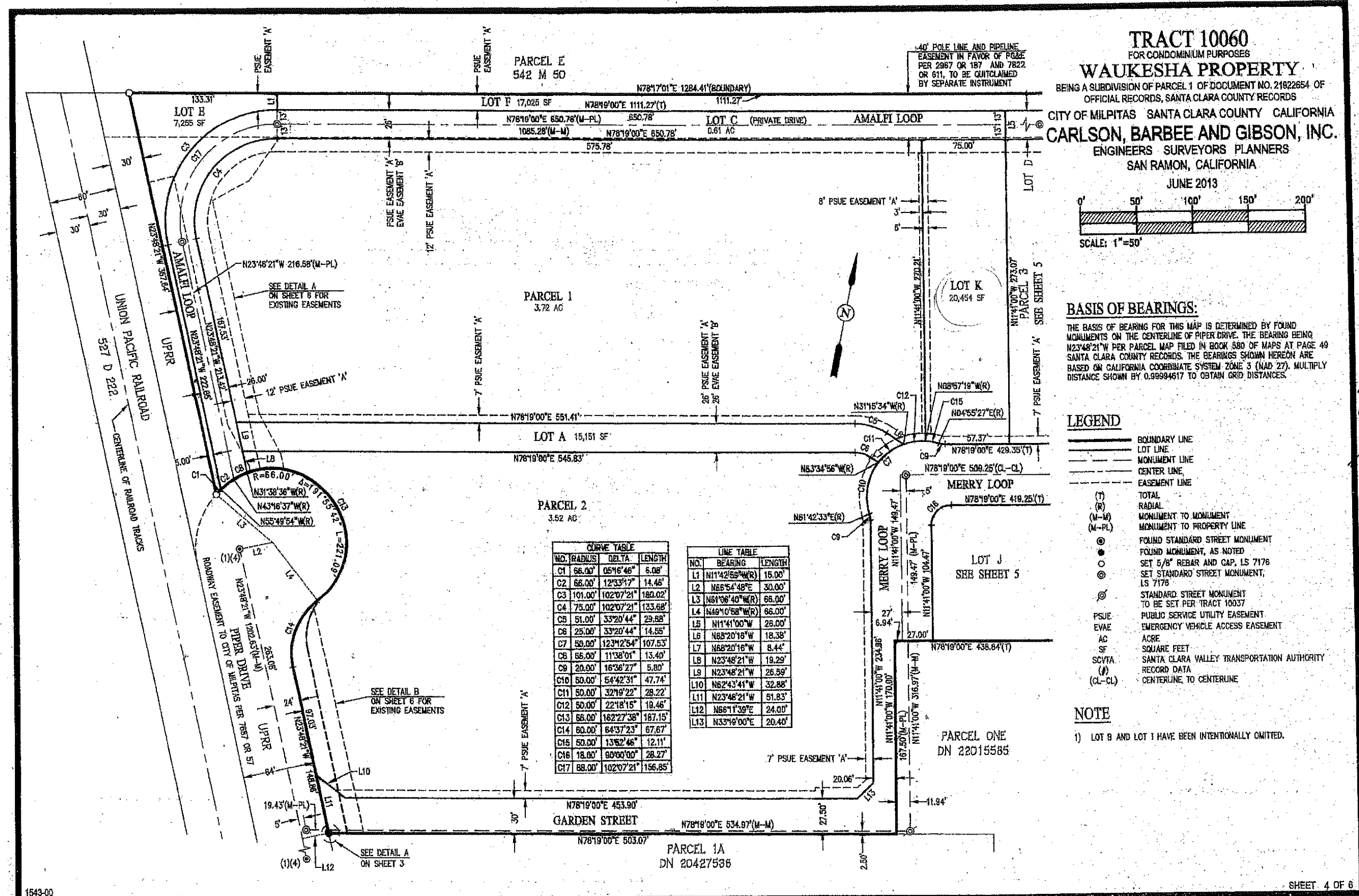
CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	60.00'	54°37'23"	67.67' (1)(10)
C2	66.00'	191°55'42"	221.09' (1)(10)

NOTE

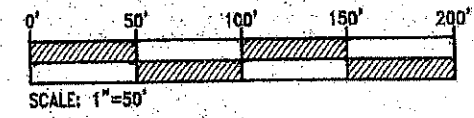
- 1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.



804
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53



TRACT 10060
FOR CONDOMINIUM PURPOSES
WAUKESHA PROPERTY
BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21822654 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON, CALIFORNIA
JUNE 2013



BASIS OF BEARINGS:
THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF PIPER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49 SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

- LEGEND**
- BOUNDARY LINE
 - LOT LINE
 - MONUMENT LINE
 - CENTER LINE
 - EASEMENT LINE
 - (T) TOTAL
 - (R) RADIAL
 - (M-M) MONUMENT TO MONUMENT
 - (M-PL) MONUMENT TO PROPERTY LINE
 - FOUND STANDARD STREET MONUMENT
 - FOUND MONUMENT, AS NOTED
 - ⊙ SET 5/8" REBAR AND CAP, LS 7176
 - ⊙ SET STANDARD STREET MONUMENT, LS 7176
 - ⊙ STANDARD STREET MONUMENT TO BE SET PER TRACT 10037
 - PSUE PUBLIC SERVICE UTILITY EASEMENT
 - EVAE EMERGENCY VEHICLE ACCESS EASEMENT
 - AC ACRE
 - SF SQUARE FEET
 - SCVTA SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
 - (#) RECORD DATA
 - (CL-CL) CENTERLINE TO CENTERLINE

NOTE
1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.

CURVE TABLE

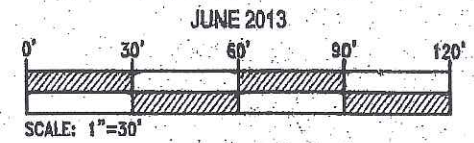
NO.	RADIUS	DELTA	LENGTH
C1	66.00'	05°16'46"	6.08'
C2	66.00'	12°33'17"	14.48'
C3	101.00'	102°07'21"	180.02'
C4	75.00'	102°07'21"	133.68'
C5	51.00'	33°20'44"	29.88'
C6	25.00'	33°20'44"	14.55'
C7	50.00'	123°12'54"	107.53'
C8	66.00'	11°38'01"	13.40'
C9	20.00'	16°36'27"	5.80'
C10	50.00'	64°42'31"	47.74'
C11	50.00'	32°19'22"	28.22'
C12	50.00'	22°18'15"	18.46'
C13	66.00'	162°27'38"	167.15'
C14	80.00'	64°37'23"	67.67'
C15	50.00'	13°52'46"	12.11'
C16	18.00'	90°00'00"	28.27'
C17	88.00'	102°07'21"	156.85'

LINE TABLE

NO.	BEARING	LENGTH
L1	N11°42'59"W(R)	15.00'
L2	N66°54'49"E	30.00'
L3	N81°06'40"W(R)	66.00'
L4	N49°10'58"W(R)	66.00'
L5	N11°41'00"W	26.00'
L6	N85°20'16"W	18.38'
L7	N68°20'16"W	8.44'
L8	N23°48'21"W	19.29'
L9	N23°48'21"W	26.59'
L10	N62°43'41"W	32.88'
L11	N23°48'21"W	51.83'
L12	N66°11'39"E	24.00'
L13	N33°19'00"E	20.40'

3.52
153.13
804
51
53
62.948
41%
10.6

TRACT 10060
FOR CONDOMINIUM PURPOSES
WAUKESHA PROPERTY
BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922854 OF
OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS
CITY OF MILPITAS · SANTA CLARA COUNTY · CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS · SURVEYORS · PLANNERS
SAN RAMON, CALIFORNIA



BASIS OF BEARINGS:

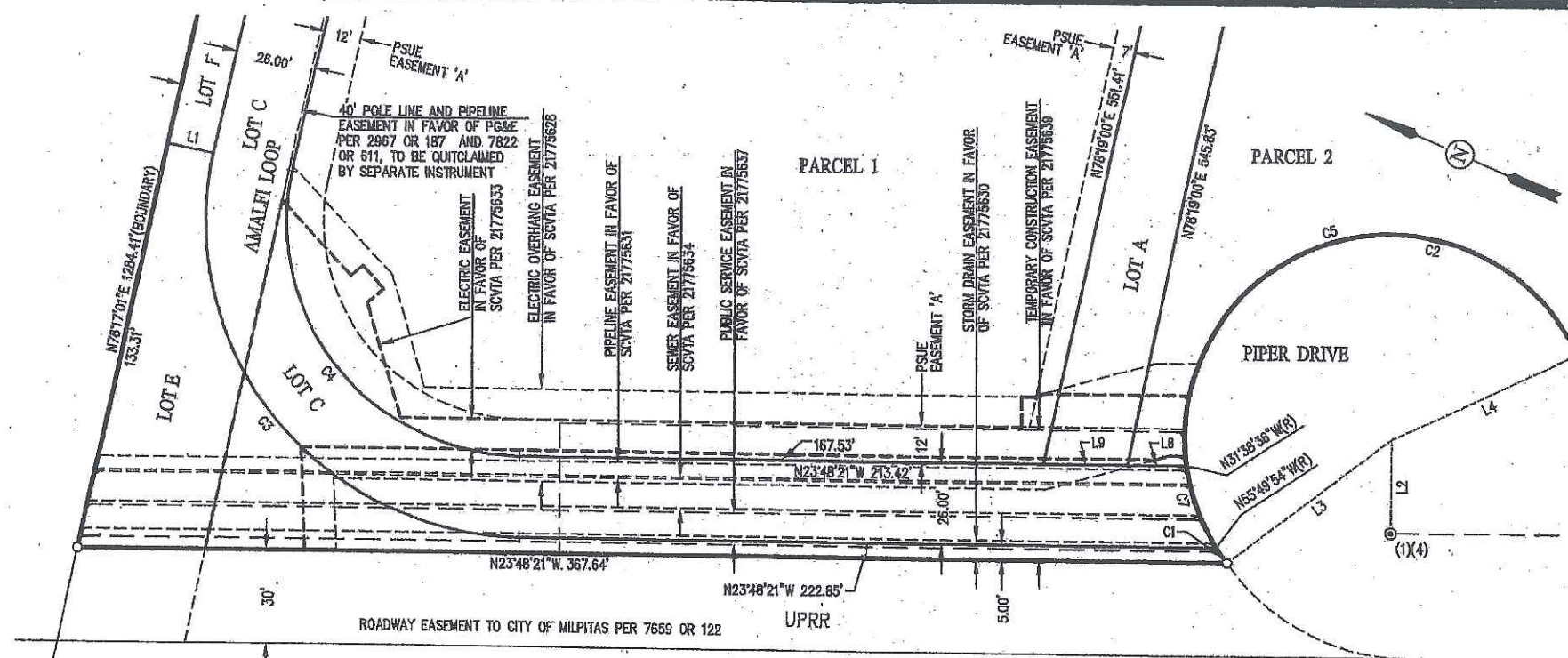
THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF PIPER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49 SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

LEGEND

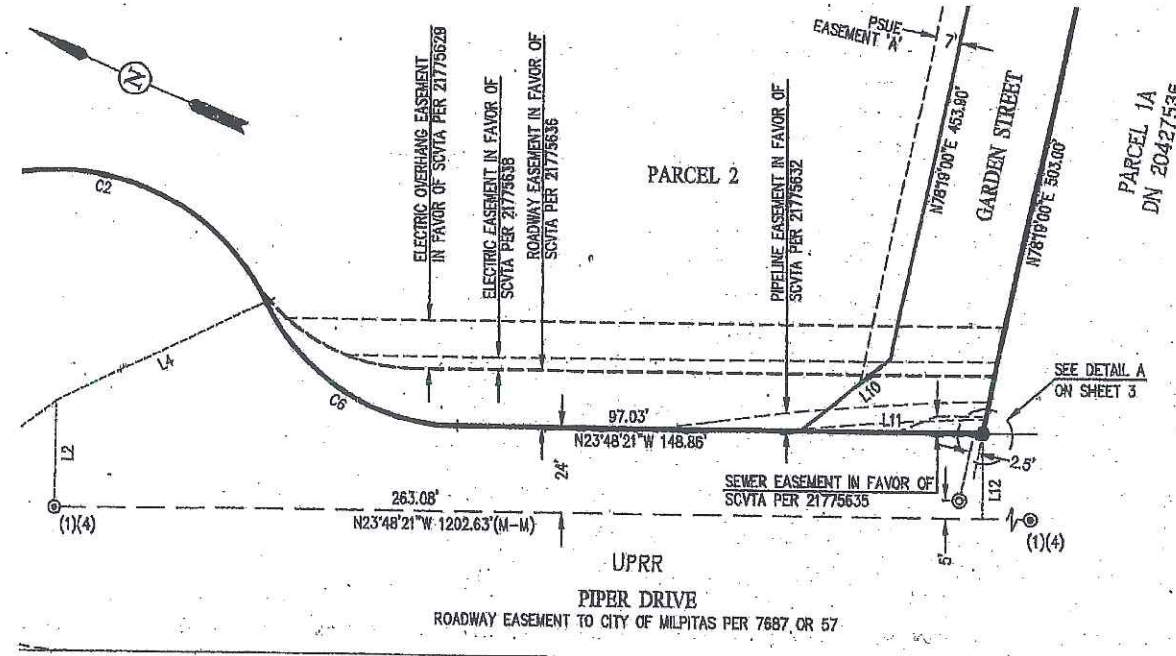
- BOUNDARY LINE
- LOT LINE
- MONUMENT LINE
- CENTER LINE
- - - EASEMENT LINE
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- (M-PL) MONUMENT TO PROPERTY LINE
- FOUND STANDARD STREET MONUMENT
- FOUND MONUMENT, AS NOTED
- SET 5/8" REBAR AND CAP, LS 7176
- SET STANDARD STREET MONUMENT, LS 7176
- ⊙ STANDARD STREET MONUMENT TO BE SET PER TRACT 10037
- PSUE PUBLIC SERVICE UTILITY EASEMENT
- EVAE EMERGENCY VEHICLE ACCESS EASEMENT
- AC ACRE
- SF SQUARE FEET
- SCVTA SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- (#) RECORD DATA
- (CL-CL) CENTERLINE TO CENTERLINE

NOTE

1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.



DETAIL A



DETAIL B

NO.	RADIUS	DELTA	LENGTH
C1	66.00'	05°16'46"	6.08'
C2	66.00'	19°55'42"	221.09'
C3	101.00'	102°07'21"	180.02'
C4	75.00'	102°07'21"	133.68'
C5	66.00'	162°27'38"	187.14'
C6	60.00'	64°37'23"	67.67'
C7	66.00'	24°11'18"	27.86'

NO.	BEARING	LENGTH
L1	N11°42'59"W	15.00'
L2	N86°54'48"E(R)	30.00'
L3	N61°08'40"W(R)	66.00'
L4	N49°10'59"W(R)	66.00'
L8	N23°48'21"W	19.29'
L9	N23°48'21"W	26.59'
L10	N62°43'41"W	32.98'
L11	N23°48'21"W	51.83'
L12	N66°11'39"E	24.00'

804
53
53

53

Legal Description

1-E

The Edge

(See attached)

A.P.N.'s 86-32-29 and a portion of 86-32-26

LEGAL DESCRIPTION

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

PARCEL ONE:

COMMENCING AT A POINT OF INTERSECTION OF THE NORTHERLY LINE OF LANDESS AVENUE WITH THE EASTERLY LINE OF THAT CERTAIN 60.00 FOOT STRIP OF LAND CONVEYED TO THE WESTERN PACIFIC RAILROAD COMPANY BY DEED RECORDED DECEMBER 29, 1920 IN BOOK 527, PAGE 222 OF DEEDS, SANTA CLARA COUNTY RECORDS; THENCE NORTH 69° 00' EAST ALONG LAST MENTIONED NORTHERLY LINE A DISTANCE OF 80.09 FEET TO THE SOUTHWESTERLY CORNER OF PARCEL NO. 1 OF THE LAND CONVEYED TO LINCOLN LAND CORPORATION, BY DEED RECORDED JULY 15, 1966 IN BOOK 7442, PAGE 670, OFFICIAL RECORDS, AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 69° 00' EAST ALONG THE NORTHERLY LINE OF SAID LANDESS AVENUE A DISTANCE OF 334.14 FEET TO A POINT IN THE WESTERLY LINE OF THE LAND CONVEYED TO THE CITY OF MILPITAS, BY DEED RECORDED MARCH 7, 1968 IN BOOK 8048, PAGE 193, OFFICIAL RECORDS; THENCE NORTH 21° 00' WEST ALONG LAST MENTIONED WESTERLY LINE A DISTANCE OF 35.00 FEET TO THE NORTHWESTERLY CORNER OF SAID LAND CONVEYED TO THE CITY OF MILPITAS; THENCE NORTH 69° 00' EAST ALONG THE NORTHERLY LINE OF THE SAID LAND CONVEYED TO THE CITY OF MILPITAS AND BY DEED RECORDED NOVEMBER 25, 1966 IN BOOK 7572, PAGE 447, OFFICIAL RECORDS, A DISTANCE OF 331.50 FEET TO A POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF PARCEL NO. 2 OF THE SAID LAND CONVEYED TO LINCOLN LAND CORPORATION; THENCE NORTH 21° 00' WEST ALONG SAID WESTERLY LINE A DISTANCE OF 305.00 FEET; THENCE SOUTH 69° 00' WEST 196.48 FEET TO THE MOST EASTERLY CORNER OF THE LAND CONVEYED TO THE WESTERN PACIFIC RAILROAD BY DEED RECORDED JULY 15, 1966 IN BOOK 7442, PAGE 670, OFFICIAL RECORDS; THENCE SOUTH 62° 16' WEST ALONG THE SOUTHERLY LINE OF SAID LAND CONVEYED TO THE WESTERN PACIFIC RAILROAD, A DISTANCE OF 230.67 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 367.25 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45° 47' 45" AN ARC DISTANCE OF 293.54 FEET TO A POINT IN THE EASTERLY LINE OF PIEPER DRIVE; THENCE SOUTH 23° 47' EAST ALONG SAID EASTERLY LINE A DISTANCE OF 171.86 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL TWO:

COMMENCING AT THE SAID POINT OF INTERSECTION OF THE SAID NORTHERLY LINE OF THE LAND CONVEYED TO THE CITY OF MILPITAS, WITH THE WESTERLY LINE OF PARCEL NO. 2 OF THE LAND CONVEYED TO LINCOLN LAND CORPORATION; THENCE NORTH 21° 00' WEST ALONG LAST WESTERLY LINE 305.00 FEET; THENCE NORTH 69° 00' EAST 120.50 FEET; THENCE SOUTH 21° 00' EAST 305.00 FEET, TO THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SAID LAND CONVEYED TO THE CITY OF MILPITAS; THENCE SOUTH 69° 00' WEST ALONG LAST MENTIONED NORTHERLY LINE A DISTANCE OF 120.50 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING FROM PARCELS ONE AND TWO, THOSE PORTIONS THEREOF CONVEYED TO THE COUNTY OF SANTA CLARA BY DEED RECORDED JUNE 22, 1973 IN BOOK 0436, PAGE 167, OFFICIAL RECORDS.

APN: 086-32-029

"EXHIBIT A"
LEGAL DESCRIPTION

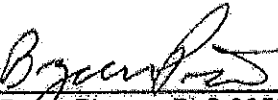
All that real property situated in the City of Milpitas, County of Santa Clara, State of California, being a portion of the 63.063 acre parcel shown on the Record of Survey filed September 4, 1953 in Book 45 of Maps, Page 19, Records of Santa Clara County, California, being more particularly described as follows:

Commencing at the intersection of the south line of "Parcel B" with the east line of Piper Drive, as shown on the Parcel Map filed November 20, 1987 in Book 580 of Maps, Pages 49 and 50, Records of Santa Clara County, California; thence along said east line, S23°00'05"E, a distance of 143.47 feet to the **Point of Beginning**; said point also being the beginning of a curve to the left, of which the radius point lies N19°07'13"E, a radial distance of 474.28 feet; thence leaving said east line, easterly along the arc, through a central angle of 39°20'39", a distance of 325.68 feet; thence N69°46'34"E, a distance of 145.88 feet to the north line of lands described in the Grant Deed recorded September 9, 2005 as Document No. 18569453, Official Records of Santa Clara County, California; thence along said north line, S63°02'18"W, a distance of 186.32 feet to a tangent curve to the left having a radius of 367.25 feet; thence continuing along said north line, southwesterly along said curve, through a central angle of 45°47'45", a distance of 293.54 feet to the east line of Piper Drive; thence along said east line, N23°00'05"W, a distance of 270.99 feet to the **Point of Beginning**.

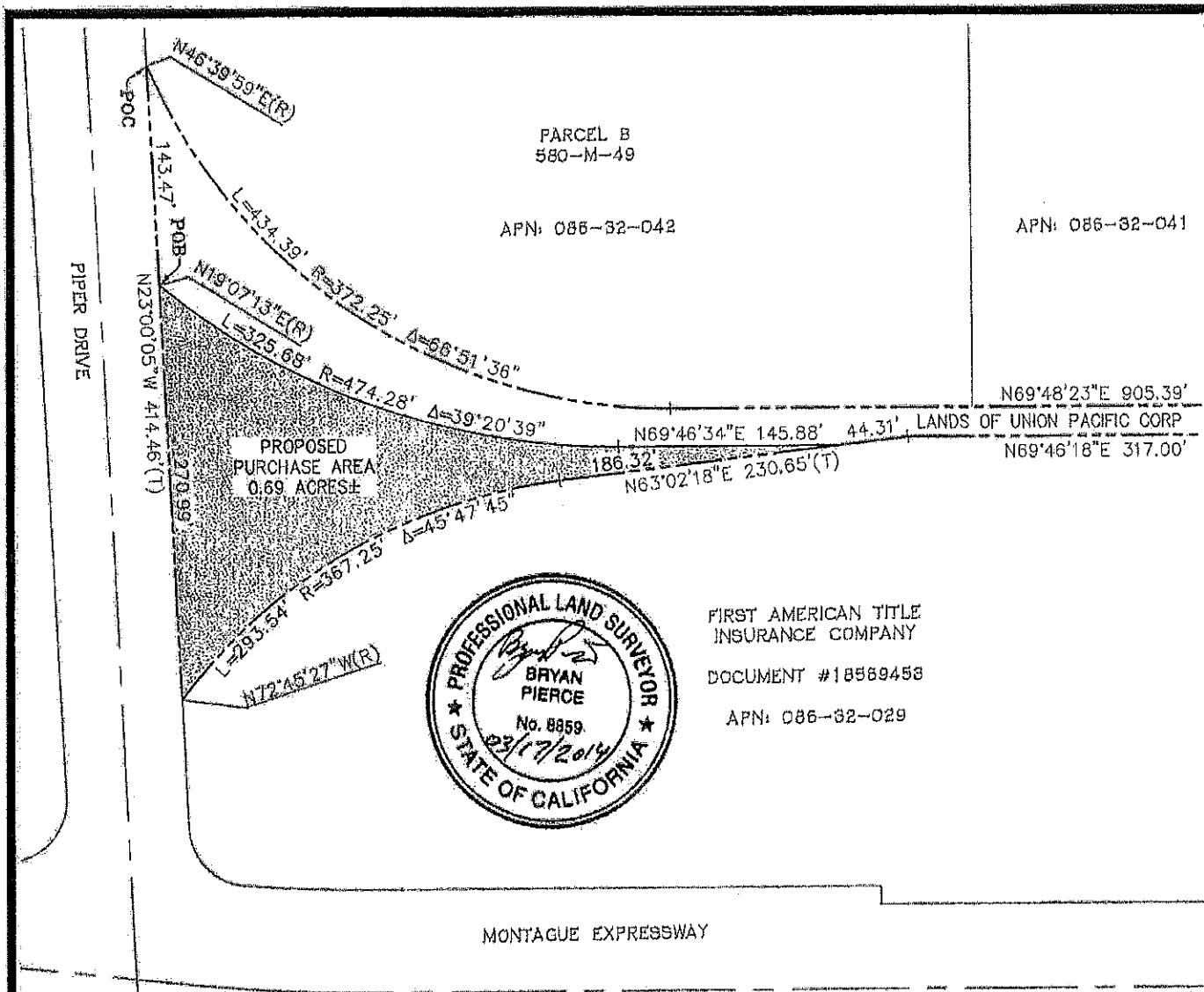
Containing 30,044 square feet or 0.69 acres, more or less.
As shown on "Exhibit B", attached hereto and made a part hereof.

END OF DESCRIPTION.

This description was prepared by me or under my direction pursuant to the requirements of the Professional Land Surveyor's Act.

 03/17/2015
Bryan Pierce, PLS 8859 Date
Expires: 12/31/2015





0 100 200

SCALE IN FEET: 1" = 100'



LEGEND

POC	POINT OF COMMENCEMENT
POB	POINT OF BEGINNING
—————	BOUNDARY LINE
—————	EXISTING LOT LINE
—————	PROPOSED LOT LINE

"EXHIBIT B"

A PORTION OF THE 63.063 ACRE
PARCEL SHOWN ON THE RECORD OF
SURVEY FILED SEPTEMBER 4, 1953 IN
BOOK 45 OF MAPS, PAGE 19, RECORDS
OF SANTA CLARA COUNTY, CALIFORNIA
MILPITAS, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
8035 CAMINO ARROYO GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302

SCALE:
1" = 100'

DATE:
03/17/2014

JOB NO.:
132003

Project: RR Purchase Parcel Monday March 17, 2014
Description: Pimper Drive
Number of Lots: 1
Report Created by: RJA-Gilroy

	Direction	Distance	Northing	Eastng
RR Purchase1				
Courses: 5			1975583.9031	6157465.8050

Radius Pt: (1976032.0185) (6157621.1565)
Radius: 474.28'
Included Angle: 39°20'38.90"
Length: 325.6808'
Radial In: N19°07'12.98"E Tangent In: S70°52'47.02"E
Radial Out: S20°13'25.92"E Tangent Out: N69°46'34.08"E
Chord: N 89°26'54" E 319.3197'
1975586.9783 6157785.1099

N 69°46'34.08" E 145.8847'
1975637.4090 6157922.0007
S 63°02'18.21" W 186.3203'
1975552.9326 6157755.9314

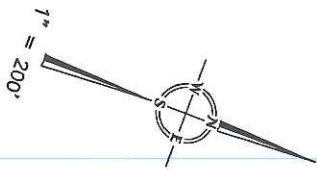
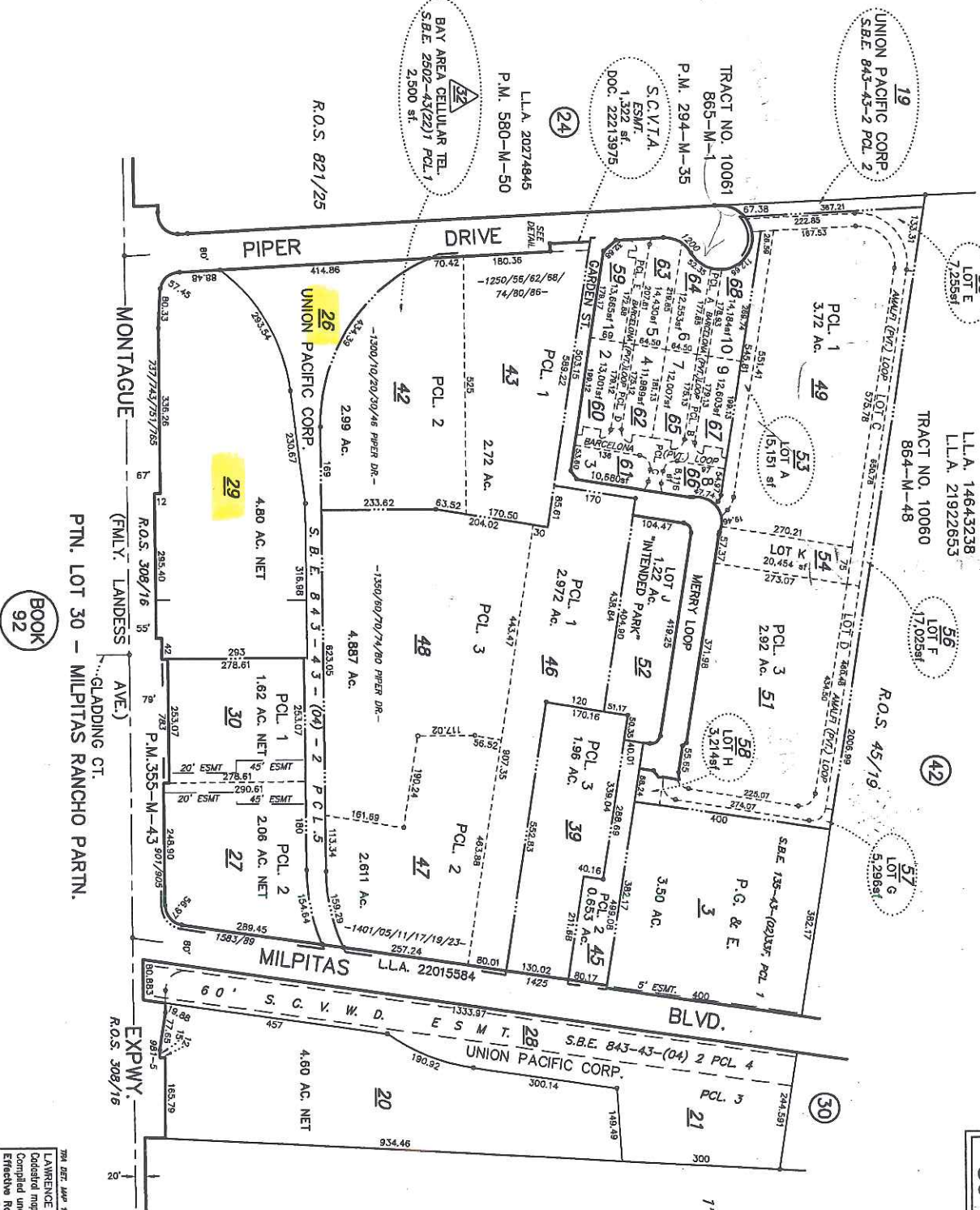
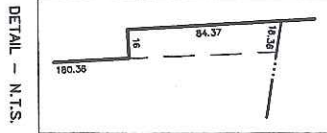
Radius Pt: (1975225.5988) (6157922.4401)
Radius: 367.25'
Included Angle: 45°47'45.00"
Length: 293.5385'
Radial In: S26°57'41.79"E Tangent In: S63°02'18.21"W
Radial Out: N72°45'26.79"W Tangent Out: S17°14'33.21"W
Chord: S 40°08'26" W 285.7869'
1975334.4582 6157571.6949

N 23°00'04.79" W 270.9897'
1975583.9031 6157465.8050

Perimeter: 1222.41 Area: 30043.92 Sq. Ft., 0.690 Acres

Error of Closure: S 33°41'24" W 0.001'
Error North: -0.001
Error East: -0.000
Precision: 1 in 1541076





THE REF. MAP 112
LAWRENCE E. STONE - ASSESSOR
Ordained map for assessment purposes only
Compiled under R. & T. Code, Sec. 327
Effective Roll Year 2014-2015



MILPITAS PLANNING COMMISSION STAFF REPORT

1-F

January 14, 2015

APPLICATION: **Development Agreement No. DA15-0001** – Adoption of an ordinance approving a development agreement vesting the Transit Area Specific Plan fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge.

RECOMMENDATION: **Staff recommends that the Planning Commission: Conduct the public hearing and Adopt Resolution No. 15-003 recommending the City Council adopt an ordinance approving a development agreement vesting the Transit Area Specific Plan fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge.**

LOCATION:

Address/APN:

1200 Piper Drive and 765 Montague Expressway
086-32-049; -051; -052 -054; -055; -056; -057
086-32-029; -026

Area of City:

Transit Area Specific Plan – Piper/Montague Subdistrict

PEOPLE:

Project Applicant:

Stephen E. Schott, Vice President, SCS Development

Consultant(s):

NA

Property/Business Owner:

SCS Development Company, 404 Saratoga Ave Ste 100, Saratoga, CA 95050

Project Planner:

Adam Petersen, Senior Planner

LAND USE:

General Plan Designation:

Boulevard Very High Density Mixed Use (BVHDMU)
Multi-Family Very High Density (VHD)
Multi-Family High Density (MFH)

Zoning District:

Very High Density Mixed Use District (MXD3)
Multiple Family Very High Density District (R4)
Multiple Family-Family District (R3)

Overlay District:

Transit Oriented Development (TOD) and Site and Architectural Overlay (S)

ENVIRONMENTAL:

Pursuant to Section 15061(b)(3) of the CEQA Guidelines, the project is exempt from CEQA since it does not have the potential to significantly affect the environment. It is further exempt pursuant to CEQA Guidelines Section 15183(a), a project

consistent with a Specific Plan for which an environmental impact report has been certified. Furthermore, pursuant to Section 15162 of the CEQA Guidelines, no further environmental documentation is required. An EIR was certified for this previously approved project, including the development of the high rise.

BACKGROUND

The Milpitas City Council adopted Resolution No. 8132 on November 11, 2011 approving the Citation I project. The Citation I project consisted of up to 732 dwelling units, public parks, streets and infrastructure improvements located at 1200 Piper Drive. Of these 732 units, 638 were allocated to two wrap buildings, which comprise the Amalfi I and Amalfi II development. Amalfi I, consisting of 378 apartment units is currently under construction. Amalfi II consists of 260 apartments, but construction has not commenced for this project. Additionally, 94 townhomes are under construction as part of the Citation I project approvals, but the 94 townhomes will not be a part of the development agreement.

On June 17, 2014, the City Council adopted Resolution No. 8382 approving the Citation II project. That project consisted of 381 apartments and 8,100 square feet of commercial and office space that fronts Montague Expressway. Map 1 illustrates the location of these two projects.

The projects are comprised of three buildings with 1,019 dwelling units on approximately 12.6 acres. The sites were previously improved with the existing industrial office buildings, outdoor storage areas, utilities and landscaping. The project site is located along Montague Expressway, tangential to the eastern property line of the Great Mall. Commercial uses are proposed in the Edge project.

The site is accessed by Montague Expressway, the proposed Piper Drive, and a public street from South Milpitas Boulevard.

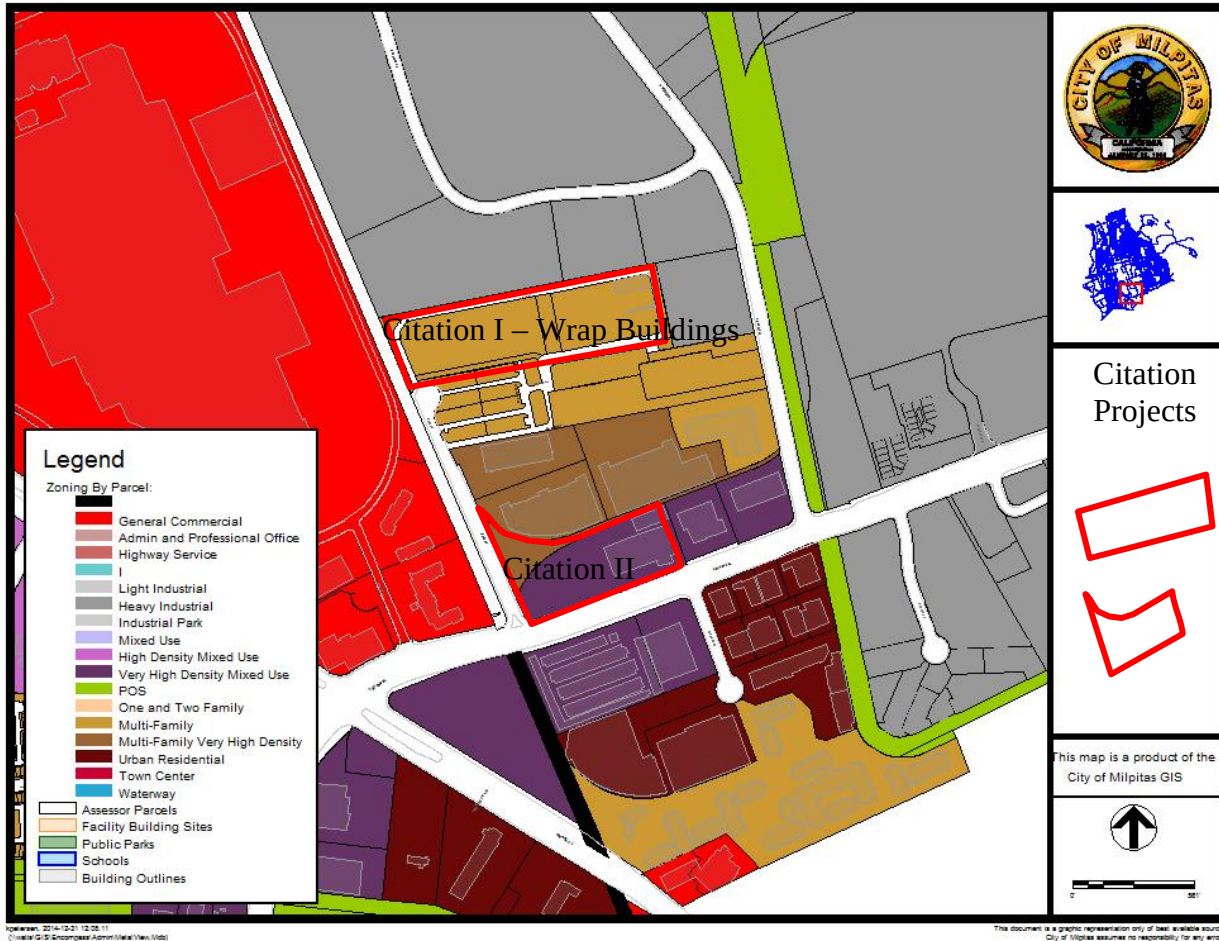
The following table summarizes the approved development projects. As of the date this staff report was prepared, Amalfi I is under construction. Construction has not commenced for Amalfi II and the Edge.

Table 1:
Summary Project Information

Use/Standards	Citation I	Citation II
	Amalfi I and Amalfi II	The Edge
Acres	7.0 acres	5.6 acres
Commercial / Retail s.f.	0	8,100 sq ft
Residential Units	638 apartments	381 apartments
Parking Required	1,207 spaces	634 spaces
Parking Provided	1,260	634 spaces
Residential Density	45 dwelling units per acre	68 dwelling units per acre
Commercial FAR	NA	0.03

Map 1
Project Location

Zoning Map



PROJECT DESCRIPTION AND ANALYSIS

The applicant is requesting a five year Development Agreement for the Amalfi I, Amalfi II and the Edge projects. The agreement may be extended another five years, if both parties mutually agree to the extension. The Development Agreement also proposes a reduction in Transit Area Specific Plan (TASP) fees for the subject development projects. Projects in the TASP are currently required to pay \$32,781 per unit at the time of building permit issuance. The applicant is requesting that the development agreement lock in a TASP fee of \$29,012 per unit due at the certificate of occupancy. This fee would adjust after five years.

The reduced TASP fees have certain benefits to the applicant, and the City will benefit from the Citation projects. The City has received an investment of approximately \$250,000,000 from the project applicant for these projects including approximately \$10,000,000 in up front public infrastructure cost that will benefit other developments. Further, the applicant has built these projects at a higher density than required with more commercial and retail square footage than what is required by the City's Zoning Code and TASP. As a result of the oversized commercial component, the City will benefit from increased economic development opportunities, employment and tax generating uses. The reduced TASP fees would allow for the appropriate planning for finance, construction and marketing of a complex and expensive project. These components would increase the likelihood of the project being constructed as approved. Therefore, the City and the applicant will benefit from the reduced TASP fees.

The project will however result in less TASP fees collected than under the current fee. Table 2 provides a summary of the TASP fees collected for the project.

Table 2:
TASP Fee Summary

	Amalfi I	Amalfi II	The Edge	Total
TASP Fee Current (\$32,781 per unit)	\$ 12,391,218	\$ 8,523,060	\$ 12,489,561	\$33,403,839
TASP Fee Requested (\$29,012 per unit)	\$ 10,966,536	\$ 7,543,120	\$ 11,053,572	\$29,563,228
Difference	\$ 1,424,682	\$ 979,940	\$ 1,435,989	-\$ 3,840,611

The result of the reduced TASP fees is that the City would not collect approximately \$3.8 million, and the collection of those fees would be delayed from building permit issuance to certificate of occupancy. However, the applicant has provided the City with public benefits from the project. The applicant has constructed approximately \$10 million in public infrastructure improvements for the project as well Milpitas Station and Barry Swenson. These improvements and funding was committed as a result of a three-party cost sharing agreement. The infrastructure constructed will serve this project and others in the future.

The Edge project is the first development in the TASP to include a commercial component. The reduced TASP fees are required to support the likelihood of a successful commercial aspect to

the project. Further, the development agreement conditions the applicant to construct the Edge project prior to the Amalfi II project. This will benefit the City of Milpitas because early construction of the 8,100 square feet of commercial development will generate revenue for the City up front rather than delaying it to a later date.

FINDINGS

California Government Code Section 65864 et seq. sets forth the general requirements for approval of development agreements. Further, the City Council adopted Resolution No. 6642 on May 6, 1997 establishing procedures and requirements for the consideration of development agreements under California Government Code Section 65864 et seq. Pursuant to Resolution No. 6642, certain findings are required by the City Council prior to approval of any development agreement.

1. The Development Agreement is consistent with the General Plan.

The proposed development agreement is consistent with the Milpitas General Plan and other applicable plans, policies and regulations of the City currently in effect. The General Plan and Transit Area Specific Plan land use designation for the area that is subject to the agreement is Boulevard Very High Density Mixed Use, Multi-Family Very High Density, and Multi-Family High Density and the proposed development of the subject project is consistent with the General Plan and Transit Area Specific Plan. As discussed in detail in the proposed agreement, the Project involves development of the “Amalfi I Building” consisting of up to three hundred and seventy-eight (378) multi-family residential units and “Amalfi II Building” consisting of up to two hundred sixty (260) multi-family residential units (collectively “Citation I Project”), and up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements (the “Edge Project” or “Citation II Project”) (collectively, all the “Project”).

The Project is also consistent with the following General Plan Guiding Principles and Policies:

- **Policy 2.a-G-7** – When considering development proposals, seek “community benefit”, such as upgrading infrastructure facilities, constructing new infrastructure facilities, and funding contributions to programs.
- **Policy 2.d-G-1** – Provide all possible community facilities and utilities of the highest standards commensurate with the present and anticipated needs of Milpitas, as well as any special needs of the region.
- **Policy 2.d-I-1** – Coordinate capital improvement planning for all municipal service infrastructure with the location and timing of growth.

2. The Development is consistent with the Transit Area Specific Plan.

The proposed Development is consistent with the Transit Area Specific Plan because:

- a. Development of the Project should be encouraged because it will help meet important economic, social, environmental and planning goals of the City, including but not limited to locating housing near jobs to reduce commutes for City residents, redeveloping underutilized property near transit investment with housing and jobs so as to encourage use of transit, providing for an extraordinary contribution towards housing and jobs in the City.
- b. The Agreement will facilitate the development of the Project in the manner proposed in the Agreement for the further reasons set forth in the accompanying staff reports and Agreement;
- c. Developer will incur unusually substantial costs in order to provide public improvements, facilities or services, in particular extraordinary funding for housing in the City, from which the public will benefit, as set forth in more detail in the accompanying staff report and Agreement and (ii) Developer has made commitments to a very high standard of quality for the Project and has agreed to development limitations beyond that required by the existing laws, as set forth in the Agreement and Development Approvals; and
- d. Development of the Project will make a substantial contribution to the economic development of the City of Milpitas in that the Project will create additional, transit-oriented housing to support transit infrastructure investments, as well as provide extraordinary tax revenues to the City.

ENVIRONMENTAL REVIEW

The proposed development agreement is exempt from the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15061(b)(3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The development agreement will not expand the range or intensity of uses permitted on the subject properties. The development agreement does not authorize any construction and will not result in any physical change in the environment. Therefore, it can be seen with certainty that the project will not have an effect on the environment.

The project is further exempt from environmental review pursuant to CEQA Section 15183(a). The development of Amalfi I, Amalfi II, and the Edge projects was previously analyzed in the Transit Area Specific Plan Environmental Impact Report (SCH 2006032091). The EIR analyzed all impacts associated with the development of these properties and anticipated the intensity of this development. The development agreement does not increase the intensity beyond that previously analyzed in the certified EIR. Further, the projects, as approved under Resolution No. 8132 and 8382 were found to be consistent with the Transit Area Specific Plan. Therefore, the proposed agreement is exempt from CEQA review because it can be seen with certainty, there is no possibility it will have a significant adverse on the environment and the project is consistent with a specific plan for which an EIR was certified.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public regarding the project.

CITY COUNCIL REVIEW

This project requires review by the City Council and is tentatively scheduled on the February 3, 2015 City Council agenda.

CONCLUSION

The development agreement as drafted includes substantial benefits to the developer and the City. The reduced TASP fees would allow for the appropriate planning for finance, construction and marketing of a complex and expensive project. Therefore, staff recommends that the Planning Commission adopt Resolution 15-003, recommending that the City Council authorize execution of the Citation I and Citation II Development Agreement, subject to the attached resolution and development agreement.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the public hearing to receive comments; and
2. Close the public hearing; and
3. Adopt Resolution No. 15-003 recommending the City Council adopt an ordinance to authorize the execution of the Citation I and Citation II Development Agreement, subject to the findings above.

ATTACHMENTS

A: Resolution No.15-003

Exhibit A: Draft Ordinance

Exhibit to Draft Ordinance: Development Agreement

Exhibit to Development Agreement: Legal Descriptions and Plat Maps

MEETING MINUTES

1-G

**MILPITAS PLANNING COMMISSION
Milpitas City Hall, Council Chambers
455 E. Calaveras Blvd., Milpitas, CA**

Wednesday, January 14, 2015

- I. PLEDGE OF ALLEGIANCE** **Chair Mandal** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. OATH OF OFFICE TO NEWLY APPOINTED MEMBERS** City Clerk Mary Lavelle swore in new members Zeya Mohsin and Ray Maglalang.
- III. ROLL CALL/ SEATING OF ALTERNATE** **Commissioners**
Present: Chair Sudhir Mandal, Vice Chair Larry Ciardella, Commissioners Gurdev Sandhu, Rajeev Madnawat, Demetress Morris, Hon Lien, Ray Maglalang, Alternate Member Zeya Mohsin
Absent:
Staff: Steven McHarris, Johnny Phan, Adam Petersen
- IV. PUBLIC FORUM** **Chair Mandal** invited members of the audience to address the Commission and there was one speaker.

Rob Means, a Milpitas resident who lives on Yellowstone, said he is circulating a petition rejecting US Supreme Court rulings regarding money interests and invited commissioners to join him for a protest march in San Francisco at 3:30 on January 21st.
- V. APPROVAL OF MEETING MINUTES** **Chair Mandal** called for approval of the December 10, 2014 meeting minutes of the Planning Commission.

Motion to approve Planning Commission meeting minutes as submitted.
Motion/Second: Commissioner Madnawat/Commissioner Morris
AYES: 4
NOES: 0
ABSTAIN: 3 Ciardella, Sandhu, Maglalang
- VI. ANNOUNCEMENTS** Planning Director Steven McHarris announced that the Holiday Inn Suites and Springhill Suites items were deferred to February 11.

Romero Rodriguez, a resident on Fairview Way, was present to speak about these projects. He said the land has been vacant for several years and as a home owner he believes the hotels will be a big boost to their property values and that they will create more pedestrian activity for the businesses located there.

Anna Capelias said her concern has to do with use and zoning of the development and what changes might occur if a hotel is allowed, and she wants to hear all of the information when the presentation is made.

Mr. McHarris said the zoning is not changing and that hotel use can occur with approval of the planning commission. The projects will be heard at the February 11 Planning Commission meeting.

VII. CONFLICT OF INTEREST

Assistant City Attorney Johnny Phan asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.

There were no reported conflicts.

VIII. APPROVAL OF AGENDA

Chair Mandal asked if staff or Commissioners had changes to the agenda and there were none.

Motion to approve the January 14, 2015 agenda as submitted.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

IX. CONSENT CALENDAR

NO ITEMS

X. PUBLIC HEARING

X-1

TOWN CENTER AMENDMENT – ALL TOWN CENTER DESIGNATED PARCELS – ZA14-0011: Zoning Text Amendment to the Town Center zoning district that would add a description and prohibit ground level residential uses.

Project Planner Adam Petersen reviewed a PowerPoint presentation discussing the zoning amendment.

Commissioner Madnawat asked if a garage is considered residential, because if so there could be an easy way to get around the amendment by building garages on the ground floor. Mr. McHarris said that residential serving garages would be classified as residential and would not be permitted on the ground floor, and that there has to be commercial on the ground floor. Commissioner Madnawat said this would mean there would be no condominium development and Mr. McHarris said that was correct. Commissioner Madnawat said the language in the ordinance should be clearer about permitted uses and should state that the ground floor needs to be 100% commercial.

Assistant City Attorney Johnny Phan said the drafted language can be updated to clarify the types of uses allowed.

Chair Mandal asked about the process of attracting high quality businesses to Milpitas and the vision for the city to produce more walkable and lively areas and Mr. Petersen said the intent of this amendment is to encourage future uses that accommodate that type of use.

Chair Mandal opened the public hearing and Mr. Means spoke in favor of this amendment.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked that the language in the ordinance be clarified to include permitted uses around the word commercial and that staff look into potential conflicts with the ordinance that allow live-work units.

Motion to adopt Resolution No. 15-001 recommending the City Council adopt Zoning Amendment No. ZA14-0011 to add the words “mixed use” residential to the purpose and intent section of the Town Center Zoning description and to prohibit ground floor residential in the Town Center zone.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

X-2

GENERAL PLAN CONVERSION - CLARIFICATION – CITY WIDE – GP14-0005: Clarification to the adopted General Plan Land Use Conversion policy (City Council Resolution No. 8220), removal of the exemption for parcels on the west side of McCarthy Boulevard north of Highway 237 and properties on the east side of California Circle to Penitencia Creek.

Senior Planner Adam Petersen provided a presentation reviewing the project.

Commissioner Sandhu asked how large the parcel is and Mr. Petersen said it is approximately 10 acres.

Commissioner Madnawat asked if there are pending applications and Mr. McHarris said there are not.

Chair Mandal opened the public hearing and Mr. Means said that this generally sounds like a good idea and was curious about the remnant parcel and who the owner is.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked if there is any interest on the parcel and Mr. McHarris said there are no pending applications. Mr. Petersen added that the owner is listed as BAPS San Jose LLC.

Motion to adopt Resolution No. 15-002 to recommend the City Council adopt a resolution rescinding Paragraph Number 7 in Resolution No. 8220 relating to conversion of employment/sales tax generation properties to residential, while considering to

continue exempting parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

X-3

CITATION PROJECTS DEVELOPMENT AGREEMENT – TASP PIPER/MONTAGUE DRIVE SUBAREA – DA14-0001: Development Agreement proposal for reduced TASP Fees for all Citation Developments.

Senior Planner Adam Petersen provided a presentation reviewing the project.

Three commissioners disclosed that they had met with the developer: Vice Chair Ciardella, Chair Mandal, and Commissioner Morris.

Commissioner Madnawat asked how the TASP fees are calculated and Mr. Petersen said that \$32,781 is the cost per unit to install infrastructure including roads, sewer and water within the TASP area. Commissioner Madnawat asked if this is a reasonable amount the City will need to spend to provide infrastructure for these homes and Mr. McHarris said it is.

Commissioner Madnawat referenced a bullet point in the presentation stating the builder has provided \$8 million worth of benefits and asked for two examples of those benefits provided that have nothing to do with their development. Mr. McHarris said the developer fronted that amount of money to enable development of the TASP area, not just for their development but to enable the development of the TASP area. He said infrastructure needed to go in and Citation stepped up to do that and also processed three projects consistent with the transit area.

Commissioner Madnawat asked what amount of the \$8 million is the amount not adding value to their project and Mr. McHarris said it does add some value to their project but also adds value to all of the projects within this sub-area of the TASP.

Commissioner Madnawat said he feels this is for the developers own benefit and that it is a \$3.8 million dollar gift to the builder. He said if \$32,781 is the fair amount that the City will have to spend then that means the taxpayers will have to pay \$3.8 million to provide those services and he has a problem with this.

Commissioner Lien asked if there was a recent fee increase and Mr. McHarris said there have been two fee adjustments in addition to the annual adjustment and that the fee is calculated at the time the project is developed not entitled.

Commissioner Maglalang said he was trying to understand the \$8.3 million infrastructure improvement cost and if this is supposed to be a City expense or an obligation by the developer. Mr. Phan said there are three developers building in the Piper/Montague sub-district of the TASP, Citation being the largest developer in that area and building over 1,000 units. Potentially Barry Swenson will build 300-400 units and also Milpitas Station.

With these three developers over 1,500 units will be built and there is significant public improvement required, none of which are City obligations. These public improvements total about \$10 million and have to be built by the developer. A few years ago the City Council approved a four-party cost sharing agreement between the City, Citation, Barry

Swenson and Milpitas Station. Citation is the first developer to come in and is going to front and build most of the improvements, going above and beyond their obligation. They will receive credit and when the other developers come in to build they will pay the City back.

Commissioner Morris asked if development fees can be grandfathered in and Mr. Phan said the city does not grandfather anyone's fees. Fees are based on inflation and updated studies and may be adjusted during the planning process and the fee was \$29,000 when Citation submitted their application and \$32,721 when the building permit was issued.

Commissioner Madnawat referenced the four-party contract and wondered why Citation doesn't request the money from the other developers, and what guarantee is there that they will reimburse the city. Mr. Phan said there is a mechanism for the City to collect from the developer, that a CFD can be created if they do not build within seven years and pay their fees.

Chair Mandal asked if there will be a park and Mr. Petersen said there will be one constructed by the Citation project and showed the location of the park. He asked about the five year freeze on the fees and Mr. Phan explained that the development agreement is drafted so that within the first five years the TASP fee stays at \$29,012 per unit if they build and pay their full TASP fees but if they build after five years then the fee is adjusted for inflation and increased parkland value.

Commissioner Madnawat asked if fees are frozen when a permit is pulled and Mr. Phan said that the City's position is that fees are not vested and not frozen when a permit is pulled but this has been an ongoing dispute with developers. Commissioner Madnawat said the TASP fee is needed to provide infrastructure and should be non-negotiable. He said someone has to pay this and it should not be the taxpayers of Milpitas, and he sees this a \$3.8 outright gift to the developer. He wants to see the cost sharing agreement and feels that some commissioners may not understand this topic.

Commissioner Maglalang is afraid that giving a fee reduction will create a bad precedence for other developers to ask for the same fees given to Citation.

Applicant Mark Tiernan, who is also a resident of Milpitas, wanted to clarify a few points about the rationale behind the development agreement: 1) they are building at the highest level of density allowed, 2) although the City asked them to provide 5,000 square feet of retail space they are providing 8,100 square feet of retail space, and 3) when Citation 1 was approved the fees were \$23,700 which was the dollar amount the City and consultant said was needed to provide the infrastructure to support these projects. By the time they got plans approved and went through the process the fees were raised to now almost \$32,800 and they have asked for a compromise in return for building what the City has described as a signature project which is the Edge.

Mr. Tiernan said the first project they are building is 381 units and will take two years to build and another 1-2 years to fully lease out. Normally a developer would wait to have a building fully leased before building another project because you don't want to compete with yourself, and their plan was to move from Amalfi 1 to Amalfi II to the Edge. When they came for approval of the Edge, the City Council felt this was an important project and that it was important to coincide with the BART station, and they entered into discussions with the City to move forward before Amalfi I is fully leased out, increasing their risk, and they asked for a compromise in the fees in return for building what the City would describe as a signature project.

He said that other developers could ask for the same deal and the City could ask them if

they are building at the highest density, providing more commercial space than required and are they willing to invest 250 million in the City to get their projects built. He said if the answer was yes to those questions, then the City would probably move forward with a development agreement because of the role the developer is playing.

Mr. Tiernan said the TASP is one of the most important transit housing opportunities in the Bay Area and Citation Homes has made this one of their signature projects. The City would like them to build this project to coincide with the BART station and with the increases in construction and material costs they would like to get some cost certainty in their fees to reduce some of their risk and start construction on a building before their other project is fully leased out.

Commissioner Madnawat said Mr. Tiernan's argument regarding requests from other developers does not hold water but that his argument for the fee increases does and said he was surprised by the huge increase in the fees and asked the reasons for such an increase. Mr. Phan said there is a formula and consultants conduct a Nexus study and look at a number of different factors to determine the fair share amount for each unit. He said the initial fee study done in 2008 was based on the plan that was adopted but has been updated based on new trends and information.

Commissioner Madnawat said that if the \$32,781 reflects what the City is going to spend it is \$3.8 million coming from the City which can be spent on hiring police officers, fire fighters, and others.

Chair Mandal opened the public hearing and there were two speakers. Rob Means said this is a great project and reviewed a list of benefits to the City that he believes offsets the \$3.8 million, including a high density housing project, extra retail, and a pedestrian over crossing getting built early.

Jim Sullivan, a consultant for the developer, said he was the project proponent for the Edge. He said developers were building on the low density side but they transferred another developers units onto the Edge and built 94 more units than necessary. He said they are also working with staff to build a great public park in the area at a substantial discount than what it would cost the city to build.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked who is building the pedestrian bridge and Mr. McHarris said it is a City project and there is currently grant funding for the design work and VTA is preparing design work for the City.

Motion to adopt Resolution No. 15-003 recommending the City Council adopt an ordinance approving a development agreement vesting the Transit Area Specific Plan fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge.

Motion/Second: Commissioner Morris/Commissioner Lien

AYES: 4

NOES: 3 Sandhu, Madnawat, Maglalang

XI. NEW BUSINESS

NO ITEMS

XII. ADJOURNMENT The meeting was adjourned at 9:10 PM to the next meeting scheduled on Wednesday, January 28, 2015.

Motion to adjourn to the next meeting.

Motion/Second: Commissioner Madnawat/Vice Chair Ciardella

AYES: 7

NOES: 0

ABSENT: 0

*Meeting Minutes submitted by
Planning Secretary Elia Escobar*

RESOLUTION NO. 15-003

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THE MILPITAS CITY COUNCIL ADOPT AN ORDINANCE
APPROVING A DEVELOPMENT AGREEMENT WITH SCS DEVELOPMENT CO.,
AMALFI MILPITAS, LLC, AND DPD INVESTMENTS, LLC FOR THE CITATION I
PROJECT (AMALFI I AND AMALFI II) AND CITATION II PROJECT (THE EDGE)
LOCATED AT 1200 PIPER DRIVE AND 765 MONTAGUE EXPRESSWAY**

WHEREAS, the Milpitas City Council adopted Resolution No. 7830 on February 17, 2009 approving Major Tentative Map No. MT08-0004, Site Development Permit No. SD08-0002, and Conditional Use Permit No. UP08-0049 for the development of up to Six Hundred and Thirty-Nine (639) residential units located near 1200 Piper Drive within the Piper-Montague Subdistrict of the Transit Area Specific Plan; and

WHEREAS, the Milpitas City Council adopted Resolution No. 8132 on November 1, 2011 approving Major Tentative Map Amendment No. TM11-0001, Site Development Permit Amendment No. SA11-0005, and Conditional Use Permit Amendment No. UA11-0008 for the development of up to seven-hundred and thirty-two (732) residential units located in the Piper-Montague Subdistrict of the Transit Area Specific Plan, consisting of the “Amalfi I Building” with three hundred and seventy-eight (378) residential units and “Amalfi II Building” with up to two hundred sixty (260) residential units (“Citation I Project”) and ninety-four (94) townhomes; and

WHEREAS, the Milpitas City Council adopted Resolution No. 8382 on June 17, 2014 approving Major Tentative Map No. TM13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit No. UP13-0011 for the development of up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements on approximately 5.6 acres located at 765 Montague Expressway (the “Edge Project” or “Citation II Project”); and

WHEREAS, on January 6, 2015, an application was submitted by SCS Development Co., Amalfi Milpitas, LLC and DPD Investments, LLC (collectively “Developer”) for a development agreement to reduce, vest, and defer the Transit Area Specific Plan Development Impact Fees from \$32,781 to \$29,012 for each residential unit and defer the payment of these fees issuance of building permits to Certificate of Occupancy (“Project”); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determines this Project is exempt pursuant to Section 15183(a) of the CEQA Guidelines because the Project is consistent with the certified EIR for the Transit Area Specific Plan project (SCH 2006032091). The Project is further exempt pursuant to Section 15061(b)(3) 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. Furthermore, the Project does not cause any substantial changes to the proposed development that would necessitate further environmental documentation under Section 15162 of the CEQA Guidelines; and

WHEREAS, on January 14, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

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

Section 1: The Planning Commission 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 Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Commission finds the Project is exempt pursuant to Section 15183(a) of the CEQA Guidelines because the Project is consistent with the certified EIR for the Transit Area Specific Plan project (SCH 2006032091). The Project is further exempt pursuant to Section 15061(b)(3) 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. Furthermore, the Project does not cause any substantial changes to the proposed development that would necessitate further environmental documentation under Section 15162 of the CEQA Guidelines.

Section 3: California Government Code Section 65864 et seq. sets forth the general requirements for approval of development agreements. Further, the City Council adopted Resolution No. 6642 on May 6, 1997 establishing procedures and requirements for the consideration of development agreements under California Government Code Section 65864 et seq. Pursuant to Resolution No. 6642, certain findings are required by the City Council prior to approval of any development agreement.

1. *The Development Agreement is consistent with the General Plan.*

The proposed development agreement is consistent with the Milpitas General Plan and other applicable plans, policies and regulations of the City currently in effect. The General Plan and Transit Area Specific Plan land use designation for the area that is subject to the agreement is Boulevard Very High Density Mixed Use, Multi-Family Very High Density, and Multi-Family High Density and the proposed development of the subject project is consistent with the General Plan and Transit Area Specific Plan. As discussed in detail in the proposed agreement, the Project involves development of the "Amalfi I Building" consisting of up to three hundred and seventy-eight (378) multi-family residential units and "Amalfi II Building" consisting of up to two hundred sixty (260) multi-family residential units (collectively "Citation I Project"), and up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements (the "Edge Project" or "Citation II Project") (collectively, all the "Project").

The Project is also consistent with the following General Plan Guiding Principles and Policies:

- **Policy 2.a-G-7** – When considering development proposals, seek “community benefit”, such as upgrading infrastructure facilities, constructing new infrastructure facilities, and funding contributions to programs.
- **Policy 2.d-G-1** – Provide all possible community facilities and utilities of the highest standards commensurate with the present and anticipated needs of Milpitas, as well as any special needs of the region.
- **Policy 2.d-I-1** – Coordinate capital improvement planning for all municipal service infrastructure with the location and timing of growth.

2. *The Development is consistent with the Transit Area Specific Plan.*

The proposed Development is consistent with the Transit Area Specific Plan because:

- a. Development of the Project should be encouraged because it will help meet important economic, social, environmental and planning goals of the City, including but not limited to locating housing near jobs to reduce commutes for City residents, redeveloping underutilized property near transit investment with housing and jobs so as to encourage use of transit, providing for an extraordinary contribution towards housing and jobs in the City.
 - b. The Agreement will facilitate the development of the Project in the manner proposed in the Agreement for the further reasons set forth in the accompanying staff reports and Agreement;
 - c. Developer will incur unusually substantial costs in order to provide public improvements, facilities or services, in particular extraordinary funding for housing in the City, from which the public will benefit, as set forth in more detail in the accompanying staff report and Agreement and (ii) Developer has made commitments to a very high standard of quality for the Project and has agreed to development limitations beyond that required by the existing laws, as set forth in the Agreement and Development Approvals; and
 - d. Development of the Project will make a substantial contribution to the economic development of the City of Milpitas in that the Project will create additional, transit-oriented housing to support transit infrastructure investments, as well as provide extraordinary tax revenues to the City.
-

Section 4: The Planning Commission of the City of Milpitas hereby recommends the Milpitas City Council adopt an ordinance to approve a Development Agreement with SCS Development Co, Amalfi Milpitas, LLC and DPD Investments, LLC for the Citation I Project (Amalfi I and Amalfi II) and Citation II Project (the Edge), subject to the above Findings and development agreement attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 14, 2015.


Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on January 14, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal	✓			
Larry Ciardella	✓			
Gurdev Sandhu		✓		
Rajeev Madnawat		✓		
Demetress Morris	✓			
Hon Lien	✓			
Ray Maglalang		✓		
Zeya Mohsin (alternate)				



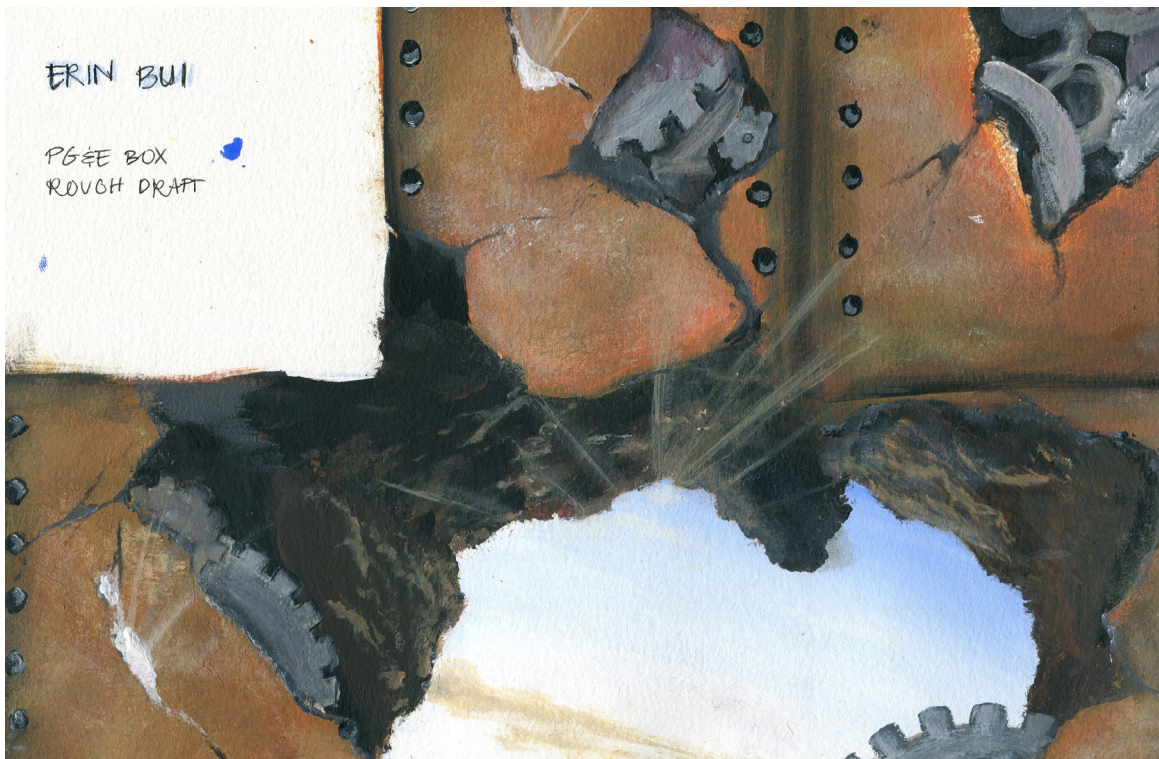
City of Milpitas Arts Commission
Electrical Signal Box Art Project – Final
Box Locations

1. Jacklin & Milpitas NW
2. Jacklin & Hillview SE
3. Jacklin & Escuela SE
4. Yosemite & Dempsey
5. Jacklin & Oliver Jones Park SW
6. Yosemite & Sinclair Frontage
7. Landess & Yellowstone
8. Calaveras & Park Victoria
9. Calaveras & Gadsden
10. Dixon Landing & Milpitas Blvd.
11. Milpitas Blvd. & Beresford Ct.
12. Milpitas Blvd. & Los Coches

Jacklin & Milpitas NW



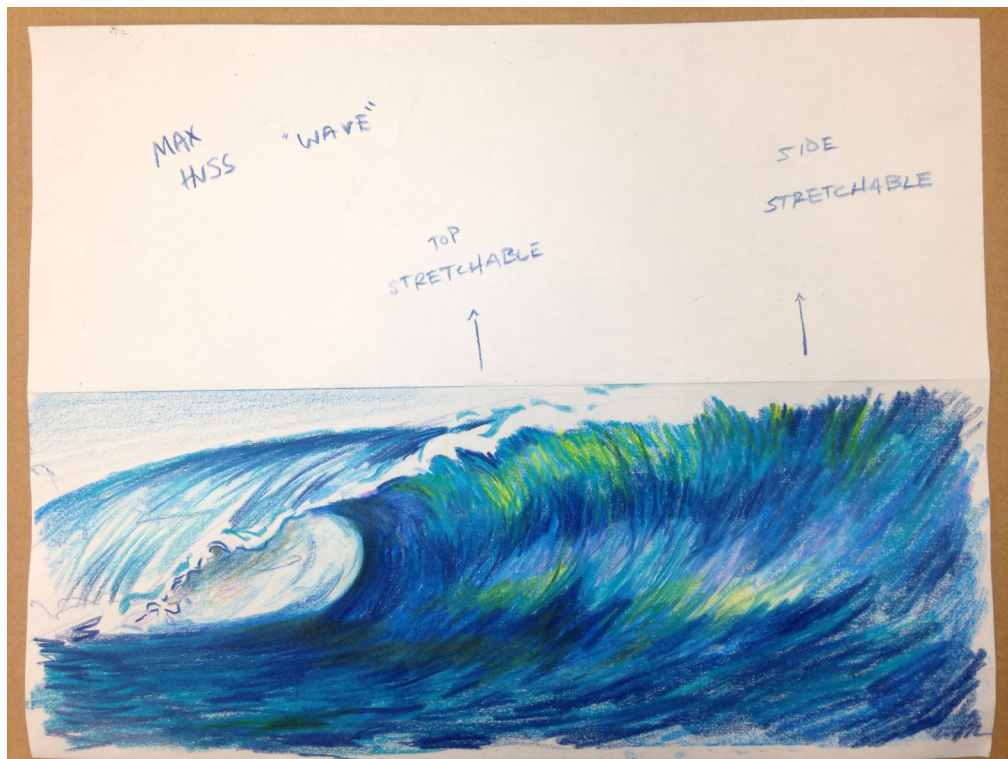
Jacklin & Hillview



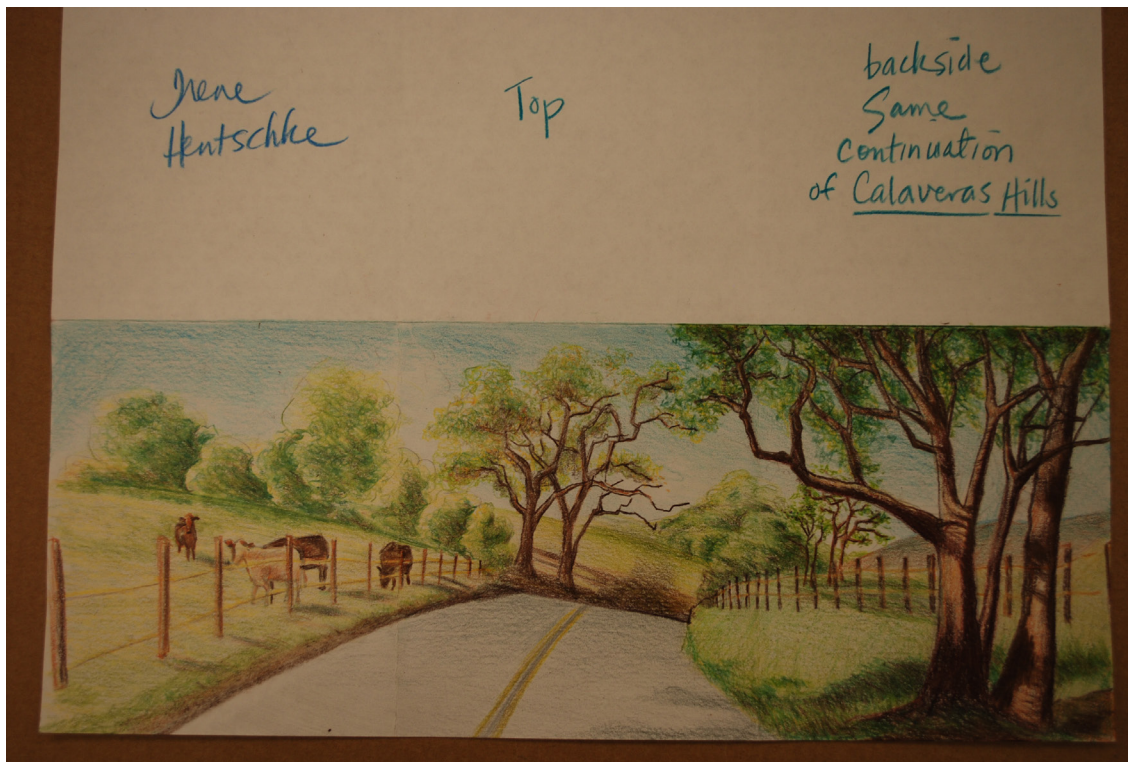
Jacklin & Escuela SE



Yosemite & Dempsey



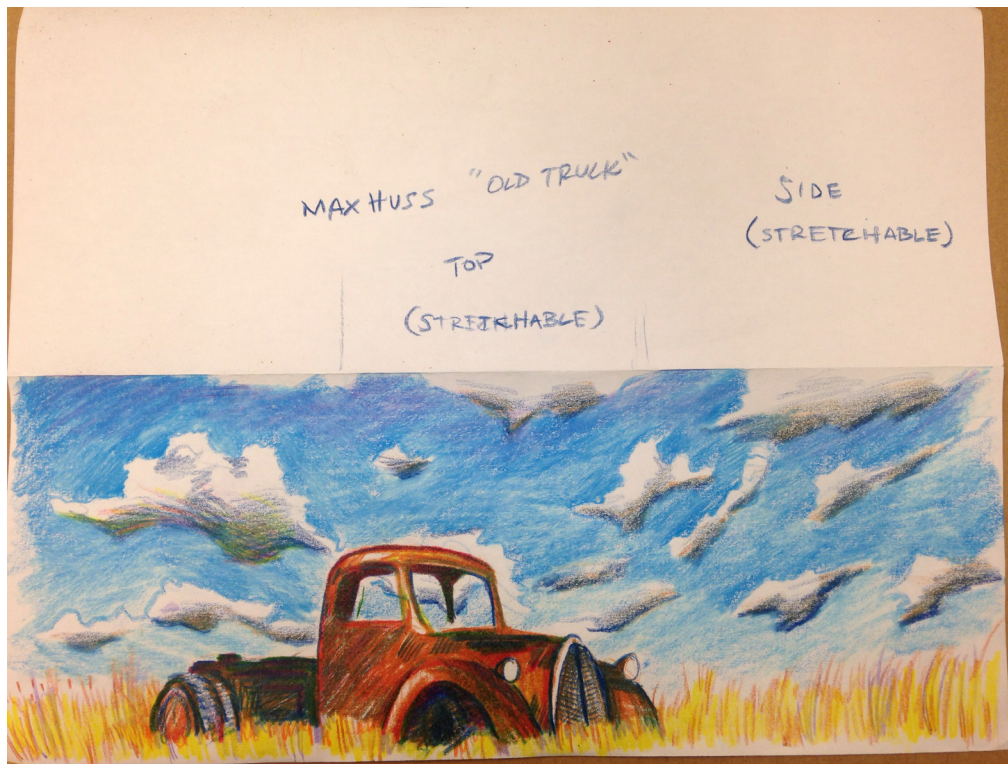
Jacklin & Oliver Jones Park SW



Yosemite & Sinclair Frontage



Landess & Yellowstone



Calaveras & Park Victoria



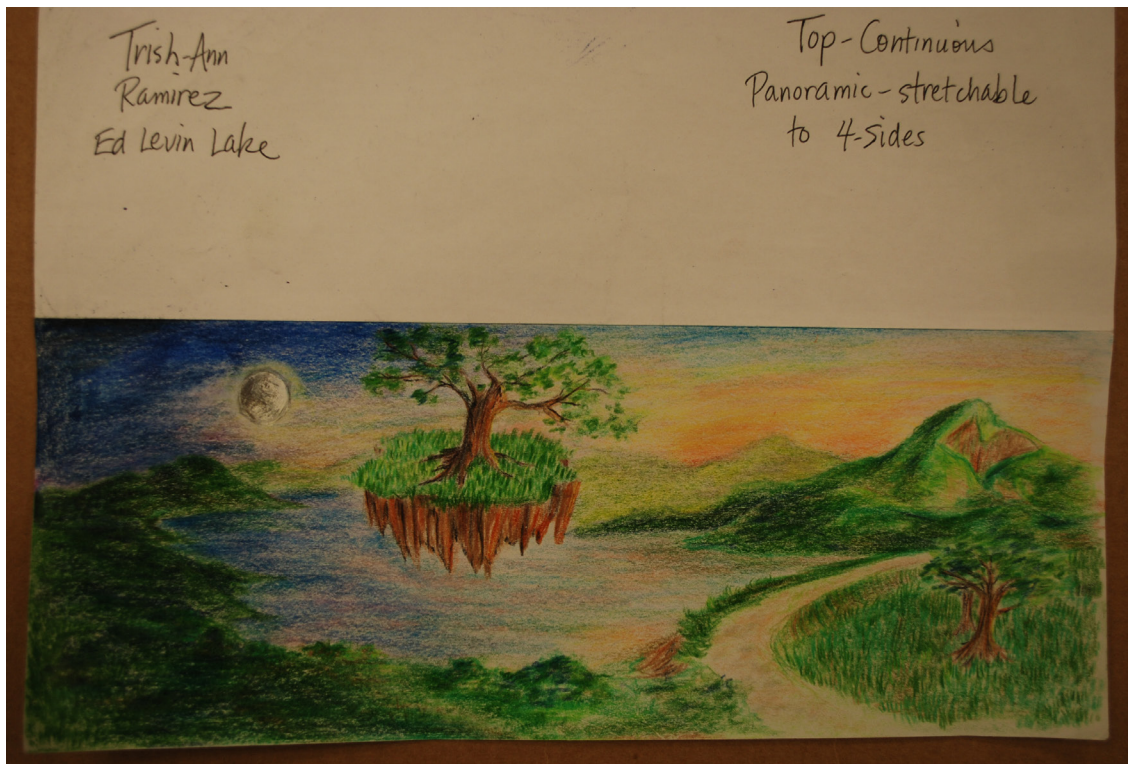
Calaveras & Gadsen



Dixon Landing & Milpitas Blvd.



Milpitas Blvd. & Beresford Ct.



Milpitas Blvd. & Los Coches



Recording Requested by and
When Recorded Mail to:

***7**

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: Office of the City Clerk

Record without fee under
Section 6103 - Government Code
State of California

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING INITIAL
ACCEPTANCE AND REDUCING PERFORMANCE BOND OF STREET RESURFACING
PROJECT 2015 – STREET CAPE AND SLURRY SEAL, PROJECTS NO. 4275 AND 3412 AND
GRANTING AUTHORIZATION TO THE CITY ENGINEER TO FILE THE NOTICE OF FINAL
ACCEPTANCE AFTER THE ONE-YEAR WARRANTY PERIOD AND TO RELEASE AND
DISCHARGE THE PERFORMANCE BOND**

WHEREAS, the City of Milpitas has heretofore entered into a contract with O’Grady Paving, Inc., for the subject project, and the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

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 of Milpitas does hereby accept said improvement as completed on this 17th day of February, 2015, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Sections 8182 and 9200-9208 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day’s labor or force account. The penal sum of the faithful performance bond securing said improvement may be reduced to the sum of \$340,862 upon request of principal and surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond, provided that said term shall not be less than one year.
3. The City Council authorizes the City Engineer to file the Notice of Final Acceptance after the one-year warranty period and to release and discharge the faithful performance bond securing said improvements without further City Council action, provided all required warranty repairs are completed to the satisfaction of the City Engineer; and nothing herein contained shall in any way deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced to improvement contract, save and except those obligations specifically mentioned herein.

PASSED AND ADOPTED this _____ day of _____, 2015, 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

Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: City Clerk

Record without fee under
Section 6103 - Government Code
State of California

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Sections 8182 and 9200-9208)

NOTICE IS HEREBY GIVEN:

1. On or about June 17, 2014, the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: Street Resurfacing Project 2015 – Street Cape and Slurry Seal, Projects No. 4275 and 3412.
2. A description of the site of which the City is owner for said work of improvement is: Various locations in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The nature and interest or estate of the City as owner of said site is: City of Milpitas.
4. The name and address of the original contractor is: O’Grady Paving, Inc., 2513 Wyandotte Street, Mountain View, CA 94043.
5. A general statement of the kind of work done or materials furnished to the City is as follows: Street resurfacing.
6. The name of the sureties upon the bond of the contractor for said work of improvement is: Travelers Casualty and Surety Company of America, 100 California St, Suite 300, San Francisco, CA 94111; bond # 105978363.
7. Said work of improvement was accepted by the Milpitas City Council as completed on February 17, 2015.

I, the undersigned, declare that I am the City Engineer of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on _____, 2015 at Milpitas, California.

Steve Machida, Acting Public Works
Director/City Engineer, City of Milpitas

NOTE: RECORD WITHIN 15 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING
RESOLUTION 1626, THE CLASSIFICATION PLAN, ELIMINATING TWO ASSISTANT
CIVIL ENGINEER POSITIONS AND ADDING ONE ASSOCIATE CIVIL ENGINEER AND
ONE ENGINEERING PERMIT TECHNICIAN POSITION WITHIN THE LAND
DEVELOPMENT SECTION OF THE ENGINEERING DEPARTMENT**

WHEREAS, the City of Milpitas has a Classification Plan adopted as Resolution No. 1626 on December 17, 1968, in accordance with the Personnel Rules and Regulations of the City of Milpitas (Resolution No. 792 as amended); and

WHEREAS, amendments to the Classification Plan are necessary to account for changes within the organization, transfer of duties, new job responsibilities, and adjustments to salary ranges.

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. Resolution No. 1626 is hereby amended effective February 17, 2015, as follows:

Eliminate two (2) Assistant Civil Engineer positions within the Land Development Section and add (1) Associate Civil Engineer position and one (1) Engineering Permit Technician position within the Land Development Section.

PASSED AND ADOPTED this _____ day of _____, 2015, 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

CITY OF MILPITAS

Effective: February 17, 2015
EEOC: Para-professional
FLSA: Non-Exempt
Unit: Engineering
Physical: 1

ENGINEERING PERMIT TECHNICIAN

DEFINITION

To provide technical and clerical support in the processing, review, record keeping, and customer service functions related to the issuance of engineering permits; to screen submitted plans for accuracy and completeness; and to act as the initial contact and resource to customers regarding relevant applications and permitting processes, requirements, and fees. To perform a variety of sub-professional engineering office work staffing the permit counter and assisting the public with routine and technical information, performing research for engineering records, performing computer data entry, filing, tracking documents, answering phones, preparing letters, scheduling meetings, typing a variety of documents, recording documents at the County, communicating with various departments, coordinating with field inspectors, and monitoring and reporting the completion of improvements in the public right-of-way.

DISTINGUISHING CHARACTERISTICS

This is a “bridge” classification between the clerical/administrative support job series and the Engineering job classes. Positions in this class typically have experience in the clerical and technical aspects of this classification and must work under immediate supervision while learning more clerical and technical job tasks assigned to the position as needed. Incumbents in this classification will eventually be expected to perform the full range of assigned duties in an independent manner.

SUPERVISION RECEIVED AND EXERCISED

Immediate to general supervision is provided by a professional Civil Engineer. May receive functional or technical supervision from other departmental professional staff.

EXAMPLES OF DUTIES - Duties may include, but are not limited too, the following:

Provide exemplary customer service to all individuals by demonstrating a willingness to be attentive, understanding, responsive, fair, courteous, respectful, and to actively participate in maintaining a positive customer service environment.

Receive, process, and issue a variety of engineering permits and applications in an efficient and timely manner; Sort and route permit application packages; insure all necessary approvals are obtained.

Review submitted plans and applications for completeness, accuracy, and compliance with City standards and regulations; assist the public in completing applications and other necessary forms; verify that appropriate signatures, insurance documents, security documents, required calculations, and scales/dimensions are included; collect and route traffic control plans for approval by the Traffic Engineer; performs simple technical plan check.

Calculate various construction valuations, plan check fees and permit fees; create private job accounts; collect fees and deposits; track account balances; communicate with the Finance department on outstanding and closed accounts; process refund requests.

Receive, sort and distribute incoming and outgoing correspondence.

Receive telephone calls and inquires at counter; assist and direct public to appropriate staff member or department; provide information regarding efficient engineering services, codes, regulations, standards, procedures, policies, requirements, fees, and other related matters.

Research City archives and retrieve plans, reports, and other public records for the Engineering Division, other departments, and public inquiry.

Provide City staff and the public with general engineering information as requested including subdivision maps, assessor's parcel numbers, easements, flood zone status, public right-of-way, public improvement plans, and assessment districts.

Prepare a variety of maps and exhibits for Commissions, City Council and other occasional meetings.

Prepare and maintain inventory of engineering forms; update forms to reflect changes in policies and procedures; create pamphlets, flyers, notices, and other outreach material; coordinate public outreach activities for engineering including floodplain management mailers.

Sort and file documents and records, maintaining alphabetical index and cross-reference files; update and maintain office records related to Engineering; keep reference system current.

Maintain a variety of statistical records; check and tabulate statistical data; prepare a variety of simple statistical and non-statistical reports. Maintain logs and records of applications received, permits issued, improvement plans approved, and improvements installed and accepted.

Operate standard office equipment including computer equipment and software applications as assigned.

Perform related duties and responsibilities as assigned.

MINIMUM QUALIFICATIONS

Knowledge of:

Standard and accepted English usage, spelling, grammar, and punctuation.

Organization, procedures, and operations of Public Agencies, including Engineering, Building, Planning, and other divisions and departments.

Modern office practices, operations, software, equipment, and record management.

Basic math as well as standard geometric knowledge for computing areas, distances, dimensions, slopes, grades, and elevations.

Construction permitting process for work within the public right-of-way and easements; standard construction practices and methods.

Ability to:

Read, understand and learn to apply and interpret pertinent and designated sections of the Federal, State, and Municipal codes, regulations, and standards related to health, safety, floodplain management, solid waste handling, land development, public improvements, construction, accessibility, traffic safety, urban runoff, clean water, recycled water, and subdivision law.

Communicate clearly and effectively orally and in writing.

Work effectively with the public, developers, consultants and other City Staff.

Review documents related to division operations; observe, identify and problem solve office operations and procedures.

Understand, interpret and explain department policies, procedures, and operations to the general public and City staff.

Compose correspondence.

Perform clerical work including maintenance of appropriate records; preparation of general reports; and verify and check files and data.

Perform simple mathematical calculations quickly and accurately.

Operate a variety of automated office equipment including computer and related applicable software.

Enter data and type with speed and accuracy.

Establish and maintain effective working relationships with those contacted in the performance of required duties.

Ability to read and interpret construction plans and blueprints.

EXPERIENCE AND EDUCATION

Experience:

Two years of progressively responsible sub-professional engineering, construction, or related experience in public permitting. Related coursework may be substituted for experience.

Desirable Qualifications:

Experience working with database and permit tracking system is highly desirable.

Experience with a public agency or with the public permitting process. Experience in customer service and interacting with the general public.

Education:

Minimum requirement is a High school diploma or equivalent. College level coursework in engineering or construction is highly desirable.

Certificates:

Possession of an appropriate, valid Class C California driver's license is required at time of appointment. ICC Permit Technician Certification is highly desirable.

SPECIAL REQUIREMENTS - Essential duties requires the following physical abilities and work environment:

General office environment; sit and/or stand for long periods of time, repetitive keyboarding; reach, squat, lift, and carry up to 25 pounds; able to travel to various locations within and outside the City of Milpitas.

Approved by: _____
City Manager

Date

Human Resources Director

Date

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING
RESOLUTION 1626, THE CLASSIFICATION PLAN, ESTABLISHING A NEW CLASSIFICATION
OF BUILDING INSPECTION MANAGER**

WHEREAS, the City of Milpitas has a Classification Plan adopted as Resolution No. 1626 on December 17, 1968, in accordance with the Personnel Rules and Regulations of the City of Milpitas (Resolution No. 792 as amended); and

WHEREAS, amendments to the Classification Plan are necessary to account for changes within the organization, transfer of duties, new job responsibilities, and adjustments to salary ranges.

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. Resolution No. 1626 is hereby amended effective February 17, 2015, as follows:

Salary Range Establishment for New Classification:

<u>Title</u>	<u>Proposed Range</u>
Building Inspection Manager	\$109,034 - \$132,533

PASSED AND ADOPTED this _____ day of _____, 2015, 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

CITY OF MILPITAS
Effective: February 2015
EEOC: Professional
FLSA: Exempt
Unit: Mid-Mgmt
Physical: 2

BUILDING INSPECTION MANAGER

DEFINITION

To supervise, schedule, and coordinate the field activities of the Building Safety Department; to inspect routine and complex structural building systems at various stages of construction, alteration, and repair to assure compliance with approved plans, specifications, codes, ordinances, and laws; and ability to review, check, and approve building and site plans for conformance with applicable codes, ordinances, and laws.

DISTINGUISHING CHARACTERISTICS

This classification is characterized by its managerial responsibility for the Building and Safety Department's building inspection functions and personnel. The Building Inspection Manager's primarily administrative is distinguished from the Senior Building Inspector which is a working supervisor class.

SUPERVISION RECEIVED AND EXERCISED

Receives direction from the Chief Building Official.

Exercises direct and indirect supervision over professional, technical, and clerical staff.

EXAMPLES OF DUTIES - Duties may include, but are not limited to, the following:

Supervises and directs the activities of staff including employee selection, work assignments, performance evaluations, employee development, disciplinary action, and complaint resolution.

Directs and assists staff in daily operations, resolving difficult problems with both internal and external customers.

Participates in the development of and implements departmental goals, objectives, policies, and priorities.

Monitors, evaluates, and improves the efficiency and effectiveness of service delivery methods and procedures, assesses and monitors workload.

Prepares budget recommendations, monitors personnel and internal services expenditures; ensures expenditures remain within budgetary limitations.

EXAMPLES OF DUTIES

Provide on-going training to building inspection staff as directed; ensure uniform application of the appropriate codes, rules, and regulations.

Prepare appropriate paperwork, records, and reports.

Check plans for construction, alteration, or repair of residential, commercial, and industrial buildings to assure compliance with applicable codes.

Administers, interprets and enforces the provisions of adopting building, mechanical, plumbing and electrical codes; municipal regulations and other codes as they relate to building matters.

Prepares and participates in code adoption process.

Performs field inspections to resolve building inspection issues.

Inspect structural building systems at various stages of construction, alteration, and repair to ensure compliance to approved plans, specifications, codes, ordinances, and laws.

Coordinate division activities with other City departments, divisions, sections, and outside agencies.

Serve as Chief Building Official as required.

Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

- Principles and practices of the California Building, Plumbing, Mechanical, Electrical, CALGreen and Energy Codes, and pertinent County codes and ordinances.
- Building construction methods and materials.
- Proper inspection methods and procedures.
- Principles of structural design, engineering mathematics, and soil engineering.
- Principles of supervision, training, and performance evaluation.
- Customer service operations, policies and procedures.
- Office management practices and procedures.

Ability to:

- Administer and conduct a variety of building inspection and related code enforcement activities.
- Analyze, interpret, and check plans, specifications, and calculations.
- Interpret and apply applicable laws, rules and regulations.
- Prepare and review correspondence, studies, reports and request for council action.
- Interact and communicate effectively, orally and in writing.

CITY OF MILPITAS
Building Inspection Manager

- Establish and maintain effective working relationships with developers, contractors, architects, engineers, and City staff.
- Supervise, train, and evaluate subordinate professional, technical, and clerical personnel.

Ability to:

- Use Windows, Excel, PowerPoint, Word; Permitting/inspection software and other job related computer programs.
- Keep abreast of current construction standards, codes, and regulations.
- Provide administrative and professional leadership and direction.
- Establish, maintain, and foster positive, harmonious and effective working relationships.

EXPERIENCE AND EDUCATION

Experience: Four years of increasingly responsible experience in the inspection of public, commercial, industrial, and residential buildings, including three years of supervisory experience.

Education: Equivalent to the completion of the twelfth grade. A Bachelor's degree or equivalent from an accredited college or university in business administration, construction inspection, engineering, architecture or a related field is highly desirable.

LICENSE OR CERTIFICATE

Possession of or ability to obtain and maintain an appropriate, valid California Driver's License.

Possession of a Building Plumbing, Mechanical, and Electrical Certificate or Residential and Commercial Combination Inspection Certificate issued by the International Code Council (ICC) or International Association of Plumbing and Mechanical Officials (IAPMO).

Possession of a Plans Examiner Certificate issued by the International Code Council (ICC) is highly desirable.

SPECIAL REQUIREMENTS

Essential duties require the following physical abilities and work environment:

Typically, work is performed at construction sites and in an office environment; exposure to outdoor elements; extensive use of the telephone and radio, repetitive keyboarding on a computer; ability to walk on uneven ground; reach (including overhead), squat, bend, lift, crawl, and, climb; push, pull, and carry up to 50 pounds; drive daily to various locations within and outside the City of Milpitas; ability to work safely in a hard-hat construction zone is essential; exposure to construction-related chemicals and products; may be required to crawl in confined spaces.

CITY OF MILPITAS
Building Inspection Manager

Approved by:

City Manager

Date

Human Resources Director

Date

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING
RESOLUTION 1626, THE CLASSIFICATION PLAN, ESTABLISHING A NEW CLASSIFICATION
OF MARKETING ASSISTANT AND ELIMINATING ONE PROGRAM COORDINATOR POSITION
FROM THE ADMINISTRATION SECTION OF THE RECREATION SERVICES DEPARTMENT**

WHEREAS, the City of Milpitas has a Classification Plan adopted as Resolution No. 1626 on December 17, 1968, in accordance with the Personnel Rules and Regulations of the City of Milpitas (Resolution No. 792 as amended); and

WHEREAS, amendments to the Classification Plan are necessary to account for changes within the organization, transfer of duties, new job responsibilities, and adjustments to salary ranges.

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. Resolution No. 1626 is hereby amended effective February 17, 2015, as follows:

- a. Salary Range Establishment for New Classification

<u>Title</u>	<u>Proposed Range</u>
Marketing Assistant	\$57,495 - \$69,886

- b. Eliminate one (1) Program Coordinator position from the Administration Section of the Recreation Services Department.

PASSED AND ADOPTED this _____ day of _____, 2015, 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

CITY OF MILPITAS
Marketing Assistant

CITY OF MILPITAS
EFFECTIVE: February 2015
EEOC: Technical
UNIT: ProTech
PHYSICAL:

MARKETING ASSISTANT

DEFINITION

To assist in the planning, promotion, implementation and coordination of marketing new and existing recreation and citywide services and programs; develop and maintain a strong communication and working relationship with vendors and customers, and perform related work as required. Employees within this class are distinguished from higher level classification by the performance of more routine, paraprofessional-level tasks and duties.

SUPERVISION RECEIVED AND EXERCISED

EXAMPLES OF DUTIES - Duties may include, but are not limited to, the following:

Develops, ideas, concepts, copy, themes, and program vision, to successfully market Recreation Programs, City sponsored events, and related community involvement efforts.

Creates and manages event promotion timelines for marketing, graphics and program coordinators.

Creates and recommends action plans for marketing and promotion of services and program.

Disseminates information to the public via eblasts, press releases, ads, phone calls, and related information to schools, community non-profits, and other government agencies.

Creates, posts, and monitors recreation Social Media Account pages; work with Webmaster on general media page posting.

Sets up displays, workshops, classes, and presents information related to recreation and other related topics. May conduct tours and make presentations.

Answers customers questions related to recreation and other city programs and services.

Coordinates program events and facility marketing material and graphic designs for new press releases, flyers, event schedules, pamphlets, and brochures.

Develops and maintain positive relationships with local business, government and community groups.

Solicits and receives sponsorships, ~~receives sponsorships~~, and ensures proper logos and applicable promotional credit is given to designated sponsors.

CITY OF MILPITAS
Marketing Assistant

Manages community promotions and executes printing budget.

Analyzes, develops and recommends marketing policy and program changes in response to customer needs, budgetary considerations, market changes, and industry developments with adherence and compliance with City rules, procedures, and regulations.

Assists staff in the development of written promotional and marketing information for their respective programs and events.

Serves as liaison and represents the City at a variety of public events, including meetings, conferences, and other related special events.

Sets up and maintains working and storage file system.

Performs other related duties as assigned.

QUALIFICATIONS

Knowledge of:

- Marketing theories
- Principle and practices and their application the assigned department program and/or services
- Customer motivation
- Principles and practices of public relations and customer services
- Principles and procedures of records keeping business writing and basic report preparation;
- Computer applications including word processing, spreadsheets, databases, and presentations; local government organization and operation.

Ability to:

- Organize and coordinate events
- Exercise initiative and good judgment within scope of work
- Respond to request and inquires from the general public
- Speak on a one- to- one basis and in front of groups of various sizes
- Elicit community and organizational support for assigned programs and projects
- Research and evaluate new marketing methods and techniques

CITY OF MILPITAS

Marketing Assistant

- Work with minimum supervision by following oral and written instructions; communicate clearly and concisely, both orally and in writing
- Make simple algebraic and arithmetic calculations; establish and maintain effective working relationship with those contacted in the course of work
- Organize and maintain records and files

EXPERIENCE AND EDUCATION

Experience: Two years of responsible paid experience in marketing, advertising, and promoting programs and services or a related field.

Education: Associates degree from an accredited college or university with course work in marketing, business or public administration, management, public relations, communications, or a related field.

LICENSE AND CERTIFICATE

- Appropriate valid California driver's license and satisfactory driving record. (DMV printout required)
- Certification in First Aid and CPR is highly desirable.

SPECIAL REQUIREMENTS: *Essential duties require the following abilities and work environments:*

Work is performed in an office/recreational setting; will be exposed to the elements and sits, stands, walks, kneels, crouches, twists, reaches, bends, crawls, and grasp; must be able to lift, carry, push, pull, drag equipment weighing up to 40 lbs.; climbing up step stool ladders to stack equipment and supplies.

Approved by:

City Manager

Date

Human Resources Director

Date

MAIN STREET
PAVEMENT RECONSTRUCTION
PROJECT No. 3412 & 4277

CITY OF MILPITAS
CALIFORNIA

MONUMENT LISTING

MON	NORTHING	EASTING	DESCRIPTION	STATION / OFFSET
119	1982318.66	6153055.11	FOUND 2 1/2" BRASS DISK W/PUNCH IN MON WELL, LS 6868	"SM" 87+16.53, 30.59' LT
120	1976687.97	6154457.95	FOUND 2 1/2" BRASS DISK W/PUNCH IN MON WELL, CAL DIV OF HWYS	"SM" 29+06.36, 22.33' RT
121	1976902.52	6154398.61	FOUND 2 1/2" BRASS DISK W/PUNCH IN MON WELL, CAL DIV OF HWYS	"SM" 31+28.63, 09.71' RT
122	1980273.96	6153458.14	FOUND RAILROAD SPIKE W/CUT X	"SM" 66+32.53, 32.18' LT
123	1978398.35	6153893.91	FOUND 2" BRASS DISK W/SCRIBED X IN MON WELL	"SM" 47+06.62, 0.03' LT
124	1978038.61	6154015.25	FOUND 2 1/2" BRASS DISK W/PUNCH IN MON WELL, CAL DIV OF HWYS	"SM" 43+26.97, 0.21' LT

MONUMENTATION NOTE:
CONTRACTOR TO PROTECT THESE AND ALL OTHER MONUMENTS IN PLACE OR PERPETUATE THOSE MONUMENTS DESTROYED DURING CONSTRUCTION IN ACCORDANCE WITH BUSINESS AND PROFESSIONS CODE SECTION 8771.

ELEVATION DATUM:

ELEV DATUM: ASSUMED
PROJECT TBM PT. NO. 124 = 108.75 FEET
2 1/2" BRASS DISK W/PUNCH IN MON WELL, CAL DIV OF HWYS, AT THE INTERSECTION OF SOUTH MAIN STREET AND WEST CURTIS AVENUE

HORIZONTAL DATUM:

THE DESIGN PLANE IS IN U.S. SURVEY FEET (GROUND) ORIENTED TO CCS83, ZONE 3, EPOCH 2007.00.

CITY OF MILPITAS STANDARD DETAILS

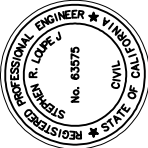
DETAIL NO.	CITY OF MILPITAS DESIGN STANDARD
202	LOCATION OF IMPROVEMENTS
220	TRENCH CONSTRUCTION
222	PAVEMENT RESTORATION
223	UTILITY CROSSING CASING
230	SHIELD AND STORM MANHOLES
419	DOUBLE CURB RAMP
426	COMMERCIAL SIDEWALK
432	COMMERCIAL/INDUSTRIAL DRIVEWAY W/ FLARES
446	STREET SURVEY MONUMENTS
462	CURB STORM DRAIN INLET



A prime contractor bidding on this project shall possess a Class A License from the Contractor's State License Board.

CIVIL ENGINEER: I hereby declare that I am the engineer of work for this project, that I have exercised responsible charge over the design of this project, that I am a duly licensed professional engineer in the State of California, and that I am not providing design services to any other person in connection with this project. I understand that any alteration or modification to the design shown herein is necessary and responsible and does not reflect any historic change from the original design or any other design shown herein. I understand that any alteration or modification to the design shown herein is necessary and responsible and does not reflect any historic change from the original design or any other design shown herein. I understand that any alteration or modification to the design shown herein is necessary and responsible and does not reflect any historic change from the original design or any other design shown herein.

SIGNATURE _____ P.E. _____ SEAL _____
Firm _____
Address _____
Telephone: _____



LEGEND

EXISTING	PROPOSED	DESCRIPTION
ROADSIDE SIGN	ROADSIDE SIGN	
UTILITY BOX, VAULT	UTILITY BOX, VAULT	
FIRE HYDRANT	FIRE HYDRANT	
ELECTROLIER	ELECTROLIER	
TRAFFIC SIGNAL W/ ELECTROLIER	TRAFFIC SIGNAL W/ ELECTROLIER	
TRAFFIC SIGNAL	TRAFFIC SIGNAL	
SANITARY SEWER MANHOLE	SANITARY SEWER MANHOLE	
STORM DRAIN MANHOLE	STORM DRAIN MANHOLE	
VALVE	VALVE	
STORM DRAIN INLET	STORM DRAIN INLET	
WATER METER	WATER METER	
UTILITY POLE	UTILITY POLE	
SURVEY MONUMENT	SURVEY MONUMENT	
CONSTRUCTION NOTE	CONSTRUCTION NOTE	
STORM DRAIN	STORM DRAIN	
SANITARY SEWER	SANITARY SEWER	
WATER MAIN	WATER MAIN	
GAS MAIN	GAS MAIN	
FIBER OPTICS	FIBER OPTICS	
TELEPHONE	TELEPHONE	
OVERHEAD POWER	OVERHEAD POWER	
RIGHT-OF-WAY	RIGHT-OF-WAY	
PSUE, TCE, SSE, SDE, EASEMENT	PSUE, TCE, SSE, SDE, EASEMENT	
TRAFFIC SIGNAL CABINET	TRAFFIC SIGNAL CABINET	

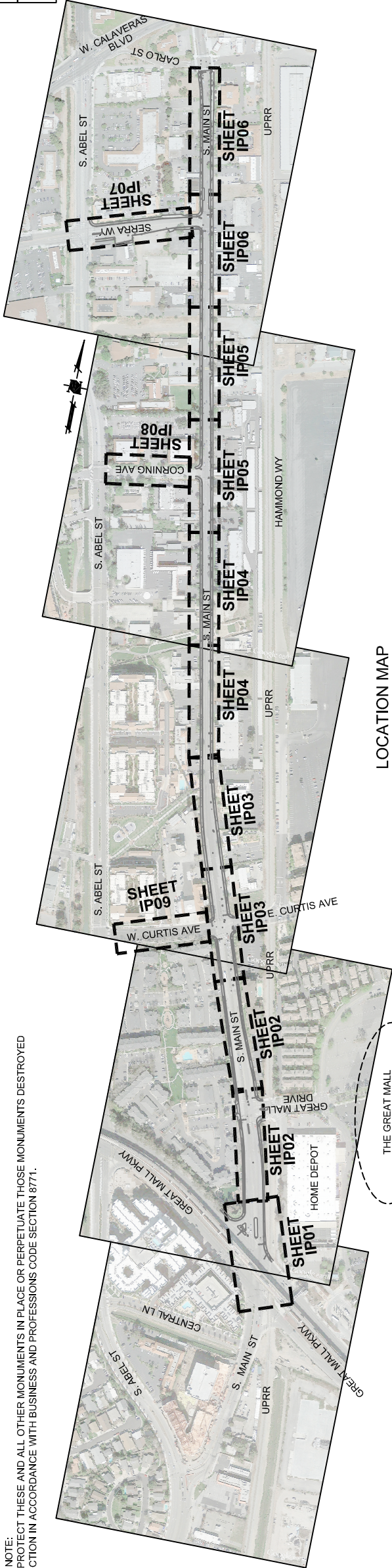
ABBREVIATIONS

AB	AGGREGATE BASE	MAX	MAXIMUM
ABN	ABANDONED	MH	MANHOLE
AC	ASSESSOR'S PARCEL NUMBER	MIN	MINIMUM
APN	ASSESSOR'S PARCEL NUMBER	N	NORTH
BOM	BACKSLOPE	NW	NORTH WEST
CCB	CURB AND GUTTER	NE	NORTH EAST
CL	CAST IRON PIPE	NTS, N.T.S.	NOT TO SCALE
CLIP	CLASSLINE	OG	ORIGINAL GROUND
CL	CLEAN OUT	OC	PULL BOX
COM	CITY OF MILPITAS	P/L	PROPERTY LINE
CONC	CONCRETE	PSUE	PUBLIC SERVICE UTILITY EASEMENT
CONST	CONSTRUCTION	PUE	PRIVATE UTILITY EASEMENT
DI	DRAINAGE INLET	PVC	POLYVINYLCHLORIDE
DIP	DUCTILE IRON PIPE	PVMT	PAVEMENT
DWG	DRAWING	R/W	RIGHT-OF-WAY
(E) OR EXIST	EXISTING	RCP	REINFORCED CONCRETE PIPE
E	EAST	RT	RIGHT
EG	EXISTING GROUND	RHMA-G	RUBBERIZED HOT MIX ASPHALT (GAP GRADED)
ELEV	ELEVATION	SCC	SANTA CLARA COUNTY
ESUT	EASEMENT	SW	SOUTH WEST
FACE	FACE OF CURB	SE	SOUTH EAST
FG	FINISHED GRADE	SCVMA	SANTA CLARA VALLEY WATER DISTRICT
FH	FIRE HYDRANT	SD	STORM DRAIN
FL	FLOWLINE	SDMH	STORM DRAIN MANHOLE
FO	FIBER OPTICS	SS	SANITARY SEWER
G	GAS	SSCO	SANITARY SEWER CLEAN OUT
HMA	HOT MIX ASPHALT	SSMH	SANITARY SEWER MANHOLE
HPG	HIGH PRESSURE GAS	SDE	STORM DRAIN EASEMENT
HOR	HORIZONTAL	SSE	SANITARY SEWER EASEMENT
INV	INVERT	T.O.P	TOP OF PIPE
JOINT	JOINT	UPRR	UNION PACIFIC RAILROAD
LS	LEFT	W/	WITH
LT	LEFT	W	WATER, WEST

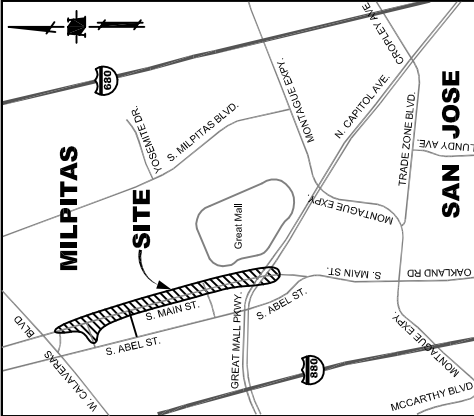
SHEET INDEX

DRAWING No.	SHEET No.	SHEET TITLE
TS01	1	TITLE / INDEX SHEET
NT01	2	NOTES
TX01	3	TYPICAL SECTIONS
IP01	4	IMPROVEMENT PLANS "SM" 23+92 TO "SM" 29+32
IP02	5	IMPROVEMENT PLANS "SM" 29+32 TO "SM" 40+59
IP03	6	IMPROVEMENT PLANS "SM" 40+59 TO "SM" 51+89
IP04	7	IMPROVEMENT PLANS "SM" 51+89 TO "SM" 63+29
IP05	8	IMPROVEMENT PLANS "SM" 63+29 TO "SM" 74+69
IP06	9	IMPROVEMENT PLANS "SM" 74+69 TO "SM" 88+78
IP07	10	IMPROVEMENT PLANS "SW" 1+86 TO 8+07
IP08	11	IMPROVEMENT PLANS
IP09	12	IMPROVEMENT PLANS
CD01	13	CONSTRUCTION DETAILS
CD02	14	CONSTRUCTION DETAILS
CD03	15	CONSTRUCTION DETAILS
PD01	16	PAVEMENT DELINEATION AND SIGN PLANS "SM" 23+92 TO "SM" 29+32
PD02	17	PAVEMENT DELINEATION AND SIGN PLANS "SM" 29+32 TO "SM" 40+59
PD03	18	PAVEMENT DELINEATION AND SIGN PLANS "SM" 40+59 TO "SM" 51+89
PD04	19	PAVEMENT DELINEATION AND SIGN PLANS "SM" 51+89 TO "SM" 63+29
PD05	20	PAVEMENT DELINEATION AND SIGN PLANS "SM" 63+29 TO "SM" 74+69
PD06	21	PAVEMENT DELINEATION AND SIGN PLANS "SM" 74+69 TO "SM" 88+78
PD07	22	PAVEMENT DELINEATION AND SIGN PLANS "SW" 1+86 TO 8+07
PD08	23	PAVEMENT DELINEATION AND SIGN PLANS "SM" 74+69 TO "SM" 88+78
PD09	24	PAVEMENT DELINEATION AND SIGN PLANS "SW" 1+86 TO 8+07
CS01	25	BEST MANAGEMENT PRACTICES
EC01	26	WATER POLLUTION CONTROL PLAN
EC02	27	PLANTING DETAILS, LEGEND AND NOTES
LP01	28	TRAFFIC SIGNAL PLANS
E01-E08	29-36	

LOCATION MAP
SCALE 1" = 300'



VICINITY MAP
NOT TO SCALE



**AMENDMENT No. 1 TO AGREEMENT
FOR CONSULTATION AND OTHER SERVICES**

This Amendment is entered into this 17th day of February, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and Triple HS, Inc. DBA H.T. Harvey & Associates (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an agreement for professional Engineering services for Storm Drain Deficiency Program, (Project No. 3700), on February 19, 2013 in the amount of Ninety-Seven Thousand Dollars (\$97,000) ("Agreement"); and

WHEREAS, the parties desire to amend the Agreement to increase the compensation for additional professional engineering services and mitigation monitoring.

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

1. The Agreement is amended to include the additional scope of services set forth in Exhibit "**A-1**", which is attached hereto and incorporated by reference herein.
2. The Agreement is amended to include the additional compensation set forth in Exhibit "**B-1**", which is attached hereto and incorporated by reference herein.
3. Section 2 of the Agreement entitled "Compensation" amended in its entirety to read as follows:

"COMPENSATION. City hereby agrees to pay Consultant a guaranteed maximum price not to exceed One Hundred and Eighteen Thousand Fifty-Five Dollars (\$118,055.00) for all services to be performed including reimbursable costs and contingency incurred under this Agreement. Consultant shall not proceed with any work to be billed toward the contingency without written approval by the City. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services

required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B and Exhibit B-1. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement."

4. The Consultant agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated **February 19, 2013**, between **H.T. Harvey & Associates** and the City of Milpitas. The Consultant shall provide the City with renewal certificates of the current policies upon the expiration of the current policy.

5. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

Name, Title

Corporate Entity Number:

C0671935

Steven Machida, Acting Public Works Director/
City Engineer as to work specifics

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney



PROPOSED SCOPE OF SERVICES
Wrigley-Ford Creek Maintenance Project
Erosion Repair Design and Giant Reed Control Strategy

(HTH # 3159-04)

13 January 2015
(Revised 21 January 2015)

H. T. Harvey & Associates (HTH) is pleased to present this proposal to provide ecological consulting services to the City of Milpitas City (City) related erosion repair and giant reed (*Arundo donax*) control at the Wrigley-Ford Creek Maintenance Project (Project). The erosion repair is required per the project's permitted Mitigation and Monitoring Plan, and occurs in the following locations within the project's Riparian and Wetland Habitat Mitigation Area:

1. downstream segment of Wrigley-Ford Creek, where approximately 3-4 gullies developed following mid-December storms, and
2. a small area along Ford Creek immediately upstream of Railroad Court.

The giant reed control services are proposed to assist the City in developing a revised strategy for controlling giant reed, during the last year of the City's current maintenance contract with Preston Pipelines, as discussed at the last Project maintenance inspection; the giant reed control area is located within the project's riparian mitigation area on Wrigley-Ford Creek.

These additional services, conducted with Schaaf & Wheeler (S&W) as a subcontractor, include a site visit, design services, permitting support, construction support, and providing a licensed Pest Control Advisor recommendation for giant reed control.

This scope of services and fee estimate are valid for a period of 60 days. Specific tasks associated with this scope of work are as follows.

Task 1 Site Visit and Erosion Repair Design

HTH and S&W (HTH Team) will conduct a site visit with the City and the contractor to review the 2 areas of erosion.

Based on the site visit, the HTH Team will prepare half size 11x17 erosion repair construction drawings for use in obtaining regulatory agency approval (under the project's existing permits) and for use by the City's contractor (Preston Pipelines) to conduct the required repairs.

The drawings will include the following:

- Site plan showing location of erosion
- Engineering details/notes describing the proposed bank repairs

- Landscape details/notes describing any required revegetation and irrigation system repair within and/or adjacent to the erosion repair locations (some replanting may be required as some existing vegetation may need to be removed to accommodate the footprint of both grading and site access at the erosion repair locations). These landscape drawings will largely refer back to the original project plans, but any repair-specific nuances will be noted. They will not be stamped or signed, but will provide all required information to assist Preston Pipelines and/or its subcontractor(s) in completing the planting and irrigation system repairs.

Task 1 Deliverables

- Site visit to review the areas of erosion
- Construction drawings

Task 2 Permitting Support

Approvals to conduct the repair work within the Wrigley-Ford Creek riparian corridor will be required from the U. S. Army Corps of Engineers (USACE), the Regional Water Quality Control Board (RWQCB), and the California Department of Fish & Wildlife (CDFW). This task assumes that these regulatory agencies will concur that the erosion repair work is covered under the project's existing USACE, RWQCB, and CDFW permits and that new permit applications are not required. Therefore, HTH will assist the City in obtaining regulatory agency approvals (via email) of the proposed erosion repairs, which will include the following:

- Preparation of a brief tech memo to the regulatory agencies. The memo will include a description of the problem, a reminder about the repair requirement and approval process for erosion repairs described in the project's permitted Mitigation and Monitoring Plan, a description of the proposed design solution, and the anticipated project schedule. Drawings developed in Task 1 will also be included.
- Coordination with the regulatory agencies via email and telephone to obtain their approval of the proposed repair work.

Task 2 Deliverables

- Technical memorandum to the regulatory agencies
- Coordination with the regulatory agencies

Task 3 Construction Support

The HTH Team will provide construction observation services and respond to Preston Pipelines' questions prior to and during construction of the erosion repairs. We will also review contractor submittals (anticipated to be geo-grid and plant list).

Task 3 Deliverables

- Contractor submittal responses
- Site visits during construction

Task 4 Develop Giant Reed Control Strategy

The Project's riparian mitigation site has several stands of giant reed, a non-native and invasive plant that requires removal per the Project's Mitigation and Monitoring Plan. These stands have received 3 years of herbicide treatments without achieving effective control. For all previous herbicide treatments, the herbicide application concentrations and methods have been provided by the contractor's licensed Pest Control Advisor (PCA). To help ensure that the last and final year of herbicide treatments are more effective, HTH's Ken Lair, who has over 20 years of experience treating this species in riparian systems throughout the Western United States, will provide the PCA recommendation. The PCA recommendation will include the Department of Pesticide Regulation standard pest control recommendation form, as well as a short memo with supplemental information including application timing, quantity, rates, methods, and precautions to avoid impacts to adjacent riparian vegetation. HTH will also attend up to two (2) site visits with the City's contractor.

Task 4 Deliverables

- Pest Control Advisor (PCA) recommendation
- Up to 2 site visits

General Assumptions

This scope and fee are based on the assumptions listed below. If changes are made to any of these assumptions, the scope and fee may be revisited.

- The erosion control repairs will be covered under the project's existing USACE, RWQCB, and CDFW permits.
- Preston Pipelines and/or its subcontractor(s) will conduct the required repairs as change orders under their existing contracts. They will also procure any replacement mitigation plants, meeting the plant origin requirements in the Mitigation and Monitoring Plan, from local native plant nurseries.
- Project management time and coordination has been included as part of the above tasks.

Fee Estimate

See attached.

Exhibit B-1



H.T. HARVEY & ASSOCIATES

Ecological Consultants

Project Name: Wrigley-Ford Creek Maintenance Project – Erosion Repair Design and Giant Reed Control Strategy

Project Number: 3159-04

Date: 13 January 2015 (Revised 21 January 2015)

Staff Time Estimates

Task	Personnel Hours by Task										HTH Cost by Task	HTH Direct Expenses	Subcontractor Schaff & Wheeler	Total Project Cost
	Dan Stephens Principal, Restoration Ecology	Max Buscardo Principal, Restoration Ecology	Karen Verpeet Associate, Landscape Architect	Carrie Jensen Restoration Landscape Designer	Gavin Archbold Restoration Ecologist	Solange Gulllaume Restoration Landscape Designer	Ken Lair Associate Restoration Ecologist	Graphic/GIS	Support					
Task 1 Site Visit and Erosion Repair Design	1	2	4		10	10					\$ 3,681	\$ 19	\$ 6,500	\$ 10,960
Task 2 Permitting Support	1	2	6						1		\$ 1,809	\$ -		\$ 1,809
Task 3 Construction Support		1		1	16						\$ 2,458	\$ 57	\$ 2,540	\$ 5,309
Task 4 Develop Giant Reed Control Strategy		1	1	10			6				\$ 2,938	\$ 38		\$ 2,976
Total Labor Hours	2	6	11	11	26	10	6	0	1					
TOTAL COST	\$ 450	\$ 1,290	\$ 1,969	\$ 1,617	\$ 3,406	\$ 1,000	\$ 1,074	\$ -	\$ 80		\$10,886	\$115	\$10,054	\$21,055

Total includes 10% markup on subcontractor fee

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
NBS GOVERNMENT FINANCE GROUP

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California, referred to herein as the ("City"), and NBS Government Finance Group, a California Corporation ("Consultant") as of February 17, 2015.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on February 18, 2016 the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed Twenty Nine Thousand, Nine Hundred Dollars (\$29,900.00) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each Agreement billing until the completion of the Agreement unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

2.5 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

2.6 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed Two Thousand Nine Hundred Dollars (\$2,900). Expenses not listed in Exhibit B are not chargeable to City.

2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain

adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code.

Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision

of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by broker or consultant, has been given to the City.

4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

- 4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by broker or consultant, has been given to the City.
- 4.3.3 The policy must contain a cross liability clause.
- 4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:
 - a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of three years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

- 4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured

retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778

of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law. The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination. City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
 - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other

materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

- 10.9 Contract Administration. This Agreement shall be administered by Steve Erickson who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices. Any written notice to Consultant shall be sent to:
- NBS
Tim Seufert, Managing Director
870 Market Street, Suite 1223
San Francisco, CA 94102
- Any written notice to City shall be sent to:
Steve Machida, Acting Public Works Director/City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035
- 10.11 Professional Seal. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 Integration. This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Exhibits. All exhibits and attachments to exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT
NBS

Thomas C Williams, City Manager

Michael Rentner, President & CEO

Taxpayer Identification Number

33-0712512

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

Corporate Entity Number

C1968655

APPROVED AS TO CONTENT:

Steve Machida, Acting Public Works Director/City Engineer

EXHIBIT A

SCOPE OF SERVICES

PROPOSITION 218 COMPLIANCE OF ENGINEER'S REPORT FOR LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICTS NO. 95-1 ("LLMAD 95-1") AND 98-1 ("LLMAD 98-1")

Task 1

Project Schedule. Consultant will develop a timeline, coordinating with City staff and Council meetings.

Deliverables:

- Provide a project schedule and timeline that incorporates the City schedule for the required annual administration tasks, and incorporates the deadlines for submitting the assessment roles to the County of Santa Clara.

Task 2

Special v. General Benefit Analysis. Review the proposed improvements and maintenance services, budgets, location and type of improvements, analyze Proposition 218 special benefit, general benefit and recent case law to separate and quantify special vs. general benefit. Meet with City staff to develop a general benefit contribution and approach for the City's two Landscape Maintenance Districts. Provide staff with related support for the duration of the project.

Budget Development. Perform an in-depth review, line item by line item, of the budgets for the projected costs of maintaining the improvements and providing services. This review is separate and in addition to the basic review performed annually as part of the ongoing administration of the districts. Cost categories may include, but not be limited to, all relevant expenses, improvements, services, incidental costs (engineering, legal, City staff, consultants and ongoing administration), and operating and capital reserves.

Support Determinations. Review the determinations made by the original Assessment Engineer, which shall include, but not be limited to the Method of Assessment and provide support for those determinations as information and research allows.

Exempt Parcels. Review all parcels that have been exempted from the annual assessment within the boundaries of the District and provide recommendations on how each of these parcels should be addressed in the future.

Findings and Recommendations Report. Prepare a report, summarizing our findings and recommendations. The main goal of the report is to identify areas of the Engineer's Report that can be updated and supported in accordance with Proposition 218 and recent case law. The report will provide analysis and numerical support for the breakdown of special vs. general benefit. The City will be able to use the report to determine the amount of the general benefit contribution and the amount of the budget that should be assessed for special benefit. Support for determinations made by the

original assessment engineer will be provided as available. The identification of parcels exempt from the assessment will be identified and addressed.

Deliverables:

- Meeting in person or by conference call, as required by City, to develop approach drafting general benefit contribution language for both Districts.
- Provide a report summarizing the findings and recommendation of areas where the engineer's reports should be updated.

Task 3

Engineer's Reports. Prepare new draft and final Engineer's Reports for two Districts, and attend up to two meetings with staff and the City Attorney, as requested by City. Reports shall be completed in time for City review and approval prior to required Council Meetings. The City's annual schedule to complete required District administration tasks is as follows:

- May 5, 2015 Council Adopts Resolution to prepare Engineers Reports
- May 19, 2015 Council Adopts Resolution approving preliminary Engineers Reports
- June 2, 2015 Council holds public hearing & approves Engineers Reports and Levees Assessments
- Meeting of June 16, 2015 is available if needed
- City Council does not meet in July.
- City provides assessment roles to Santa Clara County on July 1, 2015.

Deliverables:

- Provide draft Engineer's Reports for two Districts for City review and comments.
- Provide Final Engineer's Reports for two Districts incorporating all City comments
 - o Reports shall be signed by the consultant, and shall be provided both electronically (Word format) and hardcopy.
- Attend up to two meetings with staff and City Attorney in person or by conference call (includes meeting under Task 2 above), as requested by City staff.

City's Responsibilities. The City shall furnish NBS with any pertinent information that is available to City and applicable to the Services. The City shall designate a person to act with authority on its behalf in respect to the Services. The City shall promptly respond to NBS' requests for reviews and approvals of its work, and to its requests for decisions related to the Services. City understands and agrees that NBS is entitled to rely on all information, data and documents (collectively, "Information") supplied to NBS by City or any of its agents, contractors or proxies or obtained by NBS from other usual and customary sources including other government sources or proxies as being accurate and correct and NBS will have no obligation to confirm that such Information is correct and that NBS will have no liability to City or any third party if such Information is not correct.

EXHIBIT B

FEES

PROPOSITION 218 COMPLIANCE ANALYSIS OF ENGINEER'S REPORT

LLMAD 95-1 Consulting Fees	\$17,500
LLMAD 98-1 Consulting Fees	\$9,500
Estimated Expenses	\$2,900
Total Not-to-Exceed.....	\$29,900

Expenses

Customary out-of-pocket expenses will be billed to the City at actual cost to NBS. These expenses may include, but not be limited to, diagram/mapping preparation (time, materials, plotting and all related costs), mailing fulfillment, postage, reproduction, telephone, travel, meals and various third-party charges for data, maps, and recording fees.

Additional Services

The following table shows our current hourly rates. Additional services authorized by the City but not included in the scope of services will be billed at this rate.

Title	Hourly Rate
Director	\$ 205
Senior Consultant/Engineer	160
Consultant	140
Analyst	120
Clerical/Support	95

Terms

Consulting fees will be invoiced monthly. Expenses will be itemized and included in the next regular invoice.

EXHIBIT C

INSURANCE DOCUMENTS

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
☒ Budget Appropriation	235-2940 236-2940	\$ 18,950 10,950	235-413-4237 236-413-4237	\$ 18,950 10,950
☐ Budget Transfer				

Explain the reason for the budget change:

Background: The City administers two Landscaping and Lighting Maintenance Assessment Districts (LLMD) that improve and maintain public landscaping, irrigation, and pedestrian lighting within certain areas of the City. District No. 95-1 is located along McCarthy Boulevard from State Route 237 north to Dixon Landing Road including portions of Ranch Drive. District 98-1 is located along portions of Los Coches Street from Hillview Drive to Sinclair Frontage Road including portions of the landscaped trail adjacent to Berryessa Creek.

The City is required to prepare annual engineers reports which verify changes in district parcel boundaries, evaluate maintenance and improvement costs and budgets, and compute proposed assessment rates for property tax bills for properties within the district boundary. The format and content of the engineers report is guided by the requirements of State law. It has been fifteen years since the City's engineer's reports and LLMD administration practices have been thoroughly reviewed and updated.

Through the City's consultant selection process, the firm of NBS Government Financial has been selected to provide the assistance in updating the engineer's reports. Staff negotiated a scope and fee with NBS for the updated reports in the amount of \$29,900.

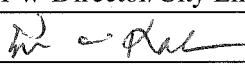
Fiscal Impact: A budget appropriation is requested in the amount of \$29,900 from LLMD Funds to the Engineering Department to cover the expenses associated with the contract with NBS for updates to the two annual engineer reports.

Recommendation:

1. Approve consultant agreement with NBS Government Finance Group in the not-to-exceed amount of \$29,900, and for a term from February 17, 2015 to February 18, 2016 for updates to the annual Lighting Landscape Maintenance Assessment District Engineer's Reports.
2. Approve budget appropriation in the amount of \$29,900 from the LLMD Funds 235 and 236 to the Engineering Budget.

☒ Check if City Council Approval required.

Meeting Date: February 17, 2015

Requested by:	Steven Machida, Acting PW Director/City Engineer	Date: February 5, 2015
Reviewed by:	Finance Director: 	Date: 2/6/15
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:



AMENDMENT NO. 2 TO THE AGREEMENT WITH
NORMA NELSON FOR
CONSULTING SERVICES – PART TIME BUYER

This Amendment is entered into this ____ day of _____, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Norma Nelson**, an individual, (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an agreement on August 6, 2014 for Consulting Services – Part Time Buyer in the amount of Nineteen Thousand Nine Hundred Sixty-Five dollars (\$19,965.00) for the period August 6, 2014 to December 5, 2014 ("Agreement"); and

WHEREAS, the parties entered into Amendment No. 1 to the Agreement on December 2, 2014 to extend the term of the Agreement from December 6, 2014 to February 27, 2015 and increase the amount of compensation to the CONSULTANT by Fourteen Thousand Three Hundred dollars (\$14,300.00) for a total compensation amount of Thirty-Four Thousand Two Hundred and Sixty-Five dollars (\$34,265.00) for all services provide under the Agreement; and

WHEREAS, the parties now desire to amend the Agreement to extend the term of the Agreement from February 27, 2015 to June 30 2015 and increase the amount of compensation to the CONSULTANT by an additional Fourteen Thousand Three Hundred dollars (\$14,300.00) for additional work not considered in the original Agreement.

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

1. The Agreement is extended through June 30, 2015.
2. For the period from February 27, 2015 to June 30, 2015, the City agrees to pay CONTRACTOR an amount not-to-exceed of Nineteen Thousand Eight hundred dollars (\$19,800.00) for a total contract amount not-to-exceed of Fifty-Four Thousand and Sixty-Five dollars (\$54,065.00) for all services provided under the Agreement.
2. All other provisions of the amended Agreement not amended by this Amendment No. 2 shall remain in full force and effect.

This Amendment is executed as of the date written above.

APPROVED BY:

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

Norma Nelson, Buyer

Approved As To Form:

Approved As To Content:

Michael J. Ogaz, City Attorney

Chris Schroeder, Purchasing Agent

RESOLUTION NO. _____

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

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

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

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

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

Jose S. Esteves, Mayor

Carmen Montano, Vice Mayor

Thomas C. Williams, City Manager

Emma C. Karlen, Assistant City Manager/
Director of Financial Services

PASSED AND ADOPTED this ____ day of _____, 2015, 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

RESOLUTION NO. PFA _____

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

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

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

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

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

Jose S. Esteves, Chair

Carmen Montano, Vice Chair

Thomas C. Williams, Authority Director

Emma C. Karlen, Authority Assistant Director

PASSED AND ADOPTED this ____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Authority Secretary

Jose S. Esteves, Chair

APPROVED AS TO FORM:

Michael J. Ogaz, Authority Counsel

MEETING MINUTES CITY OF MILPITAS

Minutes of: Joint Meeting of Milpitas City Council and the Public
Financing Authority
Date: Tuesday, February 17, 2015
Time: 7:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Councilmembers Giordano and Grilli

ABSENT: Vice Mayor Montano and Councilmember Barbadillo were absent at roll call and arrived later for closed session.

CLOSED SESSION City Council convened in Closed Session to discuss litigation matters.

City Council then convened in Open Session at 7:14 PM.

ANNOUNCEMENT None out of Closed Session.

PLEDGE Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION Vice Mayor Montano read a passage from the bible to start the meeting.

MEETING MINUTES Motion: to approve the minutes of February 3, 2015 City Council meeting

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS Motion: to approve Council Calendar/Schedule of Meetings for February and March 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATION Mayor Esteves presented:

- Certificate of Appreciation to Engineers 4 Tomorrow. Ms. Rohini Mankee, President of the group, came to the podium with three board members to accept the recognition of the non-profit group promoting STEM education. She thanked Vice Mayor Montano who is a board member. A short video about their program was shown overhead.
- Recognition of the Milpitas 2015 “Artist of the Year” Joe Santoro of South Bay School of Music.

PUBLIC FORUM Robert Marini, Milpitas resident, responded to information given to him at the last City Council meeting and commented on real estate development, the landfill site, current drought, and rates paid for utility service in Milpitas.

Thelma Batila, Milpitas resident, sought support for the “Kids and Adults Day” event planned this year in Milpitas for challenged children, which was not a fundraising event. It was scheduled on Saturday, April 25, 2015 at the Milpitas Sports Center, from 2 – 5 pm. She asked the City Council to provide city support and put her request on the next agenda March 3.

In response, Mayor Esteves asked for Council consideration on the next agenda.

Rob Means, 1421 Yellowstone resident, talked about a People’s Climate March held in New York City in September last fall regarding climate change, and changes necessary in our world.

Voltaire Montemayor, Milpitas resident, supported artists and sports. He remarked on those who received the presentations earlier.

ANNOUNCEMENTS

Mayor Esteves noted Asian New Year being celebrated this week and this month, and he offered greetings to the Asian community of Milpitas.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Tom Williams asked to continue the report on crime data (Item No. 6) to the next meeting agenda on March 3.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar items (noted by *asterisk), as amended

Vice Mayor Montano requested to remove items no. 7 (Street Resurfacing), no. 12 (HT Harvey & Assoc. agreement) and no. 13 (agreement with NBS) from the consent calendar.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

*** 3. Commission Appointments**

Approved the following recommendations from the Mayor:

Arts Commission: Re-appointed three Commissioners Larry Voellger, Cyd Mathias, and Bob Gill as regular members to terms that expire in October of 2017.

Bicycle Pedestrian Advisory Commission: Appointed Vice Mayor Montano to serve as the Council liaison to this Commission.

Community Advisory Commission: Re-appointed Jose Rosario as a regular member to a term that will expire in January 2019.

Recycling and Source Reduction Advisory Commission: Appointed school district staff Brian Shreve as the MUSD school representative on the RSRAC to a seat (currently vacant) with a term that will expire in October 2015.

Senior Advisory Commission: Re-appointed Jae Kuk Wi as a regular member to a term that will expire in December 2016.

Telecommunications Commission: Re-appointed Kurt Bohan as a regular member to a term that will expire in January 2017.

- * 4. Arts and Culture In-Kind Grant FY 2014-15 Approved the Milpitas Arts and Culture Grant awarded to the Fil-Am for in-kind performance space and City staff support.
- * 8. Resolution Adopted Resolution No. 8448 amending the Classification Plan to eliminate two Assistant Civil Engineer positions and to add one Associate Civil Engineer and One Engineering Permit Technician position within the Land Development - Engineering Department.
- * 9. Resolution Adopted Resolution No. 8449 amending the Classification Plan to establish a new classification of a Building Inspection Manager in the Building & Safety Department with an annual salary range of \$109,034 - \$132,533. Authorized funding a vacant Building Inspector position with an annual salary range of \$84,396 - \$102,583.
- *10. Resolution Adopted Resolution No. 8450 amending the Classification Plan to establish a new classification of a Marketing Assistant in the Recreation Services Department for an annual salary range of \$57,495 - \$69,886.
- *11. Main Street Pavement Approved plans and specifications for Main Street Pavement Reconstruction Project No. 4277 and authorize advertisement for bid proposals.
- *14. Amendment to Agreement with Norma Nelson Approved Amendment No. 2 to the agreement with Norma Nelson for services as a Buyer for the City in the not-to-exceed amount of \$19,800 00 for the period from February 27, 2015 to June 30, 2015.

PUBLIC HEARING

- 1. Development Agreement with SCS/Citation, et al. Planning Director Steve McHarris presented a recap from the City Council meeting of February 3 on the development agreement proposed for the Citation projects in the Transit Area Specific Plan (TASP) area: Amalfi I, Amalfi II, and The Edge. Fees were requested to be deferred for the development impact fees. Three projects by Citation would be affected in the development agreement for newly constructed apartments in the Transit Area with commercial uses as part of the projects.

Mayor Esteves asked staff to explain benefits of the agreement to the community and to the developer. Staff listed six fiscal benefits and four community benefits.

Councilmember Barbadillo asked if the impact fees were the main issue. He identified \$32,781 as the required developer's fee per new residential unit, approved in March 2014 when the TASP fees were reviewed and changed. Mr. McHarris explained much TASP fee history. The City Attorney responded on terms including the five year length of the proposed development agreement and for established fees for the Citation projects.

Councilmember Giordano remarked that this was not precedent setting, which staff confirmed. The City had executed several development agreements over the years. It was more cost effective to the city and its residents, which she viewed as a "win-win." She mentioned the development of Parktown where she lived. She favored the proposed agreement for Citation.

Councilmember Grilli stated that fees were increased last year due to anticipated lower density while this project would bring much higher density to the TASP area, which staff confirmed. She asked about the pedestrian overcrossing, which would cross from the new development over Montague Expressway – if grant funds were awarded – to allow those residents to easily access the new BART station.

Vice Mayor Montano commented on the total reduced fees the city would receive. She asked when the BART would be ready to open and staff replied that Santa Clara Valley Transportation Agency said in 2017. The City Manager responded further on the status of

the anticipated pedestrian bridge, and the funds sought to get it built. Ms. Montano questioned whether the bridge would be built ultimately.

Councilmember Barbadillo read aloud from the Planning Commission report in January. The City Attorney responded by describing the terms written in the proposed development agreement (not contemplating any reimbursement steps).

Councilmember Grilli remarked that another developer could propose a lower density project than this one yielding even fewer total TASP fees.

Vice Mayor Montano asked whether the City had given other developers such a reduction in fees. In the TASP, staff replied this was the first developer agreement, while there had been such agreements for development in the MidTown and other areas.

Mayor Esteves asked when fees would be collected, at the time of the Certificate of Occupancy or at the date of building permit issuance. He expressed concerns about timing, amount collected, treatment of all building applicants, and this project.

Next, the Mayor invited the project applicant to address the City Council. Mr. Mark Tiernan, representing developer SCS/Citation, gave reasons to support the three projects, which take a lot of capital. He discussed cost for each of the three Citation projects, totaling over \$270 million to build. The developer very much wanted to build in the TASP area at the higher densities, as identified in the plan.

Councilmember Barbadillo referred to the vesting tentative map for this project, and remarked on state and local government codes that affected the timing of the fees. He asked if they city received any objection from Citation on the fees. Mr. Ogaz said the city received a letter in the last few days, and probably by e-mail to staff in the past.

Next, Mayor Esteves re-opened the public hearing and invited speakers.

Robert Marini, resident, remarked on the non-benefits and disadvantages to this type of projects. He quoted amounts of water that would be needed for 1000 units built, causing cost increases for utilities even further and more traffic, not less.

Voltaire Montemayor, resident, said this was a great project, with benefits to the City. It would have a positive impact, near the new BART station.

Liz Ainsworth, Milpitas Chamber of Commerce President, referred to a written statement issued today by her organization in a letter to the City Council. The Chamber sought a good environment for people moving into Milpitas, including good commercial retail space at residential units next to the new BART station. She was positive about the proposed development.

Jim Sullivan, SCS real estate company, responded to several comments by Council member Barbadillo on the prior three-party cost sharing agreement on some very specific matters. He described the no cost-sharing of many improvements his company was building near this project site. He responded to the Mayor on a developer benefitting from the front end infrastructure building. He responded to the Vice Mayor that on the widening of Montague, he was working with the County on that step now. For The Edge project, he was asked to start this one quickly, when it was approved.

Steve Siddell, Milpitas resident, said that Milpitas needed to compete to attract residents and new development into the City. He urged Council to be careful about "one size fits all" approach to issues like this, and that the developer may go elsewhere when competing. He admired City staff for their hard work on this type of planning,

Tom Valore, Milpitas resident, saw the loss of \$3.8 million to the City which might lose a lot more if the developer was not willing to make an investment here if building only what

was economically feasible. He asked the decision makers to look at the total project, from the developer standpoint.

(1) Motion: to close the public hearing, after hearing six speakers

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

Councilmember Grilli wanted to hear from the City Manager on why a development agreement was good for the City. City Manager Tom Williams replied the City was getting infrastructure and improvements up front, so then the City did not need to do a Request for Proposals, collect fees, finance and build those. This was a good quality project and the agreement would help to facilitate it getting built, near the new BART station. The City risked tolerance with any decision and here there would be a lower risk to the City as a result, with the development agreement.

Vice Mayor Montano felt the one issue she had was in consistency, and that the city should abide by its ordinance. She asked why she should make exceptions for one group and not another. The City should not give up \$3.8 million with this agreement and she believed the building of the bridge overcrossing was at risk of not being funded.

Councilmember Giordano thanked her colleague for the question to the City Manager. The legal issue here was a fascinating topic. She asked if state law trumped municipal law, and then there would be an issue in court to be heard.

Councilmember Barbadillo commented on law and said this was all about good planning, following ordinances and resolutions, getting the TASP area built while trying to bend and carve exemptions. He sought integrity of rules and ordinances of the City.

Councilmember Grilli noted this was approved by the Planning Commission. Developer agreements had been approved by City Council before, so this request was not new. Ordinances and staff could be flexible and that was good for the community. The City needed a signature project at the BART entry so she supported this recommendation.

Mayor Esteves felt this project was getting credit to move ahead and he asked if other should get credit moving ahead quickly. Timing was part of any business plan while fees can and do go up. He commented on building permit timing and when fees applied. He did not think fees should be negotiated. There would be legal issues, while the City's ordinances were written to be defensible.

City Attorney Ogaz read aloud the title of Ordinance No. 38.819, "An Uncodified Ordinance of the City Council of the City of Milpitas approving a Development Agreement by and between the City of Milpitas and SCS Development Co., Amalfi Milpitas LLC and DPD Investments LLC, relating to the Citation I (Amalfi I and Amalfi II) and Citation II (The Edge) and Mixed-Use Development Projects."

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.819

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

(3) Motion: to introduce Ordinance No. 38.819 in order to approve a development agreement between City of Milpitas and SCS Development Co., Amalfi Milpitas, LLC, and DPD Investments, LLC

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion failed by a vote of: AYES: 2 (Giordano, Grilli)
NOES: 3

UNFINISHED BUSINESS

2. Odor Report

City Engineer Steve Machida gave an oral report with handouts of his presentation. He described the number of complaints to both the City's hotline number and the Bay Area Air Quality Management District's odor hotline, with a noticeable spike recently in January. Mr. Machida detailed various meetings staff and the public had attended, many related to plan for expansion of the Newby Island landfill.

Mayor Esteves asked staff to provide additional information regarding the outcome of the City of San Jose Planning Commission where the expansion of the Newby Island Landfill was considered recently. Meeting minutes could provide the information he sought and staff agreed.

Mr. Machida described the protocol followed by BAAQMD when a complaint arrived from a resident. Vice Mayor Montano asked for detailed information on when the composting was scheduled at the landfill.

An Odor Mitigation process was proposed by Republic Services, and to form a South Bay Odor Coalition with stakeholders, to help determine odor sources in this area.

Councilmember Grilli asked if it would be to the advantage of the City to participate in funding a study on finding the source of odors. City Manager Williams explained that City of San Jose oversaw regulatory oversight of the landfill, and it may direct (or not) to condition Republic Services to do an odor study.

Councilmember Giordano noted there was lots of press about this subject lately. She asked the City Manager what message to provide to residents on this issue. Mr. Williams replied that to eliminate odor so that it did not impact residents was the objective.

Mayor Esteves encouraged residents to be engaged and to speak out on the expansion plan for the Newby Island landfill, which would have a long term impact.

Motion: to receive an oral update report on odor issues from the City Engineer

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

REPORT OF COMMISSION

5. Arts Commission: Utility Box Painting

Recreation Services Director Renee Lorentzen reviewed the Arts Commission plan to implement a project to paint on the outsides of twelve electrical utility boxes throughout the City. She displayed a map of the locations with the sketch of the art planned to be painted on each particular box. Cost to the City included \$1000 for supplies and the remainder for an honorarium to each student painter and the teacher.

Councilmember Giordano felt this project represented the biggest bang for the buck, with Council only allocating money for the material (paint) as a big asset.

Councilmember Grill asked about the timeframe for implementation of the painted boxes. Staff explained it would start in mid-March and planned completion at the end of April.

Vice Mayor Montano very much liked the display of Milpitas history throughout these sketches. She did not prefer the surreal art proposed for the box at Jacklin and Hillview and suggested instead historical sites such as Ford Motor Company, United Auto Workers union hall or the Alviso Adobe.

Mayor Esteves liked the art work to be shown around the city. He inquired if the artists' names would be displayed at the bottom, and staff said yes. Also, the city staff would be prepared to handle any graffiti that showed up on these boxes.

After discussion of the box painting project, both Mayor Esteves and Vice Mayor Montano stated that they both sought a City Council ordinance on a public art requirement for all future development projects. They requested staff to come back to City Council with that.

Motion: to approve the twelve Electrical Box Painting Art project designs at the dozen locations specified throughout the City of Milpitas for a total project budget of \$5,200

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

6. Crime Report This item was removed from the agenda, to be heard at a future date.

RESOLUTIONS

Three resolutions were adopted on the consent calendar.

7. Resolution Vice Mayor Montano inquired about terminology of the agenda item title. Staff clarified it was for "Cape Seal" and Slurry Seal" two processes done for street resurfacing work.

Motion: to adopt Resolution No. 8447 granting initial acceptance of the Street Resurfacing Project 2015 Street Cape and Slurry Seal, Projects No. 4275 and No. 3412, subject to a one-year warranty period, and reduction of the faithful performance bond to \$340,862; and grant authorization to the City Engineer to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further Council action

Motion/Second: Vice Mayor Montano/Councilmember Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

AGREEMENTS

Two items were approved on the consent calendar.

12. Amendment to Agreement with H.T. Harvey & Associates Vice Mayor Montano asked about the Task No. 1 to be completed on this project and the jurisdiction of the identified creeks. Staff clarified those creeks were located within City boundaries, and not within the Santa Clara Valley Water District.

Motion: to approve Amendment No. 1 to the consultant agreement with Triple HS, Inc. doing business as H.T. Harvey and Associates for Project No. 3700 and increase the agreement amount by \$21,055

Motion/Second: Vice Mayor Montano/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

13. Agreement with NBS

Vice Mayor Montano asked what this consulting group was contracted for. City Engineer Machida responded that the consultant would take a look at the annual Engineering Reports that were required for the two Landscape Lighting and Maintenance Districts in the City (not related to the Community Advisory Commission trees project). These were prepared each year for review of the annual assessments adopted each year.

Motion: (1) to approve consultant agreement with NBS Government Finance Group in the not-to-exceed amount of \$29,900, and for a term from Feb 17, 2015 to Feb 18, 2016 for updates to the annual Lighting Landscape Maintenance Assessment District Engineer's Reports; and (2) to approve a budget appropriation in the amount of \$29,900 from the LLMD Funds 235 and 236 to the Engineering Budget

Motion/Second: Vice Mayor Montano/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

JOINT MEETING

CITY COUNCIL and PUBLIC FINANCING AUTHORITY

FA1 Call to Order

The Joint Meeting was called to order at 11:00 PM with all members present.

FA2 Approve Agenda

Motion: to approve the agenda of the joint meeting and consent calendar item

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5
NOES: 0

* FA3. Resolution to Update Officers

Adopted City Council Resolution No. 8451 and Milpitas Public Financing Authority Resolution No. PFA 17 authorizing investment of monies in the Local Agency Investment Fund and updating officers' information.

ADJOURNMENT

Mayor Esteves adjourned the joint meeting at 11:00 PM.

The foregoing minutes were approved, as amended, by the Milpitas City Council on March 3, 2015.

Mary Lavelle
Milpitas City Clerk