



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3232

AGENDA

TUESDAY, FEBRUARY 05, 2019
CITY COUNCIL CHAMBERS, 455 E. CALAVERAS BLVD., MILPITAS, CA
6:00 PM (CLOSED SESSION)

7:00 PM (PUBLIC BUSINESS)

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

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Pursuant to California Government Code Section 54956.8

Potential Property: APN 086-036-012

Agency negotiator: Julie Edmonds-Mares

Under negotiation: Price and terms of payment

CLOSED SESSION ANNOUNCEMENT: Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Phan)

PUBLIC FORUM

Those in the audience are invited to address City 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 spoken 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. Council may instruct the City Manager to place the item on a future meeting agenda.

ANNOUNCEMENTS

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

APPROVAL OF AGENDA

CONSENT CALENDAR

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a City Councilmember, member of the audience or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

C1. Approve City Council Calendar for February 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve the City Council Calendar for February 2019.

C2. Approve City Council meeting minutes of January 15, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve the meeting minutes for January 15, 2019 regular Council meeting.

C3. Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for March 5, 2019 to Hear Objections (Staff Contact: Albert Zamora, 408-586-3371)

Recommendation: Adopt a resolution declaring weeds on specific properties to be public nuisances and set a public hearing on March 5, 2019.

C4. Adopt a Resolution to Approve Site Development Permit to construct a single-family residence on a vacant lot, zoned R1-H Hillside Combining District with a Site and Architectural (-S) overlay, at 529 Vista Ridge Drive (Staff Contact: Michael Fossati, 408-586-3274)

Recommendation: Adopt a resolution approving Site Development Permit SD17-0012, subject to the written Conditions of Approval (attached to resolution), for a residence at 529 Vista Ridge Drive and Making Findings of CEQA Exemption

C5. Approve Out of State Travel for Police Lieutenant Raj Maharaj to attend the Federal Bureau of Investigation (FBI) National Academy 275th Session in Quantico, VA January 7, 2019 to March 15, 2019 (Staff Contact: Armando Corpuz, 408-586-2534)

Recommendation: Authorize Out of State Travel for Police Lieutenant Raj Maharaj to attend the FBI National Academy in Quantico, VA January 7, 2019 to March 15, 2019.

C6. Approve Out of State Travel for Two Milpitas Police Detectives so They May Follow-up on a Homicide Investigation in the State of Washington (Staff Contact: Armando Corpuz, 408-586-2534)

Recommendation: Authorize Out of State Travel for two Police Detectives to travel to the state of Washington, from January 11-12, 2019, so they may follow-up on a homicide investigation for the Milpitas Police Department.

C7. Approve Agreement with Pump Repair Service Co. for the water pump replacement at the Hillside Pump Station (Staff Contact: Tony Ndah, 408-586-2602)

Recommendation: Approve the agreement with Pump Repair Service Co. for the water pump replacement at the Hillside Pump Station for the not-to-exceed amount of \$117,100.

C8. Approve the Agreement with Pump Repair Service Co. for the water pump replacement at the Tularcitos Pump Station (Staff Contact: Tony Ndah, 408-586-2602)

Recommendation: Approve the agreement with Pump Repair Service Co. for the water pump replacement at the Tularcitos Pump Station for the not-to-exceed amount of \$118,200.00.

C9. Approve Project Plans and Specifications and Authorize Advertisement for Invitation for Bids for the Americans with Disabilities (ADA) Curb Ramp Transition, Projects No. 4283 and No. 4287 (Staff Contact: Steve Chan, 408-586-3324)

Recommendation: Approve project Plans and Specifications and authorize advertisement for Invitation for Bids for the Americans with Disabilities Act (ADA) Curb Ramp Transition, Projects No. 4283 and No. 4287.

C10. Adopt a Resolution Approving the Safe, Clean Water Program Grant for Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a Resolution Authorizing the City Manager or Designee to Apply for Grant Funding from the Santa Clara Valley Water District under the 2019 Safe, Clean Water and Natural Flood Protection Priority "D3" Grant Program in the Amount of \$100,000 for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 and if Awarded Grant Funding, Authorize the City Manager or Designee to Execute the Grant Funding Agreement.

C11. Receive a Report on Emergency Repair of Montague Expressway Storm Drain Pipeline and Authorize Payment of Invoices Associated with the Repair Activities (Staff Contact: Tony Ndah, 408-586-2602)

Recommendations: 1) Receive a report from the Public Works Director on the emergency repair work on roadway and storm drain pipeline at Montague Expressway. 2) Authorize staff to pay invoices associated with the repair activities.

C12. Receive a Report on Emergency Repair of Technology Drive Water Main and Authorize Payment of Invoices Associated with the Repair Activities (Staff Contact: Tony Ndah, 408-586-2602)

Recommendations: 1) Receive a report from the Public Works Director on the emergency repair work of a water main on Technology Drive. 2) Authorize staff to pay invoices from Preston Pipeline for work associated with the repair of the water main.

C13. Authorize Payment to County of Santa Clara Registrar of Voters for November 6, 2018 Election Costs (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Authorize payment in the amount of \$112,855 in total to the County of Santa Clara Registrar of Voters for its services for the November 6, 2018 election.

C14. Receive Preview List for Next Regular Council meeting: February 19, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

PUBLIC HEARINGS

15. Conduct a Public Hearing to Consider Protests Against Proposed Sewer Rates for FY 2018-19 through FY 2022-23 and Introduce Ordinance No. 208.53 (Staff Contact: Tony Ndah, 408-586-2606)

Recommendations:

1. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases.
2. Move to close the public hearing following all speakers.

3. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protests.
4. City Attorney shall read aloud the title of Ordinance No. 208.53.
5. If no majority protests exist, move to waive the first reading beyond the title and introduce Ordinance No. 208.53 to approve proposed sewer rates for FY 2018-19 through FY 2022-23. Ordinance No. 208.53 is entitled "AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO SEWER SERVICE CHARGES."
6. Approve subsidy program for Mobile Home Park customer class.

16. Conduct a Public Hearing to Consider Protests Against Proposed Water and Recycled Water Rates for FY 2018-19 through FY 2022-23 (Staff Contact: Tony Ndah, 408-586-2606)

Recommendations:

1. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases
2. Move to close the public hearing following all speakers
3. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protest.
4. City Attorney shall read aloud the title of Ordinance No. 120.48.
5. If no majority protest exists, move to waive the first reading beyond the title and introduce Ordinance No. 120.48 to approve updated water and recycled water rates for FY 2018-19 through FY 2022-23. Ordinance is entitled: "AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 1 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO WATER SERVICE CHARGES."

COMMUNITY DEVELOPMENT

17. Reconsider previous Direction from the City Council to the City Manager to Conduct a Study of Potential Locations and Regulations for Digital Billboards (Staff Contact: Ned Thomas, 408-586-2602)

Recommendation: Direct the City Manager to provide a signature on the pending application by Outfront-Allvision LLC to obtain permits for the proposed construction of a digital billboard on City-owned property.

18. Adopt a Resolution to Support Regional Housing Needs Allocation (RHNA) Subregion (Staff Contact: Sharon Goei, 408-586-3260)

Recommendation: Adopt a Resolution of Intent to support formation of a Housing Subregion of Santa Clara County local and county governments to facilitate and implement Countywide housing production consistent with the Regional Housing Needs Allocation (RHNA) formula currently assigned by the Association of Bay Area Governments (ABAG).

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE

19. Receive a Staff Presentation and Approve a New FY 2018-19 Capital Improvement Program Project No. 3451, The Pines Pilot Parking Permit Program (Staff Contact: Steve Chan, 408-586-3324)

Recommendation: Receive a staff presentation and approve a new FY 2018-19 Capital Improvement Program Project No. 3451, The Pines Pilot Parking Permit Program.

REPORTS OF MAYOR & COUNCILMEMBERS - from the assigned Commissions, Committees and Agencies

20. Consider Mayor's List of City Council Subcommittees and Subcommittee Appointments of City Councilmembers and Make One City Council Appointment to Bay Area Water Conservation & Supply Agency (Staff Contact: Mayor Rich Tran, 408-586-3029)

Recommendations: 1) Consider Mayor's list of City Council Subcommittees and Subcommittee Appointments of City Councilmembers, and move to confirm the list and those appointments.
2) Consider Mayor's recommendation of Councilmember Carmen Montano to serve on the Board of Bay Area Water Conservation & Supply Agency and its Regional Financing Authority, to fill the unexpired 4-year term recently vacated that will expire on June 30, 2021. This action includes rescinding the appointment of Councilmember Anthony Phan made at the January 15, 2019 City Council meeting.

ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
FEBRUARY 19, 2019

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: cdiaz@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 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

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to 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.

Backup material for agenda item:

Approve City Council Calendar for February 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve the City Council Calendar for February 2019.

January 2019						
S	M	T	W	T	F	S
			1	2	3	4
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		

Milpitas City Council Calendar

February 2019

March 2019						
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						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 7:00 PM-Parks, Recreation & Cultural Resources Commission (AP)	5 6:00 PM-Closed Session 7:00 PM-City Council	6 2:00 PM-Santa Clara VTA Northeast Group (RT) monthly 5:30 PM-Veterans Commission (RT) 7:00 PM-Community Advisory Commission (BN)	7 5:30 PM-Milpitas Chamber of Commerce Board (CM) 5:30 PM-Santa Clara VTA Board of Directors	8	9
10	11 4:00 PM-Economic Development and Trade Commission (KD)	12 LINCOLN'S BIRTHDAY  City Hall Closed	13 4:30 PM-City Council Finance Subcommittee (RT) 7:00 PM-Silicon Valley Clean Energy Board of Directors (BN) (Cupertino) 7:00 PM-Planning Commission	14 4:00 PM-Treatment Plant Advisory Comm. (CM) (San Jose) 4:00 PM-Santa Clara VTA Policy Advisory Committee (KD) 7:00 PM-Youth Advisory Commission (AP) 7:00 PM-Cities Assoc of SCC	15	16
17	18 PRESIDENT'S DAY  City Hall Closed	19 6:00 PM-Closed Session 7:00 PM-City Council	20 6:00 PM-Energy and Environmental Sustainability Commission (BN)	21	22	23
24	25 7:00 PM-Science, Technology, & Innovation Commission (BN)	26 1:30 PM-Senior Advisory Commission (BN)	27 7:00 PM-Planning Commission	28		

Backup material for agenda item:

Approve City Council meeting minutes of January 15, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: Approve the meeting minutes for January 15, 2019 regular Council meeting.

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Regular Meeting of Milpitas City Council**
Date: **Tuesday, January 15, 2019**
Time: **6:00 PM Closed Session**
7:00 PM Open Session
Location: **Council Chambers, Milpitas City Hall,**
455 East Calaveras Blvd., Milpitas

CALL TO ORDER Mayor Tran called the meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Mayor Tran, Vice Mayor Dominguez and Councilmembers Montano, Nuñez and Phan

ABSENT: None

CLOSED SESSION City Council convened in Closed Session to discuss one arbitration matter on the agenda. City Attorney Chris Diaz stated that Mayor Tran recused himself from the Closed Session item.

ANNOUNCEMENT City Attorney did not have any announcement out of Closed Session.

City Council convened at the dais for the Open Session regular agenda at 7:00 PM.

PLEDGE Local Girl Scouts from Troop No. 61192 presented the flags and led the pledge of allegiance.

INVOCATION Councilmember Nuñez read a quote aloud regarding women, in advance of the San Jose Women's March scheduled for the following weekend.

PRESENTATION Mayor Tran commended Milpitas student Nithurhan Carthikeyan, Milpitas Library e-waste recycling coordinator.

Mayor Tran and the City Council commended and recognized retiring Milpitas Police Department Captain Daryl Sequeira, after serving the City of Milpitas for 27 years.

PUBLIC FORUM Alysson McDonald, resident, reminded the City Council of urgency on adopting residential rental protection soon.

Resident, (man), spoke of serious parking issue in the part of Milpitas near where the new BART station is built. Not enough spaces and needs to be fixed soon. Lived in The Metro neighborhood behind Great Mall.

Woman, spoke of a recent report issued regarding criminal cases, and concerns about the City when the BART is opened.

Woman, homeowner since 2001, spoke of building new homes near BART station, and concern about crime in Milpitas and potential increase.

Robert Marini, resident, spoke in response to a mailer he received in his mailbox. He wanted some specific information of water rates, on a spreadsheet. Asked when he would get that.

Councilmember Phan addressed Mr. Marini.

Stacy Brobst, The Pines resident, reminded Council that there is supposed to be a permit parking program in that neighborhood, and residents looked forward to it getting implemented.

ANNOUNCEMENTS

City Manager Julie Edmonds-Mares updated the City Council about a major effort completed to repair a significant sinkhole on Montague Expressway the previous weekend. She thanked Public Works Director Tony Ndah and others to get the roadway and underground utilities repaired rapidly over the weekend, so that the road re-opened prior to Monday morning commute.

Mayor Tran asked staff to bring back the issue of the electronic billboard for an update to City Council, and to provide options the Council could explore.

Councilmember Montano reported that she'd attended a Well Water Workshop to learn about water issues, along with statewide leaders. She asked about which governments paid the costs of repair of that sinkhole, and wanted to ensure the County or others paid its fair share. Ms. Montano requested a future Commissions discussion, to possibly re-organize some, and to form a Transportation Commission regarding roads and traffic issues.

Councilmember Phan wanted to pull agenda item no. C3 (ordinance to ban commercial cannabis) but wanted his colleagues to keep it on consent. He announced that would support his colleagues in support of the staff recommendation to approve the ordinance.

Councilmember Nuñez was supportive of having a new Transportation Commission, and the billboard signs discussion. He asked the City Manager what she was bringing back to Council. City Attorney Diaz recommended that the City Council could remove item no. 18 (preview Feb. 5 agenda) to have more conversation about agenda items on which meeting dates.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, none were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as amended, to remove items no. C8 - C11

City Manager Julie Edmonds-Mares made a request to remove the four Commission workplan agenda items from this agenda and be deferred to a future date.

Motion/Second: Councilmember Montano/Councilmember Nuñez

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

CONSENT CALENDAR

Motion: to approve the Consent Calendar including agenda items numbered 1

Nuñez – remove C6, 16, 17, 18

Montano – remove C14

Motion/Second: Councilmember Nuñez/Councilmember Montano

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

* 1. Council Calendars

Accepted City Council calendar for January 2019.

* 2. Meeting Minutes

Approved City Council meeting minutes of December 18 and 19, 2018.

* 3. Adopt Ordinance

Waived the second reading and adopted Ordinance No. 298 to prohibit Commercial Cannabis in the City and regulate cultivation of Cannabis for Personal Use. This is the permanent ban ordinance, and was distinct from the urgency ordinance adopted later in the meeting (agenda item no. 23).

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|---|--|
| * 4. Adopt Resolution | Adopted Resolution No. 8838 amending the Classification Plan by establishing the classifications of Entry Firefighter and Entry Firefighter Paramedic, authorizing the addition of three (3) Full Time Equivalent (FTE) Firefighter Paramedic positions and one (1) Full Time Equivalent (FTE) Fire Battalion Chief to the City's Authorized Positions List; and, approved a budget amendment to appropriate \$60,000 in the Fire Department's FY 2018-19 General Fund Operating Budget to fund the incremental salary and benefits for one (1) Fire Battalion Chief position over and above what the SAFER Grant will support. |
| * 5. Adopt Resolution | Adopted Resolution No. 8839 approving the sole source purchase of two JWC Environmental Channel Monster Model CDD6020 Grinders for Public Works from MISCOWater for the amount not to exceed \$226,250. |
| 6. Adopt Resolution | <p>Information Services Director Mike Luu came forward to answer questions about the agreement with software vendor Cayenta.</p> <p>Councilmember Nuñez asked about the process for this agreement, inquiring if the City went out to bid or how vendor was selected. Mr. Luu explained the City did go out to bid, over 20 years ago, for this Finance Department need for financial management software. It was a sole source only provider, for the upgrade.</p> <p><u>Motion:</u> to adopt Resolution No. 8840 approving a Professional Services Agreement with Cayenta, a Division of N. Harris Computer Corporation Inc., as the sole source vendor to implement an upgrade of the Financial and Utility Billing Software Systems for a total not-to-exceed amount of \$419,892; and, to authorize the City Manager to execute the agreement, subject to any revisions deemed necessary by the City Attorney.</p> <p>Motion/Second: Councilmember Nuñez/Councilmember Phan</p> <p>Motion carried by a vote of: AYES: 5
NOES: 0</p> |
| * 7. Appointment to SBOSG | Received recommendation from the Energy and Environmental Sustainability Commission (EESC) and appointed EESC Commissioner Chia Ling Kong as Community Representative to the South Bay Odor Stakeholders Group. |
| * 8. CAC Work plan | Items No. C8 – C11 (four Commission workplans) were removed from the agenda. |
| * 9. Energy Work plan | |
| * 10. Library Work plan | |
| * 11. Technology Work plan | |
| * 12. Out of State Travel | Approved out of state travel for three Milpitas Fire Department personnel to conduct a final inspection of the new Tiller Truck Fire Apparatus at the Pierce Factory in Appleton, WI for the dates of January 21 - 24, 2019. |
| * 13. Approve Final Map | Approved Final Map Tract No. 10408 Centre Pointe at 1646 Centre Pointe Drive, acceptance of all offers of dedications as stated and depicted on the Final Map upon completion and acceptance of improvements. |
| 14. Approve Stormwater Management Agreement | <p>Councilmember Montano asked about bioswales at this location, and if those were called for in the agreement. City Engineer Steve Erickson explained that developer installed those, and the agreement is for maintenance of the facilities in perpetuity, with City inspecting for compliance.</p> <p><u>Motion:</u> to authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for McCarthy Center Holdings LLC for development at 400-940 North McCarthy Boulevard</p> <p>Motion/Second: Councilmember Montano/Vice Mayor Dominguez</p> <p>Motion carried by a vote of: AYES: 5</p> |

***15. Award Bid to Crayon Software Experts**

Awarded the bid for IFB No. 2281 to Crayon Software Experts, LLC for the purchase of 500 Microsoft 365 Licenses for the Information Services Department for a three-year license period in the not-to-exceed amount of \$277,620. Authorize the Purchasing Agent to pay for year two and three without further City Council action except for appropriation of funds.

16. Kinsale Insurance

Councilmember Montano wished to make sure that tax dollars were well spent. She asked staff for background on this matter. Finance Director Will Fuentes explained the goal for protection of potential employment liability cases, which could occur in the City. This was due to the fact that the City was 100% exposed currently for such cases.

Councilmember Nuñez thanked staff for providing explanation. He said he was pro-insurance, while he had some questions to which staff replied.

Vice Mayor Dominguez commented, regardless of insurance, she wanted to stand by processes or procedures not to get into the need for this insurance. She wished to learn what the City was doing for staff and to see a document with that information.

Human Resources Director Liz Brown came forward to provide a high level response, stating that the city staff follow state law, managers were trained, and soon all employees would be required to be trained to understand their rights, regarding prevention of harassment.

Councilmember Phan appreciated how the Finance Director looked out for the City's finances.

Mayor Tran said he supported the Vice Mayor's comments 100%. He would support the item and supported Human Resources staff.

Councilmember Nuñez asked when was the budget meeting and it was January 29, 2019. Mr. Nuñez wanted to ensure supervisors were trained correctly. He did not support the recommendation.

Councilmember Montano asked for explanation about ABAG and pooled insurance. The City Manager described the pool recently begun to be created for employment liability insurance.

Councilmember Phan understood the points made by staff, but there was more to the conversation than the finances.

Vice Mayor Dominguez asked if the Council could request to bring this back later and the City Manager replied yes. Third party investigation of any harassment would be needed and to be transparent.

Councilmember Nuñez was supportive of bringing this back to Council, with more information on training and what was implemented, prior to the start of the new fiscal year on July 1.

Motion: to defer action this item and bring it back to Council before end of FY, with more information about specific staff training, on what other cities are doing in this area, steps for creating supportive work culture, and later consider an Agreement with Kinsale Insurance Company to provide employment practices liability coverage for the city

Motion/Second: Vice Mayor Dominguez/Councilmember Montano

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

17. Award Bid for Printing to Casey Printing, Inc.

Councilmember Montano asked for the purpose of the printing contract, related to the quarterly City newsletter "Connected" and the annual minimum wage notification to businesses annually. She was concerned about cost and the actual need for printing. Public Information Officer

Jennifer Yamaguma provided a response. Councilmember Montano wanted to be moving away from the printed newsletter and it perhaps could be sent via email. .

Councilmember Nuñez was interested in the pros / cons of this contract, as noted on report.

Vice Mayor Dominguez questioned some of the figures in the contract and report.

Councilmember Phan asked for explanation of the funding for this contract. Staff explained it was from the Economic Development unit budget, and was to be moved over to the City Manager's PIO budget line.

Mayor Tran invited public comments.

Rob Means, resident, remarked on the value for the quality of the newsletter which was doggone inexpensive. He felt it was a good product and good way to communicate with citizens.

Alysson McDonald said she always read the entire newsletter when she received it in her mailbox. It was valuable telling residents what was on FaceBook, NextDoor, and social media and she appreciated it.

Motion: not to award the bid and not authorize the City Manager to execute the letter Agreement with Casey Printing, Inc. for the City Manager's Office Printing Services, and to directed staff to return to Council with a revised newsletter plan in the future, potentially online publication along with culturally competent communication

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 4
NOES: 1 (Montano)

18. Preview Next Agenda

City Manager Edmonds-Mares had heard the request for The Pines Parking item, and it would be on the next regular City Council agenda on February 5. She went reviewed the list that was in the agenda packet. This was an opportunity for Councilmembers to comment on the next or upcoming agendas.

Councilmember Nuñez wanted to know how to re-prioritize the list, and or for items requested to come back to Council. The City Manager replied that priorities would be discussed at the January 29 Budget study session, where staff would seek feedback from all the Council.

Councilmember Montano asked about the digital billboard, and to place it on the next Council agenda. There was a need to do due diligence on this topic, she felt.

Mayor Tran supported her comment on that topic.

City Attorney Diaz noted that the Council might need to rescind past action taken.

Councilmember Montano also wanted a Transportation Commission formed, to review and go over Commission workplans, with possibility to consolidate or add Commissions and to look at other cities' Commissions.

The Council received the preview list of items for City Council meeting of February 5, 2019 (with no vote taken).

COMMUNITY DEVELOPMENT

19. HOUSING AUTHORITY Update on Housing Program

City Attorney Diaz announced that the topics for both items no. 19 and no. 20 would be heard together.

Director of Building and Housing Sharon Goei introduced staff Robert Musallam, and City partner Consuela Hernandez, from the County of Santa Clara office of supportive housing. The group gave a joint presentation.

Ms. Goei provided a thorough, detailed report on housing in Milpitas, and in particular referred to the calculation of Regional Housing Needs Allocation. Funds were distributed through Association of Bay Area Governments. 3290 housing units is the current goal for housing production for City of Milpitas. She described sources of funding for construction of affordable units in the city, via actions by previous City Councils.

Housing Administrator Robert Musallam discussed affordable housing development in Milpitas: Sunnyhills Apartments (supported by HUD Section 8 vouchers), MonteVista Apartments at 1001 S. Main Street, and 355 Sango Court. Ms. Goei discussed Measure A resources from the approved countywide ballot measure.

County staff Consuela Hernandez defined affordable housing, its financing, and how government partners with various agencies and developers to bring housing to those who need it. She described what had been happening over the last two years at the Office of Supportive Housing with Measure A funds, including significant construction of housing units. Mentioned issuance of Notice of Funds Available (NOFA). She noted new construction opportunities possible with the City of Milpitas at Sango Court and S. Main Street properties.

Councilmembers commented and asked a variety of questions to all three staff. Some of these focused on assistance sought for renters and low income residents within the City.

Ms. Goei listed project considerations for three properties: 355 Sango Ct, South Main St and 308 Sango Ct. She also identified the actions needed for loan payments from the Bridge Housing Monte Vista Apts.

Mayor Tran thanked staff for their presentation and for available staff from Bridge Housing, and then invited public comments from the audience.

Alysson McDonald, resident, asked about details of the funds for Sunnyhills Apartments.

A woman, spoke about housing to be built at Sango Ct. There was not enough parking built, and more was needed throughout Milpitas.

A man, wanted to understand the approval process for having new housing built. Sought simplified language to understand.

A man spoke of being a veteran, and his family. Veterans needed to get more in this town.

A man, spoke about needing to find out considerations for housing and parking.

Rob Means, resident, spoke on Monte Vista Apartments with 50 units for investment of \$2 million would be great.

A man, a resident of Green Tree Way, had heard talk of affordable housing over 40 years in Milpitas, and it was a myth that parking was less than adequate.

Stacy Brobst, resident, was in favor of 355 Sango Ct, and urged Council to give the builder the funding needed.

Huascar Castro, was in favor of the funding for 355 Sango Ct.

Bob Stromburg, of Destination Home, a San Jose a housing non-profit, was in favor of funding for 355 Sango Ct to be built. He urged a focus on ELI units.

A man spoke in support of more affordable units, but was concerned about congestion and more cars in the new developments.

A man said money had to come from somewhere, when developers are asked to locate units somewhere, buyers have to pay costs.

Carolyn Bookheart, from RCD wanted to say Thank You! go staff for bringing forward the request for funding.

Cindy, a resident, said this would have great impact on local residents, especially near the new BART station.

Vice Mayor Dominguez thanked staff for the information packed report. She asked staff for more explanation of the actions the Council was asked to take.

Councilmember Nuñez was fine with item no. 20. On item no. 19, researching \$65 million for affordable housing at 355 Sango Ct. was needed, and he made additional comments.

Motion: to approve the following actions:

- 1) Receive report from Building & Housing Director, Housing Authority Administrator and County staff on housing program status.
- 2) Direct staff to research a commitment level up to \$6.5 million of Housing Authority Funds for Affordable Housing Construction at 355 Sango Court.
- 3) Direct staff to initiate research to develop affordable housing on Housing Authority and City-owned properties on South Main Street.
- 4) Direct staff to review future development entitlement proposal for 308 Sango Court along with sources (including Measure A) and use of funds; and, authorized staff to process predevelopment loan application for future City Council/Housing Authority Commission.

Motion/Second: Councilmember Phan/Councilmember Nuñez

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

20. HOUSING AUTHORITY
Adopt Joint Resolution

This matter was reviewed and discussed together with agenda item no. 19, above.

Motion: to adopt Joint Resolution No. HA 27 / 8841 / SA12 of the City Council, Housing Authority and Successor Agency authorizing the Executive Director of the Housing Authority to prepare and execute loan documents to forego the first 10 years of residual receipts loan payments for the Montevista Apartments located at 1001 South Main Street in Milpitas

Motion/Second: Councilmember Montano/Councilmember Phan

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

21. Accessory Dwelling Units

Senior Planner Rozalynne Thompson provided an oral report explaining what Accessory Dwelling Units (ADU) were, new state legislation on those type of residences, and where local jurisdictions could become more engaged to encourage these homes. She defined the state's ADU law elements, including that parking was not always required. She explained where the law changed in 2019 with the details in the legislation.

Councilmember Montano asked about application of the City's Hillside ordinance to ADU law.

City Attorney Diaz noted that staff was correct, about ADUs that could be approved on a hillside parcel.

Mayor Tran commented on his concerns, which included concern for parking was concerned and wanted to know about setbacks and what other cities allowed, such as Fremont. Maybe consider two story ADUS, and no windows on second story of ADUs facing out onto the street.

Vice Mayor Dominguez did some research on nearby cities and how they dealt with ADUs. She remarked the city already had a lot of converted garage units, even without permits. Her concern was safety. To bring units into compliance, offer agreement to owners, if they rent to low income tenants, maybe waive fees. Facades on garages need to have windows or not look like only a garage door. Check out City of Santa Cruz, on policy and fees establishing.

Mayor Tran wanted to know if there was a program at the City to bring in owners to get units up to code.

Motion: to receive report from Senior Planner Rozalynne Thompson and support staff suggestions regarding future amendments to the City of Milpitas Municipal Code on zoning for Accessory Dwelling Units, in order to allow more affordable housing options in Milpitas

Motion/Second: Councilmember Montano/Vice Mayor Dominguez

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

22. Short Term Residential Rental Regulations

This item was not heard, and would be carried over to a future agenda.

LEADERSHIP

23. Urgency Ordinance

This item was heard at 11:36 PM. Planning Director Ned Thomas explained the need for the urgency ordinance for a prohibition on cannabis/marijuana commercial establishments and regulate personal use.

City Attorney Chris Diaz advised the Mayor he could poll the Council on how they may vote on the urgency ordinance, in advance, to allow audience members to learn how the vote might go. Mr. Diaz polled one by one on vote of Council, and there was universal support for the ordinance.

Mayor Tran invited speakers from the audience. 26 people, primarily residents of the city, addressed the Mayor and City Council, thanking the members in advance for their anticipated vote to adopt the urgency ordinance prohibiting marijuana and cannabis commercial businesses in the City of Milpitas. .

City Attorney Chris Diaz read aloud Ordinance No. 299, “An Urgency Zoning Ordinance of the City Council of the City of Milpitas pursuant to California Government Code Section 36937(c) adding Subsection XI-10-13.15 Entitled “Cannabis Uses” and Amending Subsection XI-10-13.05 Entitled “Home Occupation” of the Milpitas Municipal Code Title XI, Chapter 10, Section 13 to Regulate Cannabis Cultivation for Personal Use and to Prohibit All Commercial Cannabis Uses, and Making Findings of Exemption from Environmental Review pursuant to CEQA Guidelines Sections 15060(C)(3) and 15061 (b)(3).”

Motion: a) to receive all comments from 22 speakers; and, move to waive the reading beyond the title and adopt Urgency Zoning Ordinance No. 299 to prohibit commercial cannabis in the City and regulate cultivation of cannabis for personal use

Motion/Second: Councilmember Montano/Councilmember Nuñez

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

REPORT

Councilmember Phan departed the Council Chambers just prior to the next item.

24. Mayor's appointments

Mayor Tran presented a four page list of his own recommendations for appointments of City Councilmembers to serve as liaison to 11 of the City's 12 Commissions, and for appointments to outside Committees, Boards and Agencies. He recommended all of those for appointment, with the exception of the Santa Clara Valley Transportation Authority Board Committees (City Council did not have authority to make those appointments).

Motion: to approve the Mayor's recommended list of appointments of City Councilmembers to serve as liaisons to City Commissions and outside agencies, committees, and boards, and confirming those appointments, with the exception of Valley Transportation Authority's Board Committees.

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Phan)

ADJOURNMENT

Mayor Tran adjourned the meeting at 12:11 AM on Wednesday, January 16, 2019 in memory of Mrs. Henkins, age 100, of the Sunnyhills neighborhood of Milpitas.

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

Backup material for agenda item:

Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for March 5, 2019 to Hear Objections (Staff Contact: Albert Zamora, 408-586-3371)

Recommendation: Adopt a resolution declaring weeds on specific properties to be public nuisances and set a public hearing on March 5, 2019.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for March 5, 2019 to Hear Objections
Category:	Consent Calendar-Public Safety
Meeting Date:	2/5/2019
Staff Contact:	Albert Zamora, Deputy Fire Chief / Fire Marshal, (408) 586-3371
Recommendation:	Adopt a resolution declaring weeds on specific properties to be public nuisances and set a public hearing on March 5, 2019.

Background:

On February 2, 1976, an Agreement was established and approved to abate weeds by the County of Santa Clara for the City of Milpitas. The purpose of the Agreement is to promote the efficiency and economy of operations in the abatement of weeds by the City and the County.

The major procedural functions to be performed by the County and / or City shall include but not limited to:

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

Analysis:

The County of Santa Clara Consumer and Environmental Protection Agency- Weed Abatement Program has notified the City of Milpitas that it is commencing its Hazardous Vegetation Abatement (weed abatement) Program for the 2019 season.

In order for the County to proceed with its annual abatement process, the City must adopt a resolution declaring weeds to be a public nuisance and to schedule a public hearing to hear objections to the proposed destruction and/or removal of weeds. The Milpitas City Council public hearing is scheduled for March 5, 2019.

Policy Alternative:

There are no policy alternatives other than what is outlined under the Recommendations section. Pursuant to the February 2, 1976 Agreement, the County under the provisions of the Health and Safety Code of the State of California and its ordinance has the authority to enforce the abatement of weeds. Likewise, the City under the California Fire Code and Milpitas Municipal Code, Title V, Chapter 202 has the authority to enforce the abatement of weeds.

The County and City will apply their respective standard operating procedures as well as best management practices that is afforded to each agency, and to the extent that ensures public safety with respect to the abatement of weeds.

Fiscal Impact:

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

California Environmental Quality Act: This project is exempt from CEQA.

Recommendation:

Adopt a Resolution declaring weeds on specific properties to be public nuisances and setting the public hearing date on March 5, 2019.

Attachment:

Resolution with attached Exhibit A - 2019 Weed Abatement Program Commencement Report (list of parcels) for the City of Milpitas

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DECLARING
CERTAIN PROPERTIES TO CONSTITUTE A PUBLIC NUISANCE DUE TO THE
OVERGROWTH OF WEEDS AND/OR ACCUMULATION OF RUBBISH, REFUSE OR DIRT
AND FIXING THE TIME AND PLACE FOR OBJECTIONS TO ABATEMENT**

WHEREAS, the Santa Clara County Agricultural and Environmental Management has compiled its annual list of properties which constitute a public nuisance due to an overgrowth of weeds and/or the accumulation of rubbish, refuse or dirt; and

WHEREAS, it is requested that the Santa Clara County Agricultural and Environmental Management will individually notify the owners of those properties of its intent to abate said public nuisance and assess the cost as a special assessment against said properties if the owners do not abate the nuisance themselves; and

WHEREAS, the purpose of this Resolution is to fix a time and place where the said property owners can object to the proposed abatement.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council declares that the properties listed on the annual list of properties, attached hereto as **Exhibit A**, constitute a public nuisance due to an overgrowth of weeds and/or the accumulation of rubbish, refuse or dirt.
3. March 5, 2019 at 7:00 p.m., in the Council Chambers at City Hall, Milpitas, California, shall be the time and place set aside for all owners of property listed on **Exhibit A** or any other person having any objections to the proposed removal of the weeds, rubbish, refuse and dirt to voice any objections they may have to the proposed nuisance abatement by the Office of Santa Clara County Agricultural and Environmental Management.
4. The City Clerk is hereby authorized to cause notice of this Resolution be given to the Office of the Santa Clara County Agricultural and Environmental Management.
5. The City Council requests that the Office of Santa Clara County Agricultural and Environmental Management notify the owners of those properties included on **Exhibit A** in accordance with Milpitas Municipal Code, Title V, Chapter 202, of its intent to abate said nuisance and assess the cost as a special assessment against said properties unless such weeds, rubbish, refuse or dirt are removed by the owner.

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mary Lavelle, City Clerk

APPROVED:

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher Diaz, City Attorney

**2019 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
CITY OF MILPITAS**

Situs	APN		CITY/STATE					
7280	MARYLINN	DR 022-07-007	Jer SunLin, Trustee	7548 Donegal Drive	Cupertino	CA	95014	
27	MAIN	ST 022-24-024	27 MAIN MILPITAS LLC	1805 DIANA AV	MORGAN HILL	CA	95037-3348	
1735	CALIFORNIA	CL 022-37-002	PRENTISS/COPLEY INVESTMENT	1910 PACIFIC AVE STE 400	DALLAS	TX	75201	
1301	CALIFORNIA	CL 022-38-002	PATEL, AMEET AND SANGEETA S	1301 CALIFORNIA CL	MILPITAS	CA	95035-3021	
	MCCARTHY	022-56-008	HUDSON CAMPUS CENTER LLC	11601 WILSHIRE BL STE 900	LOS ANGELES	CA	90025	
0	DIXON	RD 026-05-023	RASHEED, IRSHAD A AND SABIHA	619 FONTES DR	FREMONT	CA	94539	
1878	MILPITAS	BL 026-05-024	AIM DEVELOPER ENTS INC	40 PARK VICTORIA DRN A	MILPITAS	CA	95035-4600	
51	DIXON	RD 026-05-053	CHANG, CAROL	67 BERLYWOOD LN	MILPITAS	CA	95035-2543	
1750	ARIZONA	AV 026-07-044	TRAN, TY AND TRUONG, JACY HONG	2936 WILLIAMS RD	SAN JOSE	CA	95128-3337	
0	BOTHELO	LN 028-23-017	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	
0		Av 028-24-006	Linda Allen	1700 Space Park Dr.	SANTA CLARA	CA	95054	
980	CALAVERAS	DR 029-03-023	NASCENT INVESTMENT LLC	48660 KATO RD	FREMONT	CA	94538	
860	EVANS	RD 029-06-016	TRAN, TU AND DAO, HONG	860 EVANS RD	MILPITAS	CA	95035-3406	
814	CALAVERAS	DR 029-06-030	CHEN, WESLEY WUN-SHYONG AND	814 CALAVERAS RIDGE DR	MILPITAS	CA	95035-3445	
826	CALAVERAS	DR 029-06-031	DAVE, MOHINI	22356 HARTMAN DR	CUPERTINO	CA	95014-1020	
898	CALAVERAS	DR 029-06-038	LIN, JIBING ET AL	3259 HARVEY CT	PLEASANTON	CA	94588	
	COUNTRY	029-07-009	1499 COUNTRY CLUB DRIVE LLC	475 SAN ANTONIO RDS	LOS ALTOS	CA	94022-3618	
	COUNTRY	029-07-010	1499 COUNTRY CLUB DRIVE LLC	475 SAN ANTONIO RDS	LOS ALTOS	CA	94022-3618	
	COUNTRY	029-07-011	1499 COUNTRY CLUB DRIVE LLC	475 SAN ANTONIO RDS	LOS ALTOS	CA	94022-3618	
	COUNTRY	029-07-012	1499 COUNTRY CLUB DRIVE LLC	475 SAN ANTONIO RDS	LOS ALTOS	CA	94022-3618	
	COUNTRY	029-07-013	1499 COUNTRY CLUB DRIVE LLC	475 SAN ANTONIO RDS	LOS ALTOS	CA	94022-3618	
1499	COUNTRY	DR 029-07-014	1499 COUNTRY CLUB DRIVE LLC	475 SAN ANTONIO RDS	LOS ALTOS	CA	94022-3618	
322	PARK	DR 029-16-006	MAYO, NESSIM AND GUADALUPE J	0 PO BOX 15058	FREMONT	CA	94539	

**2019 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
CITY OF MILPITAS**

Situs	APN			CITY/STATE			
1715	CALAVERAS	BL	029-25-008	MILPITAS BAPTIST CHURCH	1715 CALAVERAS BLE	MILPITAS	CA 95035-6061
1049	BLALOCK	ST	029-44-063	BARODIA, BIREN D AND PITALE,	1049 BLALOCK ST	MILPITAS	CA 95035-3414
1220	COUNTRY	DR	029-52-014	HUSSAIN, FARHAT TRUSTEE	1220 COUNTRY CLUB DR	MILPITAS	CA 95035-3451
1039	CAMARILLO	CT	029-52-015	FARSI, PARIVASH O AND ROSTAM D	1132 ONONDAGA WAY	FREMONT	CA 94539-6737
461	VISTA RIDGE	DR	042-30-007	MERCADO, JAVIER R AND MARIA G	461 VISTA RIDGE DR	MILPITAS	CA 95035-7217
489	VISTA RIDGE	DR	042-30-008	QLMD PROPERTY LLC	2 SOUTH PARK VICTORIA DR	MILPITAS	CA 95035
517	VISTA RIDGE	DR	042-30-009	GANDHI, ASHISH R AND VARSHA	675 MURPHY RANCH RD	MILPITAS	CA 95035-0000
519	VISTA RIDGE	DR	042-30-010	GHANI, MAHMOOD M AND EDITHA C	519 VISTA RIDGE DR	MILPITAS	CA 95035-7217
529	VISTA RIDGE	DR	042-30-015	TRIVEDI, ANOOP K AND RAO, AARTHI	2397 TULIP RD	SAN JOSE	CA 95128-1141
490	VISTA RIDGE	DR	042-30-022	WAN, CHIEN MIN TRUSTEE & ET AL	31645 VIA LA ESTRELLA	CARMEL VALLEY	CA 93924
410	VISTA RIDGE	DR	042-30-024	WAN, CHIEN MIN TRUSTEE & ET AL	31645 VIA LA ESTRELLA	CARMEL VALLEY	CA 93624
3547	VISTA NORTE	CT	042-30-026	JETTE, ANTOINETTA R TRUSTEE	3547 VISTA NORTE CT	MILPITAS	CA 95035-7200
531	VISTA RIDGE	DR	042-30-029	CHAN, CLIFFORD J	704 LONGFELLOW DR	FREMONT	CA 94539
Rail	HAMMOND	Wy	086-25-018	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
0	MAIN	ST	086-25-020	EIGHTY EIGHT HOMES LLC	2186 PASEO DEL ORO	SAN JOSE	CA 95124-2046
0	MAIN	ST	086-25-028	PANCHAL, NATWARLAL M AND GITA	3200 MONTEREY BL	SAN JOSE	CA 95111
	HAMMOND	Wy	086-25-030	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
0	BOTHELO	LN	086-26-024	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
	BOTHELO		086-26-032	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
0	MILPITAS	BL	086-28-006	SAN FRANCISCO CITY AND COUNTY	525 GOLDEN GATE AV 10TH	SAN FRANCISCO	CA 94102
0	VISTA	WY	086-29-005	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
0	WRIGLEY	WY	086-29-036	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
0	YOSEMITE	DR	086-29-047	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747

**2019 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
CITY OF MILPITAS**

Situation		APN			CITY/STATE		
876	YOSEMITE	DR	086-30-047	T MARZETTI COMPANY-WEST	380 POLARIS PY STE 400	WESTERVILLE	OH 43082-8069
0	YOSEMITE	DR	086-30-048	T MARZETTI COMPANY	380 POLARIS PY STE 400	WESTERVILLE	OH 43082-8069
0	AMES	AV	086-30-060	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
0			086-31-003	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
0	YOSEMITE	DR	086-31-044	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
0			086-32-084	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA 95747
375	DEMPSEY	RD	088-01-002	GUNAPU, SRIDHAR AND	2951 EL SOBRANTE ST	SANTA CLARA	CA 95051-3715
335	PARK	DR	088-03-019	YAO, SHAOPING AND YUE,	335 PARK VICTORIA DRS	MILPITAS	CA 95035-5722
0	DEMPSEY	RD	088-04-060	Z X DEVELOPMENT LLC	346 MERIMONT CL	SAN BRUNO	CA 94066
0	PARK	DR	088-04-062	Z X DEVELOPMENT LLC	346 MERIMONT CL	SAN BRUNO	CA 94066
0	DEMPSEY	RD	088-04-076	Z X DEVELOPMENT LLC	346 MERIMONT CL	SAN BRUNO	CA 94066
	OLD	RD	092-34-008	OLD PIEDMONT DEVELOPMENT INC	456 MONTGOMERY ST STE.	SAN FRANCISCO	CA 94104-1247
1250	PIEDMONT	RD	092-34-014	OLD PIEDMONT DEVELOPMENT INC	456 MONTGOMERY ST STE.	SAN FRANCISCO	CA 94104-1247
250	PIEDMONT	RD	092-37-024	THIND, SATPREET S AND JASPREET K	1833 LEE WY	MILPITAS	CA 95035-0000
2235	URIDIAS	RD	092-37-050	MENG, FAN JIE AND ZHANG, HELEN	35961 COPPER ST	UNION CITY	CA 94587

Backup material for agenda item:

Adopt a Resolution to Approve Site Development Permit to construct a single-family residence on a vacant lot, zoned R1-H Hillside Combining District with a Site and Architectural (-S) overlay, at 529 Vista Ridge Drive (Staff Contact: Michael Fossati, 408-586-3274)

Recommendation: Adopt a resolution approving Site Development Permit SD17-0012, subject to the written Conditions of Approval (attached to resolution), for a residence at 529 Vista Ridge Drive and Making Findings of CEQA Exemption



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a resolution to approve Site Development Permit to construct a single-family residence on a vacant lot, zoned R1-H Hillside Combining District with a Site and Architectural (-S) overlay, at 529 Vista Ridge Drive
Category:	Consent Calendar-Community Development
Meeting Date:	2/5/2019
Staff Contact:	Michael Fossati, Sr. Planner, 408-586-3274 Ned Thomas, Planning Director, 408-586-3273
Recommendation:	Adopt a resolution approving Site Development Permit SD17-0012, subject to the written Conditions of Approval (attached to resolution), for a residence at 529 Vista Ridge Drive and Making Findings of CEQA Exemption

BACKGROUND:

On August 17, 2017, Jeff Guinta of Innovative Concepts submitted a Site Development Permit for approval to construct a 4,844-square foot split-level single-family residence and an 863-square foot attached garage on a vacant lot located at 529 Vista Ridge Drive. The zoning designation for this property is Single-Family Residential (R1) with a Hillside (H) Combining District. Per Milpitas Municipal Code (MMC) Section XI-10-45.09-2, no building permit shall be issued for the construction or expansion of a single-family structure until such structure has received a site and architectural review approval by the Planning Commission (PC) and City Council (CC). On December 12, 2018, the application received a recommendation by the PC to be approved by CC, as demonstrated within Resolution No. 18-021.

ANALYSIS:

The project site is located on the eastern edge of the City of Milpitas, adjacent to property in unincorporated Santa Clara County to the east. The project is designed in a contemporary, low-profile style compatible with the other homes in the area. The proposed residence incorporates strong lines and a mix of high-quality, earth tone materials that reflect with the rural character of the neighborhood. The blend of architectural forms and a variety of finishes creates an attractive front elevation. The exterior materials are composed of a stained cedar siding, smooth finished stucco, light colored stone cladding, and a redwood garage door. The aluminum windows and doors are finished with a “midnight summer” dark brown trim to accentuate the colors incorporated in the design. All exterior materials and finishes work together as a palette of earth tone colors creating harmony with the surroundings. Although more contemporary in design, the colors and materials are complementary to the character of the rural, neighboring properties.

In accordance with MMC Section XI-10-45.09-7, and as outlined in the attached resolution and staff report, the City Council shall consider the following guidelines in its review of the proposed project:

- (a) Avoid unreasonable interference with views and privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of the residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.
- (b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.
- (c) Minimize Perception of Excessive Bulk. The design of the proposed main and/or accessory structure in relation to the immediate neighborhood should minimize the perception of excessive bulk.

- (d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.
- (e) Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.

The project, including both the home and detached garage, features a creative design, with a minimal building footprint and substantial setbacks from neighboring property lines to alleviate unreasonable interference with views and privacy. With the exception of the proposed buildings and associated driveway areas (required for fire truck turnout), the majority of land will be preserved as natural landscape associated with vacant properties in the nearby area. The perception of excessive bulk has been minimized by the incorporation of varying rooflines, the clear delineation of colors and materials, and the punctuation of walls along the front and side elevations. The modest height and substantial setbacks help mitigate potential impairment of light and air, and the structure's foundation follows the natural slope of the hillside to allow minimal grading. As previously stated, the Planning Commission supported the project and approved the findings for approval.

POLICY ALTERNATIVES:

Alternative 1: Direct staff to draft a resolution to deny the project for review at a subsequent meeting.

Pros: The existing hillside lot is not developed and remains as open space.

Cons: The applicant would need to resubmit revised plans for development of a new residence at this location.

Reason for Not Recommending: The application meets the required findings for approval and is consistent with the City's goals of supporting high-quality development. The recommendation is for approval of the proposed project.

FISCAL IMPACT:

If approved, the applicant will be able to apply for building permits and pay associated fees.

California Environmental Quality Act:

The project is exempt from further environmental review under CEQA pursuant to Section 15303(a) for New Construction or Conversion of Small Structures including one single-family residence or a second dwelling unit in a residential zone. The Project proposes the new construction of a single-family residence and attached garage within a residentially zoned area on a legally established parcel, and it can be seen with certainty that there is no possibility that these actions may have a significant effect on the environment. As a separate and independent basis, the project is exempt from further CEQA review pursuant to Section 15183 of the CEQA Guidelines for projects consistent with a community plan, general plan or zoning. The project is consistent with the General Plan and the applicable zoning, and there are no significant environmental impacts peculiar to the project or its site.

RECOMMENDATION:

Adopt a resolution approving Site Development Permit SD17-0012, subject to the written Conditions of Approval (attached to resolution), for a residence at 529 Vista Ridge Drive.

Attachments: City Council Resolution and Project Plans

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
APPROVING SITE DEVELOPMENT PERMIT NO. SD17-0012 TO CONSTRUCT A HILLSIDE HOME ON A
VACANT 2.0 ACRE SITE LOCATED AT 529 VISTA RIDGE AND MAKING CEQA FINDINGS OF
EXEMPTION**

WHEREAS, on August 17, 2017, an application was submitted by Jeff Guinta of Innovative Concepts (“Applicant” or “Permittee”), for a development proposal to allow the construction of a 4,844 square foot one-story single-family residence and 863 square foot attached garage on a vacant 2.01 acre site at 529 Vista Ridge (APN: 042-30-015) (the “Project”). The Project site is zoned Single Family Residential - Hillside; and

WHEREAS, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), which assessment determined that the Project is exempt from CEQA review pursuant to Section 15303 (New Construction and Conversion of Small Structures) of the CEQA Guidelines and, as a separate and independent basis, is exempt from further CEQA review pursuant to Section 15183 of the CEQA Guidelines (Projects Consistent with a Community Plan, General Plan or Zoning); and

WHEREAS, on December 12, 2018, a duly-noticed public hearing was held by the City of Milpitas Planning Commission on the subject application, at which time all those in attendance were given the opportunity to speak on the Project, and the Planning Commission recommended approval of the Project to the City Council subject to Conditions of Approval per Resolution 18-021; and

WHEREAS, on February 5, 2019, a duly-noticed public hearing was held by the City of Milpitas City Council on the subject application, at which time all those in attendance were given the opportunity to speak on the Project; and

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

SECTION 1: Recitals

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 incorporated herein by reference.

SECTION 2: California Environmental Quality Act (CEQA) Findings

The project is exempt from further environmental review under CEQA pursuant to Section 15303(a) for “New Construction or Conversion of Small Structures including one single-family residence, or a second dwelling unit in a residential zone,” because it can be seen with certainty that there is no possibility that these actions may have a significant effect on the environment. The Project’s proposed new construction of a single-family residence and attached garage within a residentially zoned area on a legally established parcel. As a separate and independent basis, the project is exempt from further CEQA review pursuant to Section 15183 of the CEQA Guidelines for projects consistent with a community plan, general plan or zoning. The project is consistent with the General Plan and the applicable zoning, and there are no significant environmental impacts peculiar to the project or its site.

SECTION 3: Site Development Permit Findings (Section XI-10-57.03(F)(1))

The City Council makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD17-0012:

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

This finding can be met in that the architectural design and site planning of the development is aesthetically pleasing and complimentary with the neighboring properties. The development incorporates earth tone colors and materials that compliment both the site and existing neighborhood.

2. *The Project is consistent with the Milpitas Zoning Ordinance.*

As demonstrated in the Tables 1 and 2 below, the Project meets the development standards and site and architectural guidelines associated with the Single Family Hillside Zoning District adopted by the City of Milpitas.

Table 1
Summary of Development Standards

Standards	Hillside Requirements	Proposed	Complies
Front Setback	40 ft. minimum	87 ft.	Yes
Side Yard Setback	40 ft. minimum	40 ft. on north 40 ft. on south	Yes
Rear	40 ft. minimum	255 feet	Yes
Size of Main Residence	6,000 sq. ft. maximum	4,844 sq. ft.	Yes
Size of Accessory Structures	1,200 sq. ft. maximum	3 car garage: 863 sq. ft.	Yes
Impervious Surfaces	8,755 sq. ft. maximum	8,391 sq. ft.	Yes
Building Height	27 ft. maximum	24 ft. 6 in.	Yes
Parking	4 spaces minimum	6 spaces (3 inside garage & 3 outside)	Yes

Table 2
Site and Architectural Guidelines – City of Milpitas - Hillside

Site and Architectural Guidelines Section XI-10-45.09-7	Consistency Finding
<i>(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.</i>	Consistent. Due to the proposed location and minimal scale of the home, the development will not substantially interfere with views and privacy. In addition, the proposal exceeds the setback requirements, is one-story, and substantially setback from adjacent structures, which minimizes interference with views and privacy.
<i>(b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.</i>	Consistent. The project site is currently undeveloped with one tree in poor health. As proposed, the developer followed the natural landscape and existing contours of the site to establish finished grades and minimize grading. The finished floor follows the existing grades instead of removing or increasing soil along the foundation, which

Site and Architectural Guidelines Section XI-10-45.09-7	Consistency Finding
	would impact the natural landscape.
(c) <i>Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.</i>	Consistent. The proposed design includes varying rooflines, a clear delineation of different colors and materials, and punctuation of certain front and side facing elevations to remove the perception of bulk within the residence.
(d) <i>Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.</i>	Consistent. The proposed home has incorporated a low profile design, along with a combination of flat and minimally pitched roof systems. Furthermore, the designer utilized the site to place the development in an area that will minimally impact access to light and air from neighboring homeowners.
(e) <i>Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.</i>	Consistent. As proposed, the main dwelling shall be located where the parcel is relatively flat so that grading can be minimized and limited to only 112 cubic yards of soil to be exported from the site.

3. *The Project is consistent with the Milpitas General Plan.*

As demonstrated in Table 3 below, the Project meets is consistent with the existing General Plan policies of the City of Milpitas.

Table 3: General Plan Consistency

Policy	Conformance
2.a-G-3 <i>Provide for a variety of housing types and densities that meet the needs of individuals and families.</i>	Consistent. The proposed project will continue the City's guiding principle in accommodating a variety of housing development for individuals and families, while preserving the natural, rural character of the Milpitas hillsides.
2.a-I-23 <i>Limit new development in the Hillside Area to only to Very Low Density Residential, open space and park uses.</i>	Consistent. The proposed project is consistent with this guiding principles and standards associated with very low density residential development. As proposed, the project includes one single-family dwelling on a vacant lot.
2.a.I-25 <i>To ensure that development in the foothills is in keeping with natural character of the hillside, and that views are protected, require city review and approval of all proposed development or major alterations to existing</i>	Consistent. The proposed project's building low-profile design and earth tone materials will blend into the rural environment. Such materials include stacked stone cladding, exterior redwood siding, and gray smooth stucco. Landscaping materials include the Arbutus 'Marina' trees

<i>development in the hillside. As part of the review, ensure that:</i> • <i>Landscaping is of a type indigenous to the area;</i> • <i>That building designs, materials, and colors blend with the environment; and</i> • <i>Grading is minimized and contoured to preserve the natural terrain quality</i>	proposed, also known as a Strawberry Tree. Grading has been substantially minimized in the project, in that the split level design follows the natural contours of the site, in an effort to preserve the natural terrain quality.
2.a.I-26 <i>Establish crestline protection areas around the ridges which will ensure that buildings and grading west of the first ridge do not visually penetrate a band of land that lies 100 feet vertically below the apparent crestline when viewed from certain specific sites on the valley floor and that no structures just east of the crestline extend above the crestline sight line.</i>	Consistent. The location of the proposed project is over a half mile east of the nearest crestline and will not visually impact the viewsheds afforded to valley residents.

SECTION 4: City Council Approval

Based on the foregoing, the City Council hereby approves Site Development Permit No. SD17-0012 to allow the construction of a single-family residence in the hillside district, based on the above findings and subject to the Conditions of Approval attached hereto as **Exhibit 1** and incorporated herein.

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT 1

CONDITIONS OF APPROVAL SITE DEVELOPMENT PERMIT NO. SD17-0012 529 VISTA RIDGE DRIVE (APN 042-30-015)

GENERAL CONDITIONS

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. Site Development Permit No. SD16-0005 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed. **(P)**
2. Modifications to Project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or his or her Designee. If the Planning Director or Designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Code. **(P)**
3. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**
4. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit. **(P)**
5. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the Project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner. **(P)**
6. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
7. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the Project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P)**
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to City. There is no vesting of any fees or charges with the adoption of this Resolution. **(P)**
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the Permittee is operating the Project under the permits and approvals in this Resolution. **(P)**
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, State, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**

11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit. **(P)**
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the Project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(P)**
13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code. **(P)**
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable. **(P)**
15. Permittee shall develop the approved Project in conformance with the approved plans approved by the Planning Commission on November 6, 2018, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, Permittee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**
16. Response to Conditions of Approval. Permittee shall provide a written response to comments upon submittal for building permit application. The responses should clearly indicate how each condition of approval has been addressed in the plans and shall note the appropriate plan sheet. **(P)**
17. Prior to the issuance of a building permit, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the Project. **(P)**
18. Exposed walls and facing roadways and retaining walls shall be no greater than six feet in height. Crib walls fencing roadways shall be no greater than 15 feet in height. **(P)**
19. Landscaping coverage and stabilization of graded slopes shall be selected and designed to be compatible with surrounding natural vegetation or to replace removed natural vegetation and should recognize climatic, soil, and ecologic characteristic of the region. Plant materials that require excessive water after becoming established should be avoided. **(P)**
20. Where two cut-or-fill slopes intersect, the intersection shall be horizontally rounded and blended. **(P)**
21. Where any cut-or-fill slopes intersect the natural grade, the intersection of each slope shall be vertically and/or horizontally rounded and blended. **(P)**
22. Recycled Water for Irrigation: In accordance with MMC Chapter 6, Title VIII (Ord. No. 240), the landscape irrigation system shall be designed to comply with the City's recycled water guidelines, and connect to recycled water system when utilities become available. **(E)**

FIRE DEPARTMENT

23. The Project/development shall comply with the requirements of the Fire Department and the California Fire Code, as demonstrated in Fire Department's Memorandum, dated December 4, 2018, as may be amended by the City of Milpitas. Changes to the site plan and/or internal circulation shall be reviewed and approved by the Fire Department. **(F)**

BUILDING DEPARTMENT

24. Compliance with Building Code. The Project shall comply with the requirements of the 2016 CBC, CMC, CEC, CPC, Green Building Standards Code, California Energy Code and the 2017 Milpitas Municipal Code, as demonstrated in Building and Safety Department's Memorandum, dated September 8, 2017. **(B)**

(P) = Planning

(B) = Building

(F) = Fire Prevention

(CA) = City Attorney

AGREEMENT

Permittee/Property Owner

The undersigned agrees to each and every condition of approval and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: _____

Signature of Permittee

A NEW:

SINGLE-FAMILY RESIDENCE



3D P E R S P E C T I V E - front

529 Vista Ridge Drive, Milpitas, CA. 95035

NOTES

- The proposed residence is to be constructed by a Contractor and the architectural plans are based on site plans, exterior elevations, scaled floor plans and material construction specifications approved by the owner. The architectural plans are not intended to be comprehensive and it shall be the responsibility of the subcontractors to notify the Contractor of any necessary clarifications or modifications.
- All work connected with this project shall be done in a professional manner in accordance with the traditionally and legally defined "best

accepted practice" of the trade involved. Additionally, all work shall comply with applicable codes and trade standards which govern each phase of work, including but not limited to the 2016 California Building Code (CBC), 2016 California Mechanical Code (CMC), 2016 California Fire Code (CFC), 2016 California Electrical Code (CEC), American Concrete Institute Code (ACI), 2016 California Plumbing Code (CPC) and all applicable local codes and/or legislation.

- The Contractor shall be responsible for notifying the Designer of any unusual or unforeseen foundation conditions, discrepancies of omissions within the plans or any deviations or changes from the plans before proceeding with the work involved.

otherwise they will be considered adequate for proper completion of the project. The Contractor shall be responsible for verifying field measurements before ordering materials and prefabricated items.

- Adequate supervision and periodic inspection during the construction phase are recommended. The Contractor shall be responsible to ensure that this inspection and supervision are provided by qualified persons.
- These plans shall not be considered complete and ready for construction until a building permit has been issued.
- In all cases written dimensions take precedence over scaled dimensions. Dimensions are to the face of stud or face of concrete

unless otherwise noted.

- Larger scale details take precedence over smaller scale details.
- Lay out all structural work by referring to dimensions and elevation notes on the architectural plans. Do not scale structural drawings; work detail dimensions from controlling surface points and actual material dimensions.
- Slope finish exterior surface away from foundation.

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PROJECT DESCRIPTION :

BUILDING OCCUPANCY : R-3/U
TYPE OF CONSTRUCTION : V-B
STORIES : 1
ZONING : A1

LOT SIZE : 87,555 SF

POST DEVELOPMENT AREA:

BUILDING & GARAGE - 5,531 SF
DRIVEWAY - 2,478 SF
PORCH - 169 SF
PORCH & STEPS - 159 SF
STEPS - 38 SF
PAD - 16 SF

TOTAL IMPERVIOUS AREA - 8,391 SF

NOTE
THE FOLLOWING CODES AND REGULATIONS AS AMENDED BY THE STATE OF CALIFORNIA AND LOCAL JURISDICTION ARE APPLICABLE TO THIS PROJECT.

CBC 2016 California Building Code
CEC 2016 California Electrical Code
CFC 2016 California Plumbing Code
CMC 2016 California Mechanical Code
CEC 2016 California Electrical Code
CRC 2016 California Residential Building Code
2016 California Energy Code

RevisionsBy

10/26/2018GF

INNOVATIVE CONCEPTS

PROFESSIONAL BUILDING DESIGN AND PLANNING

3550 Stevens Creek Blvd Suite 225
San Jose, CA 95117
Phone: (408) 985-1078
E-Mail: innocpl@4adigital.net

A New Single Family Residence for:
The Rao-Trivedi Residence
529 Vista Ridge Drive
Milpitas, CA 95035

Date

08/16/2017

Scale

NOTED

Drawn

GF

Job

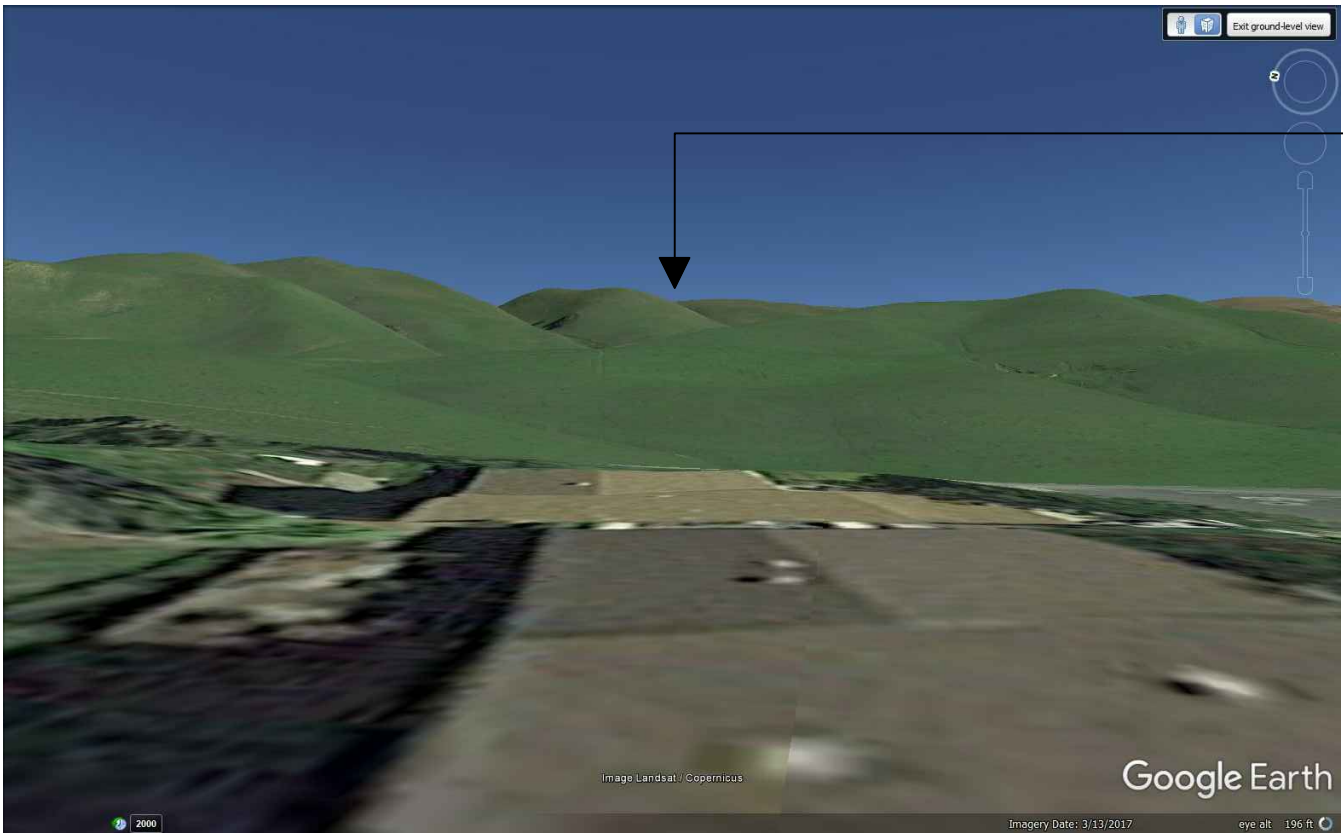
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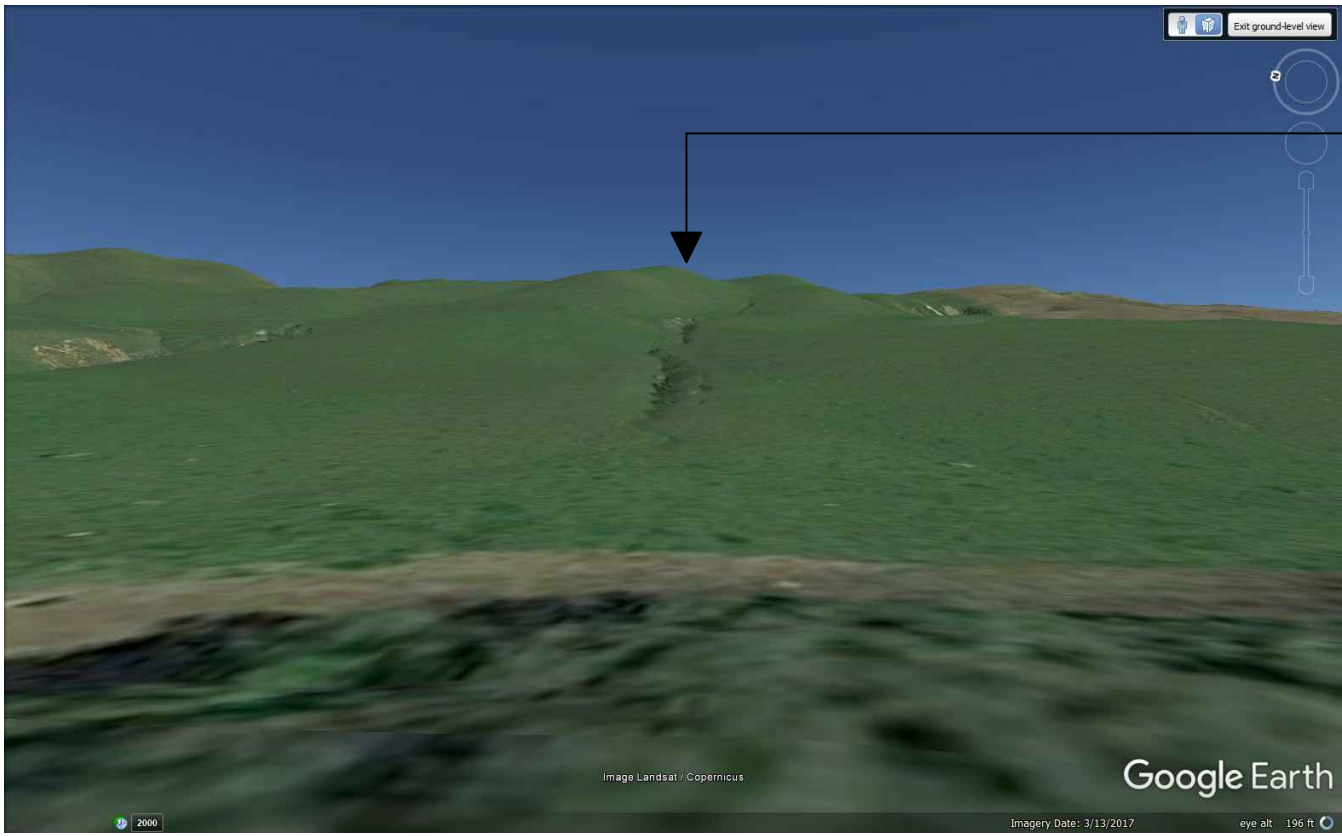
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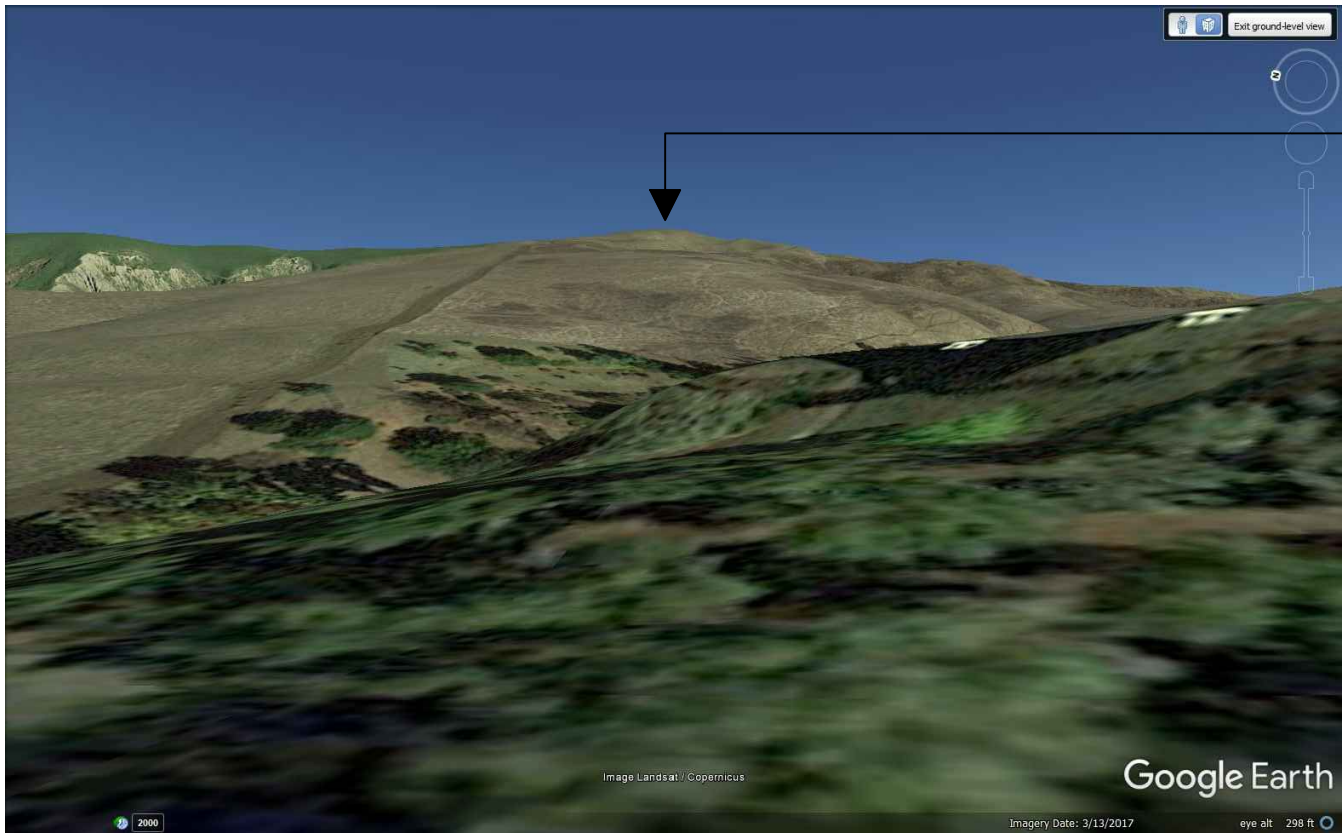
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3D MODEL



3D MODEL



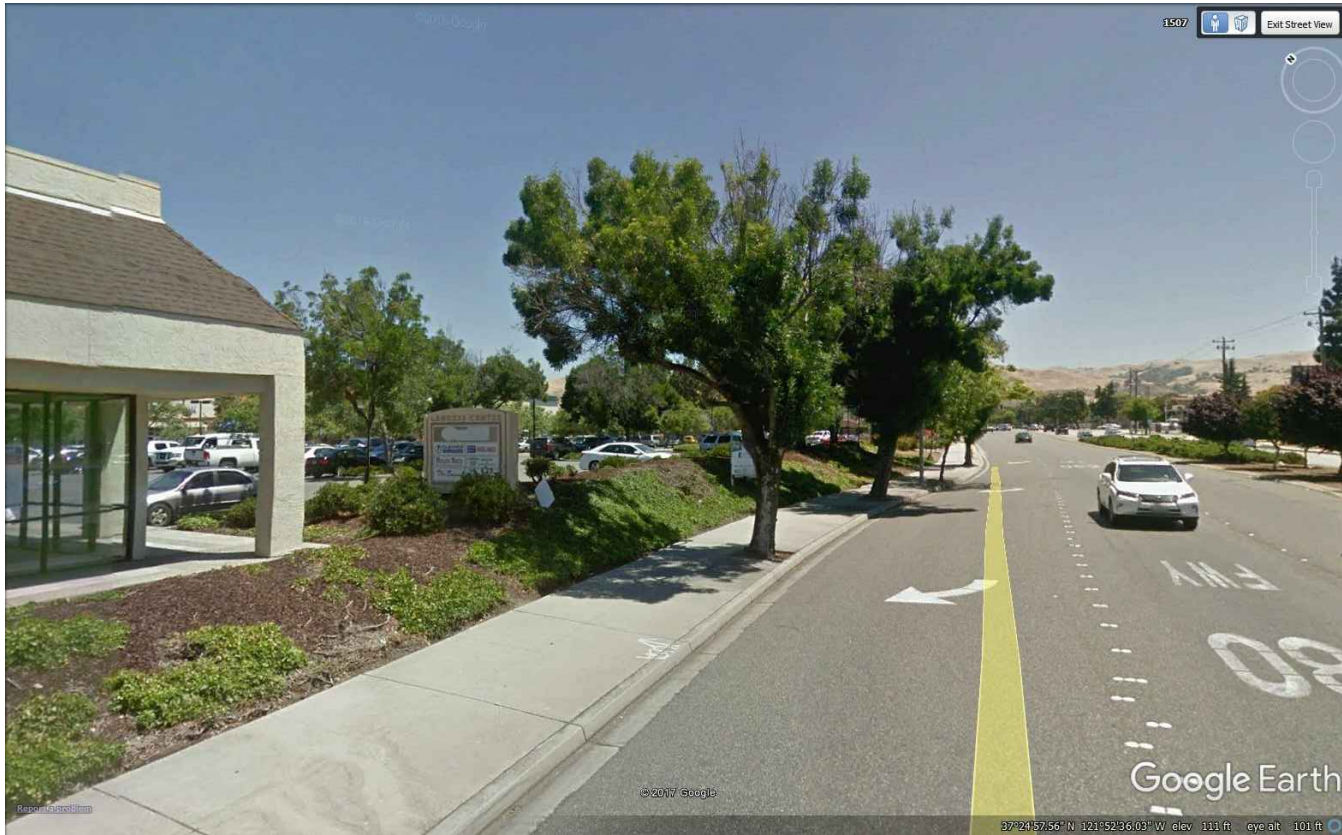
3D MODEL



A - VP7 - STREET VIEW



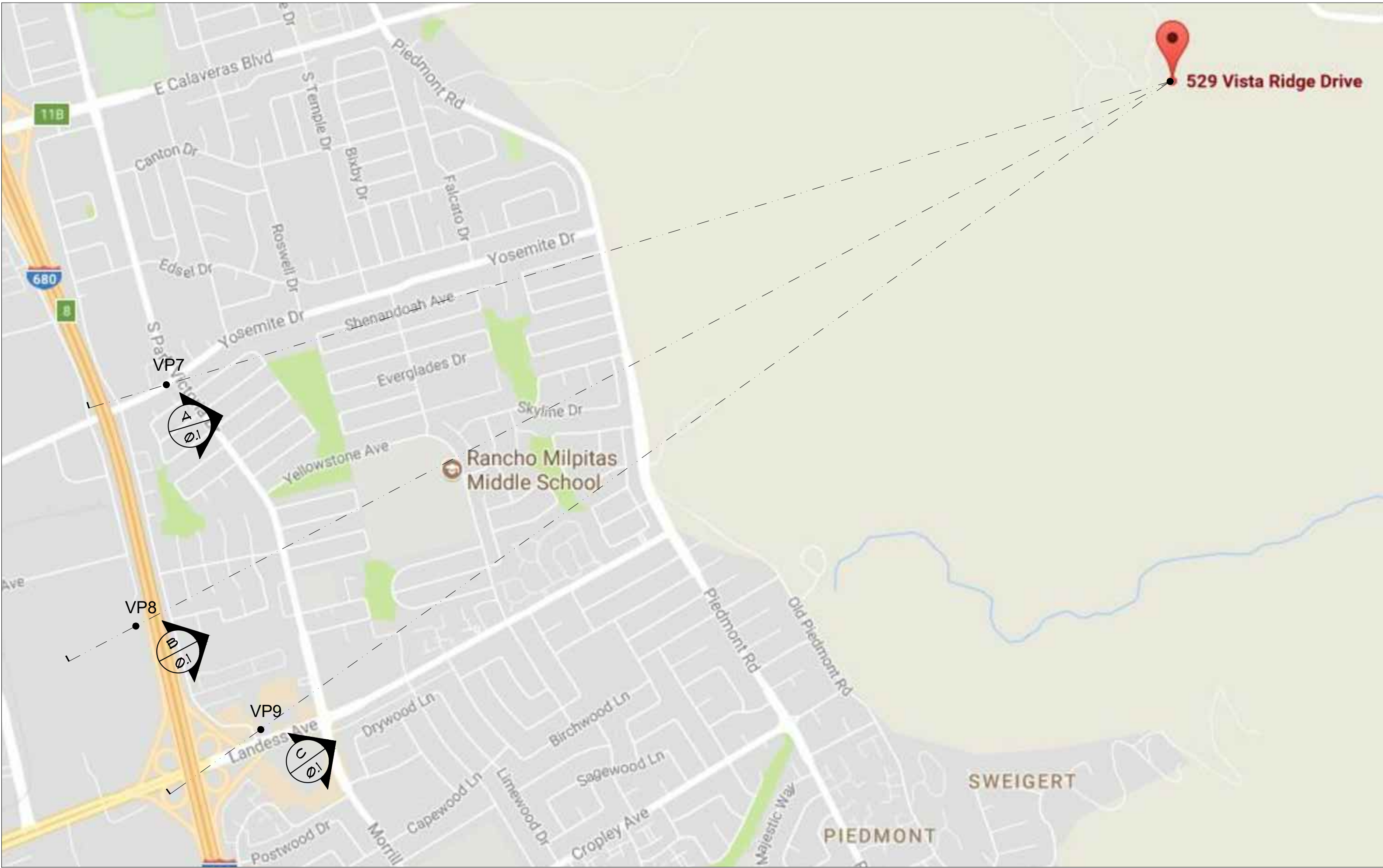
B - VP8 - STREET VIEW



C - VP9 - STREET VIEW

VIEW POINT IMAGES

NOT TO SCALE

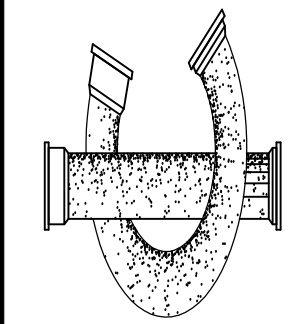


CREST LINE ZONE OF PROTECTION: REFERENCE MAP

NOT TO SCALE

Revisions	By

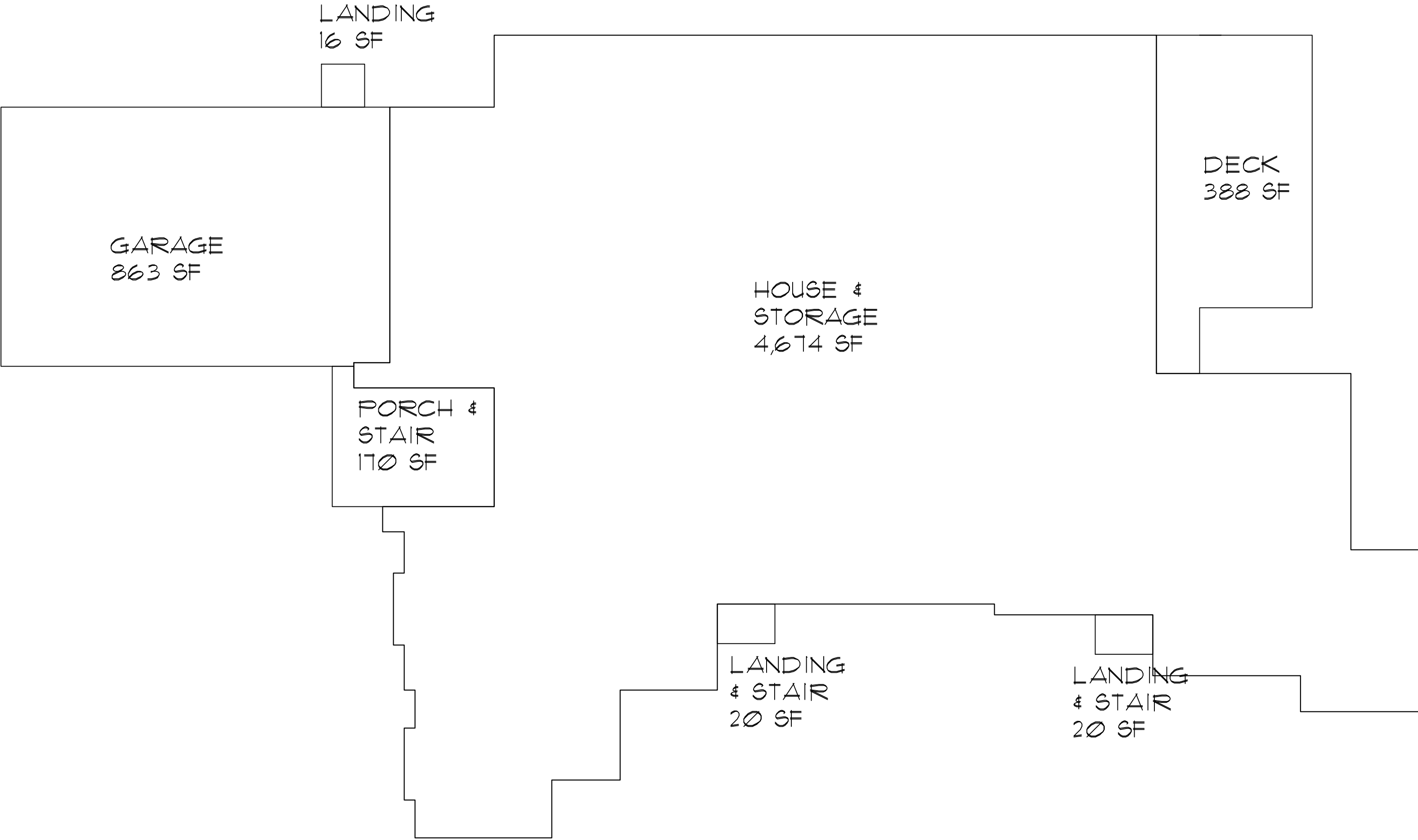
INNOVATIVE CONCEPTS
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A New Single Family Residence for:
The Rao-Trivedi Residence
529 Vista Ridge Drive
Milpitas, CA 95035

Date	08/16/2017
Scale	NOTED
Drawn	GF
Job	
Sheet	

0.1
Of Sheets



AREA CALCULATIONS

1/8" = 1' - 0

FLOOR AREA CALCULATIONS:

HOUSE & STORAGE	- 4,674 SF
PORCH & STAIRS	- 170 SF
TOTAL	- 4,844 SF

BUILDING AREA CALCULATIONS:

HOUSE & STORAGE	- 4,674 SF
GARAGE	- 863 SF
PORCH & STAIR	- 170 SF
LANDINGS & STAIRS	- 56 SF
DECK	- 388 SF
TOTAL	- 6,151 SF

Revisions	By

INNOVATIVE CONCEPTS

PROFESSIONAL BUILDING DESIGN AND PLANNING

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A New Single Family Residence for:
The Rao-Trivedi Residence
529 Vista Ridge Drive
Milpitas, CA 95035

Date	08/16/2017
Scale	NOTED
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Of	Sheets

IMPROVEMENT PLANS

PROJECT NAME: 529 VISTA RIDGE DRIVE

LOT NO. 15 , TRACT NO. 6744

IMPROVEMENT PLANS GENERAL NOTES

GENERAL

- All work and materials shall comply with standard specifications, construction details, and standard drawings (listed on this sheet) of the City of Milpitas available in the City Engineer's office. It is the responsibility of the contractor to obtain permits necessary to perform the improvements in these plans from the appropriate agencies and to comply with the agencies' requirements. All plans shall be prepared on City's Improvements Title Block. The contractor must comply with all applicable national, state and local laws.
- Plans used for construction of public facilities purposes must be signed by the City Engineer or his representative. Any subsequent changes shall be approved by the City Engineer or his representative prior to their construction.
- The official copy of these plans are on file in the office of the City Engineer in Milpitas.
- This plan is subject to review and subsequent approval in the event the work has not commenced within six (6) months of the date of plan approval.
- All utilities and improvements that become damaged during construction shall be completely restored to the satisfaction of the City Engineer.
- A \$2,000 deposit shall be made to the City of Milpitas and a construction water meter shall be obtained for incidental water used during grading and roadway construction. Water meter(s) shall be installed for incidental water use during building (s) construction and pressure test of water line within the building (s).
- The contractor shall notify Underground Service Alert (U.S.A.) at (800) 642-2444 48 hours prior to any construction activities, and obtain a reference number.
- Prior to any construction or installation of public facilities, the developer's engineer shall arrange a pre-construction conference between the contractors and the City Public Works Inspector. This shall take place a minimum of 7 days prior to the scheduled start of work. At the conference, the developer's engineer shall present the Public Works Inspector with a certified copy of a material list and specifications for installation. Prior to the installation, approval by the City Engineer is required of any non-standard materials. Any non-standard materials shall be demonstrated by the developer's engineer and contractor to equal or exceed City standards.
- The contractor shall call City of Milpitas Public Works Facilities Inspection at (408) 586-2884 to schedule inspections, 48 hours prior to start of construction.
- Prior to any work, the contractor shall obtain a City Business license and a Public Works Construction or Encroachment Permit.
- The Contractor is responsible for the preservation and or perpetuation of all existing monuments and stakes within the Contractor's area of work. The Contractor shall not disturb or remove any monuments or stakes without the permission of the City Engineer, and he shall bear the expense of resetting any monuments or stakes which may be disturbed or removed with or without permission. The Contractor shall provide a minimum of 15 Working days notice to the City Engineer prior to disturbance or removal of existing monuments or stakes. The Contractor shall utilize the services of a California Licensed Land Surveyor to reset all disturbed or removed monuments and stakes or provide witness monuments, and file the required documentation with the County Surveyor pursuant to the Business and Professions Code Section 8771.
- When it is found that field conditions are not as shown on the plans, the consulting engineer shall make revisions and/or adjustments to the satisfaction of the City Engineer prior to further construction.
- Upon completion of improvements, the developer's engineer shall submit a letter to the City Engineer certifying that those privately maintained improvements (street, lighting, utilities, etc.) have been constructed per the improvement plans.
- Developer shall coordinate with Pacific Gas and Electric Company for the design and installation of all gas and electric facilities.
- Developer shall coordinate with Pacific Bell for the design and installation of all Telephone facilities.
- Construction shall not begin until 7 AM and shall end by 7 PM, weekdays and weekends, except holidays.
- A National Pollution Discharge Elimination System Permit (NPDES construction permit) is required prior to commencement of construction activity related to this site and shall be obtained by the owner and/or owner's contractor as appropriate. Any discharge (during construction) of groundwater into the downstream storm system must be uncontaminated. The contractor shall make this determination prior to any discharge.
- If archaeological materials are uncovered during grading, trenching or other excavation, earthwork within 100' of this area shall be stopped until a professional archaeologist who is certified by the Society of California archaeologist (SCA) or the Society of Professional Archaeologist (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation measures, if they are deemed necessary.
- Record drawings original plans, including a copy of the AutoCAD files (digital format) shall be furnished to the City Engineer within 60 days of the completion of construction and prior to initial acceptance of public improvements.
- All grading shall comply with City of Milpitas Grading Ordinance, this plan, and the Preliminary Soils Report prepared by _____ dated _____ and all subsequent addendums.
- City approval of plans does not relieve the developer from his/her responsibility to correct errors and omissions discovered during construction. Upon request, any required plan revisions shall be promptly submitted to the City Engineer for approval.
- A water valve shall be installed for each residential unit after the meter and prior to entry of the building such that it is accessible to homeowner and City Meter Reader.

23. The following entities shall be responsible for inspection and maintenance / ownership of the listed facilities and completion certificate by design engineer (state ownership's name and inspection by P.W. inspection or Build. Div.):

Facilities	Ownership	Inspection	Design Engineer
Water	*	**	***
Sewer	*	**	***
Storm	*	**	***
Street	*	**	***
Street Light	*	**	***
Park	*	**	***
Common Area Homeowner's Association Build. Div. Required			

- * "City of Milpitas" or "Homeowner's Association/Homeowners"
** "P.W. inspection" or "Build. Division"
*** Design Engineer completion certificate "Required" if inspection by Build. Div., "Not required" if inspection by P.W. inspection.

24. Each parcel shall have separate solid waste enclosure and BFI service. Unless, necessary agreements have been recorded to provide for joint use of enclosure and or BFI services for more than one parcel.

STREET SURFACE NOTES

- Upon completion of rough grading, actual thickness (structural section) of the base material and AC pavement shall be determined based on the results of R-values, Sand equivalents laboratory testing. Geotechnical/Soil Engineer shall recommend the structural sections of streets to the City Engineer for review and approval.
- The contractor shall not order or place any Portland cement concrete or asphalt concrete paving until the forms and subgrade and/or aggregate base have been inspected by the City Public Works Inspector and approved by the engineer in charge of construction.
- Edge of existing pavement shall be tack coated prior to constructing new pavement.
- Standard street monuments shall be installed on all street intersections and other locations shown on this plan in conformance with City Standard Drawing No. 446.
- Driveway locations shall be set by owner's engineer in compliance with City Standard Drawing No. 430 or 432, unless locations are shown on these plans.
- One street name sign assembly shall be installed in conformance with City Standard Drawing No. 440 at each intersection, and where shown on plans.
- All fire hydrants, electroliers and meter boxes shall clear driveways and other facilities by 5', 5' and 1' respectively.
- All existing facilities shall be adjusted to finish grade as directed by City Public Works Inspector. Manholes, water valve boxes, clean out frames and covers shall be brought to finished grade by the contractor after paving is completed.
- Minimum 24" box size tree with a caliper of 2" measure 6" above rootball shall be installed, one per lot per street for residential developments and at 20'-50' separation for non-residential developments in conformance with the Approved Street Tree List and according to the City Standard Drawing No. 448.
- Mailboxes shall be provided as required by U. S. Postal Services, but will not be inspected by the Public Works Inspector.
- The final or surface layer of asphalt concrete shall not be placed until all on-site improvements have been completed, including all grading, and until all unacceptable concrete work has been removed and replaced, unless otherwise approved by the City Engineer.

UNDERGROUND

- The letter "W" shall be impressed in the face of curb where each water service crosses the curb, the letter "S" shall be impressed in the face of curb where each sewer lateral crosses the curb and the letter "R" shall be impressed in the face of curb where each recycled water service crosses the curb.
- The location, depth and existence of underground improvements are shown in their approximate positions based upon information available to the engineer. The contractor shall excavate inspection holes "pot holes" and determine the location and depth of all underground structures and utilities that are in the vicinity of and/or may be affected by the proposed improvement work prior to any construction work which could damage or conflict with said structures and/or utilities.
- Minimum cover for utilities in roadway (from top of pipe to roadway surface) shall be provided (60" sanitary sewer, 42" water line in street, 48" water line in easement, 24" storm line in street). Where the minimum cover cannot be achieved, such locations shall be specifically identified on the plans and the method of protecting the pipe and valve stems shall be indicated. The following solutions shall be subject to the City Engineer's approval:
 - Use of ductile iron pipe and butterfly valves.
 - Concrete cap.
 - Any other solution devised by the Engineer and Contractor.
- Water services and mains are to be separated a minimum of 10' horizontal distance and 1' vertical distance from sewer and recycled water laterals and mains. Potable water lines shall be above all storm drain, sanitary sewer and recycle water lines.

- Separation between the Recycle water lines from other utilities; such as potable water, fire protection and sanitary sewer; shall be in accordance with the City of Milpitas "Recycled (non-potable) Water Guidelines". Call (408) 586-3329 for a copy.
- House sewers shall not be connected to laterals until sewers are tested.
- One sanitary sewer lateral shall be constructed to each lot at the location to be staked in field by owner's engineer prior to construction. A backflow protection device shall be installed per City Standard Drawing No. 624 when the elevation of the lowest floor containing gravity waste drainage is less than one foot above the surface elevation of the nearest upstream public sewer structure (manhole, etc.).
- Connections to existing water mains shall be approved by City Engineer. Contractor shall perform all excavation, prepare site, furnish all materials, install tapping tee, valve and all thrust blocks, backfill, restore surface, and clean up. Non-metallic water lines shall be installed with a trace wire per City Standard Drawing No. 752.
- All water valves shall be clustered, unless otherwise directed by the City Engineer.
- Each lot shall have separate water, sewer and storm drain services.
- Water service pressure regulators and sewage backflow protection devices are shown on these plans for the information of the developer and City's Building Division. These items are not included in the Public Works inspection or acceptance.
- All utility stubs, especially water line components, shall be capped.
- Abandonment of existing water lines shall take place at the main line.
- Contractors shall not turn water valves without prior approval from Utility Maintenance Supervisor at (408) 586-2640.
- All metallic underground piping shall be protected against corrosion per City standard specifications.
- The contractor is responsible for performing locate services for those facilities installed by the contractor until such time as the work has been officially accepted by the City of Milpitas. The marking, labeling, and timing of such locates shall be in conformance with the requirements of Underground Service Alert.

SIGNING AND STRIPING

- All signs shall conform to State of California, Traffic Manual, Chapter 4, and latest edition of "Uniform Sign Chart."
- Signs shall be of standard size designated for each type in the Traffic Manual, except where noted otherwise.
- Mounting shall conform to appropriate provisions of Chapter 4, Traffic Manual, and applicable "standard plans," State of California (Caltrans), latest edition, except where otherwise indicated on plans.
- All traffic signs (except street nameplates) shall be of minimum .080 gage aluminum blanks with reflective faces of Scotchlite (engineer grade) or approved equal. Except, R1 and R2 signs which require high intensity.
- Striping shall conform to appropriate provisions of Chapter 6, "Markings" of the Traffic Manual and Chapter XVI of the Maintenance Manual, State of California.
- Striping paint for City streets shall be:
 - Paint shall be TMT Pathway, or approved equal. Solvent-based paints shall not be used.
 - TMT Pathway #2675A5 water base white paint, or approved equal
 - TMT Pathway #2676A5 water base yellow paint, or approved equal
 - TMT Pathway #2677A7 water base black paint, or approved equal
 - Glass beads shall conform to State Specification No. 8010-11E-22 (Type II).The certification requirements shall be submitted for ready mixed white and yellow paints.
- Raised Pavement Markers of various types shall conform to Section 85, "Pavement Markers", of the State Standard Specifications, these Technical Provisions, and as shown on the plans.
- Painted legends shall conform to standard sizes and patterns used by the City of Milpitas. Arrangements may be made to use the City's Stencils by calling (408) 586-2631.

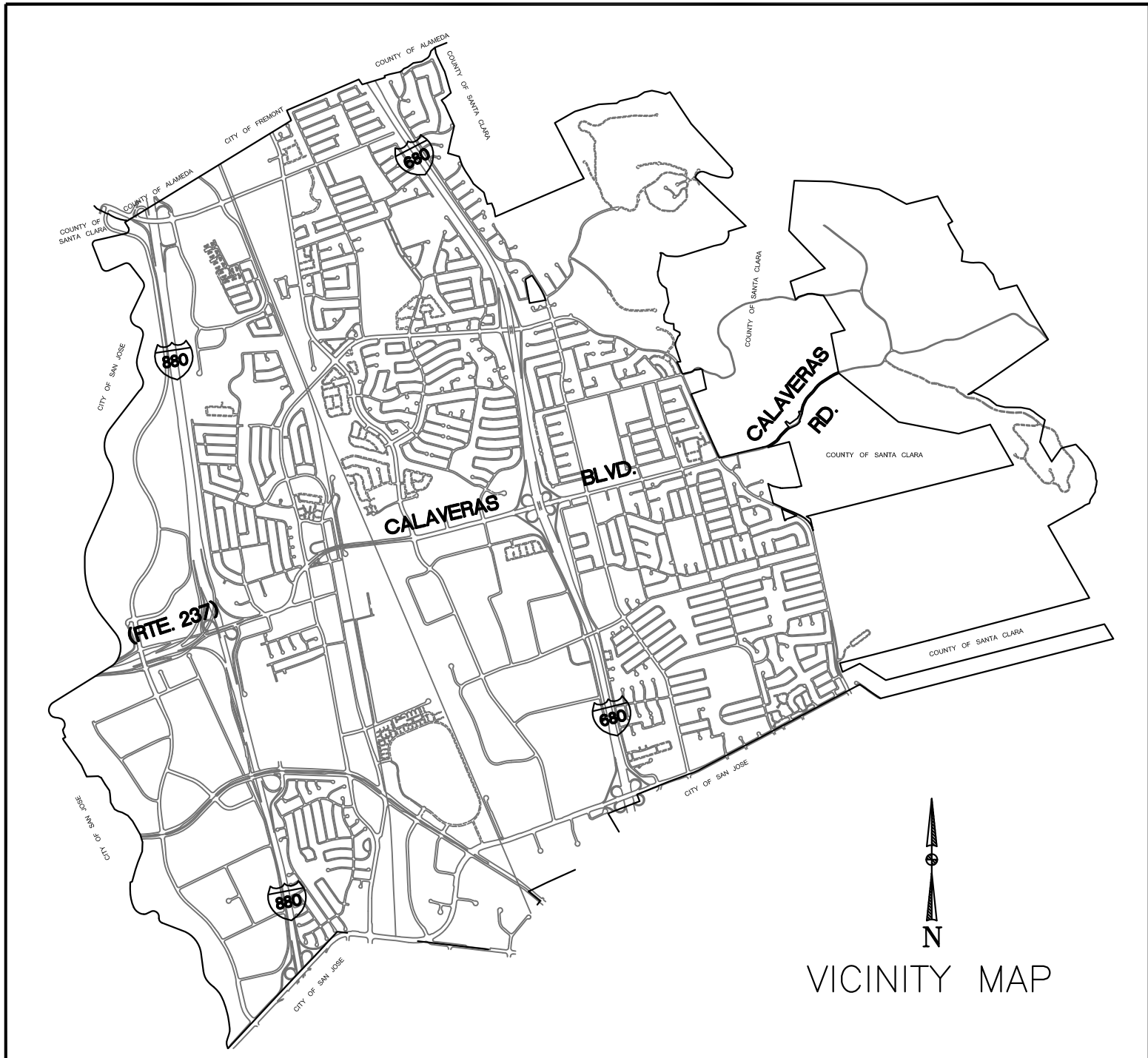
STREET LIGHTS

- Splicing of street light conductor is permitted only in pull boxes.
- Electroliers shall be connected to the closest underground secondary P.G.&E. source. Pull (junction) boxes shall be required at each electrolier and where more than one bend of the cable is necessary to reach to electrolier, where shown on plans, and at service point where no P.G.&E. box is installed. Install in-line fuses at electroliers, in the hand hole of each pole. Fuses shall be installed on each energized lead, and shall be adequately sized and enclosed in a phenolic case. Head configuration shall be either double door mounted ballast or single door - swing down ballast. 120/240 volt ballasts shall be provided. Voltage and wattage of electroliers shall be as shown on the plans.
- Street Light Numbers will be assigned by the City and installed on the poles by the contractor as directed by the Public Works Inspector.



CITY OF MILPITAS

ENGINEERING DIVISION



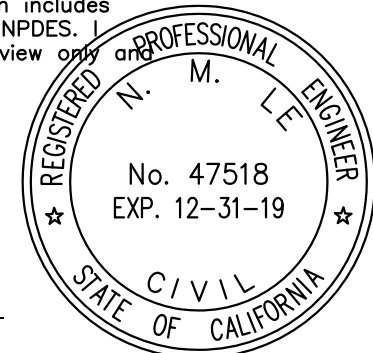
INDEX OF DRAWINGS

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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 the project as defined in section 6703 of the business and professions codes, and that the design is consistent with current standards. The design shown hereon is necessary and reasonable and does not restrict any historic drainage flows from adjacent properties nor increase drainage to adjacent properties. The design includes principles and techniques to reduce quantity and improve the quality of storm water runoff, as required by NPDES. I understand that the check of project drawings and specifications by the City of Milpitas is confined to a review only and does not relieve me, as engineer of work, of my responsibilities for project design.

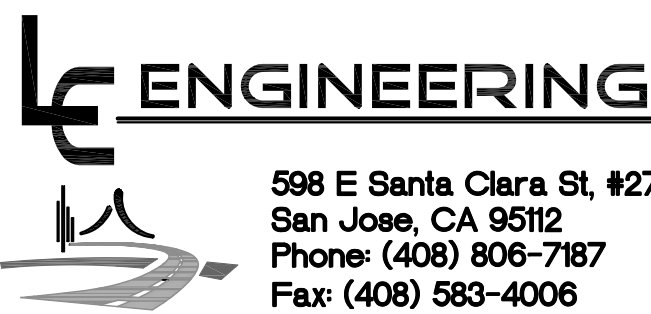
SIGNATURE _____ C47518
Firm: **LC ENGINEERING** P.E.
Address: 598 E Santa Clara St., #270, San Jose, CA 95112
Telephone: (408) 806-7187



TITLE SHEET
529 VISTA RIDGE DRIVE
APN 042-30-015

Milpitas

California



QB	09/24/2018
DESIGNED	DATE
PT	09/24/2018
DRAWN	DATE
NTS	
SCALE	
NL	09/24/2018
CHECKED	DATE

SOILS ENGINEER: These plans have reviewed and found to be in substantial conformance with the intent and purpose of the geotechnical exploration report dated _____, prepared by _____.

(Name) _____ Date _____
Firm: _____
Address: _____
Telephone: _____

Record Drawings

To be completed prior to acceptance of work by the City

Signature and Seal _____ Date _____
P.E. No. _____ Exp. _____
Public Works Inspector _____

Revisions

Num.	Date	By	Description	City Engr.	Aprv.	Date

CITY OF MILPITAS

ENGINEERING DIVISION

Approved: _____	Project No. _____
City Engineer _____ Date _____	File No. _____
Any changes to public improvements shall be approved by the City engineer	E.P. No. _____
Recommended for approval: _____	Sheet <u>1</u> of <u>9</u>
Fire Dept. _____ Date _____	
Engineering _____ Date _____	

Fresh Concrete and Mortar Application

Who should use this information?

- Masons and Bricklayers
- Sidewalk Construction Crews
- Patio Construction Workers
- Construction Inspectors
- General Contractors
- Home Builders
- Developers
- Concrete Delivery/Pumping Workers



Storm Drain Pollution from Fresh Concrete

And Mortar Applications

Fresh concrete and cement related mortars that wash into lakes, streams, or estuaries are toxic to fish and the aquatic environment. Disposing of these materials to the storm drains or creeks can block storm drains, causes serious problems, and is prohibited by law.

Doing the Job Right

General Business Practices

- Wash out concrete mixers only in designated wash-out areas in your yard, away from storm drains and waterways, where the water will flow into a temporary waste pit in a dirt area. Let water percolate through soil and dispose of settled, hardened concrete as garbage. Whenever possible, recycle washout by pumping back into mixers for reuse.
- Wash out chutes onto dirt areas at site that do not flow to streets or drains.
- Always store both dry and wet materials under cover, protected from rainfall and runoff and away from storm drains or waterways. Protect dry materials from wind.
- Secure bags of cement after they are open. Be sure to keep wind-blown cement powder away from streets, gutters, storm drains, rainfall, and runoff.
- Do not use diesel fuel as a lubricant on concrete forms, tools, or trailers.

During Construction

- Don't mix up more fresh concrete or cement than you will use in a two-hour period.
- Set up and operate small mixers on tarps or heavy plastic drop cloths.
- When cleaning up after driveway or sidewalks construction, wash fines onto dirt areas, not down the driveway or into the street or storm drain.
- Protect applications of fresh concrete and mortar from rainfall and runoff until the material has dried.
- Wash down exposed aggregate concrete only when the wash water can (1) flow onto a dirt area; (2) drain onto a bermed surface from which it can be pumped and disposed of properly; or (3) be vacuumed from a catchment created by blocking a storm drain inlet. If necessary, divert runoff with temporary berms. Make sure runoff does not reach gutters or storm drains.
- When breaking up pavement, be sure to pick up all the pieces and dispose of properly. Recycle large chunks of broken concrete at a local recycling facility.
- Never bury waste material. Dispose of small amounts of excess dry concrete, grout, and mortar in the trash.
- Never dispose of washout into the street, storm drains, drainage ditches, or streams.

Spill Cleanup

- Clean up spills immediately when they happen.
- Never hose down "dirty" pavement or impermeable surfaces where fluids have spilled. Use dry cleanup methods (absorbent materials, cat litter, and/or rags) whenever possible and properly dispose of absorbent materials.
- Sweep up spilled dry materials immediately. Never attempt to "wash them away" with water, or bury them.
- Clean up spills on dirt areas by digging up and properly disposing of contaminated soil.
- Report significant spills to the appropriate local spill response agencies immediately. In Milpitas, dial 9-1-1 if hazardous materials might enter the storm drain.

Heavy Equipment Operation

Who should use this information?

- Vehicle and Equipment Operators
- Site Supervisors
- General Contractors
- Home Builders
- Developers



Stormwater Pollution

from Heavy Equipment on Construction Sites

Poorly maintained vehicles and heavy equipment that leak fuel, oil, antifreeze or other fluids on the construction site are common sources of storm drain pollution. Prevent spills and leaks by loading equipment from runoff channels, and by watching for leaks and other maintenance problems. Remove construction equipment from the site as soon as possible.

Doing the Job Right

Site Planning and Preventive Vehicle Maintenance

- Designate one area of the construction site, well away from streams or storm drain inlets, for auto and equipment parking, refueling, and routine vehicle and equipment maintenance. Contain the area with berms, sand bags, or other barriers.
- Maintain all vehicles and heavy equipment. Inspect frequently for and repair leaks.
- Perform major maintenance, repair jobs, and vehicle and equipment washing off site where cleanup is easier.
- If you must drain and replace motor oil, radiator coolant, or other fluids on site, use drip pans or drop cloths to catch drips and spills. Collect all spent fluids, store in separate containers. Repair them wherever possible, otherwise, dispose of them as hazardous wastes.
- Do not use diesel oil to lubricate equipment parts, or clean equipment. Use only water for any onsite cleaning.
- Cover exposed fifth wheel hitch and other oily or greasy equipment during rain events.
- Use as little water as possible for dust control. Ensure water used doesn't leave silt or discharge to storm drains.

Earth-Moving and Dewatering Activities

Who should use this information?



- Bulldozer, Back Hoe, and Grading Machine Operators
- Dump Truck Drivers
- Construction Crews
- Operators of Grading Equipment, Paving Machines, Dump Trucks, Concrete Mixers
- Construction Inspectors
- General Contractors
- Home Builders
- Developers

Storm Drain Pollution from Earth-Moving Activities

Soil excavation and grading operations loosen large amounts of soil that can flow or blow into storm drains when handled improperly. Sediments in runoff can clog storm drains, smother aquatic life, and destroy habitats in creeks and the Bay. Effective erosion control practices reduce the amount of runoff crossing a site and slow the flow with check dams or roughened ground surfaces.

Contaminated groundwater is a common problem in the Santa Clara Valley. Depending on soil types and site history, groundwater pumped from construction sites may be contaminated with toxics (such as oil or solvents) or laden with sediments. Any of these pollutants can harm wildlife in creeks or the Bay, or interfere with wastewater treatment plant operations. Discharging sediment-laden water from a dewatering site into any water of the state without treatment is prohibited.

Doing the Job Right

General Business Practices

- Schedule excavation and grading work during dry weather.
- Perform major equipment repairs away from the job site.
- When refueling or vehicle/equipment maintenance must be done on site, designate a location away from storm drains.
- Do not use diesel oil to lubricate equipment parts, or clean equipment.

Practices During Construction

- Remove existing vegetation only when absolutely necessary. Plant temporary vegetation for erosion control on slopes or where construction is not immediately planned.
- Protect downslope drainage courses, streams, and storm drains with wattles, or temporary drainage swales. Use check dams or ditches to divert runoff around excavations. Refer to the Regional Water Quality Control Board's Erosion and Sediment Control

Field Manual 1 for proper erosion and sediment control measures, and California Stormwater Quality Association Stormwater Best Management Practice Handbook (construction, 2003)

- Cover stockpiles and excavated soil with secured tarps or plastic sheeting.
- Check for odors, discoloration, or an oily sheen on groundwater.
- Call your local wastewater treatment agency and ask whether the groundwater must be tested.
- If contamination is suspected, have the water tested by a certified laboratory.
- Depending on the test results, you may be allowed to discharge pumped groundwater to the storm drain (if no sediments present) or sanitary sewer. OR, you may be required to collect and haul pumped groundwater offsite for treatment and disposal at an appropriate treatment facility.

Check for Sediment Levels

- If the water is clear, the pumping time is less than 24 hours, and the flow rate is less than 20 gallons per minute, you may pump water to the street or storm drain.
- If the pumping time is more than 24 hours and the flow rate greater than 20 gpm, call your local wastewater treatment plant for guidance.
- If the water is not clear, solids must be filtered or settled out by pumping to a settling tank prior to discharge. Options for filtering include:
 - Pumping through a perforate pipe sunk part way into a small pit filled with gravel;
 - Pumping from a bucket placed below water level using a submersible pump;
 - Pumping through a filtering device such as a swimming pool filter or filter fabric wrapped around end of suction pipe;
 - Buried barrels, debris or trash.
- If the water is not clear, solids must be filtered or settled out by pumping to a settling tank prior to discharge. Options for filtering include:
 - Unusual soil conditions, discoloration or odor;
 - Abandoned underground tanks;
 - Abandoned wells;
 - Buried barrels, debris or trash.

Detecting Contaminated Soil or Groundwater

Contaminated groundwater is a common problem in the Santa Clara Valley. It is essential that all contractors and subcontractors involved know what to look for in detecting contaminated soil or groundwater, and testing ponded groundwater before pumping. Watch for any of these conditions:

- Unusual soil conditions, discoloration or odor;
- Abandoned underground tanks;
- Abandoned wells;
- Buried barrels, debris or trash.

If any of these are found follow the procedures below.



BLUEPRINT FOR A CLEAN BAY

Best Management Practices for the Construction Industry

Remember: The property owner and the contractor share ultimate responsibility for the activities that occur on a construction site. You may be held responsible for any environmental damage caused by your subcontractors or employees.

Preventing Pollution: It's Up to Us

In the Santa Clara Valley, storm drains transport water directly to local creeks and San Francisco Bay without treatment. Stormwater pollution is a serious problem for wildlife dependent on our creeks and bays and for the people who live near polluted streams or baysides. Common sources of this pollution include spilled oil, fuel, and fluids from vehicles and heavy equipment; construction debris; sediment created by erosion; landscaping runoff containing pesticides or weed killers; and materials such as used motor oil, antifreeze, and paint products that people pour or spill into a street or storm drain.



Santa Clara Valley Urban Runoff Pollution Prevention Program

Thirteen valley municipalities have joined together with Santa Clara County and the Santa Clara Valley Water District to educate local residents and businesses and fight stormwater pollution. This "Blueprint" summarizes "Best Management Practices" (BMPs) for stormwater pollution prevention.

Spill Response Agencies:

- Dial 911
- Santa Clara County Environmental Health Services (408) 299-6930
- Governor's Office of Emergency Services Warning Center (800) 852-7550 (24 hours).

Local Pollution Control Agencies

- Santa Clara County Office of Toxics and Solid Waste Management (408) 441-1195
- Santa Clara Valley Water District (408) 265-2600
- San Jose/Santa Clara Water Pollution Control Plant (408) 945-5300
- Serving Milpitas, Cupertino, Los Gatos, Milpitas, Monte Sereno, San Jose, Santa Clara and Saratoga

Small Business Hazardous Waste Disposal Program

Santa Clara County businesses that generate less than 27 gallons or 220 pounds of hazardous waste per month are eligible to use Santa Clara County's Small Business Hazardous Waste Disposal Program. Call (408) 299-7300 for a quote, more information or guidance on disposal.

General Construction and Site Supervision

Who should use this information?

- General Contractors
- Site Supervisors
- Inspectors
- Home Builders
- Developers
- Homeowners



Storm Drain Pollution from Construction Activities

Construction sites are common sources of storm water pollution. Materials and wastes that blow or wash into a storm drain, gutter, or street have a direct impact on local creeks and the Bay.

As a contractor, or site supervisor, owner or operator of a site, you may be responsible for any environmental damage caused by your subcontractors or employees.

Landscaping, Gardening, and Pool Maintenance

Who should use this information?

- Landscapers
- Gardeners
- Swimming Pool/Spa Service and Repair Workers
- General Contractors
- Home Builders
- Developers
- Homeowners



Storm Drain Pollution from Landscaping and Swimming Pool Maintenance

Many landscaping activities expose soils and increase the likelihood that earth and garden chemicals will run off into the storm drains during irrigation or when it rains. Swimming pool water containing chlorine and copper-based algaecides should never be discharged to storm drains. These chemicals are toxic to aquatic life.

Doing the Job Right

General Business Practices

- Protect stockpiles (e.g., asphalt, sand, or soil) and landscaping materials from wind and rain by storing them under tarps or secured plastic sheeting.
- Store pesticides, fertilizers, and other chemicals indoors or in a shed or storage cabinet.
- Schedule grading and excavation projects during dry weather.
- Use temporary check dams or ditches to divert runoff away from storm drains.
- Protect storm drains with sandbags or other sediment controls.
- Vegetation is an excellent form of erosion control for any site. Replant as soon as possible with temporary vegetation such as grass seed.
- Consider using Integrated Pest Management Techniques. Use pesticides sparingly, according to instructions on the label. Rinse empty containers, and use rinsewater as product. Dispose of rinsed, empty containers in the trash.
- Dispose of unused pesticides as hazardous waste.

- Collect lawn and garden clippings, pruning waste, and tree trimmings. Chip if necessary, and compost if possible.
- Do not blow or rake leaves, etc. into the street, or place yard waste in gutters or on dirt shoulders.
- Place dumpsters under roofs or cover with tarps or plastic sheeting secured around the outside of the dumpster. Never clean out a dumpster by hosing it down on the construction site.

Pool/Fountain/Spa Maintenance

- Draining pools or spas
- When it's time to drain a pool, spa, or fountain, please be sure to call your local wastewater treatment plant before you start for further guidance on flow rate restrictions, backflow prevention, and handling special cleaning waste (such as acid wash). Discharge flows should be kept to the low levels typically possible through a garden hose. Higher flow rates may be prohibited by local ordinance.
- Never discharge pool or spa water to a street or storm drain; discharge to a sanitary sewer cleaned.
- If possible, when emptying a pool or spa, let chlorine dissipate for a few days and then recycle/ reuse water by draining it gradually onto a landscaped area. OR

- San Jose/Santa Clara Water Pollution Control Plant (408) 945-5300. You may be able to discharge to the sanitary sewer by running the hose to a utility sink or sewer pipe clean-out.
- Do not use copper-based algaecides. Control algae with chlorine or other alternatives, such as sodium bromine.

Filter Cleaning

- Never clean a filter in the street or near a storm drain inlet, or near a stream, creek, or diatomaceous earth filters onto a dirt area, and spade filter residue into soil. Dispose of spent diatomaceous earth in the garbage.
- If there is no suitable dirt call San Jose/Santa Clara Water Pollution Control Plant (408) 945-5300 for instructions on discharging filter backwash or rinse water to the sanitary sewer.

Roadwork and Paving

Who should use this information?

- Road Crews
- Driveway/Sidewalk/Parking Lot Construction Crews
- Seal Coat Contractors
- Operators of Grading Equipment, Paving Machines, Dump Trucks, Concrete Mixers
- Construction Inspectors
- General Contractors
- Developers
- Home Builders



Storm Drain Pollution from Roadwork

Road paving, surfacing, and pavement removal happen right in the street, where there are numerous opportunities for asphalt, saw-cut slurry, or excavated material to illegally enter storm drains. Extra planning is required to store and dispose of materials properly and guard against pollution of storm drains, creeks, and the Bay.

Doing the Job Right

General Business Practices

- Develop and implement erosion/sediment control plans for roadway embankment construction.
- Schedule excavation and grading work during dry weather.
- Check for and repair leaking equipment.
- Perform major equipment repairs at designated areas in your maintenance yard, where cleanup is easier. Avoid performing equipment repairs at construction sites.
- When refueling or when vehicle/equipment maintenance must be done on site, designate a location away from storm drains and creeks.
- Do not use diesel oil to lubricate equipment parts or clean equipment.
- Recycle used oil, concrete, broken asphalt, etc. whenever possible, or dispose of properly.

During Construction

- Avoid paving and seal coating in wet weather, or when rain is forecast, to prevent fresh materials from contacting stormwater runoff.
- Cover and seal catch basins and manholes when applying seal coat, slurry seal, fog seal, or similar materials.
- Protect drainage ways by using earth dikes, sand bags, or other controls to divert or trap and filter runoff.
- Never wash excess material from equipment or similar treatments into a street or storm drain. Collect and recycle, or dispose to dirt area.
- Cover stockpiles (asphalt, sand, etc.) and other construction materials with plastic tarps. Protect from rainfall and prevent runoff with temporary roofs or plastic sheets and berms.
- Park paving machines over drip pans or absorbent material (cloth, rags, etc.) to catch drips when not in use.
- Clean up all spills and leaks using "dry" methods (with absorbent materials and/or rags). Dig up, remove, and properly dispose of contaminated soil.

- Collect and recycle or appropriately dispose of excess abrasive gravel or sand.
- Avoid over-application by water trucks for dust control.

Asphalt/Concrete Removal

- Avoid creating excess dust when breaking up asphalt.
- After breaking up old pavement, be sure to remove all chunks and pieces. Make sure broken pavement does not come in contact with rainfall or runoff.
- When making saw cuts, use as little water as possible. Shovel or vacuum saw-cut slurry and remove from the site. Cover or protect storm drain inlets during saw-cutting. Sweep up, and properly dispose of all residues.
- Sweep, never hose down streets to clean up tracked dirt. Use a street sweeper or vacuum truck. Do not dump vacuumed liquor in storm drains.

Painting and Application of Solvents and Adhesives

Who should use this information?

- Painters
- Paperhangers
- Plasterers
- Graphic Artists
- Dry Wall Crews
- Floor Covering Installers
- General Contractors
- Home Builders
- Developers
- Homeowners

Storm Drain Pollution from Paints, Solvents, and Adhesives

All paints, solvents, and adhesives contain chemicals that are harmful to wildlife in local creeks, San Francisco Bay, and the Pacific Ocean. Toxic chemicals may come from liquid or solid products or from cleaning residues or rags. Paint material and wastes, adhesives and cleaning fluids should be recycled when possible, or disposed of properly to prevent these materials from flowing into storm drains and watercourses.

Doing the Job Right

Handling Paint Products

- Keep all liquid paint products and wastes away from the gutter, street, and storm drains. Liquid residues from painters, thinners, solvents, glues, and cleaning fluids are hazardous wastes and must be disposed of as hazardous.
- Wash water from painted buildings constructed before 1978 can contain high amounts of lead, even if paint chips are not present. Before you begin stripping paint or cleaning pre-1978 building exteriors with water under high pressure, test paint for lead by taking paint scrapings to a local laboratory. See Yellow Pages for a state-certified laboratory.
- If there is loose paint on the building, or if the paint tests positive for lead, block storm drains. Check with the wastewater treatment plant to determine whether you may discharge water to the sanitary sewer, or if you must send it offsite for disposal as hazardous waste.

Paint Removal

- Paint chips and dust from non-hazardous dry stripping and sand blasting may be swept up or collected in plastic drop cloths and disposed of as trash.
- Chemical paint stripping and chips and dust from marine paints or paints containing lead, mercury or tributyl tin must be disposed of as hazardous wastes. Lead-based paint removal requires a state-certified contractor.
- When stripping or cleaning building exteriors with high-pressure water, block storm drains. Direct wash water onto a dirt area to find out if you can collect (mop or vacuum) building cleaning water and dispose to the sanitary sewer. Sampling of the water may be required to assist the wastewater treatment authority in making its decision.

Painting Cleanup

- Never clean brushes or rinse paint containers into a street, gutter, storm drain, French drain, or stream.
- For water-based paints, paint out brushes to the extent possible, and rinse into a drain that goes to the sanitary

- sewer. Never pour paint down a storm drain. Dispose of excess liquids and residue as hazardous waste.
- For oil-based paints, paint out brushes to the extent possible and clean with thinner or solvent in a proper container. Filter and reuse thinners and solvents. Dispose of excess liquids and residue as hazardous waste.
- When thoroughly dry, empty paint cans, used brushes, rags, and drop cloths may be disposed of as garbage in a sanitary landfill. Leave lids off paint cans so the refuse collector can see that they are empty. Empty, dry paint cans also may be recycled as metal.
- Dispose of empty aerosol paint cans as hazardous waste, or at a household hazardous waste collection event.

Recycle/Reuse Leftover Paints Whenever Possible

- Donate excess water-based (latex) paint for reuse.
- Reuse leftover oil-based paint. Dispose of non-recyclable thinners, sludge and unwanted paint as hazardous waste.
- Unopened cans of paint may be able to be returned to the paint vendor. Check with the vendor regarding its "buy-back" policy.

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SIGNATURE: 
Firm: **LC ENGINEERING**
Address: 598 E Santa Clara St., #270, San Jose, CA 95112
Telephone: (408) 806-7187

C47518

P.E.



BLUE PRINT FOR A CLEAN BAY
529 VISTA RIDGE DRIVE
APN 042-30-015

Milpitas

California

ENGINEERING
598 E Santa Clara St., #270
San Jose, CA 95112
Phone: (408) 806-7187
Fax: (408) 583-4006

QB DESIGNED 09/24/2018
DATE
PT DRAWN 09/24/2018
DATE
NTS SCALE
NL 09/24/2018
CHECKED DATE

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(Name) _____ Date _____
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Telephone: _____

Record Drawings

To be completed prior to acceptance of work by the City

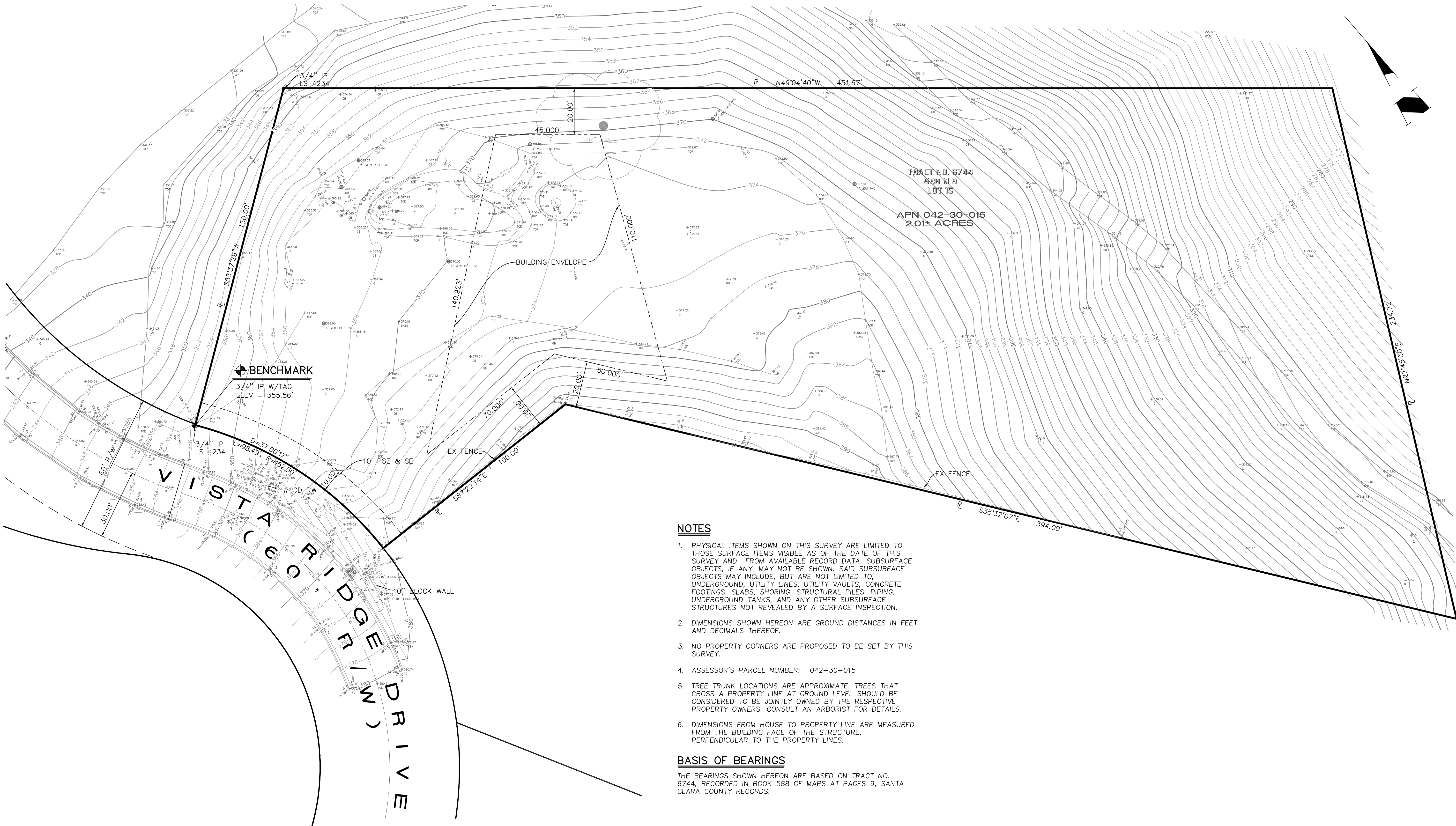
Signature and Seal Date
P.E. No. Exp. _____
Public Works Inspector _____

Revisions

Num.	Date	By	Description	City Engr.	Apprv.	Date

CITY OF MILPITAS ENGINEERING DIVISION

Approved: _____ Project No. _____
City Engineer _____ Date _____
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Fire Dept. _____ Date _____
Engineering _____ Date _____
Sheet 2 of 9



NOTES

1. PHYSICAL ITEMS SHOWN ON THIS SURVEY ARE LIMITED TO THOSE SURFACE ITEMS VISIBLE AS OF THE DATE OF THIS SURVEY AND FROM AVAILABLE RECORD DATA. SUBSURFACE OBJECTS, IF ANY, MAY NOT BE SHOWN. SAID SUBSURFACE OBJECTS MAY INCLUDE, BUT ARE NOT LIMITED TO, UNDERGROUND, UTILITY LINES, UTILITY VAULTS, CONCRETE FOOTINGS, SLABS, SHORING, STRUCTURAL PILES, PIPING, UNDERGROUND TANKS, AND ANY OTHER SUBSURFACE STRUCTURES NOT REVEALED BY A SURFACE INSPECTION.
2. DIMENSIONS SHOWN HEREON ARE GROUND DISTANCES IN FEET AND DECIMALS THEREOF.
3. NO PROPERTY CORNERS ARE PROPOSED TO BE SET BY THIS SURVEY.
4. ASSESSOR'S PARCEL NUMBER: 042-30-015
5. TREE TRUNK LOCATIONS ARE APPROXIMATE. TREES THAT CROSS A PROPERTY LINE AT GROUND LEVEL SHOULD BE CONSIDERED TO BE JOINTLY OWNED BY THE RESPECTIVE PROPERTY OWNERS. CONSULT AN ARBORIST FOR DETAILS.
6. DIMENSIONS FROM HOUSE TO PROPERTY LINE ARE MEASURED FROM THE BUILDING FACE OF THE STRUCTURE, PERPENDICULAR TO THE PROPERTY LINES.

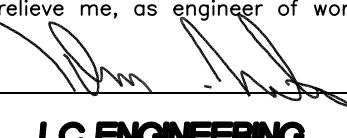
BASIS OF BEARINGS

THE BEARINGS SHOWN HEREON ARE BASED ON TRACT NO. 6744, RECORDED IN BOOK 588 OF MAPS AT PAGES 9, SANTA CLARA COUNTY RECORDS.

SURVEYOR'S STATEMENT

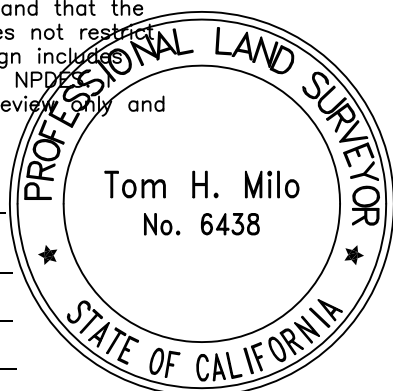
THIS BOUNDARY SURVEY AND TOPOGRAPHIC MAP WAS PREPARED BY ME OR UNDER MY DIRECTION.

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Address: 598 E Santa Clara St, #270, San Jose, CA 95112
Telephone: (408) 806-7187

LS6438

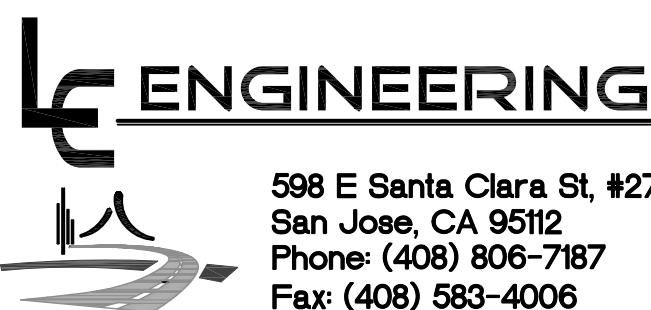
P.L.S.



**BOUNDARY SURVEY AND
TOPOGRAPHIC MAP**
529 VISTA RIDGE DRIVE
APN 042-30-015

Milpitas

California



08	08/07/17
DESIGNED	DATE
PT	08/07/17
DRAWN	DATE
1"=20'	
SCALE	
NL	08/07/17
CHECKED	DATE

SOILS ENGINEER: These plans have reviewed and found to be in substantial conformance with the intent and purpose of the geotechnical exploration report dated _____, prepared by _____.

(Name) _____ Date _____
Firm: _____
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Telephone: _____

Record Drawings

To be completed prior to acceptance of work by the City

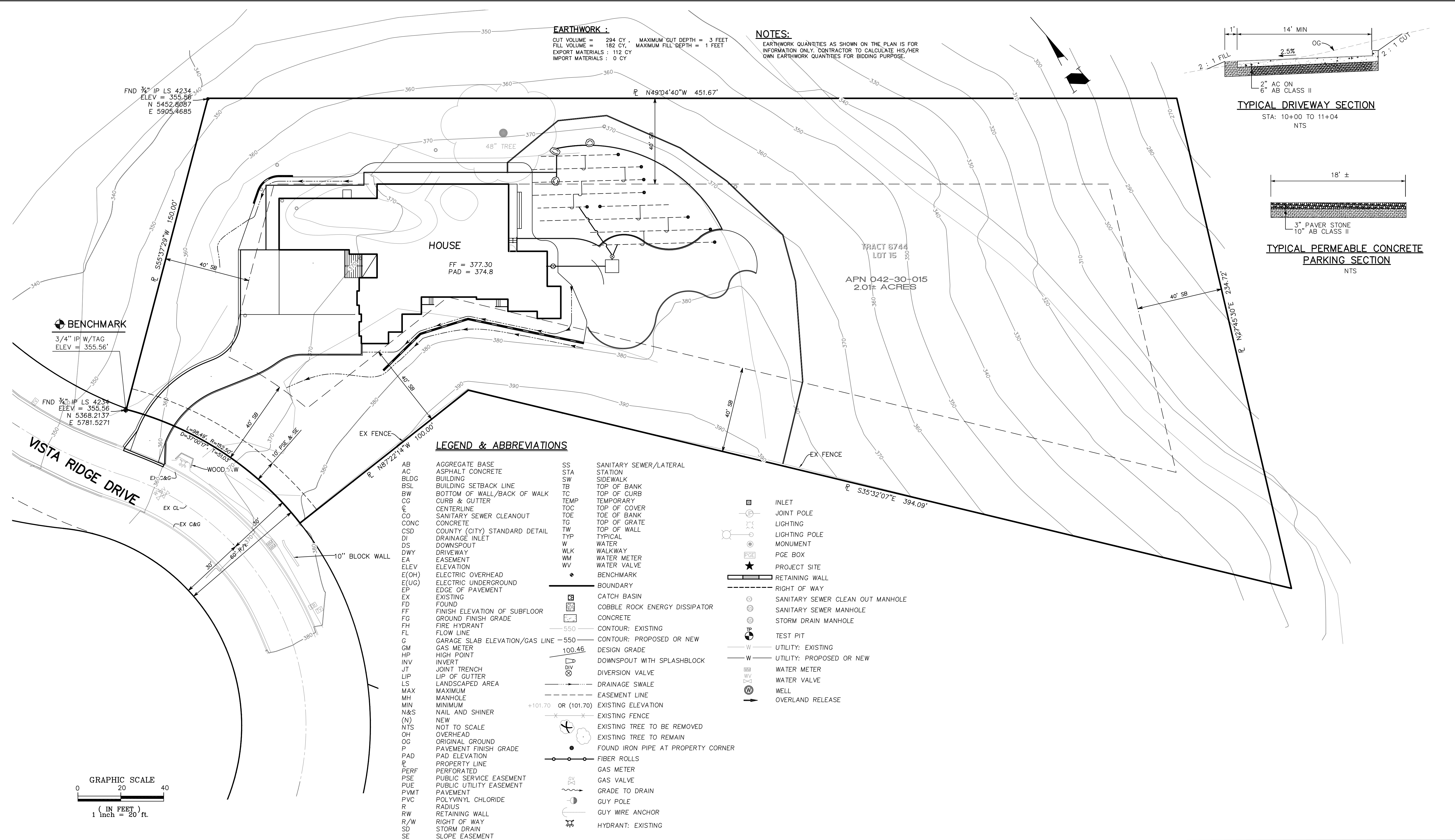
Signature and Seal _____ Date _____
P.E. No. _____ Exp. _____
Public Works Inspector: _____

Revisions

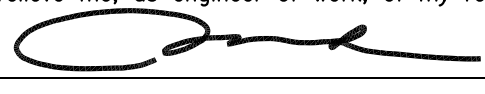
Num.	Date	By	Description	City Engr. Aprv.	Date

CITY OF MILPITAS
ENGINEERING DIVISION

Approved: _____	Project No. _____
City Engineer _____ Date _____	File No. _____
Any changes to public improvements shall be approved by the City engineer	E.P. No. _____
Recommended for approval: _____	Sheet <u>3</u> of <u>9</u>
Fire Dept _____ Date _____	
Engineering _____ Date _____	



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SIGNATURE:  C47518
Firm: **LC ENGINEERING** P.E.
Address: 598 E Santa Clara St., #270, San Jose, CA 95112
Telephone: (408) 806-7187

REGISTERED PROFESSIONAL ENGINEER
N. M.
No. 47518
EXP. 12-31-19
CIVIL
STATE OF CALIFORNIA

OVERALL SITE PLAN
529 VISTA RIDGE DRIVE
APN 042-30-015

Milpitas **California**

LC ENGINEERING
598 E Santa Clara St., #270
San Jose, CA 95112
Phone: (408) 806-7187
Fax: (408) 583-4006

QB DESIGNED 09/24/2018 DATE
PT DRAWN 09/24/2018 DATE
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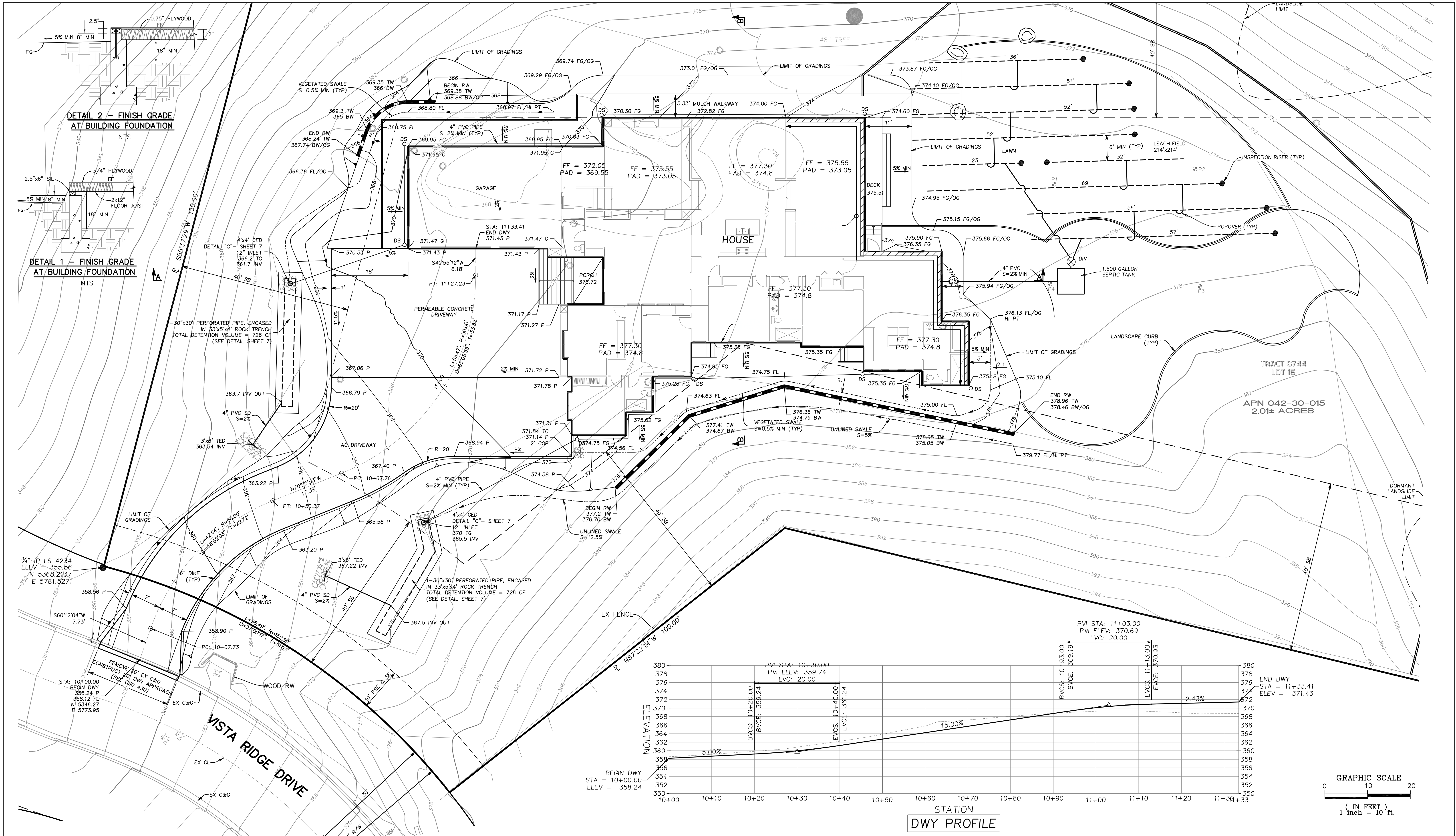
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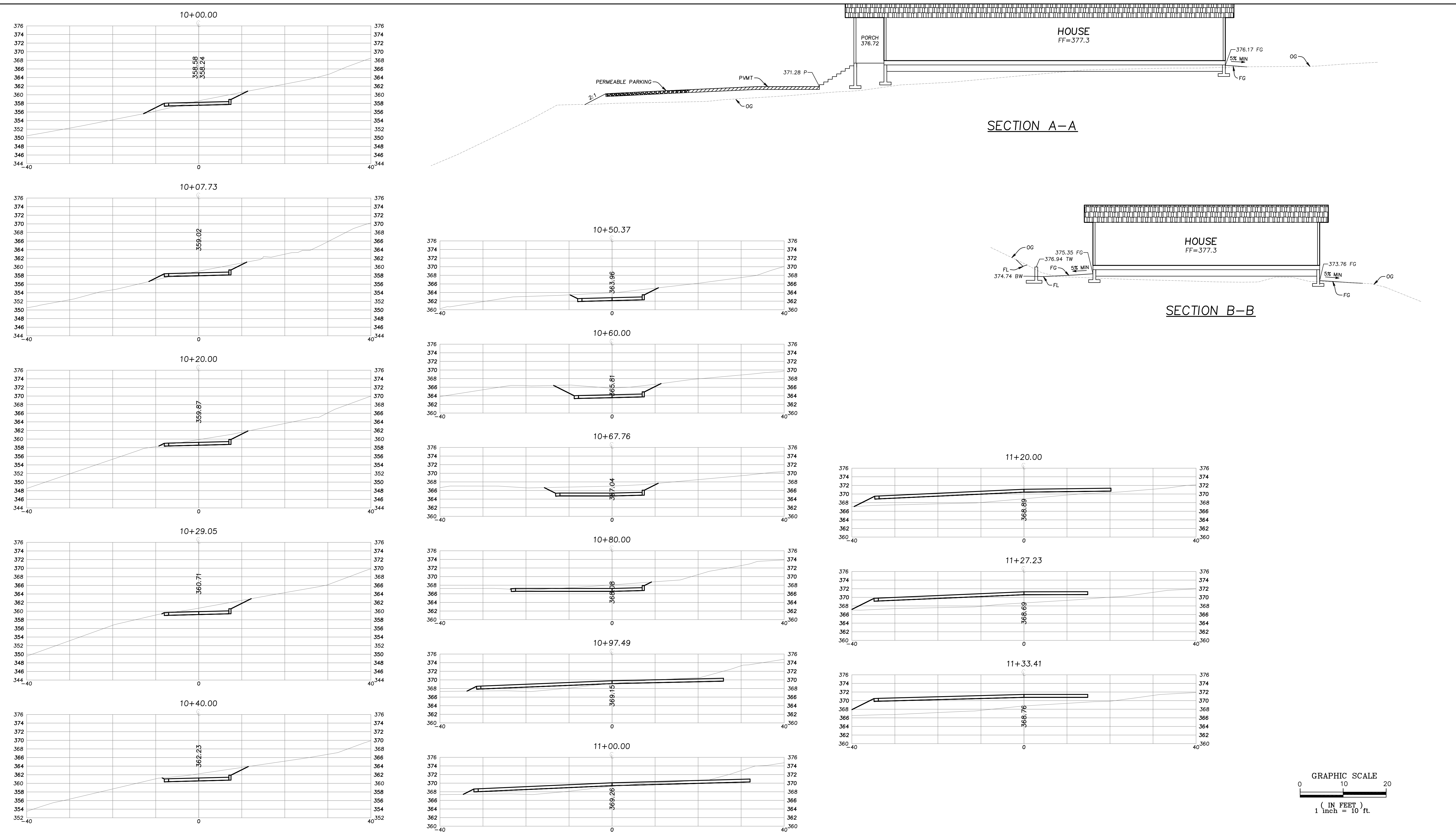
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Engineering Date _____ Sheet 4 of 9



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Firm: LC ENGINEERING P.E.
Address: 598 E Santa Clara St. #270, San Jose, CA 95112
Telephone: (408) 806-7187

**BUILDING AND DRIVEWAY
CROSS SECTIONS**
529 VISTA RIDGE DRIVE
APN 042-30-015

Milpitas **California**

LE ENGINEERING
598 E Santa Clara St. #270
San Jose, CA 95112
Phone: (408) 806-7187
Fax: (408) 583-4006

DESIGNED 09/24/2018 DATE
PT 09/24/2018 DATE
DRAWN 1"=10'
SCALE
NL 09/24/2018
CHECKED DATE

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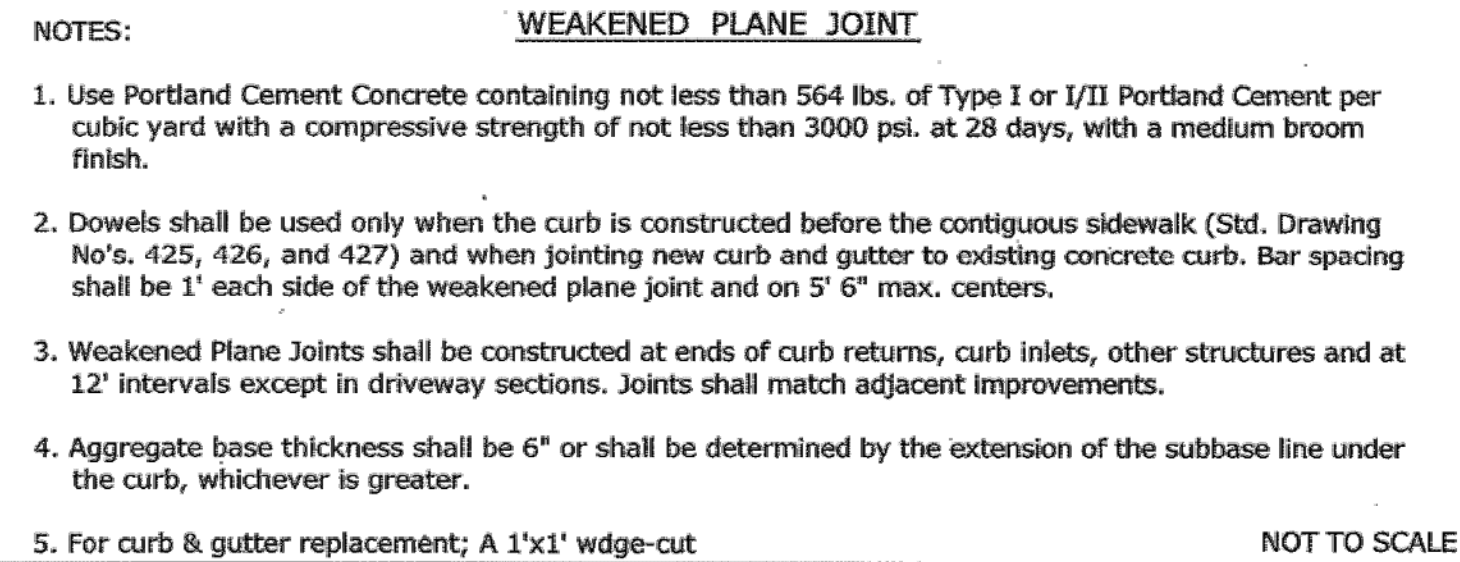
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**CITY OF MILPITAS
ENGINEERING DIVISION**

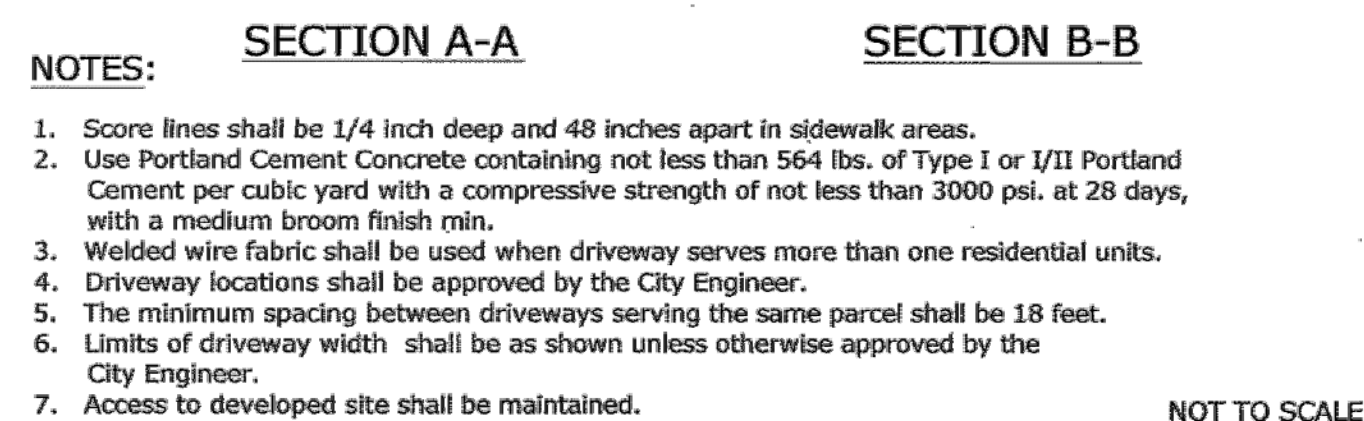
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File No. _____
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Sheet 6 of 9

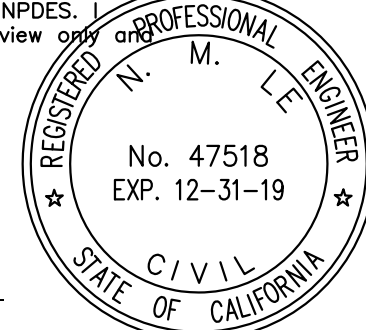
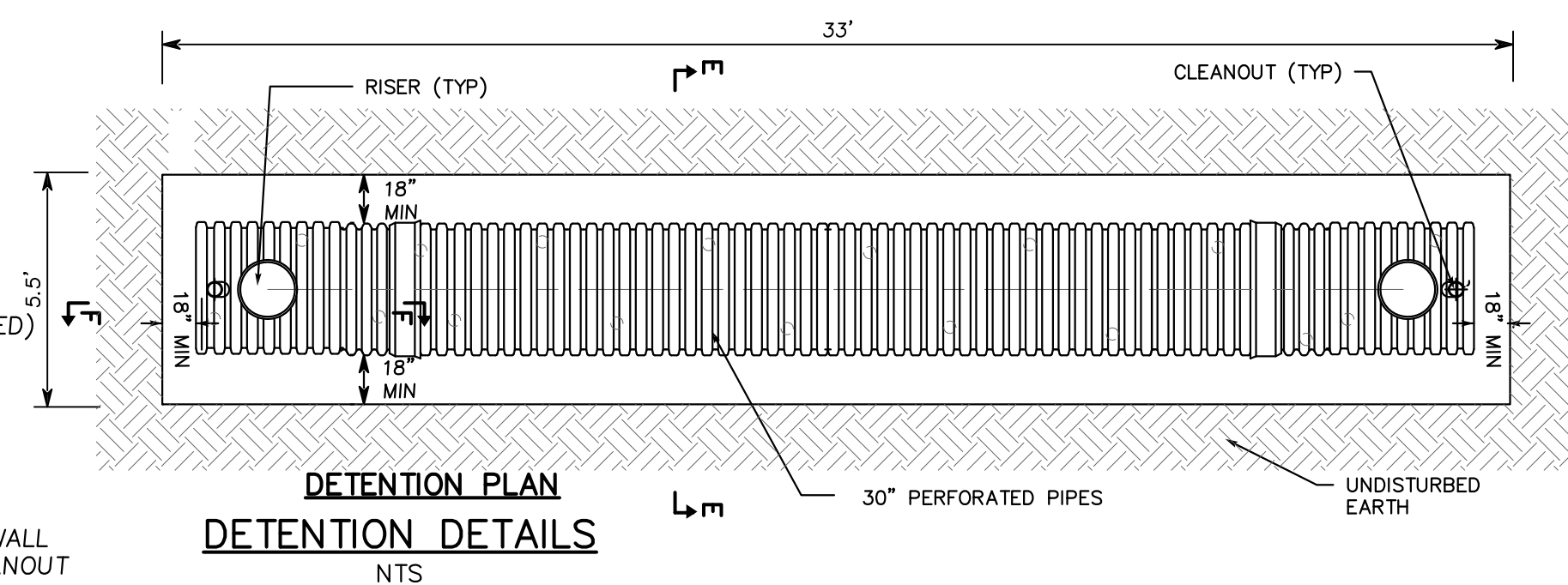
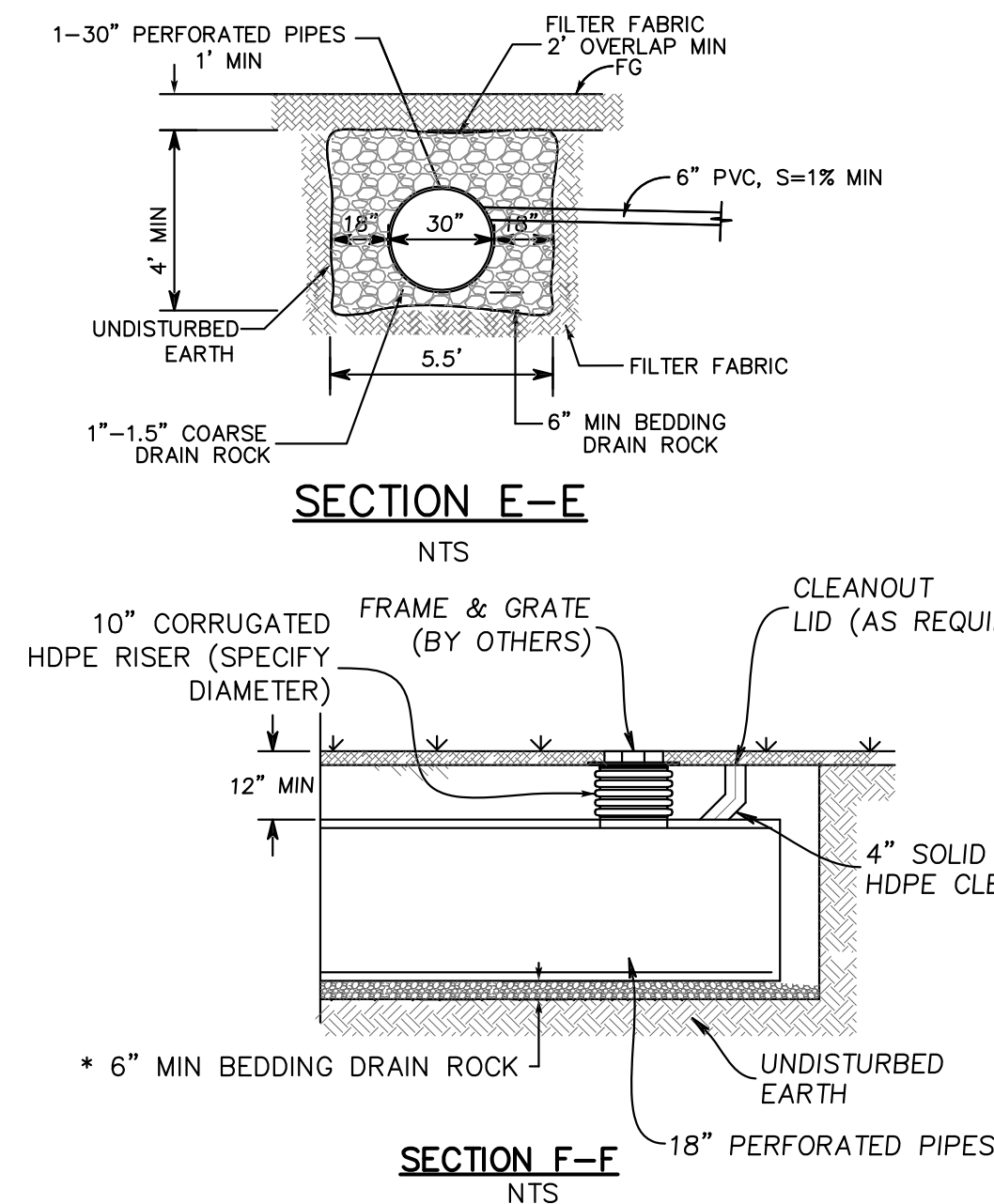


The diagram shows a plan view of a curb opening. A rectangular area is labeled 'AC PAVEMENT'. Inside this, a 'CURB OPENING' is defined by a '2' AC DIKE' on the top and right sides. The opening itself is a trapezoid with a bottom width of '2' MIN.' and a depth of '2''. The right side of the opening is a '2% MIN.' slope. A 'FL' (finish line) is indicated at the bottom of the opening. Below the opening is an 'UNLINED DITCH'. A north arrow points towards the top right, and a 'B' marker is located near the top right corner. The overall width of the paved area is '4''.

NTS



NTS



Milpitas



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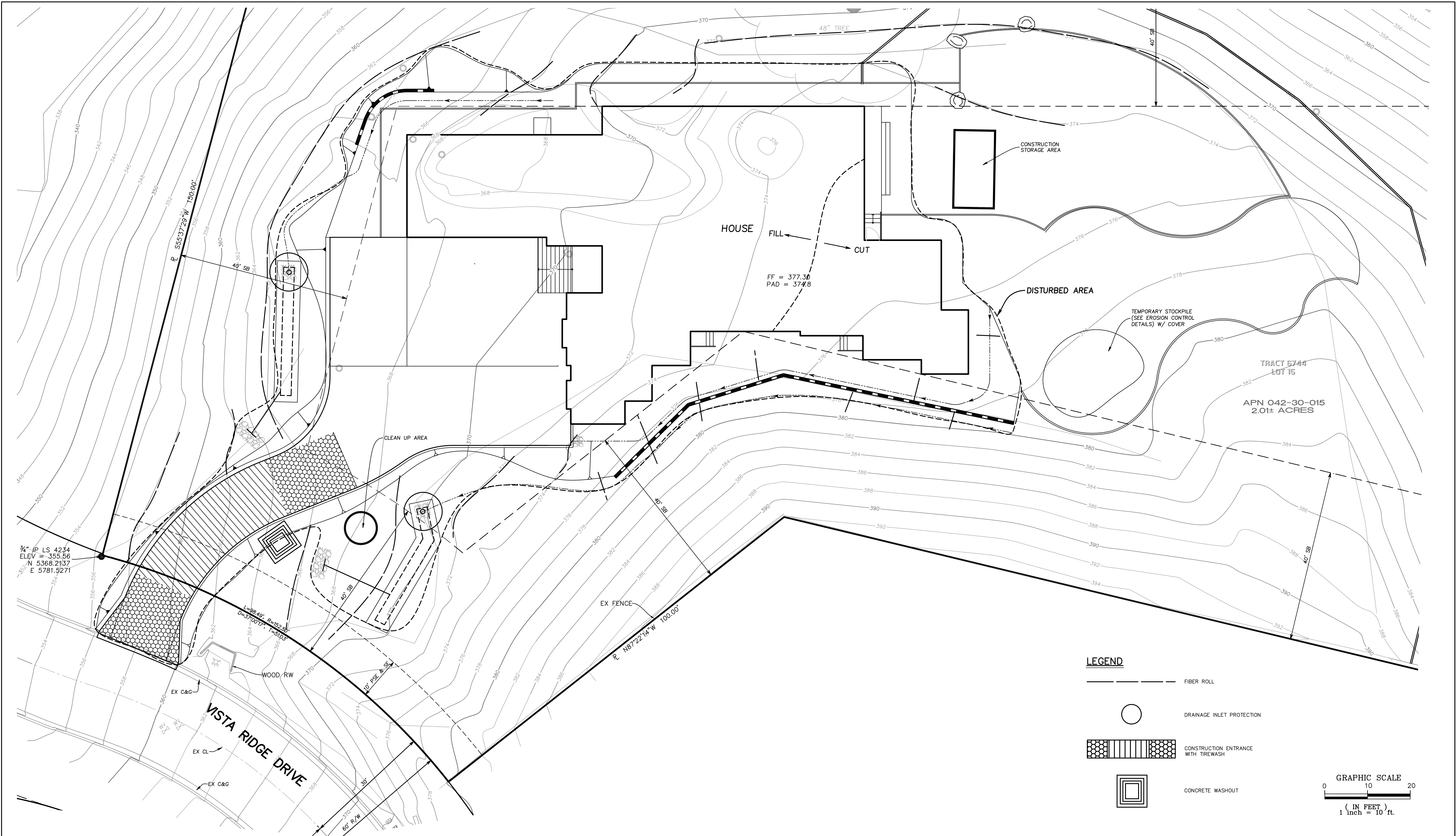
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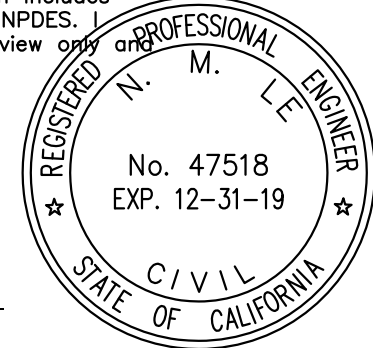
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Telephone: (408) 806-7187



EROSION CONTROL PLAN
529 VISTA RIDGE DRIVE
APN 042-30-015

Milpitas

California

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598 E Santa Clara St. #270
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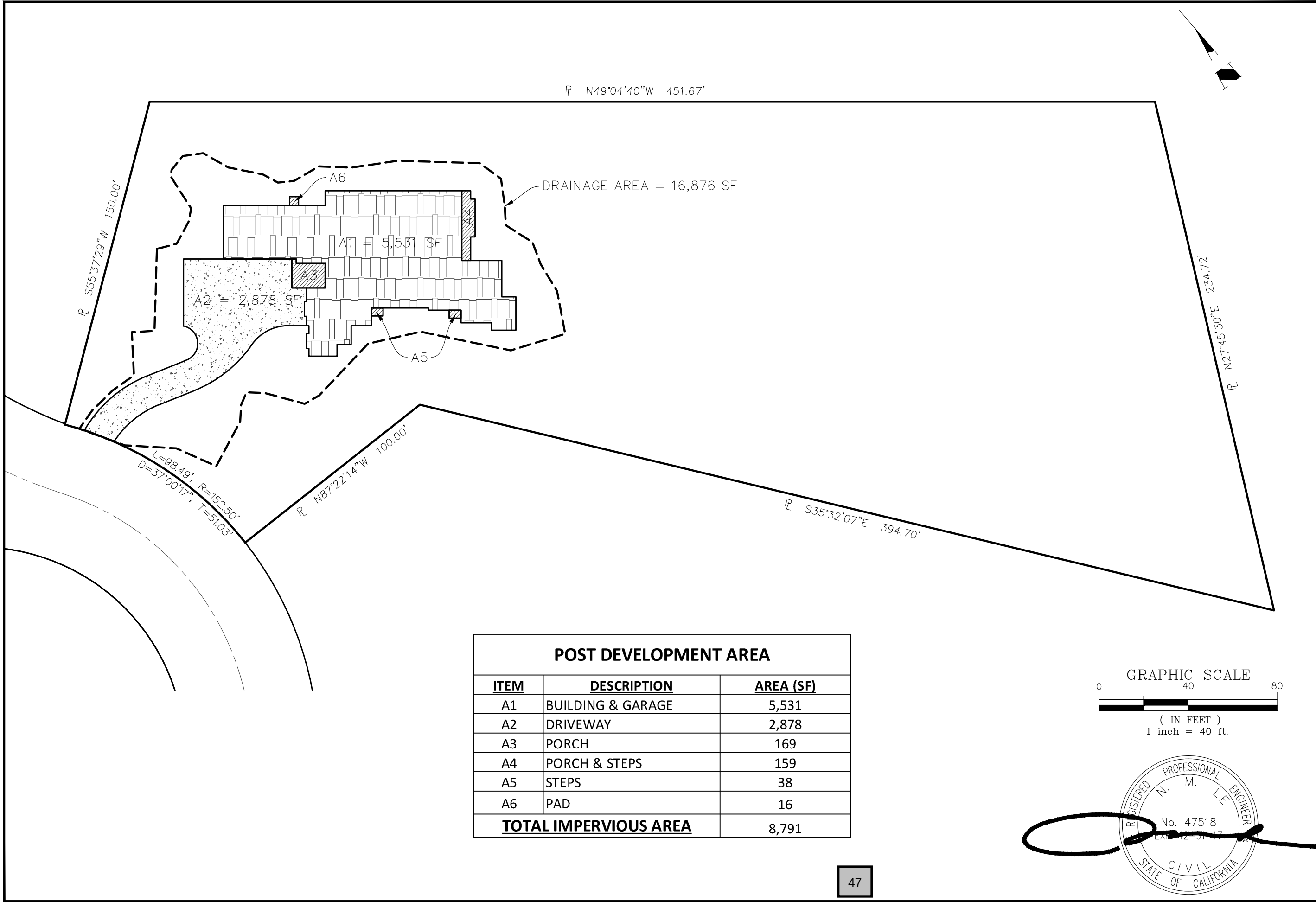
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File No. _____
E.P. No. _____
Sheet 8 of 9



DRAWING NO.

SHT NO.

FILE NO.

OF

MLPTAS

PROJECT NO.

CONTRACT NO.

IMPERVIOUS AREA (POST-DEVELOPMENT)

LANDS OF RAO AND TRIVEDI

528 VISTA RIDGE DRIVE

APN 042-30-016

ENGINEERING

598 E Santa Clara St #270

San Jose, CA 95112

Phone: (408) 806-7187

Fax: (408) 583-4006

DESIGNED

DATE

08/07/17

DRAWN

DATE

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CHECKED

DATE

08/07/17

BY

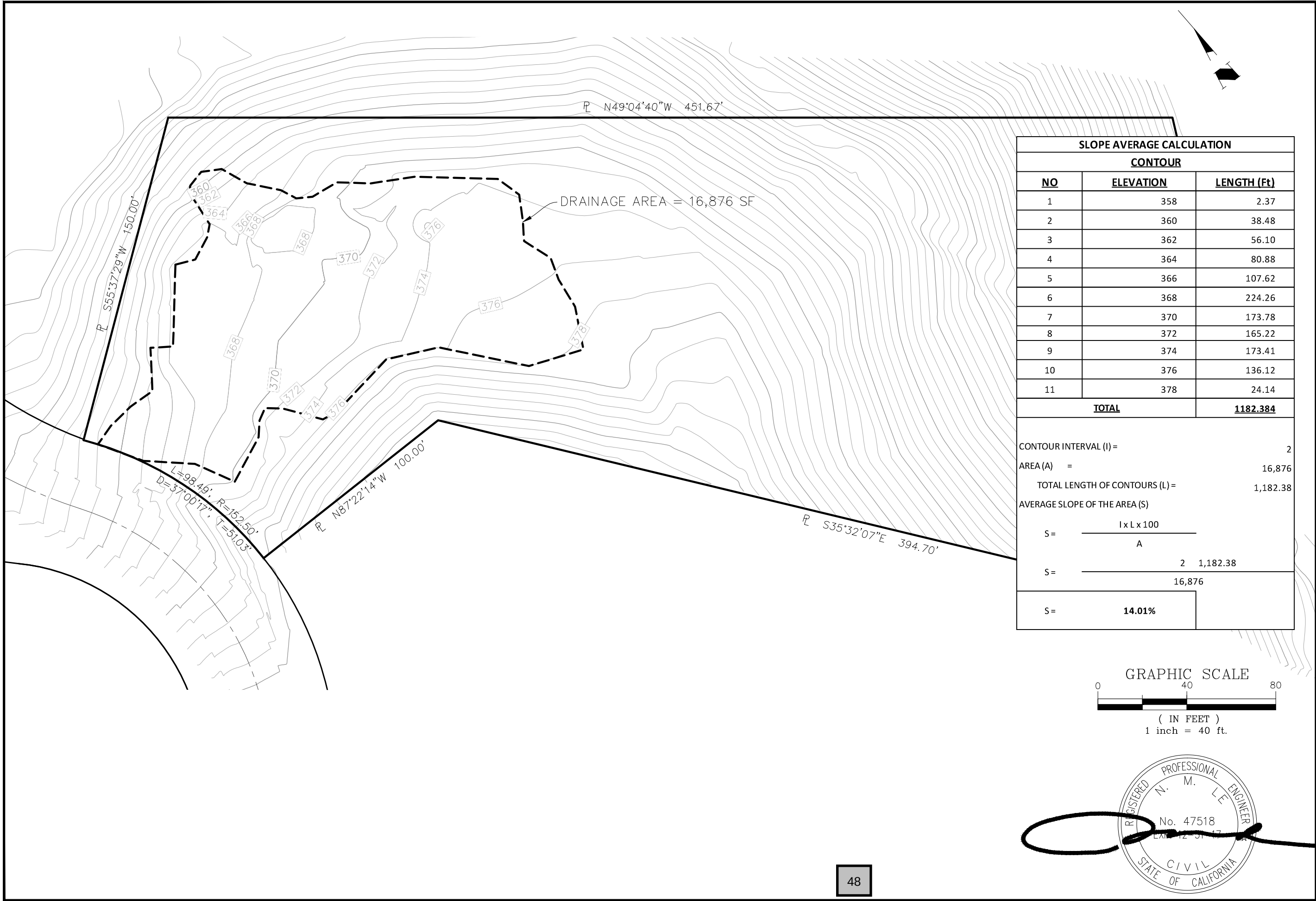
DATE

APPROVED

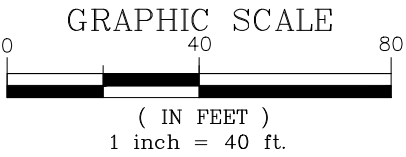
DATE

REVISIONS

NO.



SLOPE AVERAGE CALCULATION		
CONTOUR		
NO	ELEVATION	LENGTH (Ft)
1	358	2.37
2	360	38.48
3	362	56.10
4	364	80.88
5	366	107.62
6	368	224.26
7	370	173.78
8	372	165.22
9	374	173.41
10	376	136.12
11	378	24.14
TOTAL		1182.384
CONTOUR INTERVAL (I) = 2		
AREA (A) = 16,876		
TOTAL LENGTH OF CONTOURS (L) = 1,182.38		
AVERAGE SLOPE OF THE AREA (S)		
$S = \frac{I \times L \times 100}{A}$		
$S = \frac{2 \times 1,182.38}{16,876}$		
S = 14.01%		



DRAWING NO.

SHT NO.

FILE NO.

OF

MLPTA8

PROJECT NO.

CONTRACT NO.

AVERAGE SLOPE CALCULATION

LANDS OF RAO AND TRIVED

528 VISTA RIDGE DRIVE

AFN 042-30-016

CALIFORNIA

ENGINEERING

598 E Santa Clara St #270

San Jose, CA 95112

Phone: (408) 806-7187

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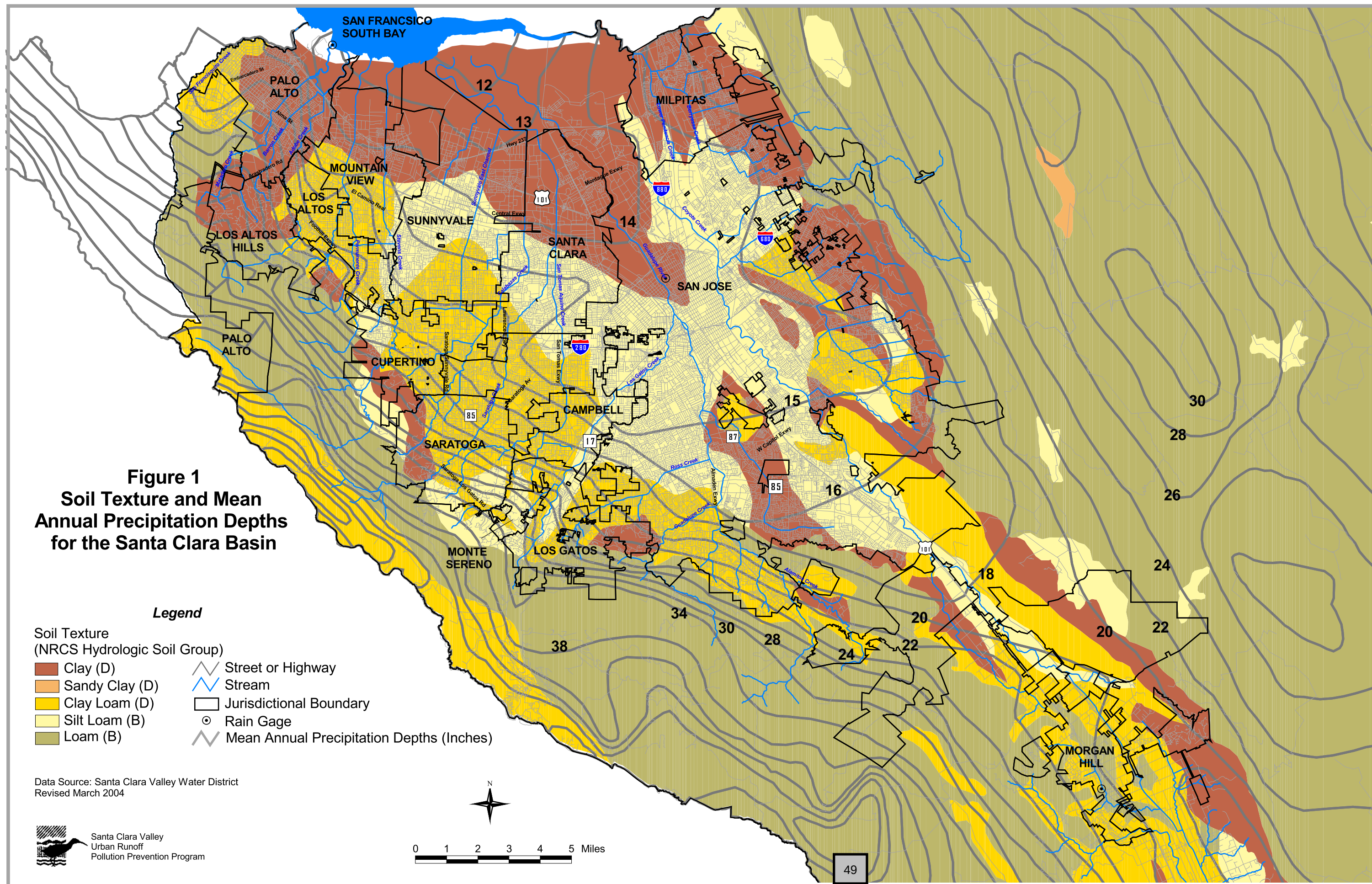
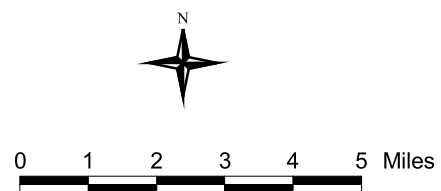
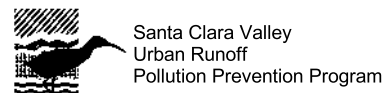
REVISIONS

NO.

Figure 1
Soil Texture and Mean
Annual Precipitation Depths
for the Santa Clara Basin

- Legend**
- | | |
|--|---|
| Soil Texture
(NRCS Hydrologic Soil Group) | |
|  Clay (D) |  Street or Highway |
|  Sandy Clay (D) |  Stream |
|  Clay Loam (D) |  Jurisdictional Boundary |
|  Silt Loam (B) |  Rain Gage |
|  Loam (B) |  Mean Annual Precipitation Depths (Inches) |

Data Source: Santa Clara Valley Water District
 Revised March 2004



SEPTIC SYSTEM CONSTRUCTION NOTES

A. PROJECT REQUIREMENTS

- SYSTEM TO SERVE A NEW 5 BEDROOM, 6,000 SF MAX HOUSE. INSTALLATION OF SYSTEM TO CONFORM TO SANTA CLARA COUNTY SEWAGE DISPOSAL ORDINANCE. CALL SANTA CLARA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH 24 HOURS MIN. PRIOR TO START OF WORK AT (408)-918-3400.
- SEWAGE DISPOSAL SYSTEM CONSISTS OF A 1,500 GALLON SEPTIC TANK WITH WATER TIGHT ACCESS RISERS TO GRADE, BULL-RUN DIVERSON VALVE, AND TWO 214" X 214" DISPERSAL FIELDS OF 18" WIDE BY 15' DEEP DRAINROCK BED WITH INSPECTION RISERS TO GRADE. THE DISPERSAL FIELDS SHALL BE INTERCONNECTED WITH A DIVERSON VALVE. THE VALVE MUST BE CAPABLE OF DIRECTING THE SEPTIC TANK EFFLUENT TO ONE DISPERSAL FIELD AT A TIME.
- GROUND SLOPE OF DISPERSAL FIELD #1 & DISPERSAL FIELD #2 IS APPROXIMATELY 1%. DISPERSAL FIELDS SHALL BE INSTALLED LEVEL AND ON CONTOURS AS SHOWN ON PLAN. EXCESS SOIL FROM LEACHFIELD CONSTRUCTION SHALL BE SPREAD ON SITE AT A DEPTH OF 8" MAX OR BE REMOVED OFF-SITE.
- THE DIVERSON VALVE SHALL BE OPERATED ANNUALLY TO ROTATE THE USE OF DISPERSAL FIELDS TO EXTEND THE LIFE OF THE SEPTIC SYSTEM.
- MARK CAPS OF ALL BULL RUN VALVES (DV) AND RISERS (R) WITH A PERMANENT MARKER OR LABEL.
- SWIMMING POOLS OR SPAS MUST NOT BE DRAINED OR BACKWASHED INTO THE SEPTIC SYSTEM.
- AVOID PLANTING TREES IN DISPERSAL FIELD OR CLOSE TO SEPTIC TANK.
- GARBAGE DISPOSAL IS NOT RECOMMENDED. IF THEY ARE INSTALLED, THEY SHOULD BE USED SPARINGLY OR NOT AT ALL.
- THE SOLIDS THAT ACCUMULATE IN THE SEPTIC TANK SHOULD BE REMOVED BY PUMPING EVERY 3-5 YEARS TO PREVENT SOLIDS FROM ENTERING AND CLOGGING THE DISPERSAL FIELD.
- ALL WORK TO BE PERFORMED BY AN APPROPRIATELY LICENSED CONTRACTOR.
- PRIOR TO STARTING CONSTRUCTION, CONTRACTOR SHALL CONTACT USA AT 1-800-227-2600 TO LOCATE ALL UNDERGROUND UTILITIES.

B. SEPTIC TANK REQUIREMENTS

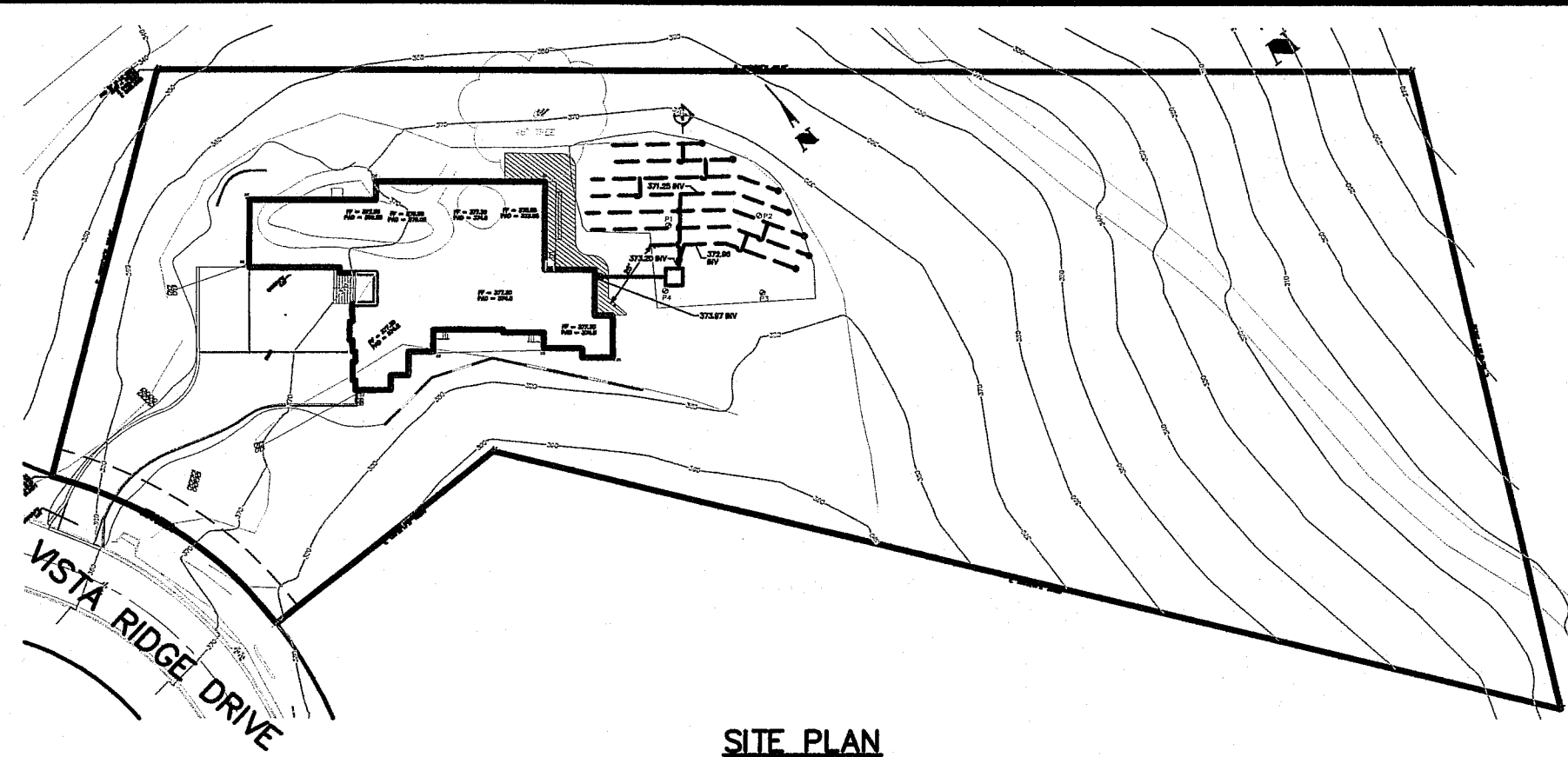
- MINIMUM CAPACITY. SEPTIC TANKS MUST HAVE A MINIMUM CAPACITY OF FIFTEEN HUNDRED(1,500) GALLONS OR TWICE THE PEAK DAILY WASTEWATER FLOW FOR THE FACILITY SERVED, WHICHEVER IS GREATER. MINIMUM SEPTIC TANK CAPACITY FOR ASSISTED CARE FACILITIES SHALL BE EQUAL TO THREE TIMES THE PEAK DAILY WASTEWATER FLOW.
- TWO COMPARTMENTS. SEPTIC TANKS MUST BE OF TWO-COMPARTMENT CONSTRUCTION, WITH THE FIRST COMPARTMENT EQUAL TO TWO-THIRDS THE TOTAL TANK VOLUME. THE COMPARTMENTS MUST BE SEPARATED BY A Baffle OR EQUIVALENT ARRANGEMENT.
- MATERIALS. SEPTIC TANKS MUST BE WATER TIGHT, PROPERLY VENTED AND CONSTRUCTED OF REINFORCED CONCRETE, HEAVYWEIGHT REINFORCED CONCRETE BLOCKS, FIBERGLASS OR OTHER DURABLE, NON-CORRODIBLE MATERIALS AS APPROVED BY THE DIRECTOR. SEPTIC TANKS SHALL BE DESIGNED TO WITHSTAND ANY ANTICIPATED WEIGHT PLACED ABOVE IT. ALL SEPTIC TANKS SHALL BE LISTED AND APPROVED BY IAPMO OR AN ANSI ACCREDITED TESTING ORGANIZATION. EXCEPTION TO THIS REQUIREMENT MAY BE GRANTED WHERE STRUCTURAL DESIGN CALCULATIONS FOR THE SEPTIC TANK ARE PROVIDED BY A CALIFORNIA REGISTERED CIVIL ENGINEER.
- ACCESS OPENINGS. ACCESS TO EACH SEPTIC TANK COMPARTMENT MUST BE PROVIDED BY A MANHOLE OPENING AT LEAST TWENTY INCHES IN DIAMETER.
- ACCESS RISERS. A RISER MUST EXTEND FROM EACH MANHOLE OPENING TO OR ABOVE THE SURFACE OF THE GROUND. THE RISER MUST BE OF A SIZE LARGER THAN THE MANHOLE OPENING, BE BOTH GAS- AND WATER-TIGHT, BE CONSTRUCTED OF DURABLE MATERIAL AND EQUIPPED WITH A SECURE COVER.
- EFFLUENT FILTER. THE OUTLET OF THE SEPTIC TANK SHALL BE FITTED WITH AN EFFLUENT FILTER CAPABLE OF SCREENING SOLIDS IN EXCESS THREE-SIXTEENTHS (3/16) OF AN INCH IN DIAMETER AND CONFORMING TO NSF/ANSI STANDARD 46 OR AS OTHERWISE APPROVED BY THE DIRECTOR.
- TANK CONNECTIONS. ALL CONNECTIONS FROM BUILDING TO SEPTIC TANK MUST CONFORM TO CONSTRUCTION STANDARDS AS REQUIRED BY THE COUNTY BUILDING OFFICIAL.
- WATER-TIGHTNESS TESTING. ALL NEW SEPTIC TANK INSTALLATIONS AND MODIFICATIONS TO EXISTING SEPTIC TANKS SHALL UNDERGO WATER-TIGHTNESS TESTING AS FOLLOWS:
A) NEW TANKS. FOR NEW TANK INSTALLATIONS, THE TESTING SHALL BE DONE WITH THE RISERS IN PLACE AND THE INLET AND OUTLET PIPES PLUGGED. THE TANK SHALL BE FILLED WITH WATER TO A LEVEL EXTENDING A MINIMUM OF TWO (2) INCHES INTO THE RISERS, AND MONITORED FOR A 1- HOUR PERIOD, WITH NO MEASURABLE DROP IN THE WATER LEVEL.
B) EXISTING TANKS. FOR EXISTING TANKS, THE TANK SHALL BE FILLED WITH WATER TO A LEVEL EVEN WITH THE INVERT OF THE OUTLET PIPE, AND MONITORED FOR A 1-HOUR PERIOD, WITH NO MEASURABLE DROP IN WATER LEVEL. HOWEVER, IN CASES WHERE THERE THE GROUNDWATER LEVEL IS KNOWN OR ESTIMATED TO RISE ABOVE THE LEVEL OF THE OUTLET PIPE DURING ANY TIME OF THE YEAR, THE WATER-TIGHTNESS TEST SHALL BE CONDUCTED FOLLOWING THE PROCEDURE FOR NEW TANK INSTALLATIONS; I.E., BY FILLING THE TANK WITH WATER INTO THE RISERS.

C. PIPE REQUIREMENTS

- SOLID PIPE, JOINTS AND CONNECTIONS. SOLID (NON-PERFORATED) PIPE FOR OWTS MUST CONFORM TO THE STANDARDS OF THE MOST RECENT EDITION OF THE UNIFORM PLUMBING CODE, WHICH IS ADOPTED BY REFERENCE INTO THE COUNTY'S BUILDING ORDINANCES. PIPE DIAMETER MUST BE FOUR INCHES. ALL SOLID PIPE JOINTS AND CONNECTIONS MUST BE GLOUED, CEMENTED OR MADE WITH AN ELASTOMERIC SEAL SO AS TO BE WATER TIGHT.
- TIGHTLINES UNDER RESIDENTIAL DRIVEWAY. TIGHTLINES IN RESIDENTIAL TRAFFIC AREAS MUST BE INSTALLED WITH SCHEDULE 40 PVC. AN ALTERNATIVE IS TO SLEEVE (I.E., DOUBLE PIPE) THE THIN WALL TIGHTLINE PIPE WITH AN OUTER PIPE CONSISTING OF SCHEDULE 40 PVC. ABS OR SUITABLE ALTERNATIVE AND RATED BY THE UNIFORM PLUMBING CODE.
- DISTRIBUTION PIPE. PERFORATED PIPE FOR CONVENTIONAL OWTS DISPERSAL SYSTEMS MUST CONFORM TO THE MOST RECENT EDITION OF THE UNIFORM PLUMBING CODE, WHICH IS ADOPTED BY REFERENCE INTO THE COUNTY'S BUILDING ORDINANCES. THE PIPE DIAMETER MUST BE FOUR INCHES.

D. DISPERSAL SYSTEM REQUIREMENTS

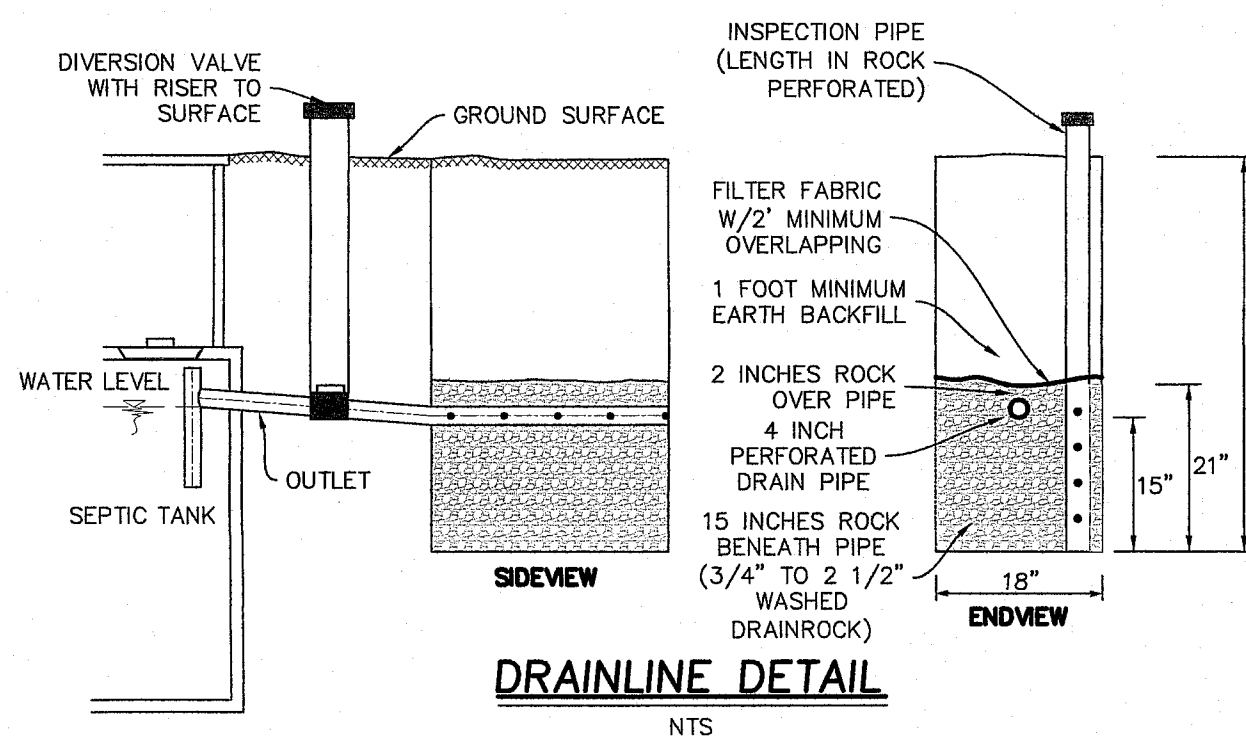
- TRENCH CONSTRUCTION.
A) TRENCHES MUST BE PLACED IN UNDISTURBED EARTH, IN AN ACCESSIBLE AREA, AND SHALL NOT BE COVERED BY PAVING OR OTHER IMPERMEABLE OR COMPACTED SURFACE. NATURAL TOPOGRAPHY SHALL NOT BE GRADED TO MODIFY SLOPE.
B) THE BOTTOM OF A TRENCH MUST BE LEVEL, WITH A VARIATION OF NO MORE THAN 2 INCHES PER 100 LINEAL FEET OF TRENCH; TRENCHES SHALL BE ALIGNED PARALLEL TO THE GROUND SURFACE CONTOURS TO THE GREATEST EXTENT PRACTICABLE.
C) ADJACENT TRENCHES ON SLOPES MUST BE CONNECTED WITH A WATER TIGHT OVERFLOW LINE ("RELIEF LINE") IN A MANNER THAT ALLOWS EACH TRENCH TO BE FILLED WITH SEWAGE EFFLUENT TO THE DEPTH OF THE ROCK BEFORE THE SEWAGE FLOWS TO THE NEXT LOWER TRENCH. ALTERNATIVELY, A DISTRIBUTION BOX (D-BOX) MAY BE USED TO EQUALLY DIVIDE THE FLOW AMONGST THE TRENCHES, PROVIDED THE PROPOSED D-BOX IS OF A DESIGN APPROVED AND LISTED BY THE DEH PER PART 3.1.E (MATERIALS AND EQUIPMENT) OF THIS MANUAL. FOR SYSTEMS LOCATED ON SITES HAVING SLOPES OF LESS THAN 3%, A "GRID" DESIGN MAY BE USED IN ACCORDANCE WITH GUIDELINES PROVIDED UNDER AT THE END OF THIS SECTION (E.3.F).
D) TRENCHES MUST NOT BE EXCAVATED WHEN THE SOIL IS SO WET THAT SMEARING OR COMPACTION OCCURS.
E) IN CLAY SOILS WHEN GLAZING OCCURS, THE TRENCH SURFACES MUST BE SCARIFIED TO THE DEPTH OF THE GLAZING AND THE LOOSE MATERIAL REMOVED.
F) ROCK MATERIAL IN THE TRENCH MUST BE WASHED AND FREE OF FINES, AND MUST BE COVERED WITH AN APPROVED FILTER FABRIC SILT BARRIER (GEOTEXTILE) PRIOR TO BACKFILLING WITH NATURAL EARTH.
G) A CAPPED INSPECTION RISER SHALL BE INSTALLED WITHIN EACH TRENCH TO PROVIDE A MEANS OF OBSERVING THE EFFLUENT LEVEL IN THE TRENCH.
H) EROSION CONTROL MEASURES SHALL BE IMPLEMENTED FOLLOWING INSTALLATION PER REQUIREMENTS OF SECTION B11-83(C) FOR ANY CONVENTIONAL DISPERSAL SYSTEM WHERE: (1) GROUND SLOPE EXCEEDS 20%; (2) ABOVE-GRADE COVER FILL IS ADDED; (3) DESIGN FLOW EXCEEDS 1,000 GPD; OR (4) A GRADING AND/OR DRAINAGE PERMIT IS REQUIRED FOR PROJECT SITE DEVELOPMENT PER DIVISION C12, CHAPTER II OF THE COUNTY CODE. THE PLAN SUBMITTAL FOR THE OWTS SHALL INCLUDE AN EROSION CONTROL PLAN IN ACCORDANCE WITH REQUIREMENTS OF ORDINANCE SECTION B11-83(C).



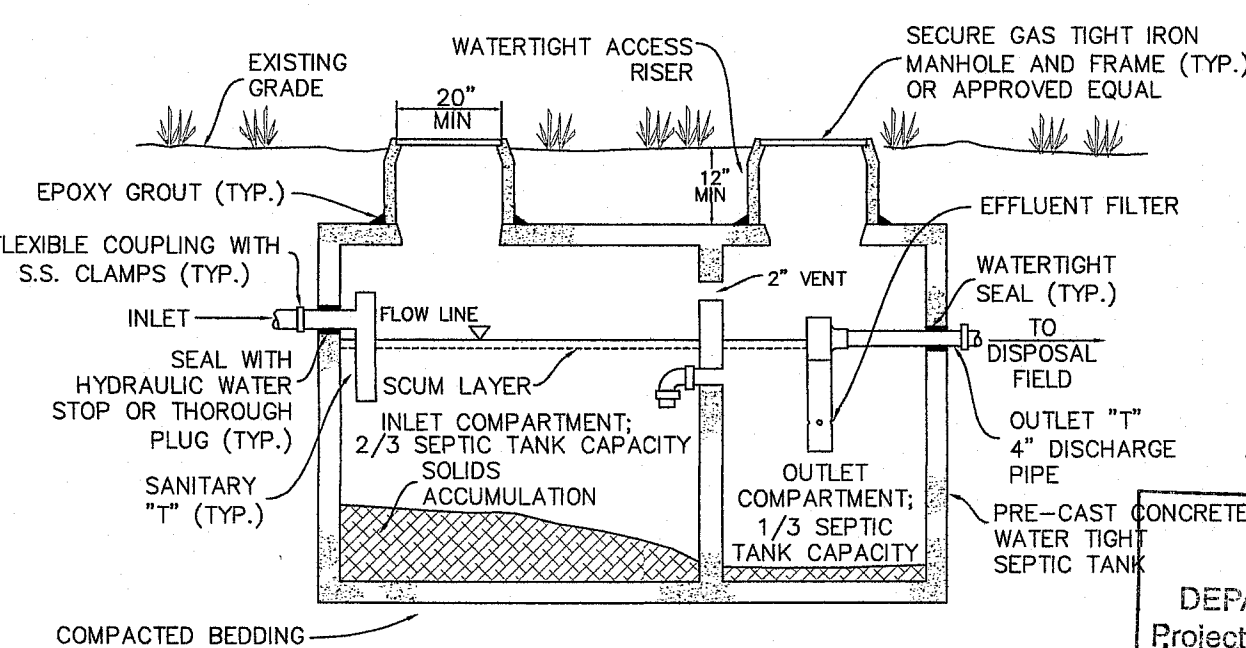
SITE PLAN
SCALE 1" = 60'

LEGEND

- 4" PVC SOLID PIPE
- 4" PVC PERFORATED PIPE
- DIV DIVERSON VALVE

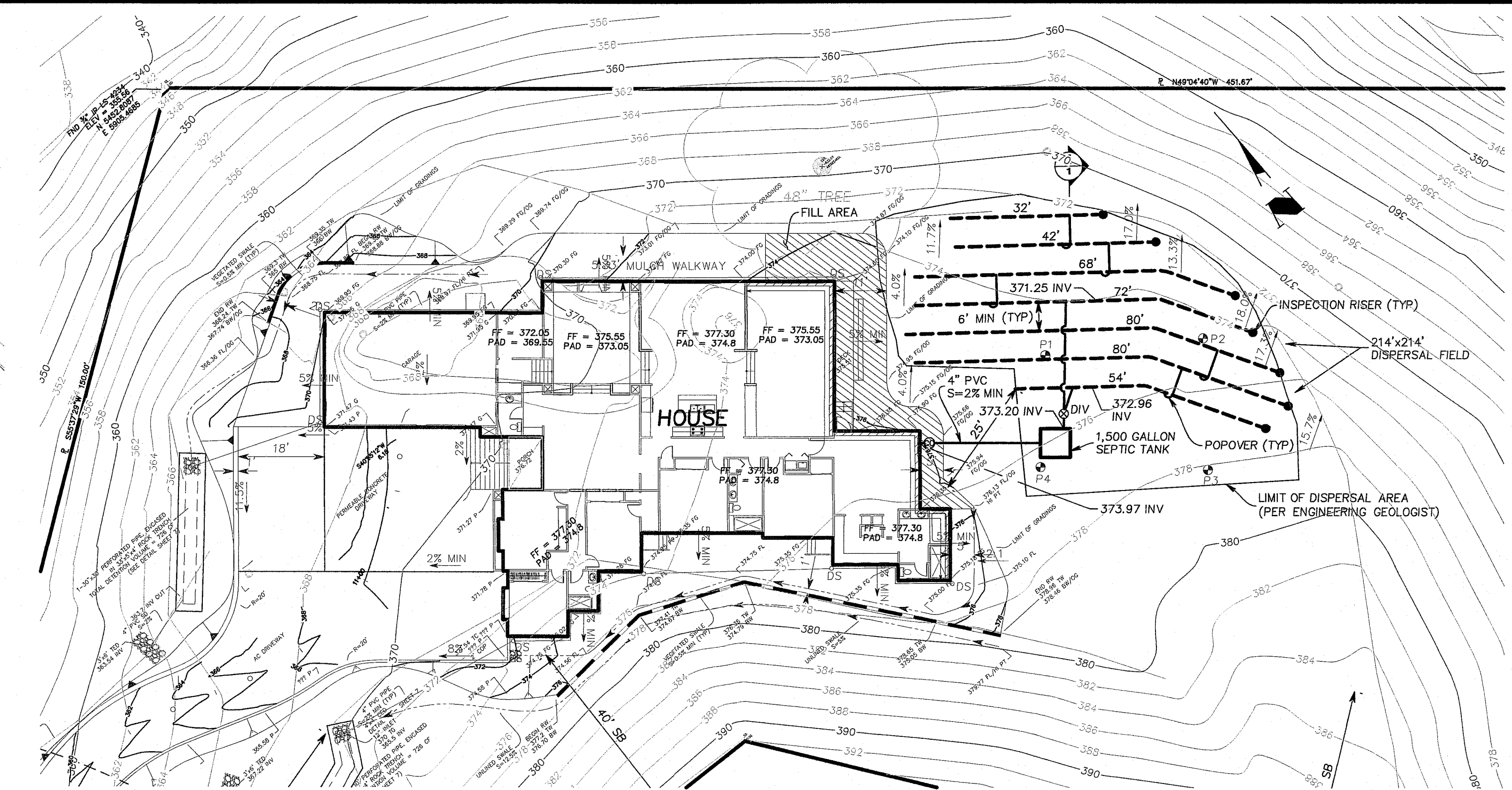
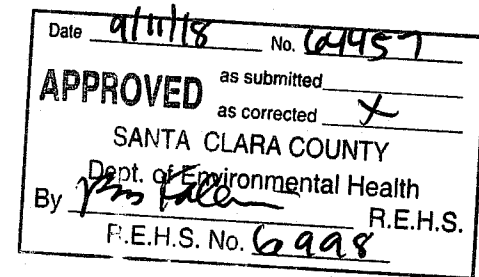


DRAINLINE DETAIL
NTS

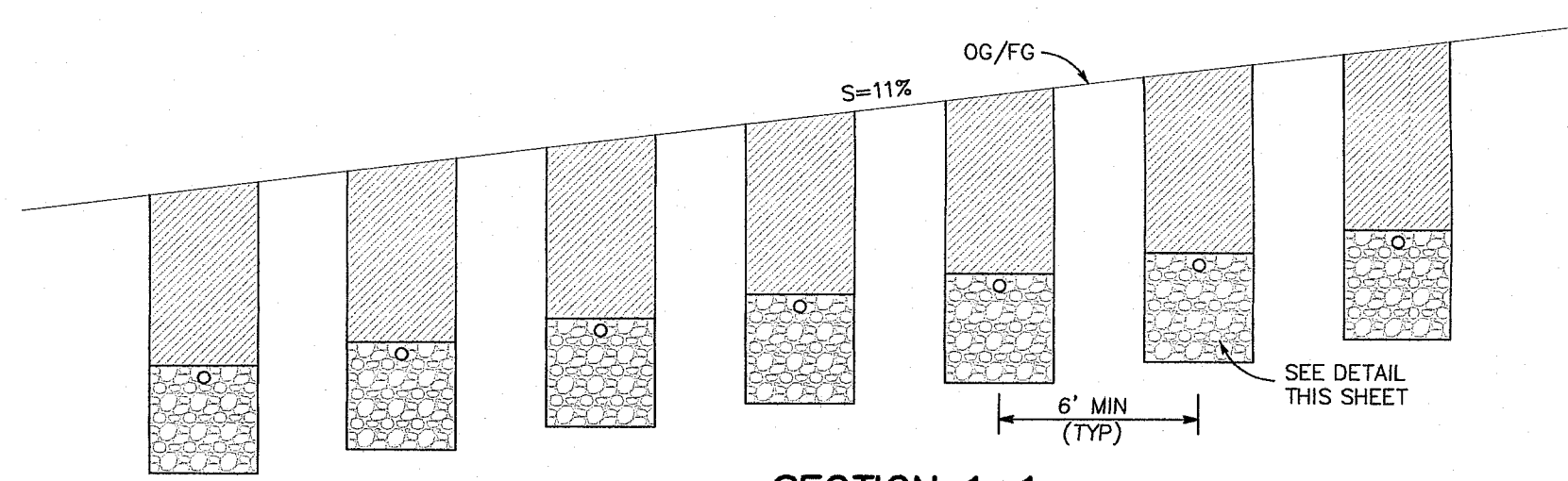


TYPICAL SEPTIC TANK CROSS-SECTION
NTS

CONCRETE TANKS MUST BE USED WHERE POSSIBLE. ALTERNATIVE MATERIALS ARE APPROVED ON A SITE SPECIFIC BASIS. THE DEPARTMENT OF ENVIRONMENTAL HEALTH MAINTAINS A LIST OF APPROVED SEPTIC TANKS.



SEPTIC SYSTEM PLAN
SCALE 1" = 20'



SECTION 1-1
NTS

PERCOLATION TEST RESULTS

HOLE	STABILIZED PERCOLATION RATE (MPI)*	ADJUSTED STABILIZED PERCOLATION RATE (MPI)**
P1	5	7
P2	4.2	5.88
P3	30	42
P4	6	8.4
TOTAL		63.28

SR053922
SEWAGE SYSTEM REVIEW
SANTA CLARA COUNTY
DEPARTMENT OF ENVIRONMENTAL HEALTH
Project Description: New 5 bedroom max
APPROVAL RECOMMENDED
[X] With existing system
[X] Install/modify system per plan (describe below)
(Obtain a permit from Environmental Health)
New 1500 gallon septic tank
214" x 214"
R.E.H.S. [Signature] Date 9/11/18
Not A Sewage System Permit

TABLE 3-4. CONVENTIONAL OWTS DISPERSAL TRENCH DESIGN

PARAMETER	REQUIREMENT
Trench length	Determined based on design flow and percolation rate; see below Recommended maximum of 100' per trench
Trench width	18 inches minimum; 36 inches maximum
Trench Depth	2.5 feet minimum; 8 feet maximum
Minimum cover over rock, in inches*	12 inches
Depth of rock under pipe (minimum)*	12 inches
Depth of rock over pipe (minimum)*	2 inches
Size of rock *	3/4 to 2 1/2 inches
Spacing of trenches, center to center, in feet, minimum	2 times the depth of rock below pipe; 6 feet minimum, plus 1-foot additional spacing for every 5% increase in dispersal area ground slope above 20%

*OTHER MATERIALS MAY BE SUBSTITUTED FOR DRAINROCK IN THE DISPERSAL TRENCHES IF IT IS DETERMINED BY THE DIRECTOR THAT THE MATERIAL WILL SERVE THE SAME FUNCTION AS DRAINROCK AS FOLLOWS: 1) SUPPORT THE TRENCH SIDEWALLS AND MAINTAIN THE INTEGRITY OF THE INFILTRATIVE SURFACE; AND 2) PROVIDE ADEQUATE STORAGE FOR SEPTIC TANK EFFLUENT SURGES. THE MAXIMUM DEPTH AND SPACING BETWEEN TRENCHES MAY NOT BE MODIFIED. MATERIALS APPROVED AS DRAINROCK SUBSTITUTES MUST PROVIDE EQUIVALENT EFFECTIVE INFILTRATIVE SURFACE CONSISTENT WITH TRENCH SIZING REQUIREMENTS PER PARAGRAPH E3 BELOW. REDUCTION IN TRENCH SIZING REQUIREMENTS, UP TO 30%, MAY BE APPROVED BY THE DIRECTOR FOR IAPMO-CERTIFIED DISPERSAL SYSTEMS.

Percolation Rate (MPI)	Application Rate (gpd/ft²)
15	0.72
16	0.70
17	0.68
18	0.67

*COUNTY OF SANTA CLARA - DEH
ONSITE SYSTEM MANUAL - MAY 2014

DISPERSAL TRENCH LENGTH CALCULATIONS

REFERENCE
SANTA CLARA COUNTY ONSITE
SYSTEM MANUAL (OSM), MAY 2014
WASTEWATER DESIGN FLOW (WWDF)
NO. BEDROOM = 5
FROM TABLE 3-1 OSM
5 BEDROOM = 600 GAL/DAY
WWDF = 600 GAL/DAY

STANDARD WASTEWATER APPLICATION RATES (SWAR)

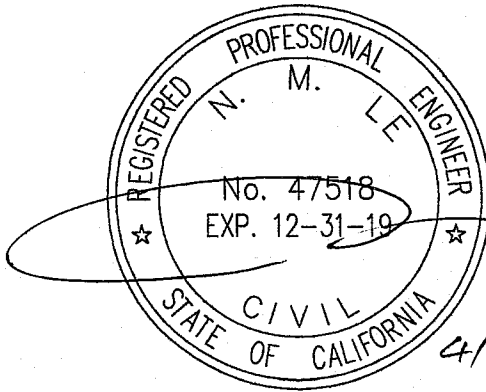
AVERAGE ADJUSTED PERCOLATION RATE = 16 MPI
FROM TABLE 1 OSM WITH 16 MPI:
SWAR = 0.70

TRENCH LENGTH CALCULATIONS

$L = \frac{Q}{RA}$
L = TRENCH LENGTH;
Q = DESIGN WASTEWATER FLOW (GPD)
R = SWAR (GPD/SF)
A = TOTAL INFILTRATIVE AREA PER LINEAL FOOT OF TRENCH (SF)
WITH LEACHFIELD AREA GROUND SLOPE < 20% & SOIL PERCOLATION RATE BETWEEN 5 AND 60 MPI USE INFILTRATIVE SURFACE OF 4 SF
 $L = \frac{600}{(0.70)4} = 214.29'$; USE 214'

*TABLE 3-1
WASTEWATER DESIGN FLOWS FOR SINGLE FAMILY RESIDENCES AND SECOND UNITS

No. of Bedrooms	Design Flow (gpd/day)
1	150
2	300
3	450
4	525
5	600
6	675
>6	+75 per bedroom



ENGINEERING
598 E Santa Clara St. #270
San Jose, CA 95121
Phone: (408) 806-7187
Fax: (408) 583-4006

SEPTIC SYSTEM PLAN
529 VISTA RIDGE DR
APN 042-30-015

DRAWING NO. **391**
SHEET NO. **1** OF **2**
FILE NO. **391**

PROJECT NO. **Mipitas**

CONTRACT NO.

REVISIONS
BY DATE APP'D

DATE
03/23/18
03/23/18
03/23/18

CHECKED
DATE
03/23/18

SCALE
1" = 20'

DATE
03/23/18

DATE
03/23/18

DATE
03/23/18

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03/23/18

DATE
03/23/18

APPLICANT : **PLANS**

ROAD NAME : VISTA RIDGE DR

FILE NO : .

memorandum

TO: PETER		FROM: Amir Pourshahidi	
SUBJECT: PERC. TEST @ Spring Valley Heights (LOT #15)		DATE: 8-16-89	
CITY OF MILPITAS			
STABILIZED PERC. RATE (MIN./IN.)	# BEDROOMS: 4	# BATHROOMS: 2 1/2	
P1 5 min/in	RECOMMENDATION:		
P2 4.2 min/in	SEPTIC TANK VOLUME (GAL.) 1500		
P3 30 min/in	LENGTH OF TRENCH (FT.) 300 ft		
P4 6 min/in	FOR EACH SYSTEM		
AVERAGE (P) = 11.3 min/in	NOTE: Based upon the proposed occupancy for your residence, the drainfield requirement will be 300 ft + 300 ft feet connected by a bull run diversion valve and a septic tank of a minimum size of 1500 gallons.		
$C = \frac{6.24 \times (P)}{29} = 0.6$ $L = \frac{1000 \times (C)}{2} = 300 \text{ ft}$			

LOT # 15
OWNER - Jen Huang
12376 Priscilla Lane
LOS ALTOS HILLS, 94022
263-7427

ENVIRONMENTAL HEALTH SERVICES		FILE NO. 263-7427	
SOIL PERCOLATION TEST Jen Huang 263-7427			
SUBDIVISION OR PROPERTY		Location Spring Valley Heights, Milpitas	
Name Spring Valley Heights (LOT #15)		Location See map	
TEST HOLE	No. P1	Depth before test 7'	Depth after test 6'
WATER APPLICATION	Diameter 12"	Fillings	Started Finished
	Water added from:		
	Hose	First 11:30	11:32
	Tank Truck	Second	
	Barrel	Third	
OBSERVATIONS	Time 11:32	Water depth from surface	Elapsed Time in minutes
	12:02	20"	30
	12:32	27"	30
	1:02	33"	30
	1:32	39"	30
Stabilized Percolation Rate (min. per inch) 5 min/in Adjusted Rate = $5 \times 1.4 = 7 \text{ mpi}$			
REMARKS: Dark clay soil, no water remained in hole from pre-soaking.			
SANITARIAN: Amir Pourshahidi Date 8/16/89			
NOTE: If less than hourly readings are used to determine percolation rate, holes must be filled at least three times.			

ENVIRONMENTAL HEALTH SERVICES		FILE NO. 263-7427	
SOIL PERCOLATION TEST Jen Huang 263-7427			
SUBDIVISION OR PROPERTY		Location Spring Valley Heights, Milpitas	
Name Spring Valley Heights (LOT #15)		Location See map	
TEST HOLE	No. P2	Depth before test 7'	Depth after test 6'
WATER APPLICATION	Diameter 12"	Fillings	Started Finished
	Water added from:		
	Hose	First 11:32	11:34
	Tank Truck	Second	
	Barrel	Third	
OBSERVATIONS	Time 11:34	Water depth from surface	Elapsed Time in minutes
	12:04	19"	30
	12:34	29"	30
	1:04	36"	30
	1:34	43"	30
Stabilized Percolation Rate (min. per inch) 4.2 min/inch Adjusted Rate = $4.2 \times 1.4 = 5.88 \text{ mpi}$			
REMARKS: Dark clay soil, no water remained in the hole from pre-soaking.			
SANITARIAN: Amir Pourshahidi Date 8/16/89			
NOTE: If less than hourly readings are used to determine percolation rate, holes must be filled at least three times.			

ENVIRONMENTAL HEALTH SERVICES		FILE NO. 263-7427	
SOIL PERCOLATION TEST Jen Huang 263-7427			
SUBDIVISION OR PROPERTY		Location Spring Valley Heights, Milpitas	
Name Spring Valley Heights (LOT #15)		Location See map	
TEST HOLE	No. P3	Depth before test 7'	Depth after test 6'
WATER APPLICATION	Diameter 12"	Fillings	Started Finished
	Water added from:		
	Hose	First 11:35	11:37
	Tank Truck	Second	
	Barrel	Third	
OBSERVATIONS	Time 11:37	Water depth from surface	Elapsed Time in minutes
	12:07	2 1/2"	30
	12:37	4"	30
	1:07	5"	30
	1:37	6"	30
Stabilized Percolation Rate (min. per inch) 30 min/inch Adjusted rate = $30 \times 1.4 = 42 \text{ mpi}$			
REMARKS: Dark clay soil, some water remained in the hole from pre-soaking.			
SANITARIAN: Amir Pourshahidi Date 8/16/89			
NOTE: If less than hourly readings are used to determine percolation rate, holes must be filled at least three times.			

ENVIRONMENTAL HEALTH SERVICES		FILE NO. 263-7427	
SOIL PERCOLATION TEST Jen Huang 263-7427			
SUBDIVISION OR PROPERTY		Location Spring Valley Heights, Milpitas	
Name Spring Valley Heights (LOT #15)		Location See map	
TEST HOLE	No. P4	Depth before test 7'	Depth after test 6'
WATER APPLICATION	Diameter 12"	Fillings	Started Finished
	Water added from:		
	Hose	First 11:38	11:40
	Tank Truck	Second	
	Barrel	Third	
OBSERVATIONS	Time 11:40	Water depth from surface	Elapsed Time in minutes
	12:10	33"	30
	12:40	42"	30
	1:10	50"	30
	1:40	55"	30
Stabilized Percolation Rate (min. per inch) 6 min/inch Adjusted rate = $6 \times 1.4 = 8.4 \text{ mpi}$			
REMARKS: Dark clay soil - no water remained in the hole from pre-soaking.			
SANITARIAN: Amir Pourshahidi Date 8/16/89			
NOTE: If less than hourly readings are used to determine percolation rate, holes must be filled at least three times.			

County of Santa Clara
Health Department

2220 Moorpark Avenue
San Jose, California 95128



August 17, 1989

JEN HUANG
12376 PRISCILLA LANE
LOS ALTOS HILLS, CA 94022

RE: PERCOLATION TEST RESULTS
SPRING VALLEY HEIGHTS, LOT #15 (529 Vista Ridge)
MILPITAS, CA

On August 16, 1989 percolation tests were conducted on the above property for a single family residence to determine the drainfield requirement.

Based upon the proposed occupancy of your residence. The drainfield requirement will be 300 feet + 300 feet = 600 feet connected by a bull run diversion valve and a septic tank of minimum size of 1500 gallons.

If you desire any further information or assistance, please contact the undersigned any week day between 8:00 AM and 9:00 AM at 1650-K Las Plumas Avenue, San Jose, CA 95133. Our office phone number is (408) 729-5155 and our fax number is (408) 258-5891.

Amir Pourshahidi, R.E.H.S.

AMIR POURSHAHIDI, R.E.H.S.
REGISTERED ENVIRONMENTAL HEALTH SPECIALIST
ENVIRONMENTAL HEALTH SERVICES

AP:td

Board of Supervisors: Susanna Wilson, Zoe Lofgren, Ron Gonzales, Brad Dinkins, Dianne McKenna
County Executive: Sally K. Reed



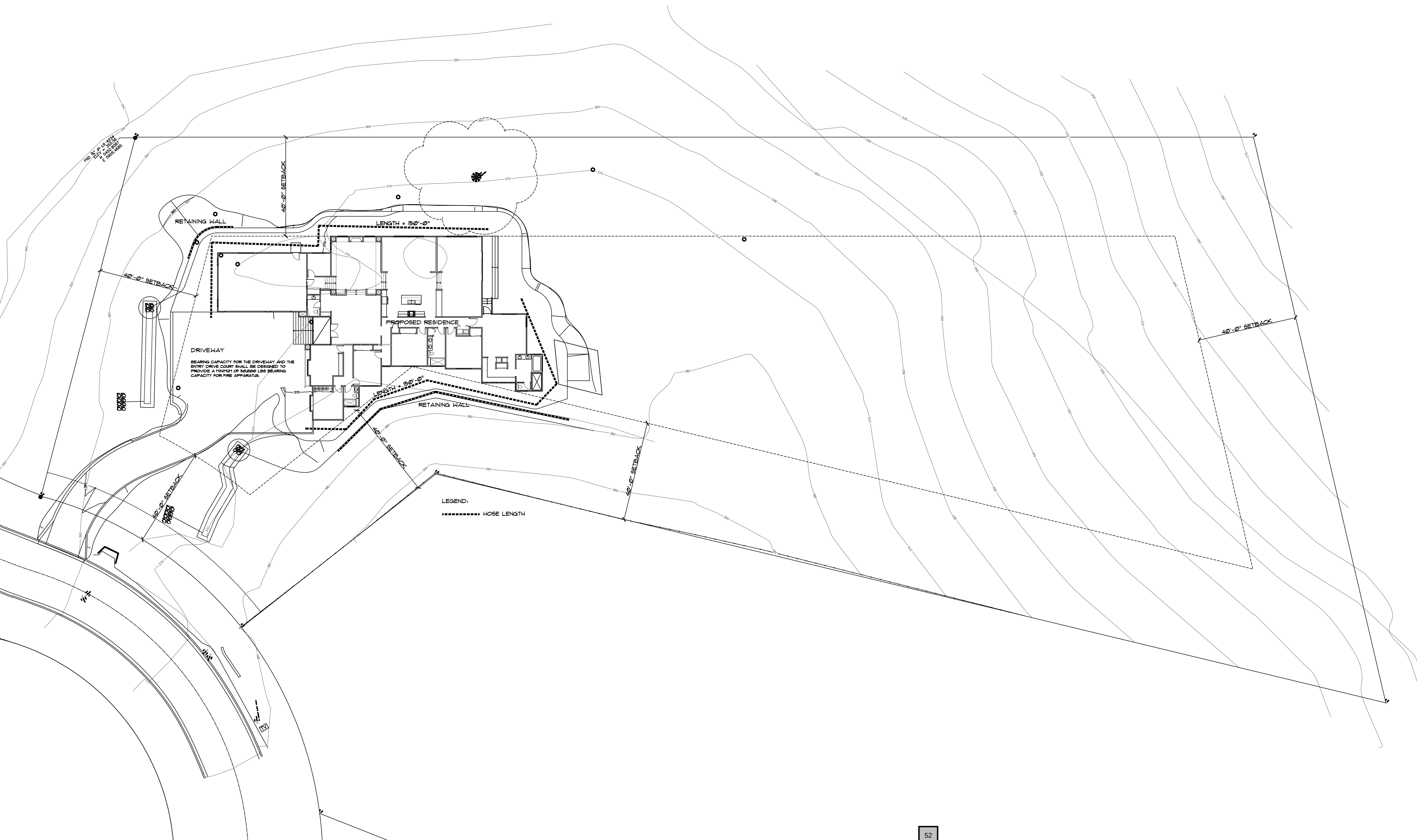
ENGINEERING		598 E Santa Clara St. #270 San Jose, CA 95112 Phone: (408) 806-7187 Fax: (408) 583-4006	
SEPTIC SYSTEM PLAN		529 VISTA RIDGE DR APN 042-30-015	
California		Milpitas	
382		2 OF 2	
DRAWING NO.		PROJECT NO.	
SHEET NO.		CONTRACT NO.	
FILE NO.		DATE	
BY		DATE	
APPROVED		DATE	
REVISIONS		NO.	

APPLICANT :

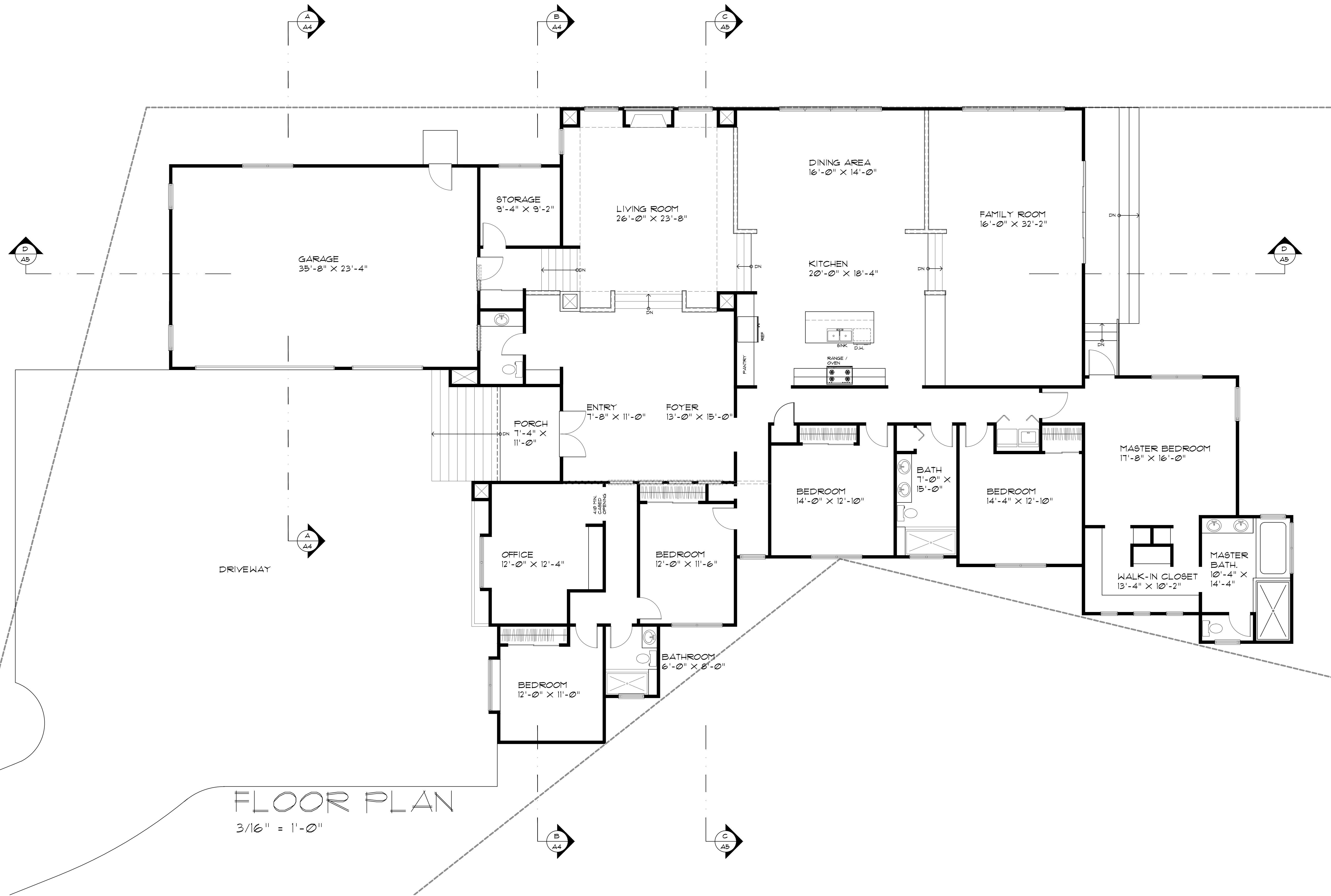
ROAD NAME : VISTA RIDGE DR

FILE NO : .

h
SITE PLAN
1" = 20'-0"
APN 042-30-015



Revisions	By
10/26/2018	GF
INNOVATIVE CONCEPTS PROFESSIONAL BUILDING DESIGN AND PLANNING 3550 Stevens Creek Blvd Suite 225 San Jose, CA 95117 Phone: (408) 985-1078 E-Mail: imc3d@4global.net	
A New Single Family Residence for: The Rao-Trivedi Residence 529 Vista Ridge Drive Milpitas, CA 95035	
Date	08/16/2017
Scale	NOTED
Drawn	GF
Job	
Sheet	A0



FLOOR PLAN
3/16" = 1'-0"

Revisions	By
10/26/2018	GF

INNOVATIVE CONCEPTS
PROFESSIONAL BUILDING DESIGN AND PLANNING
3550 Stevens Creek Blvd Suite 225
San Jose, CA 95117
Phone: (408) 985-1078
E-Mail: innco2@aiglobal.net

A New Single Family Residence for:
The Rao-Trivedi Residence
529 Vista Ridge Drive
Milpitas, CA 95035

Date	08/16/2017
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Sheet	A1

Of Sheets



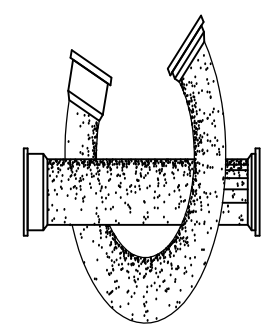
FRONT ELEVATION
3/16" = 1'-0"



RIGHT-SIDE ELEVATION
3/16" = 1'-0"

Revisions	By
10/26/2018	GF

INNOVATIVE CONCEPTS
PROFESSIONAL BUILDING DESIGN AND PLANNING
3550 Stevens Creek Blvd Suite 225
San Jose, CA 95117
Phone: (408) 985-1078
E-Mail: innco2@4global.net



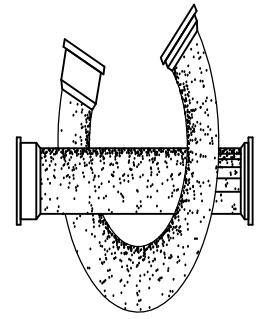
A New Single Family Residence for:
The Rao-Trivedi Residence
529 Vista Ridge Drive
Milpitas, CA 95035

Date	08/16/2017
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Revisions	By
10/26/2018	GF

INNOVATIVE CONCEPTS
 PROFESSIONAL BUILDING DESIGN AND PLANNING
 3550 Stevens Creek Blvd Suite 225
 San Jose, CA 95117
 Phone: (408) 985-1078
 E-Mail: imcp@4global.net

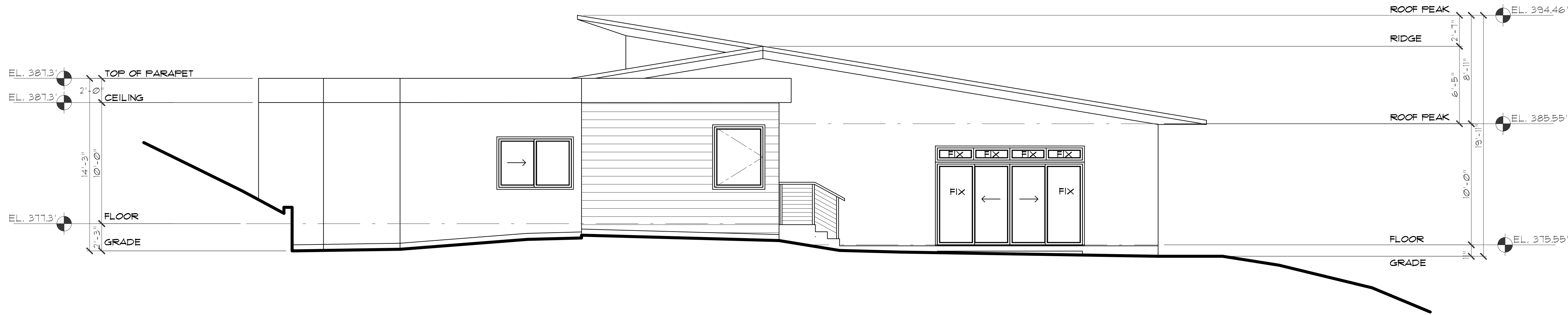


A New Single Family Residence for:
 The Rao-Trivedi Residence
 529 Vista Ridge Drive
 Milpitas, CA 95035

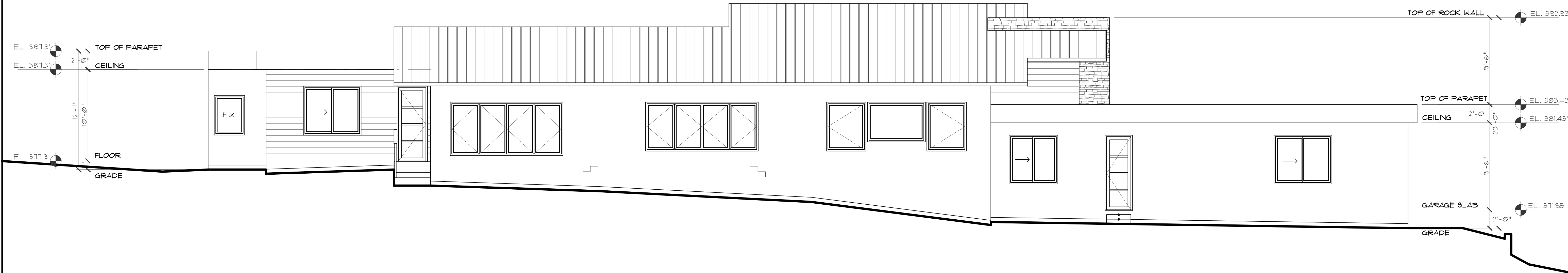
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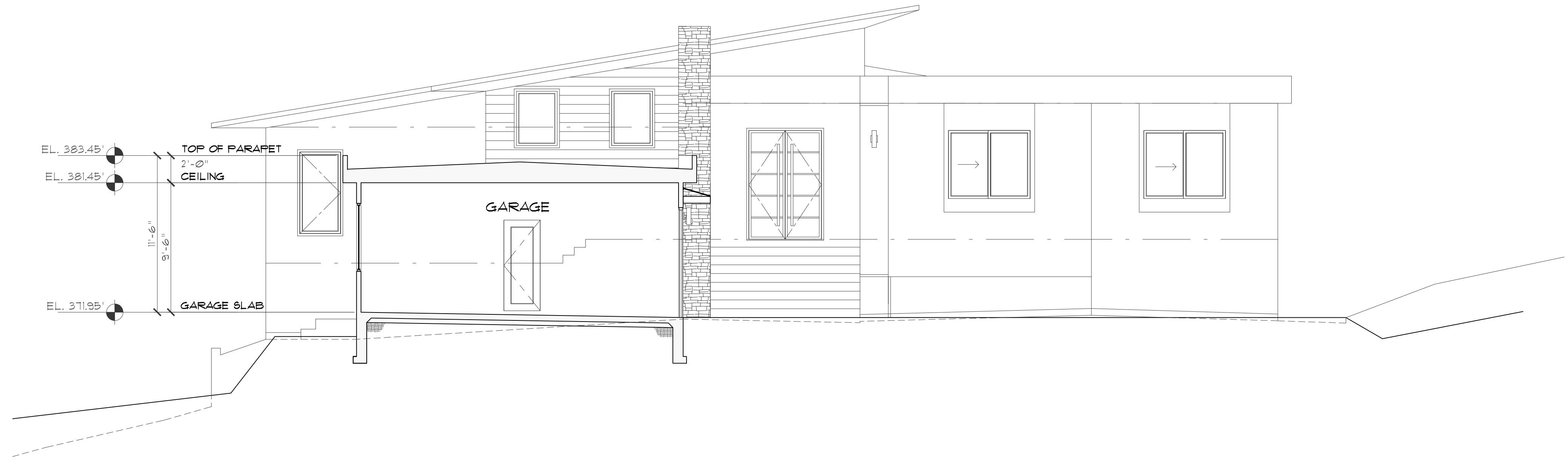
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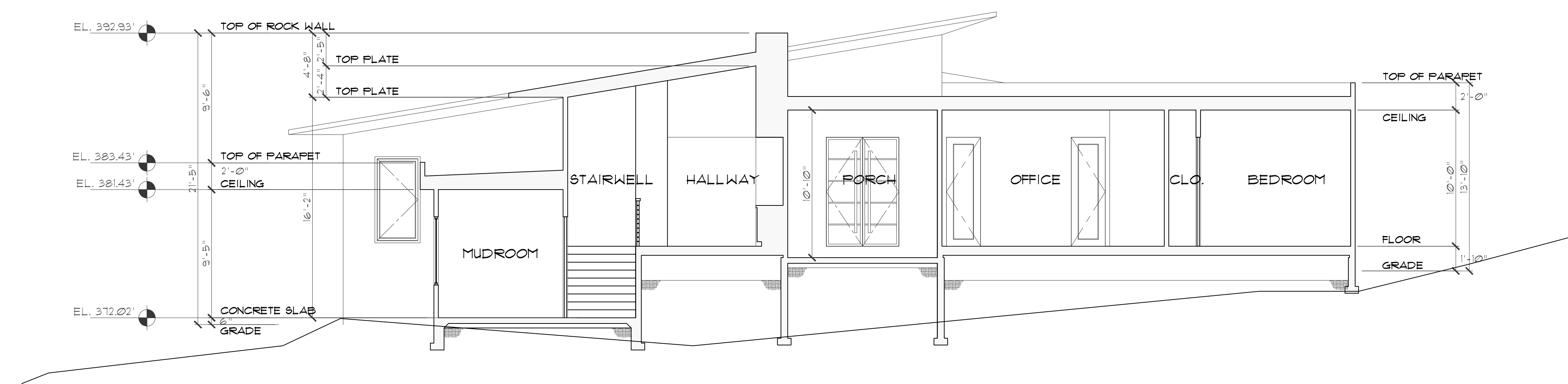
REAR ELEVATION
 3/16" = 1'-0"



LEFT-SIDE ELEVATION
 3/16" = 1'-0"



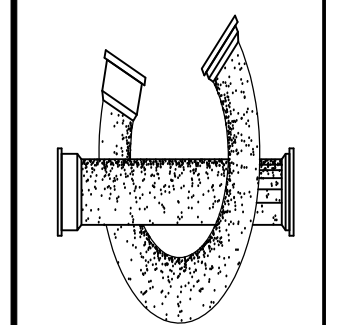
SECTION 'A' = 'A'
3/16" = 1'-0"



SECTION 'B' = 'B'
3/16" = 1'-0"

Revisions	By
10/26/2018	GF

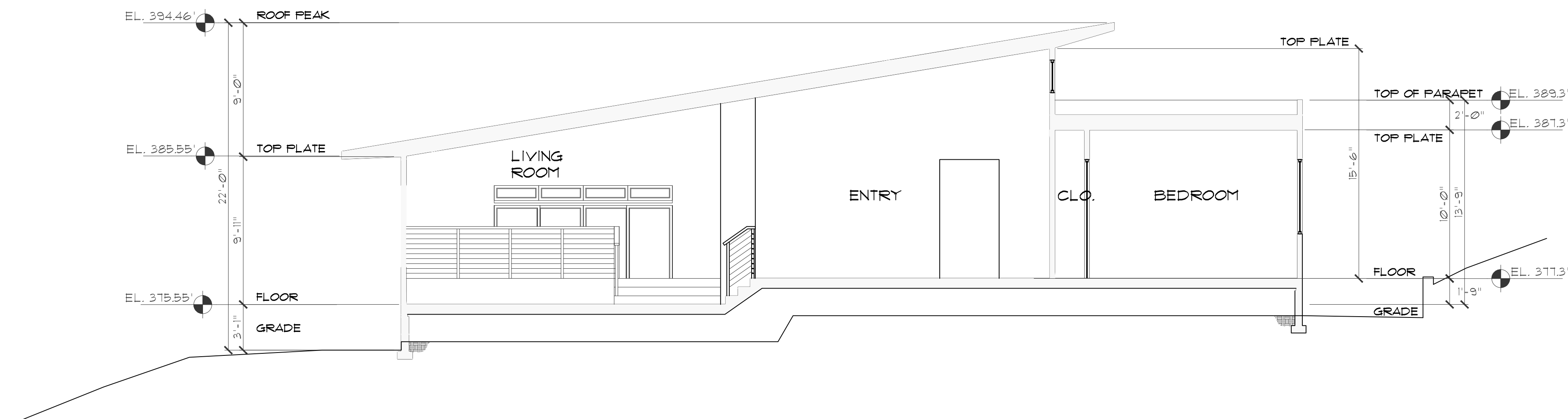
INNOVATIVE CONCEPTS
PROFESSIONAL BUILDING DESIGN AND PLANNING
3550 Stevens Creek Blvd Suite 225
San Jose, CA 95117
Phone: (408) 985-1078
E-Mail: imcp@aiglobal.net



A New Single Family Residence for:
The Rao-Trivedi Residence
529 Vista Ridge Drive
Milpitas, CA 95035

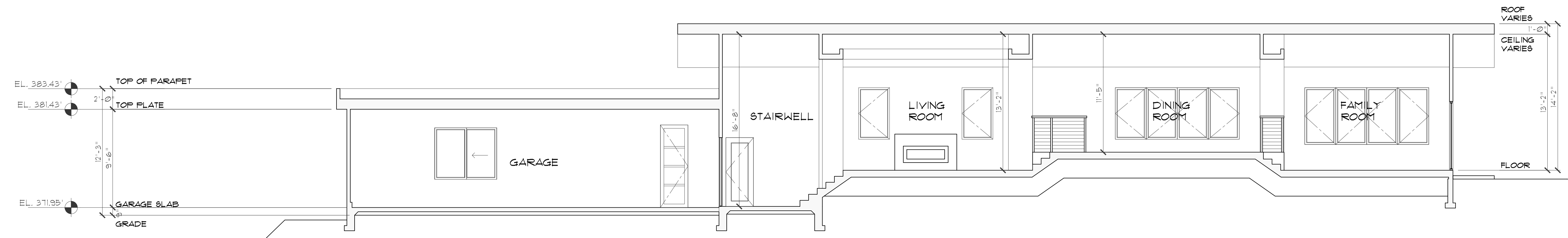
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A4
Of Sheets



SECTION 'C' = 'C'

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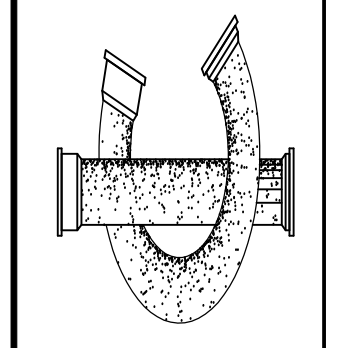


SECTION 'D' = 'D'

3/16" = 1'-0"

Revisions	By
10/26/2018	GF

INNOVATIVE CONCEPTS
PROFESSIONAL BUILDING DESIGN AND PLANNING
3550 Stevens Creek Blvd Suite 225
San Jose, CA 95117
Phone: (408) 985-1078
E-Mail: imcp@aiglobal.net

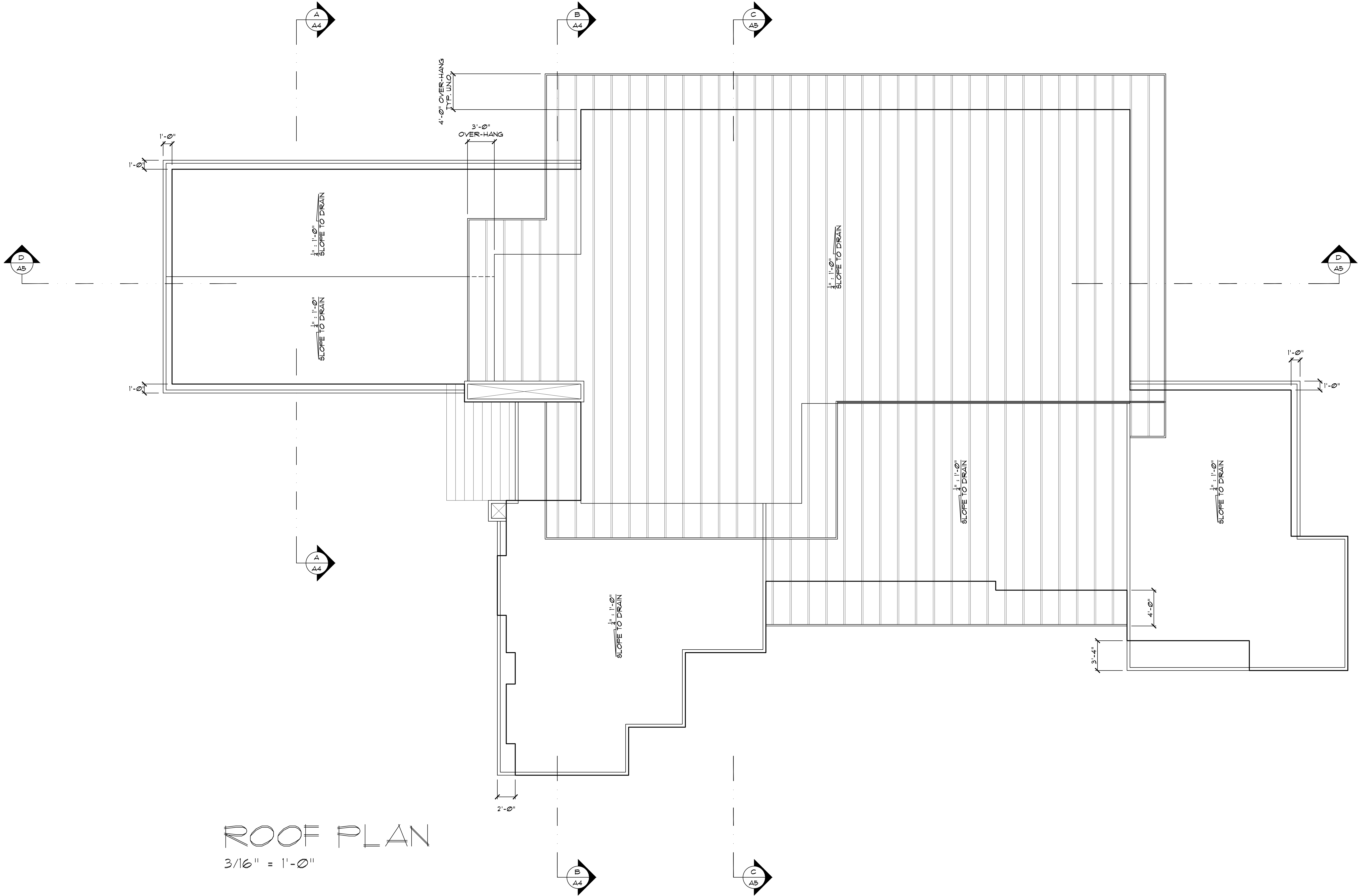


A New Single Family Residence for:
The Rao-Trivedi Residence
529 Vista Ridge Drive
Milpitas, CA 95035

Date	08/16/2017
Scale	NOTED
Drawn	GF
Job	
Sheet	

A5

Of Sheets



ROOF PLAN
3/16" = 1'-0"

Revisions	By
10/26/2018	GF
INNOVATIVE CONCEPTS PROFESSIONAL BUILDING DESIGN AND PLANNING 3550 Stevens Creek Blvd Suite 225 San Jose, CA 95117 Phone: (408) 985-1078 E-Mail: innco@aiglobal.net	
A New Single Family Residence for: The Rao-Trivedi Residence 529 Vista Ridge Drive Milpitas, CA 95035	
Date	08/16/2017
Scale	NOTED
Drawn	GF
Job	
Sheet	A6

58

Of Sheets

COLORS and MATERIALS:



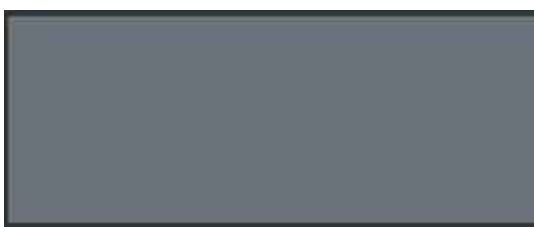
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EXTERIOR STONE CLADDING:
RUSTIC LEDGE - SEQUOIA



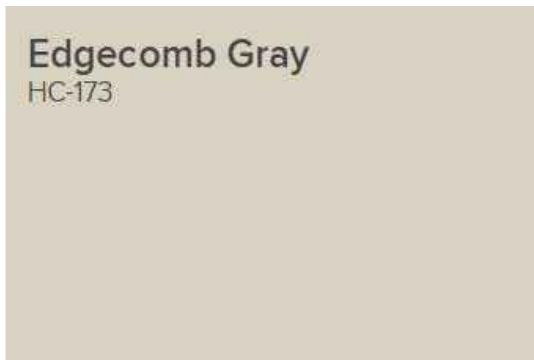
2
GARAGE DOOR:
ACCENT STRIP NO SPLICE
COLOR - CEDAR Ø11 ON REDWOOD



3
WINDOWS:
ANDERSEN 100 CONTEMPORARY SERIES



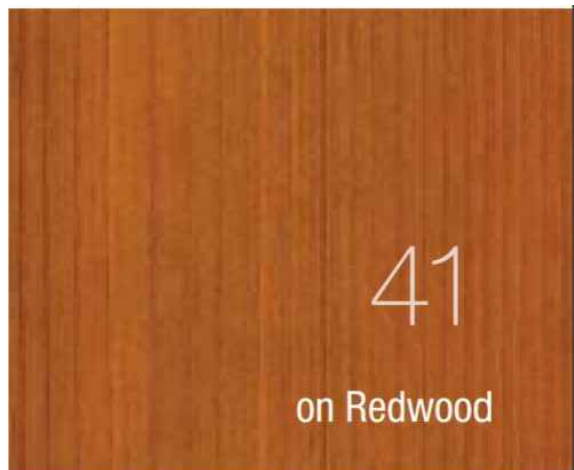
4
ROOFING:
RMS - MECHANICAL SEAM METAL
COLOR - CHARCOAL GRAY



5
EXTERIOR STUCCO:
SMOOTH FINISH
COLOR - EDGEComb GRAY HC-173
BY BENJAMIN MOORE



6
EXTERIOR TRIM:
SMOOTH FINISH
COLOR - MIDSUMMER NIGHT
BY BENJAMIN MOORE



7
EXTERIOR SIDING:
COLOR - CEDAR Ø11 ON REDWOOD
BY BENJAMIN MOORE



8
EXTERIOR LIGHT FIXTURE:
OUTDOOR CYLINDER COLLECTION 2-LIGHT
PAINTED BRUSHED NICKEL OUTDOOR WALL
FIXTURE
BY SEA GULL LIGHTING



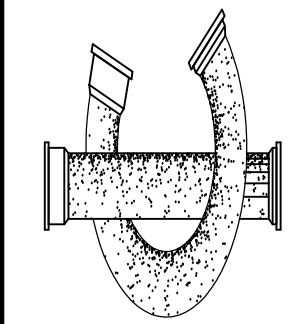
3D P E R S P E C T I V E - right-side



3D P E R S P E C T I V E - left-side

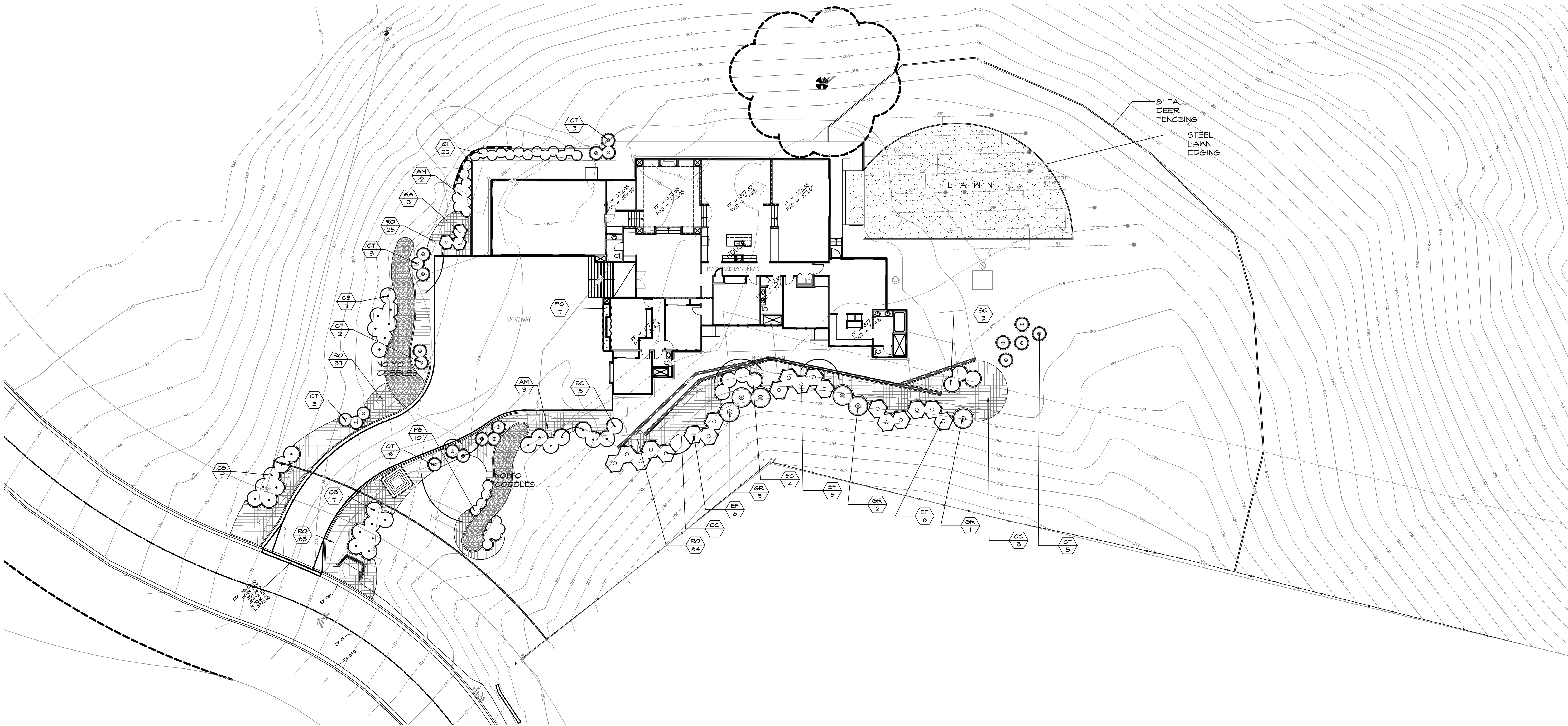
Revisions	By
10/26/2018	GF

INNOVATIVE CONCEPTS
PROFESSIONAL BUILDING DESIGN AND PLANNING
3550 Stevens Creek Blvd Suite 225
San Jose, CA 95117
Phone: (408) 985-1078
E-Mail: inn3p@aiglobal.net



A New Single Family Residence for:
The Rao-Trivedi Residence
529 Vista Ridge Drive
Milpitas, CA 95035

Date	08/16/2017
Scale	NOTED
Drawn	GF
Job	
Sheet	



PLANT LEGEND

SYM.	SIZE	QTY.	BOTANICAL NAME	COMMON NAME	REMARKS	Water Eff.
TREES						
AM	24" Bx	5	Arbutus 'Marina'	NCN	Natural Form	Low Water Use
CC	24" Bx	4	Cercis c. 'Forest Pansy'	Forest Pansy Red Bud	Standard	Low Water Use
SHRUBS						
AA	15g	3	Agave attenuata	NCN		Low Water Use
CI	5g	22	Cistus 'Sunset'	Rockrose		Low Water Use
CS	5g	21	Cistus skanbergii	Rockrose		Low Water Use
CT	5g	22	Chondropetalum tectorum	Small Cape Rush		Mod. Water Use
EF	5g	19	Echium fastuosum	Pride of Madeira		Low Water Use
GR	5g	6	Grevillea 'Red Hooks'	NCN		Low Water Use
PS	1g	17	Penstemon x 'Appleblossom'	Garden Penstemon		Mod Water Use
SC	5g	15	Salvia clevelandii	Cleveland Sage		Low Water Use
GROUND COVERS						
RO	1g	196	Rosmarinus o. 'Irene'	Rosemary		Low Water Use

Planting Notes

1. All trees 15 gallons or larger to receive (2) 2"x10' Lodge Pole Pine Stakes with (1) 1"x4" backer board nailed to stakes. Tie all trees to stakes with rubber ties at mid point of trunk, and right below branch crotch. Nail with galvanized roofing nails.
2. Provide deep watering/inspection tubes on all trees. Water basins should be sufficient enough to contain water at base of tree, as necessary.
- 3.Fertilizer tablets shall be placed at the mid-point of root ball per manu. recommendation.
- 4.Rototill and amend entire planting site with 6" or more of compost per 1000 sq ft, into top 6"-12" of existing soil as necessary for planting needs. Refer to soil analysis report for type type of fertilizer, amendment needed for optimal growth.
- 5.Provide 3"+. of shredded mulch under all trees, shrubs and unplanted areas for water conservation.
6. Provide water saving spray irrigation for lawn areas and water saving drip irrigation for all planted areas.



SINGLE FAMILY RESIDENCE
529 VISTA RIDGE DR., MILPITAS, CA

PLANTING PLAN

GENERAL CSJ EROSION AND SEDIMENT CONTROL NOTES:

1. CONTRACTOR/OWNER: AARTHI RAO & ANOOP TRIVEDI
ADDRESS: 529 VISTA RIDGE DRIVE, MILPITAS, CA 95035
PHONE NUMBER: (---)-----
IT SHALL BE THE OWNER'S RESPONSIBILITY TO MAINTAIN CONTROL OF THE ENTIRE CONSTRUCTION OPERATION AND TO KEEP THE ENTIRE SITE IN COMPLIANCE WITH THE SOIL EROSION CONTROL PLAN.
2. CIVIL ENGINEER: LC ENGINEERING
ADDRESS: 598 E SANTA CLARA ST #270, SAN JOSE, CA 95112
PHONE NUMBER: (408) 806-7187
3. CONSTRUCTION SUPERINTENDENT: AARTHI RAO & ANOOP TRIVEDI
ADDRESS: 529 VISTA RIDGE DRIVE, MILPITAS, CA 95035
24-HOUR PHONE NUMBER: (---)-----
CONTRACTOR: AARTHI RAO & ANOOP TRIVEDI
ADDRESS: 529 VISTA RIDGE DRIVE, MILPITAS, CA 95035
24-HOUR PHONE NUMBER: (---)-----
4. THIS PLAN IS INTENDED TO BE USED FOR INTERIM EROSION AND SEDIMENT CONTROL ONLY AND IS NOT TO BE USED FOR FINAL ELEVATIONS OR PERMANENT IMPROVEMENTS.
5. DEVELOPER WILL SUBMIT TO THE CITY MONTHLY (AT THE FIRST OF EACH MONTH BETWEEN OCT 1ST AND APRIL 30TH) CERTIFICATIONS THAT ALL EROSION/SEDIMENT MEASURES IDENTIFIED ON THE APPROVED EROSION CONTROL PLAN ARE IN PLACE. IF MEASURES ARE NOT IN PLACE, DEVELOPER SHALL PROVIDE THE CITY WITH A WRITTEN EXPLANATION OF WHY THE MEASURE IS NOT IN PLACE AND WHAT WILL BE DONE TO REMEDY THIS SITUATION.
6. OWNER/CONTRACTOR SHALL BE RESPONSIBLE FOR MONITORING EROSION AND SEDIMENT CONTROL MEASURES PRIOR, DURING, AND AFTER STORM EVENTS.
7. REASONABLE CARE SHALL BE TAKEN WHEN HAULING ANY EARTH, SAND, GRAVEL, STONE, DEBRIS, PAPER OR ANY OTHER SUBSTANCE OVER ANY PUBLIC STREET, ALLEY OR OTHER PUBLIC PLACE. SHOULD ANY BLOW, SPILL, OR TRACK OVER AND UPON SAID PUBLIC OR ADJACENT PRIVATE PROPERTY, IMMEDIATE REMEDY SHALL OCCUR.
8. SANITARY FACILITIES SHALL BE MAINTAINED ON THE SITE.
9. DURING THE RAINY SEASON, ALL PAVED AREAS SHALL BE KEPT CLEAR OF EARTH MATERIAL AND DEBRIS. THE SITE SHALL BE MAINTAINED SO AS TO MINIMIZE SEDIMENT LADEN RUNOFF TO ANY STORM DRAINAGE SYSTEM, INCLUDING EXISTING DRAINAGE SWALES AND WATER COURSES.
10. CONSTRUCTION OPERATIONS SHALL BE CARRIED OUT IN SUCH A MANNER THAT EROSION AND WATER POLLUTION WILL BE MINIMIZED. STATE AND LOCAL LAWS CONCERNING POLLUTION ABATEMENT SHALL BE COMPLIED WITH.
11. CONTRACTOR SHALL PROVIDE DUST CONTROL AS REQUIRED BY THE APPROPRIATE FEDERAL, STATE AND LOCAL AGENCY REQUIREMENTS.

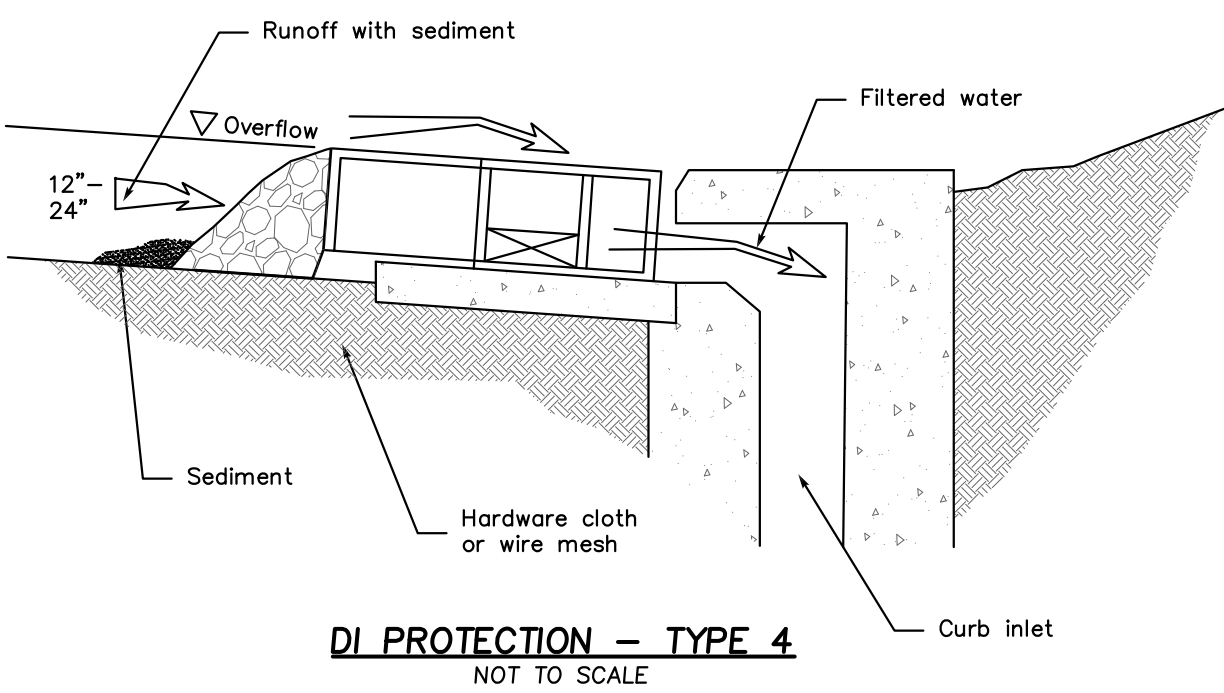
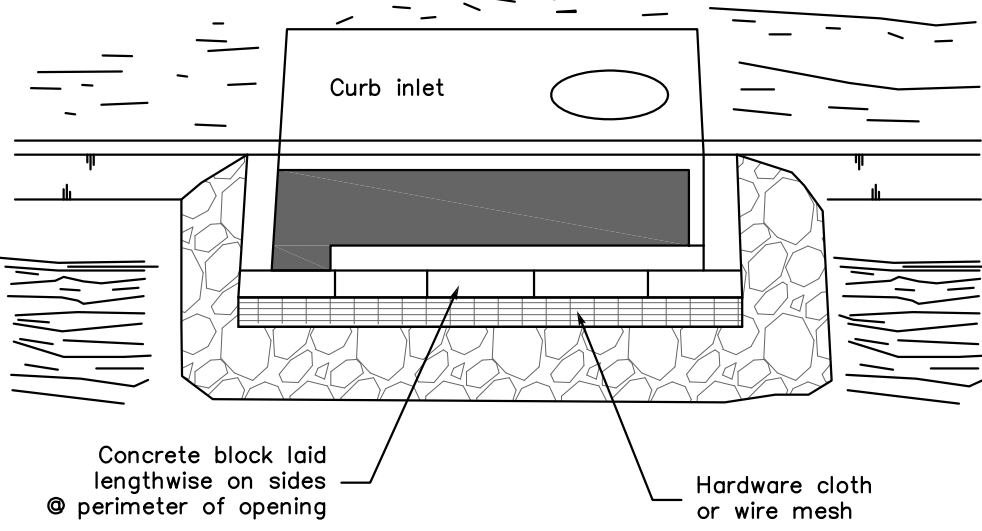
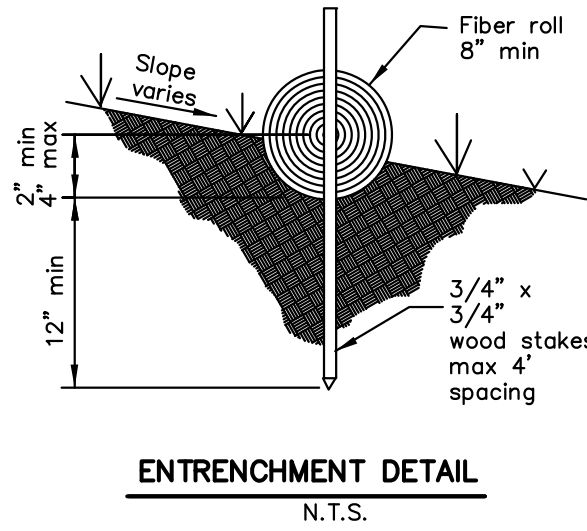
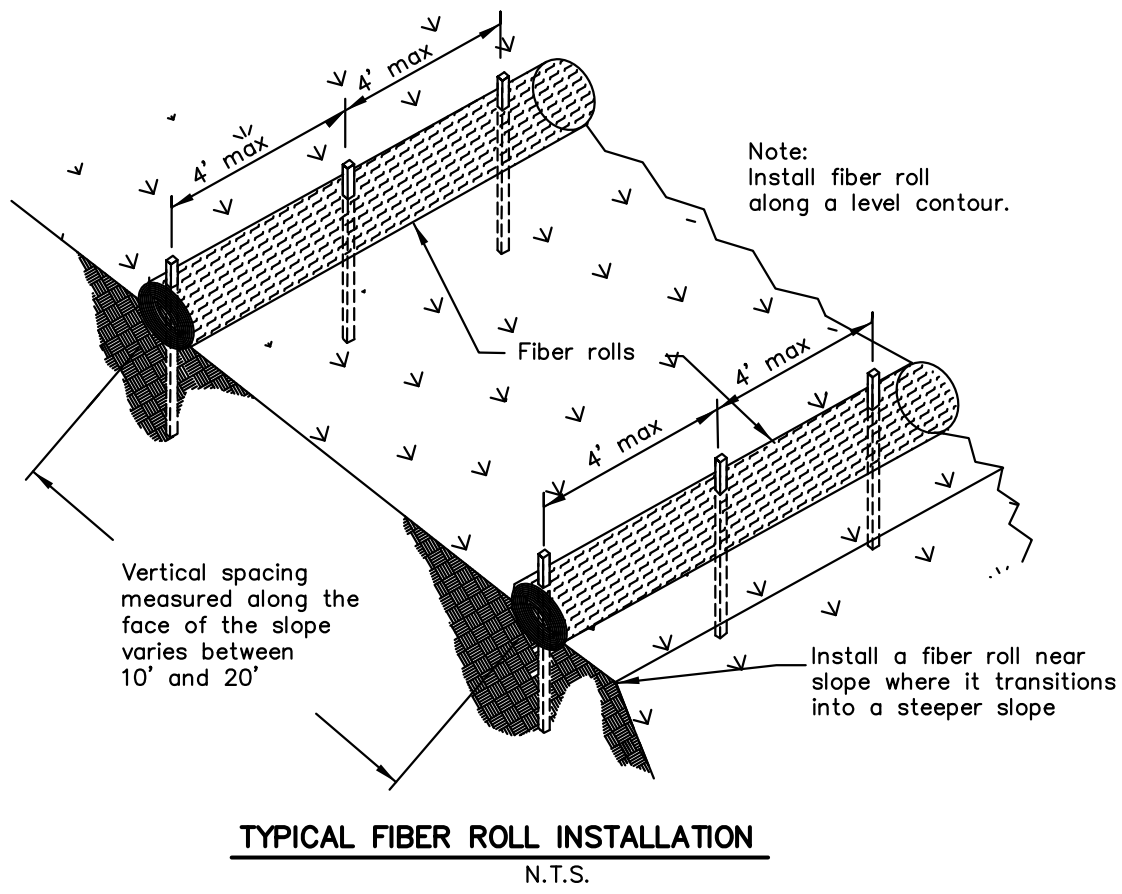
EROSION AND SEDIMENT CONTROL MEASURES

1. THE FACILITIES SHOWN ON THIS PLAN ARE DESIGNED TO CONTROL EROSION AND SEDIMENT DURING THE RAINY SEASON, OCTOBER 1 TO APRIL 30. FACILITIES ARE TO BE OPERABLE PRIOR TO SEPTEMBER 15 OF ANY YEAR. GRADING OPERATIONS DURING THE RAINY SEASON WHICH LEAVE DENUDED SLOPES SHALL BE PROTECTED WITH EROSION CONTROL MEASURES IMMEDIATELY FOLLOWING GRADING ON THE SLOPES. DURING THE NON-RAINY SEASON BEST MANAGEMENT PRACTICES (BMPs) MUST BE IMPLEMENTED DURING CONSTRUCTION WHICH INCLUDES, BUT IS NOT LIMITED TO: STABILIZED CONSTRUCTION ENTRANCE, TIRE WASH AREA AND INLET PROTECTION.
2. THIS PLAN COVERS ONLY THE FIRST WINTER FOLLOWING GRADING WITH ASSUMED SITE CONDITIONS AS SHOWN ON THE EROSION CONTROL PLAN. PRIOR TO SEPTEMBER 15, THE COMPLETION OF SITE IMPROVEMENT SHALL BE EVALUATED AND REVISIONS MADE TO THIS PLAN AS NECESSARY WITH THE APPROVAL OF THE CITY ENGINEER. PLANS ARE TO BE RESUBMITTED FOR CITY APPROVAL PRIOR TO SEPTEMBER 1 OF EACH SUBSEQUENT YEAR UNTIL SITE IMPROVEMENTS ARE ACCEPTED BY THE CITY.
3. CONSTRUCTION ENTRANCES SHALL BE INSTALLED PRIOR TO COMMENCEMENT OF GRADING. ALL CONSTRUCTION TRAFFIC ENTERING ONTO THE PAVED ROADS MUST CROSS THE STABILIZED CONSTRUCTION ENTRANCE WAYS. (ALSO INCLUDE THIS NOTE ON GRADING PLANS.)
4. CONTRACTOR SHALL MAINTAIN STABILIZED ENTRANCE AT EACH VEHICLE ACCESS POINT TO EXISTING PAVED STREETS. ANY MUD OR DEBRIS TRACKED ONTO PUBLIC STREETS SHALL BE REMOVED DAILY AND AS REQUIRED BY THE CITY.
5. IF HYDROSEEDING IS NOT USED OR IS NOT EFFECTIVE BY 09/23, THEN OTHER IMMEDIATE METHODS SHALL BE IMPLEMENTED, SUCH AS EROSION CONTROL BLANKETS, OR A THREE-STEP APPLICATION OF 1) SEED, MULCH, FERTILIZER 2) BLOWN STRAW 3) TACKIFIER AND MULCH.
6. INLET PROTECTION SHALL BE INSTALLED AT OPEN INLETS TO PREVENT SEDIMENT FROM ENTERING THE STORM DRAIN SYSTEM. INLETS NOT USED IN CONJUNCTION WITH EROSION CONTROL ARE TO BE BLOCKED TO PREVENT ENTRY OF SEDIMENT.
7. LOTS WITH HOUSES UNDER CONSTRUCTION WILL NOT BE HYDROSEEDED. EROSION PROTECTION FOR EACH LOT WITH A HOUSE UNDER CONSTRUCTION SHALL CONFORM TO THE TYPICAL LOT EROSION CONTROL DETAIL SHOWN ON THIS SHEET.
8. THIS EROSION AND SEDIMENT CONTROL PLAN MAY NOT COVER ALL THE SITUATIONS THAT MAY ARISE DURING CONSTRUCTION DUE TO UNANTICIPATED FIELD CONDITIONS. VARIATIONS AND ADDITIONS MAY BE MADE TO THIS PLAN IN THE FIELD. NOTIFY THE CITY REPRESENTATIVE OF ANY FIELD CHANGES.

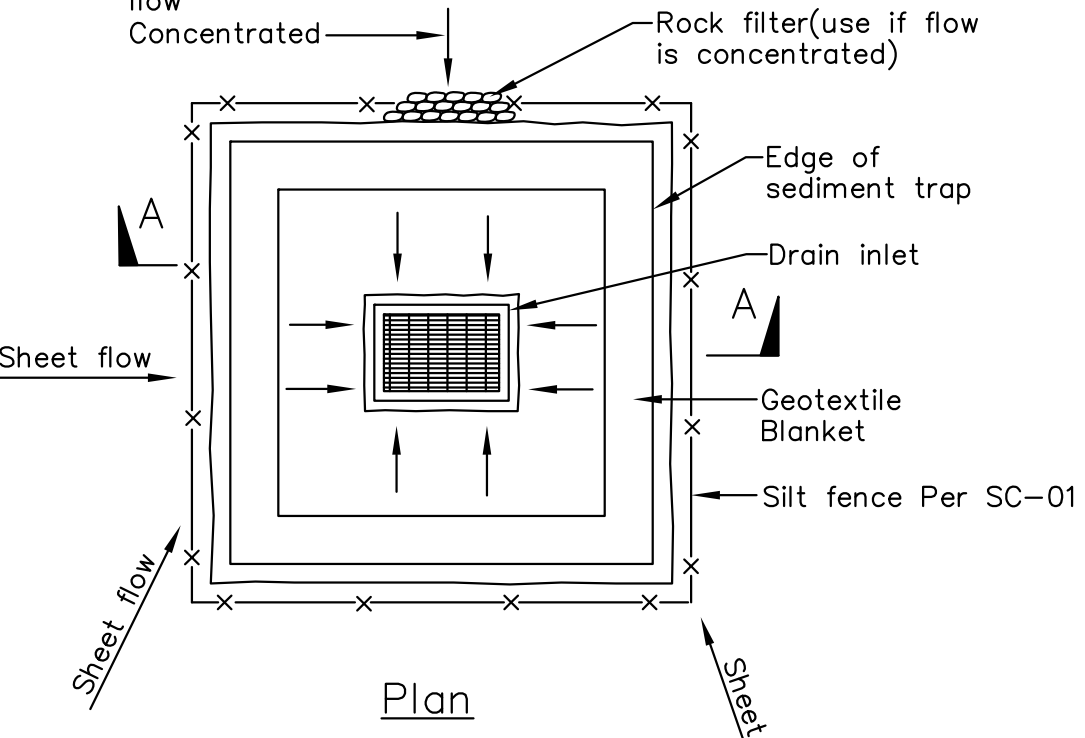
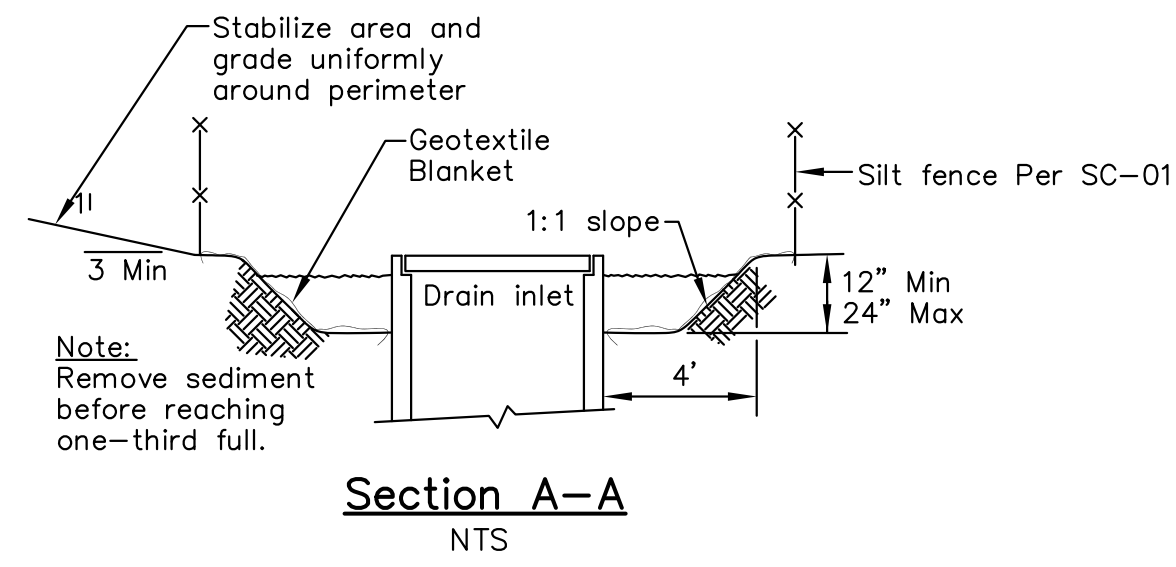
MAINTENANCE NOTES

1. MAINTENANCE IS TO BE PERFORMED AS FOLLOWS:
A. REPAIR DAMAGES CAUSED BY SOIL EROSION OR CONSTRUCTION AT THE END OF EACH WORKING DAY.
B. SWALES SHALL BE INSPECTED PERIODICALLY AND MAINTAINED AS NEEDED.
C. SEDIMENT TRAPS, BERMS, AND SWALES ARE TO BE INSPECTED AFTER EACH STORM AND REPAIRS MADE AS NEEDED.
D. SEDIMENT SHALL BE REMOVED AND SEDIMENT TRAP RESTORED TO ITS ORIGINAL DIMENSIONS WHEN SEDIMENT HAS ACCUMULATED TO A DEPTH OF 1 FOOT.
E. SEDIMENT REMOVED FROM TRAP SHALL BE DEPOSITED IN A SUITABLE AREA AND IN SUCH A MANNER THAT IT WILL NOT ERODE.
F. RILLS AND GULLIES MUST BE REPAIRED.
2. SAND BAG INLET PROTECTION SHALL BE CLEANED OUT WHENEVER SEDIMENT DEPTH IS ONE HALF THE HEIGHT OF ONE SAND BAG.

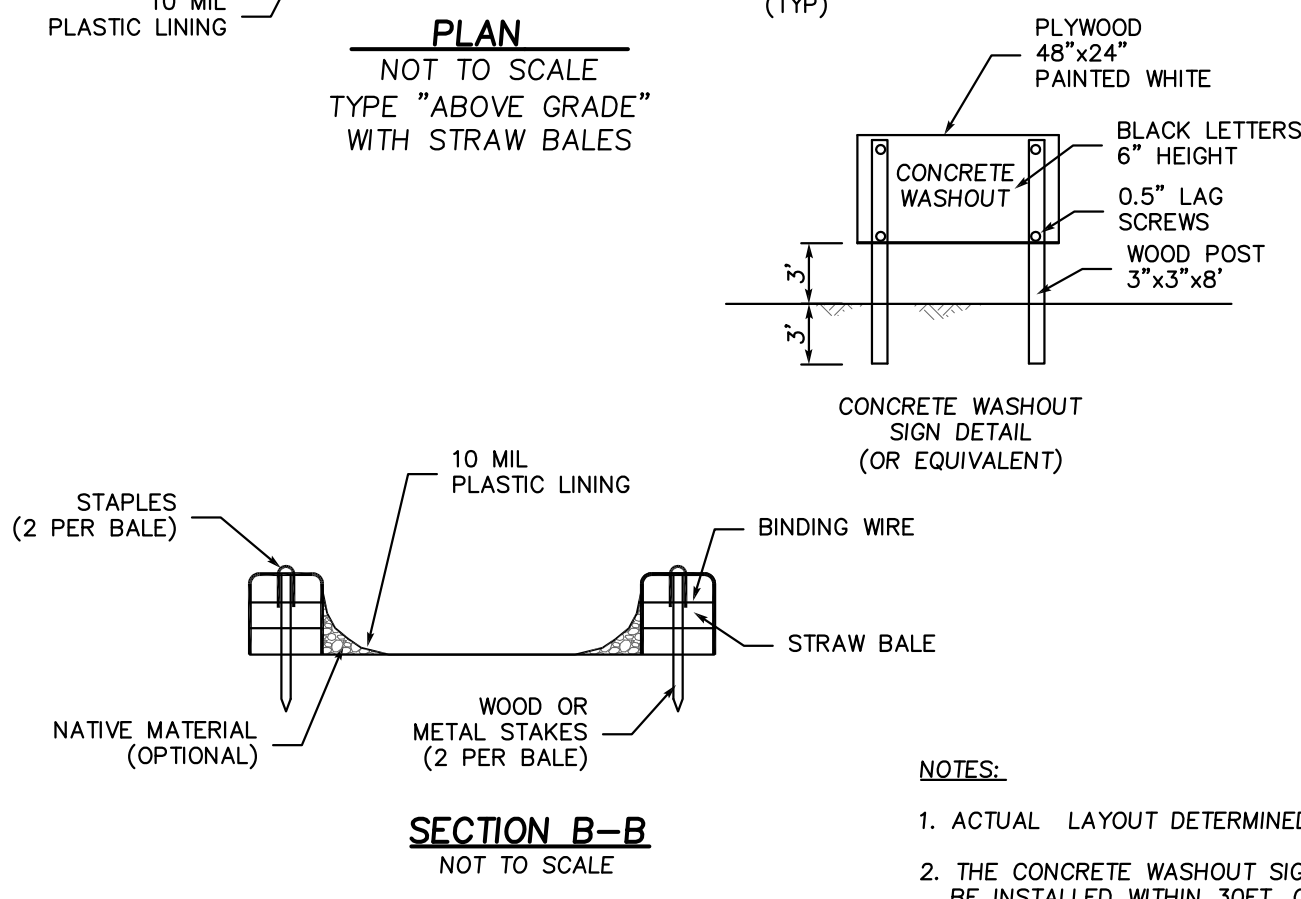
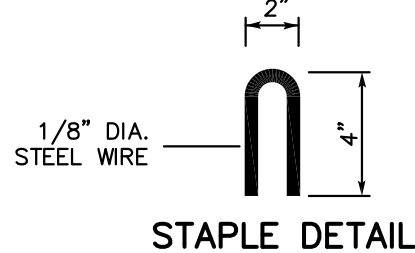
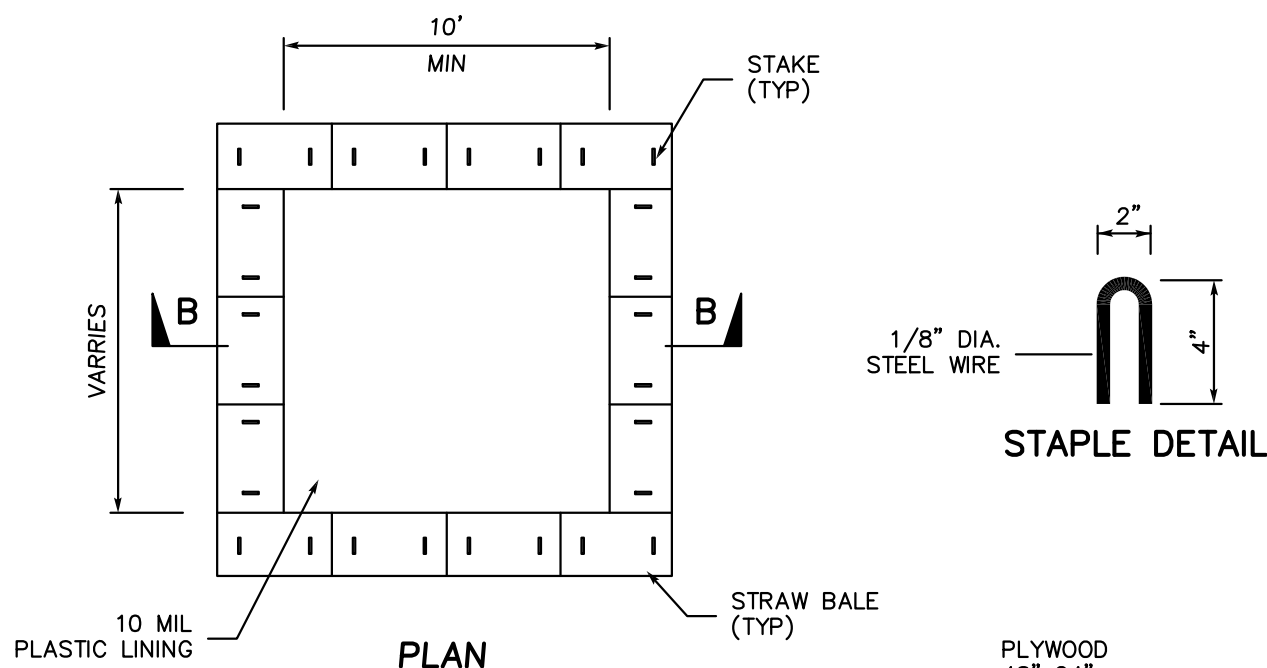
BMP SUMMARY TABLE	
BMP CATEGORY	BMP USED
EROSION CONTROL	FIBER ROLLS
SEDIMENT CONTROL	DRAINAGE INLET PROTECTION, TEMPORARY GRAVEL ENTRANCE/EXIT
GOOD SITE MANAGEMENT	CONCRETE WASTE MANAGEMENT, TEMPORARY GRAVEL ENTRANCE/EXIT
NON-STORMWATER MANAGEMENT	CHECK PAVEMENT & EXTERNAL BUILDING WASH DOWN, FIRE HYDRANT FLUSHING, IRRIGATION DRAINAGE, GROUND WATER, FOUNDATION DRAIN FLOWS
RUN-ON AND RUN-OFF CONTROL	INSPECTION AND MAINTENANCE OF ALL ON/OFF-SITE DRAIN SYSTEM CONTROL WASTE AT THE CONSTRUCTION SITE SUCH AS DISCARDED BUILDING MATERIALS, TRUCK WASHOUT, CHEMICALS, LITTER AND SANITARY WASTE
ACTIVE TREATMENT SYSTEMS	BIO SWALE, SAND BAG FILTER,



Storm Drain Inlet Protection

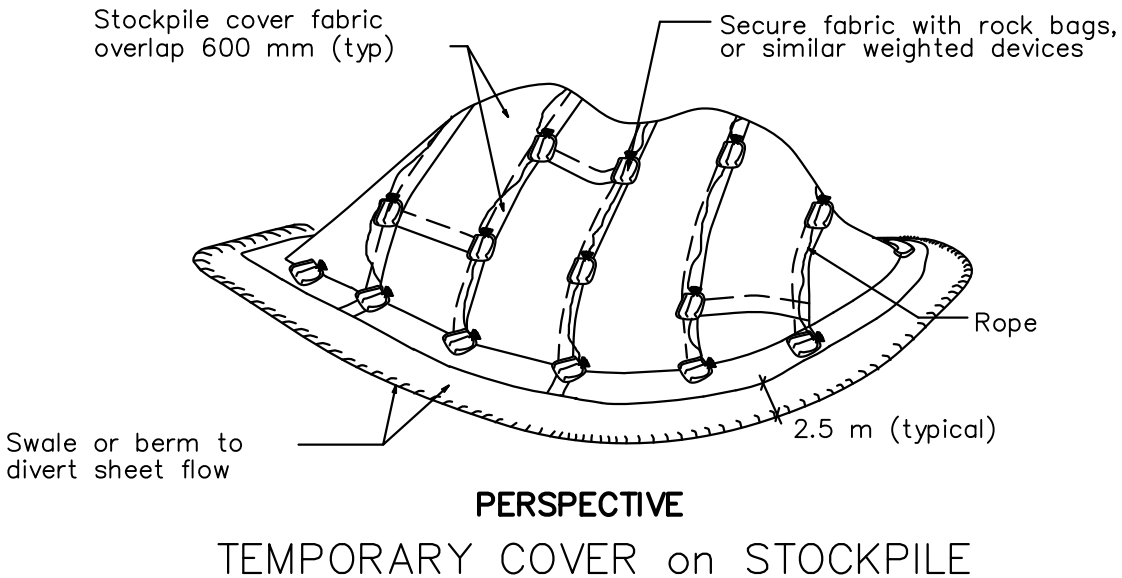
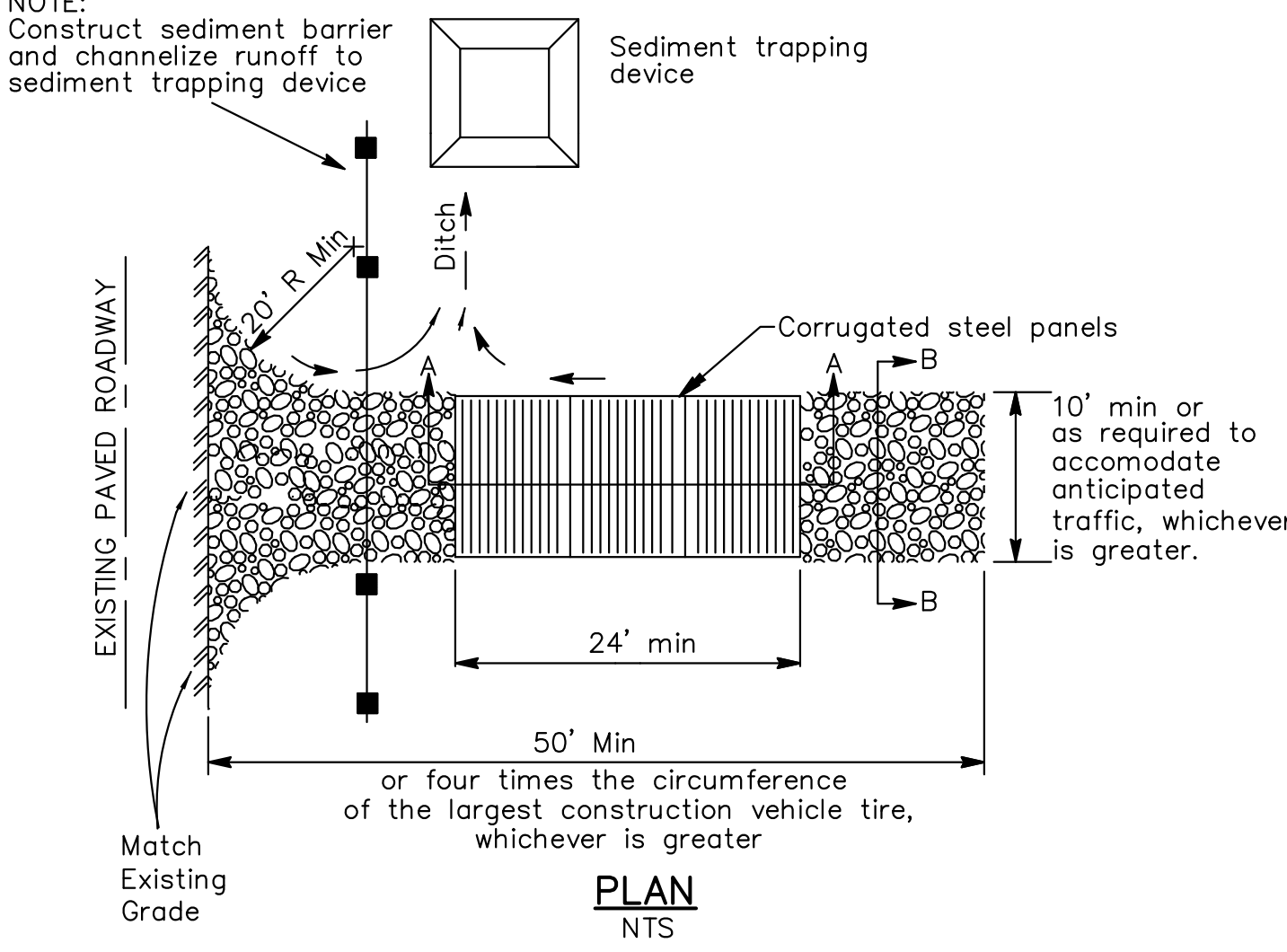
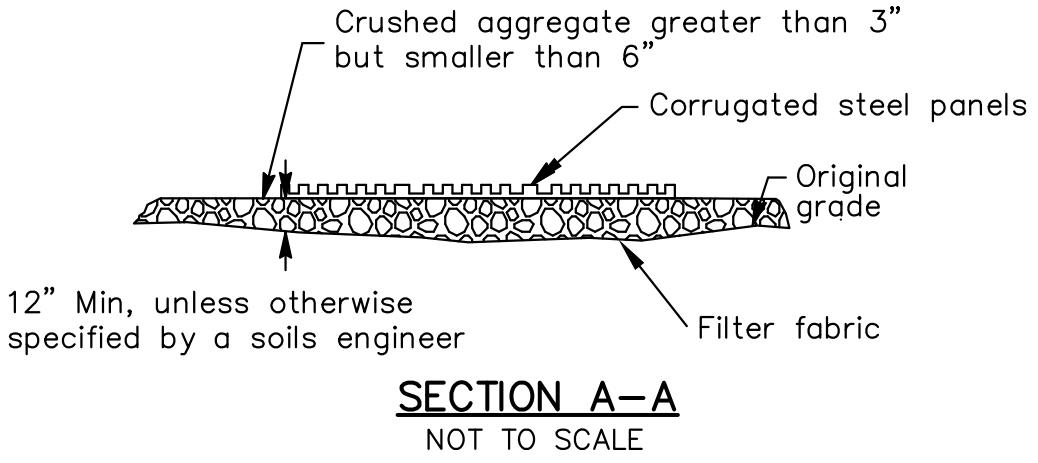
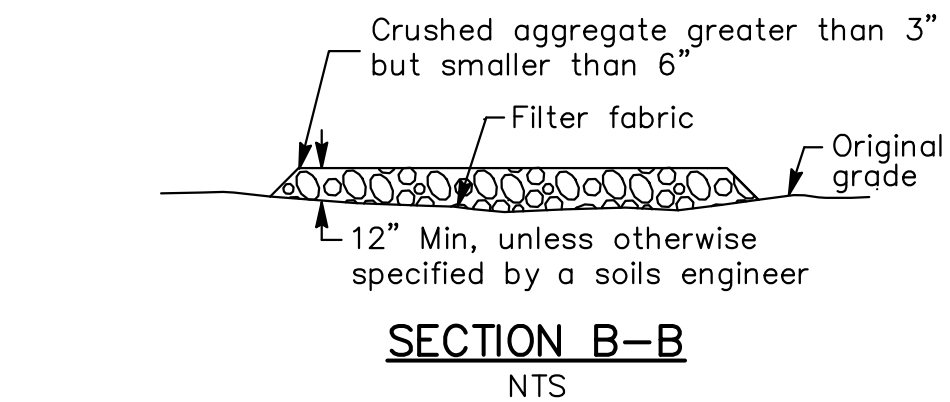


- Notes
1. For use in cleared and grubbed and in graded areas.
2. Shape basin so that longest inflow area faces longest length of trap.
3. For concentrated flows, shape basin in 2:1 ratio with length oriented towards direction of flow.



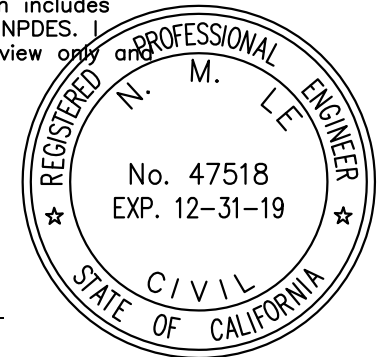
- NOTES:
1. ACTUAL LAYOUT DETERMINED IN FIELD.
2. THE CONCRETE WASHOUT SIGN SHALL BE INSTALLED WITHIN 30FT. OF THE TEMPORARY CONCRETE WASHOUT FACILITY.

Concrete Waste Management



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 the project as defined in section 6703 of the business and professions codes, and that the design is consistent with current standards. The design shown hereon is necessary and reasonable and does not restrict any historic drainage flows from properties nor increase drainage to adjacent properties. The design includes principles and techniques to reduce quantity and improve the quality of storm water runoff, as required by NPDES. I understand that the check of project drawings and specifications by the City of Milpitas is confined to a review only and does not relieve me, as engineer of work, of my responsibilities for project design.

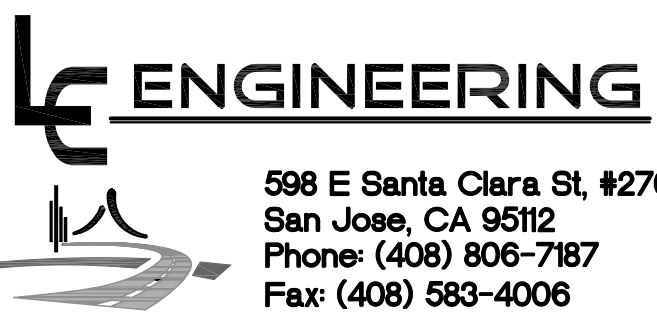
SIGNATURE: LC ENGINEERING P.E. No. 47518
Firm: LC ENGINEERING
Address: 598 E Santa Clara St, #270, San Jose, CA 95112
Telephone: (408) 806-7187



EROSION CONTROL PLAN
529 VISTA RIDGE DRIVE
APN 042-30-015

Milpitas

California



QB	09/24/2018
DESIGNED	DATE
PT	09/24/2018
DRAWN	DATE
NTS	
SCALE	
NL	09/24/2018
CHECKED	DATE

SOILS ENGINEER: These plans have reviewed and found to be in substantial conformance with the intent and purpose of the geotechnical exploration report dated _____, prepared by _____.
(Name) _____ Date _____
Firm: _____
Address: _____
Telephone: _____

Record Drawings
To be completed prior to acceptance of work by the City
Signature and Seal _____ Date _____
P.E. No. _____ Exp. _____
Public Works Inspector _____

Revisions				
Num.	Date	By	Description	City Engr. Aprv. Date

CITY OF MILPITAS ENGINEERING DIVISION	
Approved: _____	Project No. _____
City Engineer _____ Date _____	File No. _____
Any changes to public improvements shall be approved by the City engineer	E.P. No. _____
Recommended for approval: _____	Sheet <u>9</u> of <u>9</u>
Fire Dept. _____ Date _____	
Engineering _____ Date _____	

Backup material for agenda item:

Approve Out of State Travel for Police Lieutenant Raj Maharaj to attend the Federal Bureau of Investigation (FBI) National Academy 275th Session in Quantico, VA January 7, 2019 to March 15, 2019 (Staff Contact: Armando Corpuz, 408-586-2534)

Recommendation: Authorize Out of State Travel for Police Lieutenant Raj Maharaj to attend the FBI National Academy in Quantico, VA January 7, 2019 to March 15, 2019.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Out of State Travel for Police Lieutenant Raj Maharaj to attend the Federal Bureau of Investigation (FBI) National Academy 275th Session in Quantico, VA January 7, 2019 to March 15, 2019.
Category:	Consent Calendar-Public Safety
Meeting Date:	2/5/2019
Staff Contact:	Armando Corpuz, 408-586-2534
Recommendation:	Authorize Out of State Travel for Police Lieutenant Raj Maharaj to attend the FBI National Academy in Quantico, VA January 7, 2019 to March 15, 2019.

Background: The FBI National Academy is a professional course of study for United States and international law enforcement leaders. This 10-week program provides coursework in intelligence theory, terrorism, leadership, behavioral science, organizational management, and other specialized training.

The federal government absorbs all costs for housing, meals, air transportation, and ground transportation. The City of Milpitas paid for required uniforms, which was \$559.95.

Police Lieutenant Raj Maharaj started the National Academy, on January 7, 2019, and he will graduate on March 15, 2019. This item is coming to council after Lieutenant Maharaj's start date because of an administrative oversight.

Analysis: The City of Milpitas Travel and Expense Policy requires employee out-of-state be approved by City Council. The approval of this out-of-state travel will allow Lieutenant Maharaj to continue his executive level law enforcement training. Lieutenant Maharaj's professional development and networking opportunities will benefit succession planning and Police Department service delivery.

Policy Alternatives:

Alternative 1: Do not Approve the Out-of-State Travel

Pros: Requires Lieutenant Maharaj to return to the Police Department and resume his duties.

Cons: Eliminates the opportunity for professional growth that will benefit Police operations. Could prevent the FBI from approving future applications.

Reason not recommended: There is high demand to attend the National Academy and opportunities are infrequent. The City will benefit from investing in Lieutenant Maharaj's professional development.

Fiscal Impact: The City of Milpitas is required to purchase Lieutenant Maharaj's uniforms and the expense was \$559.95. The Police Department is budgeted for the expense.

California Environmental Quality Act: Not Applicable.

Recommendation: Authorize Out of State Travel for Police Lieutenant Raj Maharaj to attend the FBI National Academy in Quantico, VA January 7, 2019 to March 15, 2019.

Attachments:

None

Backup material for agenda item:

Approve Out of State Travel for Two Milpitas Police Detectives so They May Follow-up on a Homicide Investigation in the State of Washington (Staff Contact: Armando Corpuz, 408-586-2534)

Recommendation: Authorize Out of State Travel for two Police Detectives to travel to the state of Washington, from January 11-12, 2019, so they may follow-up on a homicide investigation for the Milpitas Police Department.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Out of State Travel for (2) Milpitas Police Detectives so they may follow-up on a homicide investigation, in the state of Washington.
Category:	Consent Calendar-Public Safety
Meeting Date:	2/5/2019
Staff Contact:	Armando Corpuz, 408-586-2534
Recommendation:	Authorize Out of State Travel for Police Detectives to travel to the state of Washington, from January 11, 2019 to January 12, 2019, so they may follow-up on a homicide investigation.

Background: On September 29, 2016, Milpitas Police Officers responded to a shooting that resulted in the death of a Milpitas resident. Police detectives investigated the case as a homicide and identified the individuals responsible for the incident.

In February 2018, two of the suspects were arrested but one of the individuals absconded and fled the state.

On January 10, 2019, Milpitas Police Detectives were notified that the third suspect was arrested in the state of Washington and the suspect would be held at a local jail.

On January 11, 2019, Detective Sergeant Steven Fox and Detective Mohammed Ali traveled to the state of Washington to interview the suspect, search for possible witnesses, and search for evidence. The detectives returned to California, on January 12, 2019.

Analysis: The City of Milpitas Travel and Expense Policy requires prior City Council approval for employee out-of-state travel, except in cases of emergency. Homicide investigations are complex and there is an exigency to follow-up on leads. In this case, the detectives were able to interview the suspect, interview additional people, and search for evidence. The detectives completed their tasks and returned timely to California.

Due to the exigency of the travel, approval from Council was not sought prior to the deployment to Washington.

Policy Alternatives:

Not Applicable.

Fiscal Impact: The cost of travel expenses was \$1,326.58. The Police Department is budgeted for the expense.

California Environmental Quality Act: Not Applicable.

Recommendation: Authorize Out of State Travel for two Police Detectives to travel to the state of Washington, from January 11, 2019 to January 12, 2019.

Attachments:

None

Backup material for agenda item:

Approve Agreement with Pump Repair Service Co. for the water pump replacement at the Hillside Pump Station (Staff Contact: Tony Ndah, 408-586-2602)

Recommendation: Approve the agreement with Pump Repair Service Co. for the water pump replacement at the Hillside Pump Station for the not-to-exceed amount of \$117,100.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Agreement with Pump Repair Service Co. for the water pump replacement at the Hillside Pump Station
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	2/5/2019
Staff Contact:	Chris Schroeder, 408-586-3161, Tony Ndah, 408-586-2602
Recommendation:	Approve the agreement with Pump Repair Service Co. for the water pump replacement at the Hillside Pump Station for the not-to-exceed amount of \$117,100.00.

Background: The Hillside Water Pump Station pumps drinking water to a large section of the City's residents in the eastern hills. The pump station is configured with two pumps, each serving as back-up to the other in case of failure. One pump will work while the other is in standby. The redundancy helps extend the working life of each pump and provides back-up in case of needed maintenance, repair or pump failure. The Number 1 pump recently failed, necessitating an Invitation for Bid (IFB) be issued to have the failed pump replaced.

Analysis: The Purchasing Division released IFB 2252 – Water Pump Replacement on November 5, 2018 on PublicPurchase.com, the City's eProcurement Website. Staff also issued notices to qualified vendors registered with the City as well as required plan rooms per California Uniform Public Construction Cost Accounting Act (CUPCCAA) requirements.

The IFB closed on December 21, 2018, at 2:00 p.m. and two bids were received. The table below shows the results of the bid tabulation:

Bidder	Total Bid Price
Pump Repair Service Co.	\$117,100.00
Fort Bragg Electric, Inc.	\$175,890.00

Pending approval, the agreement with Pump Repair Service Co. the replacement pump will be ordered in early 2019 and installation is expected to be completed by July 31, 2019.

Policy Alternatives:

Alternative 1: Not replace the failed pump

Pros: Continue services with the single operational pump and deploy a back-up pump in the event of failure.

Cons: Without replacing Pump 1, the drinking water supply to the hillside residents serviced by the Hillside Pump Station will only be serviced by a single pump increasing the chances of a service interruption.

Reason not recommended: Only utilizing one pump will shorten the expected life of Pump 2 and potentially incur a service disruption for the hillside residents

Fiscal Impact: The cost to procure the water pump replacement at the Hillside Pump Station through Pump Repair Service Co. is \$117,100. There are sufficient funds available in Capital Improvement Project No. 7133 and the FY2018-19 Public Works Utility Operation and Maintenance Budget for this work. . No further budget appropriations are requested at this time.

California Environmental Quality Act: This Project is exempt from CEQA under Class 1 - Section 15301 - Existing Facilities because they relate to the operation, repair, maintenance or minor alterations to a public facility involving no or negligible expansion of use.

Recommendation: Approve the agreement with Pump Repair Service Co. for the water pump replacement at the Hillside Pump Station for the not-to-exceed amount of \$117,100.00.

Attachments: Agreement with Pump Repair Service Co.

CITY OF MILPITAS
CONSTRUCTION CONTRACT
Hillside Water Pump Replacement

1. PARTIES AND DATE.

This Contract is made and entered into this _____ day of _____, 2019 by and between the City of Milpitas, a public agency and public corporation of the State of California (“City”) and **Pump Repair Service Co.**, a corporation, with its principal place of business at **405 Allan Street San Francisco, CA 94134** (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Contract.

2. RECITALS.

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing Hillside Water Pump Replacement related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: C10 – Electrical and C61/D21 Machinery and Pumps.

2.3 Project. City desires to engage Contractor to render such services for the Hillside Water Pump Replacement (“Project”) as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, a performance bond, a payment bond, and all insurance documentation, as required by the Contract.

3. TERMS

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit “A”)
- Plans and Specifications (Exhibit “B”)
- Special Conditions (Exhibit “C”)
- Contractor’s Certificate Regarding Workers’ Compensation (Exhibit “D”)
- Public Works Contractor Registration Certification (Exhibit “E”)
- Payment and Performance Bonds (Exhibit “F”)
- Insurance Requirements (Exhibit “G”)
- Federal Requirements (Exhibit “H”)
- Addenda
- Change Orders executed by the City

- 2015 Edition of the Caltrans Standard Specifications, Excluding Division I (Sections 1-9)
- 2015 Edition of the Caltrans Standard Plans
- Notice Inviting Bids, if any
- Instructions to Bidders, if any
- Contractor's Bid

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Work under this Contract from **the date first written above through and including July 31, 2019**, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of One Hundred Dollars and Zero Cents (\$100.00) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including an City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of One Hundred Seventeen Thousand One Hundred Dollars and Zero Cents (\$117,100.00) ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1)

liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total

compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.7.13 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the

Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.7.14 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.8 Performance of Work; Jobsite Obligations.

3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.8.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 Cost of Compliance. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 Liability for Non-Compliance. Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its directors, officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 Reservation of Right to Defend. City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.8.1.7 Training. In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Consultant further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least

two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, an City Business License. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's applicable business license fee. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating

and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.8.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.8.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed

no later than the date of final payment. The claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

3.10.3 Supporting Documentation. The Contractor shall submit all claims in the following format:

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

3.10.4 City's Response. Upon receipt of a claim pursuant to this Section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the public entity issues its written statement.

3.10.4.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, City shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.10.4.2 Within 30 days of receipt of a claim, City may request in writing additional documentation supporting the claim or relating to defenses or claims City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

3.10.4.3 City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.10.5 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, either within 15 days of receipt of City's response or within 15 days of City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.10.6 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with City and the Contractor sharing the associated costs equally. City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

3.10.6.1 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.10.6.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.10.6.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

3.10.7 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures.. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.10.8.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. City's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section

3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.12.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.13 Insurance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under Exhibit "G" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required therein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.14 Bond Requirements.

3.14.1 Payment Bond. If required by Civil Code section 9550, as it may be amended from time to time, or otherwise specifically requested by City as set forth in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.15 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any

defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.16.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

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

3.17 General Provisions.

3.17.1 City's Representative. The City hereby designates the General Manager, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.17.3 Termination. This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event

of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:

Pump Repair Service Co.
405 Allan Street
San Francisco, CA 94134
Attn: Jim Sedlack

CITY:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: City Manager

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

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

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

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

3.17.14 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.17.15 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Contract, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.17.16.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.18 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

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

3.17.20 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

3.17.21 Wage Theft Prevention.

3.17.21.1 Contractor, and any subcontractor it employs to complete work under this Contract, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

3.17.21.2 BY SIGNING THIS CONTRACT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS CONTRACT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS CONTRACT.

3.17.21.3 If at any time during the term of this Contract, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Contract has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment,

decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Contract demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

3.17.21.4 For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

3.17.21.5 Failure to comply with any part of this Section constitutes a material breach of this Contract. Such breach may serve as a basis for immediate termination of this Contract and/or any other remedies available under this Contract and/or law.

3.17.21.6 Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Contract and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

3.17.22 Federal Provisions. [Reserved]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF MILPITAS
AND PUMP REPAIR SERVICE CO.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the
_____ day of _____, 2019

CITY OF MILPITAS

Approved By:

Julie Edmonds-Mares
City Manager

Date

Approved As To Form:

Christopher J. Diaz
City Attorney

PUMP REPAIR SERVICE CO.

Signature

Name

Title

Date

EXHIBIT "A"
SERVICES / SCHEDULE

PART 1 SCOPE OF SERVICES

1.01 SECTION INCLUDES

- A. Identification and summary description of the Project, the Work, location, products furnished by Owner, activities by others, coordination, and early occupancy by Owner.

1.02 THE WORK

- A. The Work consists of furnishing all labor, tools, materials, and equipment necessary for mobilization, replacement, installation, and testing of vertical turbine pump and motor at the Country Club Booster Pump Station. The Work shall be in accordance with all details, plans, requirements and specifications stated herein.

1.03 LOCATION OF PROJECT

- A. The Work is located at the Country Club Booster Pump Station. The Country Club Booster Pump Station is located off of Country Club Drive and Calaveras Ridge Drive. All facilities are behind locked gates.

1.04 CALENDAR OF EVENTS

- A. The Project shall follow the following timeline of events. All dates are subject to change.

Event	Date/Location
Required Delivery Date	Within 6 months of contract start date or earlier
Project Completion Date	Within 30 days of delivery date

1.05 OWNER ASSIGNED SUBCONTRACTORS

- A. There will be no assignment of Subcontractors by Owner.

1.06 ACTIVITIES BY OTHERS

- A. Owner, utilities, and others may perform activities within Project area while the Work is in progress.
1. Schedule the Work with Owner, utilities, and others to minimize mutual interference. There will be no additional compensation for Contractors inability to provide such coordination.

1.07 COORDINATION OF WORK

- A. Maintain overall coordination of the Work.

PART 2 TECHNICAL SPECIFICATIONS

2.01 SECTION INCLUDES

- A. Contractor furnished materials, equipment, labor and incidentals necessary to furnish and place into operation pump system including vertical turbine pumps with radial type impellers and vertically mounted motor drives at constant speed as specified herein.

2.02 REFERENCES

- A. American Gear Manufacturers Association Standards (AGMA):
 - 1. AGMA 1012-G05 - Gear Nomenclature, Definition of Terms with Symbols.
 - 2. AGMA 2001-D04 - Fundamental Rating Factors and Calculation Methods for Involute Spur and Helical Gear Teeth.
 - 3. AGMA 2003-C10 - Rating the Pitting Resistance and Bending Strength of Generated Straight Bevel, Zero Bevel and Spiral Bevel Gear Teeth.
 - 4. AGMA 6001-E08 - Design and Selection of Components for Enclosed Gear Drives.
 - 5. AGMA 6025-D98 - Sound for Enclosed Helical, Herringbone, and Spiral Bevel Gear Drives.
- B. American Society of Mechanical Engineers (ASME):
 - 1. ASME B 16.1 - Cast Iron Pipe Flanges and Flanged Fittings, Class 25, 125, 250, and 800.
 - 2. ASME B 16.5 - Pipe Flanges and Flanged Fittings.
 - 3. ASME PTC 8.2 - Performance Test Code for Centrifugal Pumps.
- C. American Society for Testing and Materials (ASTM):
 - 1. A 48/A48M - Standard Specification for Gray Iron Castings.
 - 2. A 53/A53M - Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.
 - 3. A 108 - Standard Specification for Steel Bars, Carbon, Cold-Finished, Standard Quality.
 - 4. A 240/A240M - Standard Specification for Stainless Steel and Heat-Resisting Chromium-Nickel Steel Plate Sheet and Strip.
 - 5. A 276/A276M - Standard Specification for Stainless Steel Bars and Shapes.
 - 6. A 283/A283M - Specification for Low and Intermediate Tensile Strength Carbon Steel Plates.
 - 7. A 576 - Standard Specification for Steel Bars, Carbon, Hot Wrought, Special Quality.
 - 8. A 582/A582M - Standard Specification for Free-Machining Stainless Steel Bars.
 - 9. A 743/A743M - Standard Specification for Castings, Iron-Chromium, Iron-Nickel, Corrosion Resistant, for General Application.
 - 10. B 505/B505M - Specification for Copper-Base Alloy Continuous Castings.
 - 11. B 584 - Specification for Copper Alloy Sand Castings for General Applications.

12. D 2240 - Test Method for Rubber Property - Durometer Hardness.
13. E 10 - Test Method for Brinell Hardness of Metallic Materials.
14. F 593 - Specification for Stainless Steel Bolts, Hex Cap Screws and Studs.
15. F 594 - Specification for Stainless Steel Nuts.

- D. Antifriction Bearing Manufacturers Association Standards (ABMA):
 1. ABMA 9 - Load Ratings and Fatigue Life for Ball Bearings.
 2. ABMA 11 - Load Ratings and Fatigue Life for Roller Bearings.
- E. California Code of Regulations (CCR):
 1. Title 8 - Industrial Relations.
 2. Title 24 - Building Standards.
- F. Hydraulic Institute Standards, 14th Edition.
- G. National Sanitation Foundation (NSF), Latest standards:
- H. United Laboratories/ Factory Mutual Laboratories (UL/FM), Latest standards:

2.03 DEFINITIONS

- A. Pump head (total dynamic head), flow capacity, pump efficiency, net positive suction head available and net positive suction head required are as defined in the Hydraulic Institute Standards, and will be measured at the pump discharge as indicated on the Drawings.
- B. Tolerances: This Section contains tolerances that are more stringent than Hydraulic Institute Standards tolerances. Where tolerances are not mentioned, Hydraulic Institute Standards tolerances apply to this Section of the specifications.
- C. Flow, head, efficiency and motor horsepower specified in this Section are minimums unless stated otherwise.

2.04 SYSTEM DESCRIPTION

- A. The Country Club pump and motor shall be designed to meet the following conditions.
 1. Pump Performance Characteristics:

Characteristic	Requirement
Product	Drinking Water
Seal Type	Double Mechanical
Drive Arrangement	Direct Coupled Submersible
Flow (GPM)	250
Total Dynamic Head (Feet)	270

Minimum Efficiency	76
NPSH Required (Feet)	8
Fluid Temperature (Fahrenheit)	50 – 70

2. Datum (elevation):

Characteristic	Requirement
Well Casing Inner Diameter (Feet)	3
Height of Pump Can (Feet)	20
Top of Pump Can Elevation (Feet)	219.5
Pump Inlet Elevation (Feet)	210.2

3. Motor Characteristics:

Characteristic	Requirement
Horsepower	30
Voltage	460
Full Load RPM	1720
Power Phases	3
Power Frequency (Hertz)	60
Service Factor	1.1
Insulation Class	F
Duty Cycle	Continuous

2.05 SUBMITTALS

- A. Product Data: Submit data completely describing products including plan and section views and listings of all components and their materials of construction designated by ASTM Standard and UNS Alloy Number.
- B. Shop Drawings; Submit Before Fabrication:
 - 1. Outline drawings showing dimensions, weights and locations of pump, seal, motor, shafting, couplings, drive arrangement, gears, baseplate or supports, anchor bolt sizes, bearings and other furnished components.

2. Installation and check-out instructions including leveling, alignment, grouting, lubrication, and initial start-up procedures.
 3. Wiring and control schematics and control logic diagrams for all electrical and control components furnished.
 4. Calculations and other information to substantiate base plates, supports and anchor bolts meet minimum design strength requirements and can withstand seismic loads per the Uniform Building Code design loads for the project location; calculations signed and stamped by a Professional Engineer licensed to practice in the state where the project is located.
 5. Bearing L10 life calculations in accordance ABMA calculation methods for pump, gears, shafts, motor and other drive line components with bearings; calculations signed and stamped by a Professional Engineer licensed to practice in the state where the project is located.
 6. Product data showing basis for selection of line shaft and other shaft components, or calculations showing basis for sizing of shaft components.
 7. Vibration Information:
 - a. For all pumps, submit calculations and other information to substantiate that natural resonant vibration frequencies (torsional, radial or axial) meet the requirements of this Section.
 8. Submit proposed surface preparation and finishes to be applied to all equipment.
- C. Quality Control Submittals: Submit at the time of shipping:
1. Certificates of Compliance:
 - a. Certification of column hydrostatic test
 - b. Provide copies of mill certificates of composition and quality for component materials actually used in the manufacture of the pump and drive system.
 - c. Certification of Factory or Shop Performance Testing: Certify that each pump complies with requirements as specified in Article 2.05 of this specification.
 2. Balancing Records: Submit factory rotating element balancing records including balance machine make and model, balance machine weight rating, balanced part weight, final balance quality (center of gravity displacement in inches) and methods used to achieve final balance (e.g. grinding, drilling, end milling, etc.) and mark relative locations on a sketch of the rotating part.
- D. Contract Closeout Submittals, submit before field testing, correct as necessary after start-up:
1. Project Record Documents showing as-built dimensions, as-built wiring and control diagrams, as-built control logic diagrams and design information for all supplied parts and equipment.
 2. Operation and Maintenance Manuals showing complete details with step by step procedures and exploded views for all operation and maintenance requirements including complete overhaul and replacement of all parts.
 3. Training plan detailing proposed training subject matter and durations to meet training requirements of this Section.

2.06 QUALITY ASSURANCE

- A. Qualifications: Pump manufacturer and system component manufacturers to have a minimum of 5 years experience in the design, manufacturer and assembly of the specified pumps and components. Pump manufacturer to coordinate design of all pump and drive system components.

2.07 DELIVERY, STORAGE, AND HANDLING

- A. Packing and Shipping: Pack as required for shipping and storage at the project site for up to months. Apply temporary corrosion protective coatings to all unpainted components and pack components to protect from the elements.
- B. Storage and Protection: Protect the pump system components at the site or Contractor's storage facility and during installation prior to project completion. Apply protective coatings and manually rotate shafts regularly as recommended by the manufacturer.

2.08 PROJECT CONDITIONS

- A. Environmental Requirements: Submerged in finished drinking water at approximately 100 feet above sea level, and in pressurized surroundings.
- B. Existing Conditions: Existing pump installation must be matched as indicated on the Drawings.

2.09 SPARE PARTS

- A. Extra Materials:
 - 1. Special Tools: For each type or size of pump specified, provide 1 set of all special tools required for complete assembly or disassembly of all pump system components.

2.10 START-UP PLAN

- A. Submit start-up plan for each piece of equipment and each system not less than 3 weeks prior to planned initial equipment or system start-up.
- B. Provide Detailed Subnetwork of Progress Schedule with the Following Activities Identified:
 - 1. Manufacturer's services.
 - 2. Installation certifications.
 - 3. Operator training.
 - 4. Submission of Operation and Maintenance Manual.
 - 5. Functional testing.
 - 6. Performance testing.
 - 7. Operational testing.

- C. Provide testing plan with test logs for each item of equipment and each system when specified. Include testing of alarms, control circuits, capacities, speeds, flows, pressures, vibrations, sound levels, and other parameters.
- D. Provide summary of shutdown requirements for existing systems which are necessary to complete start-up of new equipment and systems.
- E. Revise and update start-up plan based upon review comments, actual progress, or to accommodate changes in the sequence of activities.
- F. Training: Provide factory trained representative for a minimum of 1 day, exclusive of travel time and start-up services, for each type of pump supplied for training of operations and maintenance personnel.

2.11 GENERAL START-UP AND TESTING PROCEDURES

- A. Mechanical Systems:
 1. Remove rust preventatives and oils applied to protect equipment during construction.
 2. Flush lubrication systems and dispose of flushing oils. Recharge lubrication system with lubricant recommended by manufacturer.
 3. Flush fuel system and provide fuel for testing and start-up.
 4. Install and adjust packing, mechanical seals, O-rings, and other seals. Replace defective seals.
 5. Remove temporary supports, bracing, or other foreign objects installed to prevent damage during shipment, storage, and erection.
 6. Check rotating machinery for correct direction of rotation and for freedom of moving parts before connecting driver.
 7. Perform cold alignment and hot alignment to manufacturer's tolerances.
 8. Inspect hand and motorized valves for proper adjustment. Tighten packing glands to insure no leakage, but permit valve stems to rotate without galling. Verify valve seats are positioned for proper flow direction.
 9. Tighten leaking flanges or replace flange gasket. Inspect screwed joints for leakage.
 10. Install gratings, safety chains, handrails, shaft guards, and sidewalks prior to operational testing.
- B. Electrical Systems:
 1. Perform insulation resistance tests on wiring except 120 volt lighting, wiring, and control wiring inside electrical panels.
 2. Perform continuity tests on grounding systems.
 3. Test and set switchgear and circuit breaker relays for proper operation.
 4. Perform direct current high potential tests on all cables that will operate at more than 2,000 volts. Obtain services of independent testing lab to perform tests.
 5. Check motors for actual full load amperage draw. Compare to nameplate value.
- C. Instrumentation Systems:
 1. Bench or field calibrate instruments and make required adjustments and control point settings.

2. Energize transmitting and control signal systems, verify proper operation, ranges and settings.

2.12 PERFORMANCE TESTING

- A. Test equipment for proper performance at point of manufacture or assembly when specified.
- B. When Source Quality Control Testing Is Specified:
 1. Demonstrate equipment meets specified performance requirements.
 2. Provide certified copies of test results.
 3. Do not ship equipment until certified copies have received written acceptance from ENGINEER. Written acceptance does not constitute final acceptance.

2.13 FUNCTIONAL TESTING

- A. Functionally test mechanical and electrical equipment for proper operation after general start-up and testing tasks have been completed.
- B. Demonstrate proper rotation, alignment, speed, flow, pressure, vibration, sound level, adjustments, and calibration. Perform initial checks in the presence of and with the assistance of the manufacturer's representative.
- C. Demonstrate proper operation of each instrument loop function including alarms, local and remote controls, instrumentation and other equipment functions. Generate signals with test equipment to simulate operating conditions in each control mode.
- D. Conduct continuous 8 hour test under full load conditions. Replace parts which operate improperly.

2.14 CERTIFICATE OF PROPER INSTALLATION

- A. At Completion of Functional Testing, Furnish Written Report Prepared and Signed by Manufacturer's Authorized Representative, Certifying Equipment:
 1. Has been properly installed, adjusted, aligned, and lubricated.
 2. Is free of any stresses imposed by connecting piping or anchor bolts.
 3. Is suitable for satisfactory full-time operation under full load conditions.
 4. Operates within the allowable limits for vibration.
 5. Controls, protective devices, instrumentation, and control panels furnished as part of the equipment package are properly installed, calibrated, and functioning.
 6. Control logic for start-up, shutdown, sequencing, interlocks, and emergency shutdown have been tested and are properly functioning.
- B. Furnish Written Report Prepared and Signed by the Electrical And/or Instrumentation Subcontractor Certifying:
 1. Motor control logic that resides in motor control centers, control panels, and circuit boards furnished by the electrical and/or instrumentation subcontractor has been calibrated and tested and is properly operating.
 2. Control logic for equipment start-up, shutdown, sequencing, interlocks and emergency shutdown has been tested and is properly operating.

- C. Co-sign the reports along with the manufacturer's representative and subcontractors.

2.15 TRAINING OF OWNER'S PERSONNEL

- A. Provide operations and maintenance training for items of mechanical, electrical and instrumentation equipment. Utilize manufacturer's representatives to conduct training sessions.
- B. Provide training manual (outline of training session) to Owner at training session.
- C. Coordinate training sessions to prevent overlapping sessions. Arrange sessions so that individual operators and maintenance technicians do not attend more than 2 sessions per week.
- D. Provide Operation and Maintenance Manual for specific pieces of equipment or systems 2 weeks prior to training session for that piece of equipment or system.
- E. Satisfactorily complete functional testing before beginning operator training.
- F. Provide training sessions for each work shift listed below during the time periods shown. Pooling of shifts will not be permitted unless accepted by OWNER.

Shift	
Day	Monday through Friday, 7:00 a.m. to 4:00 p.m.
Coordinate Schedule with the OWNER.	

2.16 OPERATIONAL TESTING

- A. Conduct operational test of the entire facility after completion of operator training. Demonstrate satisfactory operation of equipment and systems in actual operation.
- B. Conduct operational test for continuous 7 day period.
- C. OWNER will provide operations personnel, power, fuel, and other consumables for duration of test.
- D. Immediately correct defects in material, workmanship, or equipment which became evident during operational test.
- E. Repeat operational test when malfunctions or deficiencies cause shutdown or partial operation of the facility or results in performance that is less than specified.

2.17 RECORD KEEPING

- A. Maintain and Submit Following Records Generated During Start-up and Testing Phase of Project:
 - 1. Daily logs of equipment testing identifying all tests conducted and outcome.

2. Logs of time spent by manufacturer's representatives performing services on the job site.
3. Equipment lubrication records.
4. Electrical phase, voltage, and amperage measurements.
5. Insulation resistance measurements.
6. Data sheets of control loop testing including testing and calibration of instrumentation devices and setpoints.

PART 3 PRODUCTS

3.01 MANUFACTURERS

- A. Manufacturers: One of the following or approved equal:
1. FlowServe (Byron Jackson), Model 7 MQH.
 2. or approved equal.

3.02 MATERIALS

- A. Vertical turbine pumps and the materials used in their manufacture shall comply with the most recent revision of the following standards:

Item	Material Standards
Pump Suction Bell	Cast Iron ASTM A48 Class 30
Pump Suction Strainer	Stainless Steel Type 316
Pump Suction Bell Bearing	Tin Bronze ASTM B584-938
Pump Impeller Shaft	Stainless Steel ASTM A582 Type 416
Pump Impellers	Cast Iron ASTM A48 Class 30
Pump Impeller Keys or Locking Devices	Stainless Steel ASTM A582 Type 416
Intermediate and Discharge Pump Impeller Cases	Cast Iron ASTM A48 Class 30
Pump Impeller Bowl Bearings	Bronze ASTM B584-938 , fitted with a neoprene bearing
Pump Column Pipe	Steel ASTM A53
Pump Barrel and Can	Reuse existing steel can and refinish with NSF/ANSI-61 approved Epoxy
Pump Surface Support Plate	Steel ASTM A36
Discharge Elbow	Steel ASTM A283

Nuts	Stainless Steel ASTM F594 Type 316
Bolts	Stainless Steel ASTM F593 Type 316

3.03 EQUIPMENT

- A. Provide submersible vertical turbine pumps with discharge elbows and support plates, bearings, impeller bowl assemblies, column barrels or cans, motor, seals, couplings, base plates, supports, anchor bolts and features as specified in Article 1.04 and other articles of this Section. Provide complete with necessary valves, gauges, taps, lifting eyes, stands and similar type items as specified and as required for complete operational units ready for use as indicated on the Drawings.
- B. Provide all pumps in this Section from same manufacturer; like components from the same manufacturer.

3.04 COMPONENTS

- A. Pump Construction, General:
 - 1. Type: Industrial heavy duty, vertical turbine, centrifugal type pumps meeting performance requirements and features as Specified in Article 1.04 and elsewhere in this Section.
 - 2. Discharge Flange: ANSI 125 pound bolt pattern.
 - 3. Discharge Nozzles: Provide 2 inch NPT taps for pressure gauges; install nipple and gauge with block valve.
 - 4. Shafts:
 - a. Stainless steel as specified in this Section, accurately machined and of sufficient size to transmit full driver output with less than 0.002 inches deflection under any operating condition; meet vibration limits as specified.
- B. Pump Suction Assembly:
 - 1. Pump Suction Inlet: Provide suction strainer as required in Article 1.04
- C. Pump Impeller Bowl Assemblies:
 - 1. Pump Impeller Assembly:
 - a. Type: As specified in Article 1.04 of this Section.
 - b. Required Balance: Static, dynamic, and hydraulic.
 - c. Method of Securing Impellers to Shafts: Keyed and secured by a nut locked in place, but readily removable without use of special tools.
 - d. Impeller Thrust: When appropriate for the specified impeller type, provide hydraulically balanced impeller to minimize down thrust.
 - 2. Intermediate and Discharge Impeller Cases: Cases to be attached with bolting or threaded connections.
 - 3. Pump Impeller Bowl Bearings: Provide bearing for each impeller.
 - 4. Lower Bearings: Provide bronze sleeved bearings with self-contained lubrication system filled with NSF approved lubricant; provide bearing with sand cap.

- D. Pump Column Pipe: Schedule 40 pipe thickness or equivalent fabricated steel thickness minimum
- E. Pump Support Plate and Discharge Elbow Assembly:
 - 1. Head and Base Plate Construction: Sufficient strength, weight, and thickness to provide accurate alignment, prevent excessive deflection and support the drive motor or right angle gear as specified.
 - 2. Air Release Vent: Provide 1 inch NPT threaded vent on support plate; install air release valve, piping and nipples reused from the existing pump assembly in vent opening.
- F. Motor:
 - 1. Oil filled designed to withstand the pressure of submergence to 40 psig.
 - 2. Shall be manufactured by the pump manufacturer and shall be designed specifically to drive vertical turbine pumps in submerged applications.
 - 3. Shall be equipped with a shroud of the manufactures design, attached above the pump inlet, to direct incoming water over the motor surfaces to enhance cooling.
- G. Finishes:
 - 1. Provide fusion-bonded, NSF-61 approved, epoxy coatings on pump bowl and column interior and exterior, below base plate exterior surfaces, and discharge head waterways.
 - 2. Prime coat all other exposed metal surfaces above the base plate, including the base plate, in the shop prior to delivery to the site with a minimum 3 mil polyamide epoxy primer measured as a dry film thickness. Surface preparation and application shall be recommended by coating material manufacturer.
 - 3. Approved submittal data identifying the shop primer used shall be provided to the onsite finish coat applicator and to the Project Manager before delivery of items to the job site.
 - 4. Correct damage to lining or coating to the satisfaction of the Project Manager if in their opinion it is repairable. Return equipment which has damaged coating and/or lining, beyond repair, to the manufacturer for recoating.

3.05 SOURCE QUALITY CONTROL

- A. Pump Factory Tests:
 - 1. Test Fluid: Water at ambient conditions.
 - 2. Test Tolerances: In accordance with the Hydraulic Institute Standards, latest Edition except that tolerances are from 0 to plus 5 percent of head at the rated design point flow or 0 to plus 5 percent of flow at the rated design point head, and no negative tolerance for the efficiency at the rated design point and no positive tolerance for vibration limits.
 - 3. Test Measurement and Results: Provide calibrated instrumentation meeting Hydraulic Institute Standards; use test values as measured to determine if the pump meets the specifications; do not adjust values or calculated results for instrument uncertainty or repeatability; provide certified test performance curves and other required test data in a report with Table of Contents and explanations of all calculations made.
 - 4. Flow and Head: Perform head measurements from shutoff to 150 percent of rated design flow with the pump operating at maximum operating revolutions

per minute. Determine pump brake horsepower, net positive suction head required and efficiency at each test point Test with actual motor to be supplied.

a. Number and Location of Test Points:

- 1) Minimum Number: Take 6 points minimum or, if more, the number of specified points in Article 1.04 plus minimum flow readings.
- 2) Locations: Take at least 1 point of 6 as near as possible to each specified condition.

B. Inspection and Balancing, All Components:

1. Statically, dynamically, and hydraulically and dynamically balance each of the individual rotating parts as required to achieve the required field vibration limits. Statically and dynamically balance the completed rotating assemblies and drive shaft components.
2. Furnish copies of all material and component inspection reports including balancing reports for all pump system components and for the completed rotating assembly.

C. Verification of Performance:

1. Furnish certified pump head-capacity, efficiency, net positive suction head required and brake horsepower curves; state minimum and maximum permissible flows (if none stated, pump may be operated at any point along the entire certified head-capacity curve without damage or voiding warranty).
2. Furnish all vibration data taken at the factory or shop, the make and model of vibration instruments, and a sketch or drawing showing the location of each vibration reading.
3. At Owner's option, factory, or shop testing will be witnessed by Owner or Owner's representative.
 - a. Give 12 calendar days advanced notice of scheduled testing date.
 - b. Owner pays Owner's expenses to witness the first scheduled factory testing. Contractor/pump manufacturer pays Owner representative's reasonable travel and labor expenses for subsequent factory test witnessing if the Owner had scheduled to witness the first factory tests and if the first testing results in the pump failing to meet specifications or if testing is delayed and rescheduled with less than 48 hours advanced notice.

PART 4 EXECUTION

4.01 EXAMINATION

- A. Inspect all components for shipping damage, conformance to specifications and proper torques and tightness of fasteners.

4.02 INSTALLATION

- A. General: Follow manufacturer's written instructions for installation and adjustment of components.
- B. Leveling: Level the pump system components using brass shims or stainless jack screws as recommended by the manufacturer. The pump and support plat are to be installed on the existing steel can which is cast in concrete.
- C. Lubrication: Clean bearings and housings and install lubricants per manufacturer's recommendations; consolidate lubricant brands and types with other mechanical equipment; after completion of all field testing, drain or clean out all lubricants in accordance with manufacturer's instructions and replace with fresh lubricants at the recommended levels; do not replace permanently sealed bearing lubricants.
- D. Installation Tolerances: Per manufacturer's recommendations with enhancements as required to meet performance and vibration specifications.
- E. Field Finishes: Apply or touch up finishes in the field.

4.03 FIELD QUALITY CONTROL

- A. Inspection and Check-out: Prior to operating the pump or any component of the pump system for any reason, finish complete inspection, adjustment, calibration, component testing and check-out of all supporting systems, including but not limited to driver systems, gears, control systems, piping systems and safety systems.
 - 1. Instrumentation and Controls:
 - a. Individual Loop Tests: Test each instrumentation loop from field drive to intermediate terminations to controller and back to controlled element. For each loop, provide signed and dated loop test sheets conforming to Instrument Society of America standards.
 - b. End to End Test: Perform "end to end" tests of each instrumentation loop to demonstrate functionality by simulating an input at the field drive and observing the control system response at the final field control element.
 - c. Set operational limits (start/stop, etc.) and alarm and shutdown limits as recommended by the manufacturer or as directed by the Engineer.
 - 2. Piping: Flush and disinfect potable water piping in accordance with AWWA C651-14 Disinfecting Water Main Standards. Piping for potable water shall be sterilized prior to being returned to service.
 - 3. Shaft Rotations: Test drivers, gear and pump rotation direction with couplings disconnected; verify all are correct.
- B. Pump Test Tolerances:
 - 1. Tolerances: In accordance with the Hydraulic Institute Standards, latest Edition except that acceptable tolerances are from 0 to plus 5 percent of

head at the rated design point flow or 0 to plus 5 percent of flow at the rated design point head, and no negative tolerance for the efficiency at the rated design point and no positive tolerance for vibration limits at any point or frequency.

2. Measurement Errors and Results: Use measured test values as measured to determine if the system or components meet the specifications; do not adjust values or calculated results for instrument uncertainty or repeatability.

C. General Pump Testing Requirements:

1. Provide: Calibrated test instrumentation and equipment for field quality control tests including but not limited to electrical power measurement drives (e.g. kilowatt-hour meters), pressure gauges, vibration instrumentation, and flow instruments as required to perform the tests.
2. Calibration Records: Prior to testing, certify all test instrumentation has been calibrated to verifiable national standards within the past year; prior to testing, provide signed and dated certificates of calibration for all test instrumentation and equipment to the Engineer.
3. Test Plan: Submit a test plan and schedule (bar chart format) to the Engineer for review; testing may affect the ongoing operations of the existing facilities and delays or rescheduling may be required; allow for at least 2 weeks unanticipated delays in testing.
4. Test Interruption: For operational reasons, the testing may be interrupted or stopped at any time at the direction of the Engineer.
5. Test Personnel: Provide personnel to operate new equipment and repair or correct deficiencies noted during testing.
6. Test Utilities and Consumables: Provide utilities and consumables required for testing; Owner will provide water and electricity.
7. Operation of Related Existing Equipment: Owner will operate related existing equipment or facilities necessary to accomplish the testing.

D. Field Performance Tests:

1. Test Fluid: Test using the intended service fluid; duration of test at each test condition, test 20 minutes minimum or longer until temperatures, vibration and flows achieve steady state at that condition.
2. Hydraulic Performance:
 - a. Measure head and efficiency versus flow from shutoff to 125 percent of rated design point flow (or maximum permissible pump run out flow as rated by the manufacturer, whichever is less) of each pump.
 - b. At each pump test revolutions per minute, test minimum of 5 different flow/head points; 1 point to be at the rated design point flow; at least 1 point above and 1 point below the rated design point flow; include specified flow points if feasible; provide temporary throttling valve or use suitable installed valving to test reduced flow/increased head conditions.
3. Acceptable Tests:
 - a. Demonstrate the pump performance meet all the requirements of this Section. If the pump system or component fails to meet the specified requirements of this Section, correct, repair or replace the causative components and repeat the testing that revealed the deficiency.
 - b. All test data is summarized in a written report to the Engineer; include copies of all raw field data sheets, make, model and calibration sheets for all test instrumentation, sample calculations and graphs of head and

efficiency versus flow report to be signed and stamped by a licensed Professional Engineer.

- E. Operational Testing: After acceptable completion of specified field performance tests, perform operational test.
 - 1. Duration: 7 days, operate each pump system including control systems as intended for long term service to demonstrate the pump, drivers, piping and control systems perform as specified.
 - 2. Acceptable Tests:
 - a. Test Success: Pump system operates as intended without failures for the specified duration.
 - b. Test Failure: Any unintended shutdown, the failure of the control system to respond as required. Minor on-line adjustments and tuning of instrumentation are not considered a failure.
 - c. Retesting: After a failure, correct, repair or replace the causative components and repeat the testing for the full specified duration at no additional cost to the Owner.
- F. Disinfection:
 - 1. Disinfect pump and pump can, and take bacteria samples in accordance with AWWA disinfection standards for new construction.
- G. Manufacturer's Field Service:
 - 1. Start-up: Factory authorized representative to inspect the system before any field performance testing or start-up and certify in writing that the system is complete and has been correctly installed and prepared for start-up; representative to observe all Field Performance Tests.
 - 2. Training: Refer to the training requirements in Article 2.12.F.

PART 5 MEASUREMENT AND PAYMENT

5.00 GENERAL

- A. The total Bid price shall cover all work necessary for the proper and successful completion of the Contract. All work not specifically set forth as a pay item in the Bidder's Bid, but necessary to meet the requirements of this Contract, shall be considered a subsidiary obligation of the Contractor, and all costs in connection therewith shall be included in the prices Bid.
- B. All estimated quantities stipulated in the Bid form are to be used only as a basis for estimating the probable cost of the work and/or for the purpose of comparing the Bids submitted for the work. The actual amounts of work completed under unit price items may differ from estimated quantities. The basis of payment for unit price work will be the actual amount of work completed. Contractor agrees to make no claim for damages anticipated profits or otherwise on account of any difference in the amounts of work actually performed, and estimated amounts therefor.
- C. Payment will be issued upon completion of each line item listed in the applicable bid schedule.

5.01 MOBILIZATION, DEMOBILIZATION, STORING, AND OTHER INCIDENTALS (BID ITEM NO. 1)

- A.** The work to be performed in accordance with this section includes the storing and movement of materials, personnel, equipment, supplies, and incidentals to the project site; for the establishment of facilities necessary for work on the project; for premiums on bonds and insurance for the project; and for all the work and operations which must be performed or cost incurred before beginning work on the various contract items.
- B.** Demobilization at the end of the job includes removal of tools, materials, equipment, and facilities used by the Contractor during construction of the project. Also included is the final clean-up to leave the site with a neat, clean appearance.
- C.** Materials shall consist of equipment and tools necessary to move to the project site to perform work. Material for bid items shall not be included in Mobilization.
- E.** Payment will be provided at the contract bid fixed lump sum price for item no. 1 upon completion of the project.

5.02 COUNTRY CLUB PUMP (BID ITEM NO. 2)

- A.** Under this item, the Contractor shall provide all materials as specified or as approved equal, including but not limited to the pump, motor, mechanical seals, shafts, and impellers, as necessary to provide a complete and full replacement of the Country Club pump, and to the satisfaction of the Public Works Director.
- B.** Under this bid item, the contractor is responsible for providing factory testing of the pump and all associated materials and reports.
- C.** Payment for the Country Club Pump will be made at the contract bid fixed lump sum price for item no. 2 upon completion.

5.03 COUNTRY CLUB PUMP INSTALLATION (BID ITEM NO. 3)

- A.** Under this bid item, the contractor is responsible for furnishing all labor, deliveries, assembly, salvage, recycling, materials, tools, equipment, appurtenances, and incidentals for doing all the work involved in installing pump and motor components including, but not limited to, cases, shafts, impellers, flanges, couplings, piping, strainers, rings, seals, tie-ins, testing, troubleshooting, complete in place, suitable for its intended use, as shown on the plans, as specified in these Specifications, or as necessary to provide a complete and functional project, and to the satisfaction of the Public Works Director.
- B.** Under this bid item, the contractor is responsible for cleaning and disinfecting the pump can prior to installation of the pump, shall follow all OSHA confined space entry requirements as necessary, and provide photographic evidence of the condition of the pump can before and after cleaning, all to the satisfaction of the City.
- C.** Under this item, the Contractor will perform all specified analytical performance testing of the pump, which includes, but is not limited to, performing pump calibration, directional bump, and operational and field tests, to demonstrate to the City's representative that the pump performs satisfactorily.

- D.** Under this item, the Contractor will perform all specified analytical water quality testing of the pump and pump can, which includes, but is not limited to treating and taking samples of the pump and pump can water to test total chlorine residual, turbidity, and total coliform bacteria to meet AWWA standards for new construction disinfection
- E.** Payment for installation of the Country Club pump will be made at the contract bid fixed lump sum price for Item No. 3 upon completion.

EXHIBIT "B" PLANS AND SPECIFICATIONS

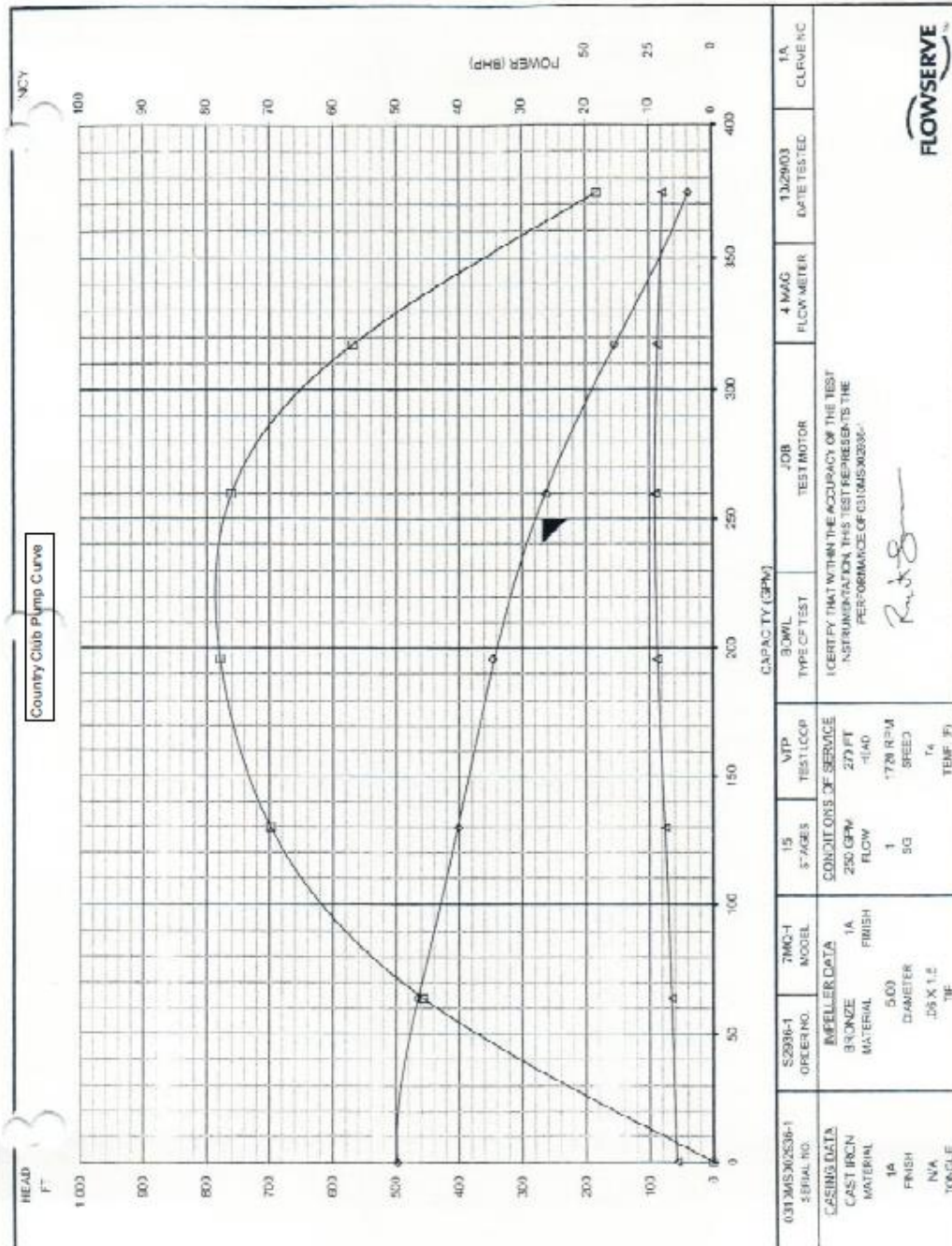


EXHIBIT "C"

SPECIAL CONDITIONS

ARTICLE 1. BONDS

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. Failure to do so may, in the sole discretion of City, result in the forfeiture of Contractor's bid security. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

ARTICLE 2. GENERAL

- A. The Contract Documents are intended to be fully cooperative and to be complementary. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
1. Change Orders or Work Change Directives, the most recent first
 2. Addenda, the most recent first
 3. Special Conditions (Exhibit E)
 4. Technical Specifications/Scope of Work (Exhibit A)
 5. Contract
 6. Insurance Requirements (Exhibit D)
 7. Schedule of Services (Exhibit B)
 8. Compensation Schedule (Exhibit C)
 9. Instructions to Bidders
 10. Notice Inviting Bids
 11. Contractor's Bid Forms
- B. Titles and headings to sections and paragraphs in these specifications are introduced merely for convenience and shall not be taken as a correct or complete segregation of the several units or materials and labor.

ARTICLE 3. ACCEPTED HOURS OF WORK

Allowable working hours shall be between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday, unless otherwise specified for off-peak hours. No work shall be performed after regular working hours, or work in excess of eight (8) hours a day, or on Saturday, Sunday, or any legal holiday. Any of the additional costs incurred by the City due to afterhours work by the Contractor will be deducted from any monies due or to become due to the Contractor.

ARTICLE 4. FINAL INSPECTION

- A. At least four (4) working days' notice shall be given to the Public Works Maintenance Manager for Utilities that the project is ready for final inspection,

that the Contractor has carefully inspected all portions of the work and that all conditions of the Contract Section have been fulfilled.

- B. Upon acceptance of notice that the work is ready for final inspection, the Public Works Maintenance Manager for Utilities together with the Contractor, shall promptly make a joint inspection of the work and note deficiencies, if any. If there are no deficiencies, or when noted deficiencies, have been corrected and Public Works Maintenance Manager for Utilities finds the work acceptable then the Contract is fully performed.

ARTICLE 5. ORDER OF WORK

- A. The contractor's schedule shall indicate the order of their work and the time period required in each area.
- B. Complete Country Club Pump Station Improvements.
- C. Connections to existing systems shall not be made until the new construction has been satisfactorily disinfected and tested.

ARTICLE 6. GUARANTEES

The contractor shall be held responsible for and make good any defect through faulty, improper, or inferior workmanship or materials, arising or discovered in any part of the contractor's work within one (1) year after the completion and acceptance of the work. The bond for faithful performance, furnished by the contractor, shall cover such defects and protect the City against them. Longer guarantee periods shall apply where specifically called for in the detailed specifications.

ARTICLE 7. CONDITION OF THE WORK SITE

During the period of work, the contractor shall be required to coordinate cleaning and testing activity with the Public Works Maintenance Manager for Utilities. Care should be taken to provide safety and egress and ingress to the work area.

ARTICLE 8. DAMAGE TO PROPERTY

Damage to any property, including but not limited to the existing structures, equipment, pipe covering, grounds, sidewalks, curbs, gutters, driveways, fences, etc., damaged by the Contractor during the course of his work shall be replaced or repaired by the Contractor in a manner satisfactory to the City and at the Contractor's expense, prior to final inspection and acceptance.

ARTICLE 9. STORM WATER POLLUTION PREVENTION

- A. The contractor is advised that the City of Milpitas is subject to the requirements of the Municipal Regional Storm Water National Pollutant Discharge Elimination System (NPDES) Permit. This permit prohibits the discharge of illicit discharges (non rainwater) into the storm drain system, unless specifically exempt.
- B. All work performed under this contract and all contractors and their associates and/or employees are required to comply with all applicable Storm Water regulations at all times.

ARTICLE 10. SAFETY

- A. Contractor, before beginning construction, is to provide, maintain and remove upon completion of work all barricades around openings and excavations, fences around areas and other temporary construction, warning signals, signs, and flagmen as required to direct traffic through the work area and or to redirect traffic to detours.
- B. The temporary work shall conform to all requirements of State and Local Authorities, and of the Underwriters in regard to operation, safety, and fire hazards. The Contractor shall furnish and complete all items necessary for such construction and for conformity with such requirements whether or not called for under the separate divisions of these specifications.
- C. Contractor agrees that he will assume sole and complete responsibility for job site conditions during the course of construction of this project, including safety of all persons and property; that this requirement shall apply continuously and not be limited to normal working hours.

ARTICLE 11. DISPOSAL OF MATERIAL

- A. All material shall be disposed of at the Contractors expense and shall be included as part of the appropriate bid item prices. No additional compensation shall be given for disposal of material.
- B. All unsuitable materials including packaging materials, scraps, used containers, solvents, debris, etc., shall be removed from the job site and disposed of by the contractor all to the satisfaction of the City. The hauling and disposal of materials off the job site shall be performed by the contractor.

ARTICLE 12. USE OF WATER

- A. Contractor shall follow all procedures and requirements necessary to ensure water quality in the pump can is not compromised. In the event the City finds the Contractor negligent in their process and procedure, resulting in water which does not meet City, State and Federal safe drinking water standards, the Contractor will be held responsible for the treatment of the water until it meets minimum safe drinking water standards. If it is determined by the City that the water in the pump does not meet safe drinking water standards and the water must be drained, the cost of cleaning, disinfecting, filling of the pump can and bac-T testing shall be borne by the contractor. Pump can and pump shall be drained, cleaned, disinfected and filled until it passes bac-T.
- B. Additional water shall be furnished at the current municipal water rates charged by the City to industrial/commercial customers and shall be paid for by the Contractor.

EXHIBIT "D"

**CERTIFICATION
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

PUMP REPAIR SERVICE CO.

By: _____
Signature

Name (Print)

Title (Print)

EXHIBIT "E"

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: **PUMP REPAIR SERVICE CO.**

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or X No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor _____

Signature _____

Name and Title _____

Dated _____

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

EXHIBIT “F”

PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Milpitas (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's

rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__).

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

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

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

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Milpitas (hereinafter designated as the "City"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

_____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of

improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

Title _____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT "G"

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit G. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

- ☐ Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- X_ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ☐ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general

aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X_ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

___ (If Design/Build), with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake

self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

X_ Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000,000** policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status:

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the **Contractor's or Consultant's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel,

modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

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

Applicability of Coverage:

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

EXHIBIT “H”
FEDERAL REQUIREMENTS

[RESERVED]



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

2/05/2019

Agenda Item No. 7



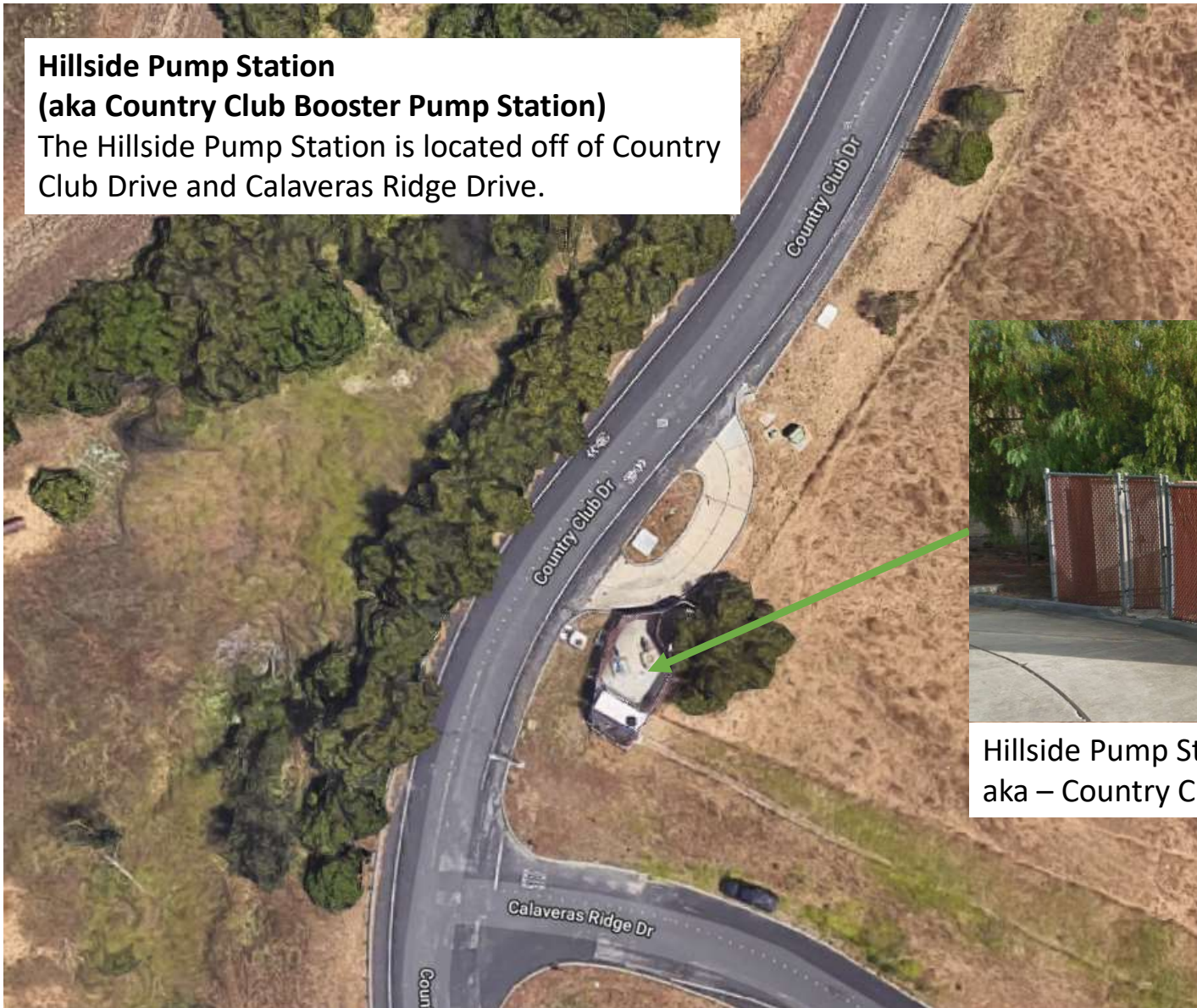
ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



Hillside Pump Station

(aka Country Club Booster Pump Station)

The Hillside Pump Station is located off of Country Club Drive and Calaveras Ridge Drive.



Hillside Pump Station
aka – Country Club Booster Pump Station

Backup material for agenda item:

Approve the Agreement with Pump Repair Service Co. for the water pump replacement at the Tularcitos Pump Station (Staff Contact: Tony Ndah, 408-586-2602)

Recommendation: Approve the agreement with Pump Repair Service Co. for the water pump replacement at the Tularcitos Pump Station for the not-to-exceed amount of \$118,200.00.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Agreement with Pump Repair Service Co. for the water pump replacement at the Tularcitos Pump Station
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	2/5/2019
Staff Contact:	Chris Schroeder, 408-586-3161, Tony Ndah, 408-586-2602
Recommendation:	Approve the agreement with Pump Repair Service Co. for the water pump replacement at the Tularcitos Pump Station for the not-to-exceed amount of \$118,200.00.

Background: The Tularcitos Water Pump Station pumps drinking water to a large section of the City's residents in the eastern hills. The pump station is configured with two pumps, each serving as back-up to the other in case of failure. One pump will work while the other is in standby. The redundancy helps extend the working life of each pump and provides back-up in case of needed maintenance, repair or pump failure. The Number 1 pump recently failed, necessitating an Invitation for Bid (IFB) be issued to have the failed pump replaced.

Analysis: The Purchasing Division released IFB 2286 – Tularcitos Water Pump Replacement on November 16, 2018 on PublicPurchase.com, the City's eProcurement Website. Staff also issued notices to qualified vendors registered with the City as well as required plan rooms per California Uniform Public Construction Cost Accounting Act (CUPCCAA) requirements.

The IFB closed on December 21, 2018, at 2:00 p.m. and two bids were received. The table below shows the results of the bid tabulation:

Bidder	Total Bid Price
Pump Repair Service Co.	\$118,200.00
Fort Bragg Electric, Inc.	\$179,281.00

Pending approval, the agreement with Pump Repair Service Co. the replacement pump will be ordered in early 2019 and installation is expected to be completed by July 31, 2019.

Policy Alternatives:

Alternative 1: Not replace the failed pump

Pros: Continue services with the single operational pump and deploy a back-up pump in the event of failure.

Cons: Without replacing Pump 1, the drinking water supply to the hillside residents serviced by the Tularcitos Pump Station will only be serviced by a single pump increasing the chances of a service interruption.

Reason not recommended: Only utilizing one pump will shorten the expected life of Pump 2 and potentially incur a service disruption for the hillside residents

Fiscal Impact: The cost to procure the water pump replacement at the Tularcitos Pump Station through Pump Repair Service Co. is \$118,200. There are sufficient funds available in Capital Improvement Project No. 7133 and the FY2018-19 Public Works Utility Operation and Maintenance Budget for this work. No further budget appropriations are requested at this time.

California Environmental Quality Act: This Project is exempt from CEQA under Class 1 - Section 15301 - Existing Facilities because they relate to the operation, repair, maintenance or minor alterations to a public facility involving no or negligible expansion of use.

Recommendation: Approve the agreement with Pump Repair Service Co. for the water pump replacement at the Tularcitos Pump Station for the not-to-exceed amount of \$118,200.00.

Attachments: Agreement with Pump Repair Service Co.

CITY OF MILPITAS
CONSTRUCTION CONTRACT

Tularcitos Water Pump Replacement

1. PARTIES AND DATE.

This Contract is made and entered into this _____ day of _____, 2019 by and between the City of Milpitas, a public agency and public corporation of the State of California ("City") and **Pump Repair Service Co.**, a corporation, with its principal place of business at **405 Allan Street San Francisco, CA 94134** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

2. RECITALS.

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing Hillside Water Pump Replacement related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: C10 – Electrical and C61/D21 Machinery and Pumps.

2.3 Project. City desires to engage Contractor to render such services for the Hillside Water Pump Replacement ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, a performance bond, a payment bond, and all insurance documentation, as required by the Contract.

3. TERMS

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Insurance Requirements (Exhibit "G")
- Federal Requirements (Exhibit "H")
- Addenda
- Change Orders executed by the City

- 2015 Edition of the Caltrans Standard Specifications, Excluding Division I (Sections 1-9)
- 2015 Edition of the Caltrans Standard Plans
- Notice Inviting Bids, if any
- Instructions to Bidders, if any
- Contractor's Bid

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Work under this Contract from **the date first written above through and including July 31, 2019**, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of One Hundred Dollars and Zero Cents (\$100.00) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of **One Hundred Eighteen Thousand Two Hundred Dollars and Zero Cents (\$118,200.00)** ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1)

liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total

compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.7.13 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the

Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.7.14 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.8 Performance of Work; Jobsite Obligations.

3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.8.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 Cost of Compliance. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 Liability for Non-Compliance. Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its directors, officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 Reservation of Right to Defend. City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.8.1.7 Training. In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Consultant further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least

two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, an City Business License. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's applicable business license fee. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating

and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.8.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.8.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed

no later than the date of final payment. The claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

3.10.3 Supporting Documentation. The Contractor shall submit all claims in the following format:

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

3.10.4 City's Response. Upon receipt of a claim pursuant to this Section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the public entity issues its written statement.

3.10.4.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, City shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.10.4.2 Within 30 days of receipt of a claim, City may request in writing additional documentation supporting the claim or relating to defenses or claims City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

3.10.4.3 City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.10.5 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, either within 15 days of receipt of City's response or within 15 days of City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.10.6 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with City and the Contractor sharing the associated costs equally. City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

3.10.6.1 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.10.6.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.10.6.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

3.10.7 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures.. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.10.8.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. City's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section

3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.12.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.13 Insurance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under Exhibit "G" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required therein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.14 Bond Requirements.

3.14.1 Payment Bond. If required by Civil Code section 9550, as it may be amended from time to time, or otherwise specifically requested by City as set forth in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.15 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any

defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.16.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

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

3.17 General Provisions.

3.17.1 City's Representative. The City hereby designates the General Manager, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.17.3 Termination. This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event

of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:

Pump Repair Service Co.
405 Allan Street
San Francisco, CA 94134
Attn: Jim Sedlack

CITY:

City of Milpitas
1265 N. Milpitas Boulevard
Milpitas, California 95035
Attn: Director of Public Works

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

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

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

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

3.17.14 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.17.15 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Contract, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.17.16.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.18 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

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

3.17.20 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

3.17.21 Wage Theft Prevention.

3.17.21.1 Contractor, and any subcontractor it employs to complete work under this Contract, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

3.17.21.2 BY SIGNING THIS CONTRACT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS CONTRACT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS CONTRACT.

3.17.21.3 If at any time during the term of this Contract, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Contract has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment,

decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Contract demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

3.17.21.4 For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

3.17.21.5 Failure to comply with any part of this Section constitutes a material breach of this Contract. Such breach may serve as a basis for immediate termination of this Contract and/or any other remedies available under this Contract and/or law.

3.17.21.6 Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Contract and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

3.17.22 Federal Provisions. [Reserved]

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF MILPITAS
AND PUMP REPAIR SERVICE CO.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the _____ day of _____, 2019

CITY OF MILPITAS

Approved By:

Julie Edmonds-Mares
City Manager

Date

Approved As To Form:

Christopher J. Diaz
City Attorney

Approved As To Content:

Will Fuentes
Director of Finance

Approved As To Scope:

Tony Ndah
Public Works Director

PUMP REPAIR SERVICE CO.

Signature

Name

Title

Date

EXHIBIT "A"
SERVICES / SCHEDULE

PART 1 SCOPE OF SERVICES

1.01 SECTION INCLUDES

- A. Identification and summary description of the Project, the Work, location, products furnished by Owner, activities by others, coordination, and early occupancy by Owner.

1.02 THE WORK

- A. The Work consists of furnishing all labor, tools, materials, and equipment necessary for mobilization, replacement, installation, and testing of vertical turbine pump and motor at the Tularcitos Booster Pump Station. The Work shall be in accordance with all details, plans, requirements and specifications stated herein.

1.03 LOCATION OF PROJECT

- A. The Work is located at the Tularcitos Booster Pump Station. The Tularcitos Booster Pump Station is located off of Tularcitos Drive within the Country Club Community. All facilities are behind locked gates.

1.04 CALENDAR OF EVENTS

- A. The Project shall follow the following timeline of events. All dates are subject to change.

Event	Date/Location
Required Delivery Date	Within 6 months of contract start date or earlier
Project Completion Date	Within 30 days of delivery date

1.05 OWNER ASSIGNED SUBCONTRACTORS

- A. There will be no assignment of Subcontractors by Owner.

1.06 ACTIVITIES BY OTHERS

- A. Owner, utilities, and others may perform activities within Project area while the Work is in progress.
1. Schedule the Work with Owner, utilities, and others to minimize mutual interference. There will be no additional compensation for Contractors inability to provide such coordination.

1.07 COORDINATION OF WORK

- A. Maintain overall coordination of the Work.

PART 2 TECHNICAL SPECIFICATIONS

2.01 SECTION INCLUDES

- A. Contractor furnished materials, equipment, labor and incidentals necessary to furnish and place into operation pump system including vertical turbine pumps with radial type impellers and vertically mounted motor drives at constant speed as specified herein.

2.02 REFERENCES

- A. American Gear Manufacturers Association Standards (AGMA):
 - 1. AGMA 1012-G05 - Gear Nomenclature, Definition of Terms with Symbols.
 - 2. AGMA 2001-D04 - Fundamental Rating Factors and Calculation Methods for Involute Spur and Helical Gear Teeth.
 - 3. AGMA 2003-C10 - Rating the Pitting Resistance and Bending Strength of Generated Straight Bevel, Zero Bevel and Spiral Bevel Gear Teeth.
 - 4. AGMA 6001-E08 - Design and Selection of Components for Enclosed Gear Drives.
 - 5. AGMA 6025-D98 - Sound for Enclosed Helical, Herringbone, and Spiral Bevel Gear Drives.
- B. American Society of Mechanical Engineers (ASME):
 - 1. ASME B 16.1 - Cast Iron Pipe Flanges and Flanged Fittings, Class 25, 125, 250, and 800.
 - 2. ASME B 16.5 - Pipe Flanges and Flanged Fittings.
 - 3. ASME PTC 8.2 - Performance Test Code for Centrifugal Pumps.
- C. American Society for Testing and Materials (ASTM):
 - 1. A 48/A48M - Standard Specification for Gray Iron Castings.
 - 2. A 53/A53M - Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.
 - 3. A 108 - Standard Specification for Steel Bars, Carbon, Cold-Finished, Standard Quality.
 - 4. A 240/A240M - Standard Specification for Stainless Steel and Heat-Resisting Chromium-Nickel Steel Plate Sheet and Strip.
 - 5. A 276/A276M - Standard Specification for Stainless Steel Bars and Shapes.
 - 6. A 283/A283M - Specification for Low and Intermediate Tensile Strength Carbon Steel Plates.
 - 7. A 576 - Standard Specification for Steel Bars, Carbon, Hot Wrought, Special Quality.
 - 8. A 582/A582M - Standard Specification for Free-Machining Stainless Steel Bars.
 - 9. A 743/A743M - Standard Specification for Castings, Iron-Chromium, Iron-Nickel, Corrosion Resistant, for General Application.
 - 10. B 505/B505M - Specification for Copper-Base Alloy Continuous Castings.
 - 11. B 584 - Specification for Copper Alloy Sand Castings for General Applications.

12. D 2240 - Test Method for Rubber Property - Durometer Hardness.
13. E 10 - Test Method for Brinell Hardness of Metallic Materials.
14. F 593 - Specification for Stainless Steel Bolts, Hex Cap Screws and Studs.
15. F 594 - Specification for Stainless Steel Nuts.

- D. Antifriction Bearing Manufacturers Association Standards (ABMA):
 1. ABMA 9 - Load Ratings and Fatigue Life for Ball Bearings.
 2. ABMA 11 - Load Ratings and Fatigue Life for Roller Bearings.
- E. California Code of Regulations (CCR):
 1. Title 8 - Industrial Relations.
 2. Title 24 - Building Standards.
- F. Hydraulic Institute Standards, 14th Edition.
- G. National Sanitation Foundation (NSF), Latest standards:
- H. United Laboratories/ Factory Mutual Laboratories (UL/FM), Latest standards:

2.03 DEFINITIONS

- A. Pump head (total dynamic head), flow capacity, pump efficiency, net positive suction head available and net positive suction head required are as defined in the Hydraulic Institute Standards, and will be measured at the pump discharge as indicated on the Drawings.
- B. Tolerances: This Section contains tolerances that are more stringent than Hydraulic Institute Standards tolerances. Where tolerances are not mentioned, Hydraulic Institute Standards tolerances apply to this Section of the specifications.
- C. Flow, head, efficiency and motor horsepower specified in this Section are minimums unless stated otherwise.

2.04 SYSTEM DESCRIPTION

- A. The Tularcitos pump and motor shall be designed to meet the following conditions.
 1. Pump Performance Characteristics:

Characteristic	Requirement
Product	Drinking Water
Seal Type	Double Mechanical
Drive Arrangement	Direct Coupled Submersible
Flow (GPM)	250
Total Dynamic Head (Feet)	365

Minimum Efficiency	76
NPSH Required (Feet)	8
Fluid Temperature (Fahrenheit)	50 – 70

2. Datum (elevation):

Characteristic	Requirement
Well Casing Inner Diameter (Feet)	3
Height of Pump Can Elevation (Feet)	20
Top of Pump Can Elevation (Feet)	545
Pump Inlet (Feet)	537.8

3. Motor Characteristics:

Characteristic	Requirement
Horsepower	40
Voltage	460
Full Load RPM	1770
Power Phases	3
Power Frequency (Hertz)	60
Service Factor	1.1
Insulation Class	F
Duty Cycle	Continuous

4. Performance Requirements:

- a. Design hydraulic requirements to head, capacity, pump efficiency, net positive suction head required, and vibration design requirements of this Section. Head and efficiency are measured from the suction bell to the discharge flange (column and other internal losses are in addition to the specified head).

5. Design Coordination:

- a. Pump Manufacturer to furnish and coordinate driver and pump components and to provide written installation and check out

- requirements to provide an operational system to meet the specified performance.
- b. Design pump column and related component lengths to match the approximate discharge mounting and suction elevations as indicated on the Drawings.
- 6. Impellers and Suction Bowl:
 - a. Design with smooth water passages design specifically for pumping clean, potable water.
 - b. Design radial impellers for balanced thrust to minimize down thrust loads on the bearings.
 - c. Design impellers capable of working on pumps that may be started against closed valve.
 - 7. Shafting and Couplings:
 - a. Strength: Design shafting and couplings to withstand a minimum of 1.5 times the maximum operating torque, thrust and other loads.
 - b. Design shafting with hardened sleeves where shafts pass through bearings or stuffing boxes; Brinell 550 or higher; hardened shafts are not required in the area of mechanical seals when mechanical seals specified.
 - c. Design driver to pump line shaft coupling of sufficient length and strength to maintain line shaft alignment.
 - 8. Resonant Frequency: Design the pump, motor, pump shaft, couplings, bearings and the motor shafting and motor bearings to ensure there are no natural resonant frequencies, either torsional, radial or axial, which are within 25 percent above or below the operating rotating frequencies or any multiples of the operating rotational frequencies that may be excited by vane passing frequencies, other pump related hydraulic forces or other excitation frequencies resulting from the pump and drive system design.
 - 9. Bearings:
 - a. Design motor and pump with bearings to support the line shaft assembly and rated for ABMA L10 life of 40,000 hours at design rated point flow and head in accordance with ABMA 9 or ABMA 11. Motor or pump thrust bearing to withstand continuous duty full load thrust and momentary upthrust that may occur during pump on/off or other operations.
 - b. Design a sleeve bearing for each impeller.
 - c. All lubricants shall be NSF approved for use in potable water pumping applications.
 - 10. Supports:
 - a. Coordinate pump and drive system supports with the foundation designs as indicated on the Drawings.

2.05 SUBMITTALS

- A. Product Data: Submit data completely describing products including plan and section views and listings of all components and their materials of construction designated by ASTM Standard and UNS Alloy Number.
- B. Shop Drawings; Submit Before Fabrication:
 - 1. Outline drawings showing dimensions, weights and locations of pump, seal, motor, shafting, couplings, drive arrangement, gears, baseplate or supports, anchor bolt sizes, bearings and other furnished components.

2. Installation and check-out instructions including leveling, alignment, grouting, lubrication, and initial start-up procedures.
 3. Wiring and control schematics and control logic diagrams for all electrical and control components furnished.
 4. Calculations and other information to substantiate base plates, supports and anchor bolts meet minimum design strength requirements and can withstand seismic loads per the Uniform Building Code design loads for the project location; calculations signed and stamped by a Professional Engineer licensed to practice in the state where the project is located.
 5. Bearing L10 life calculations in accordance ABMA calculation methods for pump, gears, shafts, motor and other drive line components with bearings; calculations signed and stamped by a Professional Engineer licensed to practice in the state where the project is located.
 6. Product data showing basis for selection of line shaft and other shaft components, or calculations showing basis for sizing of shaft components.
 7. Vibration Information:
 - a. For all pumps, submit calculations and other information to substantiate that natural resonant vibration frequencies (torsional, radial or axial) meet the requirements of this Section.
 8. Submit proposed surface preparation and finishes to be applied to all equipment.
- C. Quality Control Submittals: Submit at the time of shipping:
1. Certificates of Compliance:
 - a. Certification of column hydrostatic test
 - b. Provide copies of mill certificates of composition and quality for component materials actually used in the manufacture of the pump and drive system.
 - c. Certification of Factory or Shop Performance Testing: Certify that each pump complies with requirements as specified in Article 2.05 of this specification.
 2. Balancing Records: Submit factory rotating element balancing records including balance machine make and model, balance machine weight rating, balanced part weight, final balance quality (center of gravity displacement in inches) and methods used to achieve final balance (e.g. grinding, drilling, end milling, etc.) and mark relative locations on a sketch of the rotating part.
- D. Contract Closeout Submittals, submit before field testing, correct as necessary after start-up:
1. Project Record Documents showing as-built dimensions, as-built wiring and control diagrams, as-built control logic diagrams and design information for all supplied parts and equipment.
 2. Operation and Maintenance Manuals showing complete details with step by step procedures and exploded views for all operation and maintenance requirements including complete overhaul and replacement of all parts.
 3. Training plan detailing proposed training subject matter and durations to meet training requirements of this Section.

2.06 QUALITY ASSURANCE

- A. Qualifications: Pump manufacturer and system component manufacturers to have a minimum of 5 years experience in the design, manufacturer and assembly of the specified pumps and components. Pump manufacturer to coordinate design of all pump and drive system components.

2.07 DELIVERY, STORAGE, AND HANDLING

- A. Packing and Shipping: Pack as required for shipping and storage at the project site for up to months. Apply temporary corrosion protective coatings to all unpainted components and pack components to protect from the elements.
- B. Storage and Protection: Protect the pump system components at the site or Contractor's storage facility and during installation prior to project completion. Apply protective coatings and manually rotate shafts regularly as recommended by the manufacturer.

2.08 PROJECT CONDITIONS

- A. Environmental Requirements: Submerged in finished drinking water at approximately 100 feet above sea level, and in pressurized surroundings.
- B. Existing Conditions: Existing pump installation must be matched as indicated on the Drawings.

2.09 SPARE PARTS

- A. Extra Materials:
 - 1. Special Tools: For each type or size of pump specified, provide 1 set of all special tools required for complete assembly or disassembly of all pump system components.

2.10 START-UP PLAN

- A. Submit start-up plan for each piece of equipment and each system not less than 3 weeks prior to planned initial equipment or system start-up.
- B. Provide Detailed Subnetwork of Progress Schedule with the Following Activities Identified:
 - 1. Manufacturer's services.
 - 2. Installation certifications.
 - 3. Operator training.
 - 4. Submission of Operation and Maintenance Manual.
 - 5. Functional testing.
 - 6. Performance testing.
 - 7. Operational testing.

- C. Provide testing plan with test logs for each item of equipment and each system when specified. Include testing of alarms, control circuits, capacities, speeds, flows, pressures, vibrations, sound levels, and other parameters.
- D. Provide summary of shutdown requirements for existing systems which are necessary to complete start-up of new equipment and systems.
- E. Revise and update start-up plan based upon review comments, actual progress, or to accommodate changes in the sequence of activities.
- F. Training: Provide factory trained representative for a minimum of 1 day, exclusive of travel time and start-up services, for each type of pump supplied for training of operations and maintenance personnel.

2.11 GENERAL START-UP AND TESTING PROCEDURES

- A. Mechanical Systems:
 1. Remove rust preventatives and oils applied to protect equipment during construction.
 2. Flush lubrication systems and dispose of flushing oils. Recharge lubrication system with lubricant recommended by manufacturer.
 3. Flush fuel system and provide fuel for testing and start-up.
 4. Install and adjust packing, mechanical seals, O-rings, and other seals. Replace defective seals.
 5. Remove temporary supports, bracing, or other foreign objects installed to prevent damage during shipment, storage, and erection.
 6. Check rotating machinery for correct direction of rotation and for freedom of moving parts before connecting driver.
 7. Perform cold alignment and hot alignment to manufacturer's tolerances.
 8. Inspect hand and motorized valves for proper adjustment. Tighten packing glands to insure no leakage, but permit valve stems to rotate without galling. Verify valve seats are positioned for proper flow direction.
 9. Tighten leaking flanges or replace flange gasket. Inspect screwed joints for leakage.
 10. Install gratings, safety chains, handrails, shaft guards, and sidewalks prior to operational testing.
- B. Electrical Systems:
 1. Perform insulation resistance tests on wiring except 120 volt lighting, wiring, and control wiring inside electrical panels.
 2. Perform continuity tests on grounding systems.
 3. Test and set switchgear and circuit breaker relays for proper operation.
 4. Perform direct current high potential tests on all cables that will operate at more than 2,000 volts. Obtain services of independent testing lab to perform tests.
 5. Check motors for actual full load amperage draw. Compare to nameplate value.
- C. Instrumentation Systems:
 1. Bench or field calibrate instruments and make required adjustments and control point settings.

2. Energize transmitting and control signal systems, verify proper operation, ranges and settings.

2.12 PERFORMANCE TESTING

- A. Test equipment for proper performance at point of manufacture or assembly when specified.
- B. When Source Quality Control Testing Is Specified:
 1. Demonstrate equipment meets specified performance requirements.
 2. Provide certified copies of test results.
 3. Do not ship equipment until certified copies have received written acceptance from ENGINEER. Written acceptance does not constitute final acceptance.

2.13 FUNCTIONAL TESTING

- A. Functionally test mechanical and electrical equipment for proper operation after general start-up and testing tasks have been completed.
- B. Demonstrate proper rotation, alignment, speed, flow, pressure, vibration, sound level, adjustments, and calibration. Perform initial checks in the presence of and with the assistance of the manufacturer's representative.
- C. Demonstrate proper operation of each instrument loop function including alarms, local and remote controls, instrumentation and other equipment functions. Generate signals with test equipment to simulate operating conditions in each control mode.
- D. Conduct continuous 8 hour test under full load conditions. Replace parts which operate improperly.

2.14 CERTIFICATE OF PROPER INSTALLATION

- A. At Completion of Functional Testing, Furnish Written Report Prepared and Signed by Manufacturer's Authorized Representative, Certifying Equipment:
 1. Has been properly installed, adjusted, aligned, and lubricated.
 2. Is free of any stresses imposed by connecting piping or anchor bolts.
 3. Is suitable for satisfactory full-time operation under full load conditions.
 4. Operates within the allowable limits for vibration.
 5. Controls, protective devices, instrumentation, and control panels furnished as part of the equipment package are properly installed, calibrated, and functioning.
 6. Control logic for start-up, shutdown, sequencing, interlocks, and emergency shutdown have been tested and are properly functioning.
- B. Furnish Written Report Prepared and Signed by the Electrical And/or Instrumentation Subcontractor Certifying:
 1. Motor control logic that resides in motor control centers, control panels, and circuit boards furnished by the electrical and/or instrumentation subcontractor has been calibrated and tested and is properly operating.
 2. Control logic for equipment start-up, shutdown, sequencing, interlocks and emergency shutdown has been tested and is properly operating.

- C. Co-sign the reports along with the manufacturer's representative and subcontractors.

2.15 TRAINING OF OWNER'S PERSONNEL

- A. Provide operations and maintenance training for items of mechanical, electrical and instrumentation equipment. Utilize manufacturer's representatives to conduct training sessions.
- B. Provide training manual (outline of training session) to Owner at training session.
- C. Coordinate training sessions to prevent overlapping sessions. Arrange sessions so that individual operators and maintenance technicians do not attend more than 2 sessions per week.
- D. Provide Operation and Maintenance Manual for specific pieces of equipment or systems 2 weeks prior to training session for that piece of equipment or system.
- E. Satisfactorily complete functional testing before beginning operator training.
- F. Provide training sessions for each work shift listed below during the time periods shown. Pooling of shifts will not be permitted unless accepted by OWNER.

Shift	
Day	Monday through Friday, 7:00 a.m. to 4:00 p.m.
Coordinate Schedule with the OWNER.	

2.16 OPERATIONAL TESTING

- A. Conduct operational test of the entire facility after completion of operator training. Demonstrate satisfactory operation of equipment and systems in actual operation.
- B. Conduct operational test for continuous 7 day period.
- C. OWNER will provide operations personnel, power, fuel, and other consumables for duration of test.
- D. Immediately correct defects in material, workmanship, or equipment which became evident during operational test.
- E. Repeat operational test when malfunctions or deficiencies cause shutdown or partial operation of the facility or results in performance that is less than specified.

2.17 RECORD KEEPING

- A. Maintain and Submit Following Records Generated During Start-up and Testing Phase of Project:
 1. Daily logs of equipment testing identifying all tests conducted and outcome.

2. Logs of time spent by manufacturer's representatives performing services on the job site.
3. Equipment lubrication records.
4. Electrical phase, voltage, and amperage measurements.
5. Insulation resistance measurements.
6. Data sheets of control loop testing including testing and calibration of instrumentation devices and setpoints.

PART 3 PRODUCTS

3.01 MANUFACTURERS

- A. Manufacturers: One of the following or approved equal:
1. FlowServe (Byron Jackson), Model 7 MQH.
 2. or approved equal.

3.02 MATERIALS

- A. Vertical turbine pumps and the materials used in their manufacture shall comply with the most recent revision of the following standards:

Item	Material Standards
Pump Suction Bell	Cast Iron ASTM A48 Class 30
Pump Suction Strainer	Stainless Steel Type 316
Pump Suction Bell Bearing	Tin Bronze ASTM B584-938
Pump Impeller Shaft	Stainless Steel ASTM A582 Type 416
Pump Impellers	Cast Iron ASTM A48 Class 30
Pump Impeller Keys or Locking Devices	Stainless Steel ASTM A582 Type 416
Intermediate and Discharge Pump Impeller Cases	Cast Iron ASTM A48 Class 30
Pump Impeller Bowl Bearings	Bronze ASTM B584-938 , fitted with a neoprene bearing
Pump Column Pipe	Steel ASTM A53
Pump Barrel and Can	Reuse existing steel can and refinish with NSF/ANSI-61 approved Epoxy
Pump Surface Support Plate	Steel ASTM A36
Discharge Elbow	Steel ASTM A283

Nuts	Stainless Steel ASTM F594 Type 316
Bolts	Stainless Steel ASTM F593 Type 316

3.03 EQUIPMENT

- A. Provide submersible vertical turbine pumps with discharge elbows and support plates, bearings, impeller bowl assemblies, column barrels or cans, motor, seals, couplings, base plates, supports, anchor bolts and features as specified in Article 1.04 and other articles of this Section. Provide complete with necessary valves, gauges, taps, lifting eyes, stands and similar type items as specified and as required for complete operational units ready for use as indicated on the Drawings.
- B. Provide all pumps in this Section from same manufacturer; like components from the same manufacturer.

3.04 COMPONENTS

- A. Pump Construction, General:
 - 1. Type: Industrial heavy duty, vertical turbine, centrifugal type pumps meeting performance requirements and features as Specified in Article 1.04 and elsewhere in this Section.
 - 2. Discharge Flange: ANSI 125 pound bolt pattern.
 - 3. Discharge Nozzles: Provide 2 inch NPT taps for pressure gauges; install nipple and gauge with block valve.
 - 4. Shafts:
 - a. Stainless steel as specified in this Section, accurately machined and of sufficient size to transmit full driver output with less than 0.002 inches deflection under any operating condition; meet vibration limits as specified.
- B. Pump Suction Assembly:
 - 1. Pump Suction Inlet: Provide suction strainer as required in Article 1.04
- C. Pump Impeller Bowl Assemblies:
 - 1. Pump Impeller Assembly:
 - a. Type: As specified in Article 1.04 of this Section.
 - b. Required Balance: Static, dynamic, and hydraulic.
 - c. Method of Securing Impellers to Shafts: Keyed and secured by a nut locked in place, but readily removable without use of special tools.
 - d. Impeller Thrust: When appropriate for the specified impeller type, provide hydraulically balanced impeller to minimize down thrust.
 - 2. Intermediate and Discharge Impeller Cases: Cases to be attached with bolting or threaded connections.
 - 3. Pump Impeller Bowl Bearings: Provide bearing for each impeller.
 - 4. Lower Bearings: Provide bronze sleeved bearings with self-contained lubrication system filled with NSF approved lubricant; provide bearing with sand cap.

- D. Pump Column Pipe: Schedule 40 pipe thickness or equivalent fabricated steel thickness minimum
- E. Pump Support Plate and Discharge Elbow Assembly:
 - 1. Head and Base Plate Construction: Sufficient strength, weight, and thickness to provide accurate alignment, prevent excessive deflection and support the drive motor or right angle gear as specified.
 - 2. Air Release Vent: Provide 1 inch NPT threaded vent on support plate; install air release valve, piping and nipples reused from the existing pump assembly in vent opening.
- F. Motor:
 - 1. Oil filled designed to withstand the pressure of submergence to 40 psig.
 - 2. Shall be manufactured by the pump manufacturer and shall be designed specifically to drive vertical turbine pumps in submerged applications.
 - 3. Shall be equipped with a shroud of the manufactures design, attached above the pump inlet, to direct incoming water over the motor surfaces to enhance cooling.
- G. Finishes:
 - 1. Provide fusion-bonded, NSF-61 approved, epoxy coatings on pump bowl and column interior and exterior, below base plate exterior surfaces, and discharge head waterways.
 - 2. Prime coat all other exposed metal surfaces above the base plate, including the base plate, in the shop prior to delivery to the site with a minimum 3 mil polyamide epoxy primer measured as a dry film thickness. Surface preparation and application shall be recommended by coating material manufacturer.
 - 3. Approved submittal data identifying the shop primer used shall be provided to the onsite finish coat applicator and to the Project Manager before delivery of items to the job site.
 - 4. Correct damage to lining or coating to the satisfaction of the Project Manager if in their opinion it is repairable. Return equipment which has damaged coating and/or lining, beyond repair, to the manufacturer for recoating.

3.05 SOURCE QUALITY CONTROL

- A. Pump Factory Tests:
 - 1. Test Fluid: Water at ambient conditions.
 - 2. Test Tolerances: In accordance with the Hydraulic Institute Standards, latest Edition except that tolerances are from 0 to plus 5 percent of head at the rated design point flow or 0 to plus 5 percent of flow at the rated design point head, and no negative tolerance for the efficiency at the rated design point and no positive tolerance for vibration limits.
 - 3. Test Measurement and Results: Provide calibrated instrumentation meeting Hydraulic Institute Standards; use test values as measured to determine if the pump meets the specifications; do not adjust values or calculated results for instrument uncertainty or repeatability; provide certified test performance curves and other required test data in a report with Table of Contents and explanations of all calculations made.
 - 4. Flow and Head: Perform head measurements from shutoff to 150 percent of rated design flow with the pump operating at maximum operating revolutions

per minute. Determine pump brake horsepower, net positive suction head required and efficiency at each test point Test with actual motor to be supplied.

a. Number and Location of Test Points:

- 1) Minimum Number: Take 6 points minimum or, if more, the number of specified points in Article 1.04 plus minimum flow readings.
- 2) Locations: Take at least 1 point of 6 as near as possible to each specified condition.

B. Inspection and Balancing, All Components:

1. Statically, dynamically, and hydraulically and dynamically balance each of the individual rotating parts as required to achieve the required field vibration limits. Statically and dynamically balance the completed rotating assemblies and drive shaft components.
2. Furnish copies of all material and component inspection reports including balancing reports for all pump system components and for the completed rotating assembly.

C. Verification of Performance:

1. Furnish certified pump head-capacity, efficiency, net positive suction head required and brake horsepower curves; state minimum and maximum permissible flows (if none stated, pump may be operated at any point along the entire certified head-capacity curve without damage or voiding warranty).
2. Furnish all vibration data taken at the factory or shop, the make and model of vibration instruments, and a sketch or drawing showing the location of each vibration reading.
3. At Owner's option, factory, or shop testing will be witnessed by Owner or Owner's representative.
 - a. Give 12 calendar days advanced notice of scheduled testing date.
 - b. Owner pays Owner's expenses to witness the first scheduled factory testing. Contractor/pump manufacturer pays Owner representative's reasonable travel and labor expenses for subsequent factory test witnessing if the Owner had scheduled to witness the first factory tests and if the first testing results in the pump failing to meet specifications or if testing is delayed and rescheduled with less than 48 hours advanced notice.

PART 4 EXECUTION

4.01 EXAMINATION

- A. Inspect all components for shipping damage, conformance to specifications and proper torques and tightness of fasteners.

4.02 INSTALLATION

- A. General: Follow manufacturer's written instructions for installation and adjustment of components.
- B. Leveling: Level the pump system components using brass shims or stainless jack screws as recommended by the manufacturer. The pump and support plat are to be installed on the existing steel can which is cast in concrete.
- C. Lubrication: Clean bearings and housings and install lubricants per manufacturer's recommendations; consolidate lubricant brands and types with other mechanical equipment; after completion of all field testing, drain or clean out all lubricants in accordance with manufacturer's instructions and replace with fresh lubricants at the recommended levels; do not replace permanently sealed bearing lubricants.
- D. Installation Tolerances: Per manufacturer's recommendations with enhancements as required to meet performance and vibration specifications.
- E. Field Finishes: Apply or touch up finishes in the field.

4.03 FIELD QUALITY CONTROL

- A. Inspection and Check-out: Prior to operating the pump or any component of the pump system for any reason, finish complete inspection, adjustment, calibration, component testing and check-out of all supporting systems, including but not limited to driver systems, gears, control systems, piping systems and safety systems.
 - 1. Instrumentation and Controls:
 - a. Individual Loop Tests: Test each instrumentation loop from field drive to intermediate terminations to controller and back to controlled element. For each loop, provide signed and dated loop test sheets conforming to Instrument Society of America standards.
 - b. End to End Test: Perform "end to end" tests of each instrumentation loop to demonstrate functionality by simulating an input at the field drive and observing the control system response at the final field control element.
 - c. Set operational limits (start/stop, etc.) and alarm and shutdown limits as recommended by the manufacturer or as directed by the Engineer.
 - 2. Piping: Flush and disinfect potable water piping in accordance with AWWA C651-14 Disinfecting Water Main Standards. Piping for potable water shall be sterilized prior to being returned to service.
 - 3. Shaft Rotations: Test drivers, gear and pump rotation direction with couplings disconnected; verify all are correct.
- B. Pump Test Tolerances:
 - 1. Tolerances: In accordance with the Hydraulic Institute Standards, latest Edition except that acceptable tolerances are from 0 to plus 5 percent of

head at the rated design point flow or 0 to plus 5 percent of flow at the rated design point head, and no negative tolerance for the efficiency at the rated design point and no positive tolerance for vibration limits at any point or frequency.

2. Measurement Errors and Results: Use measured test values as measured to determine if the system or components meet the specifications; do not adjust values or calculated results for instrument uncertainty or repeatability.

C. General Pump Testing Requirements:

1. Provide: Calibrated test instrumentation and equipment for field quality control tests including but not limited to electrical power measurement drives (e.g. kilowatt-hour meters), pressure gauges, vibration instrumentation, and flow instruments as required to perform the tests.
2. Calibration Records: Prior to testing, certify all test instrumentation has been calibrated to verifiable national standards within the past year; prior to testing, provide signed and dated certificates of calibration for all test instrumentation and equipment to the Engineer.
3. Test Plan: Submit a test plan and schedule (bar chart format) to the Engineer for review; testing may affect the ongoing operations of the existing facilities and delays or rescheduling may be required; allow for at least 2 weeks unanticipated delays in testing.
4. Test Interruption: For operational reasons, the testing may be interrupted or stopped at any time at the direction of the Engineer.
5. Test Personnel: Provide personnel to operate new equipment and repair or correct deficiencies noted during testing.
6. Test Utilities and Consumables: Provide utilities and consumables required for testing; Owner will provide water and electricity.
7. Operation of Related Existing Equipment: Owner will operate related existing equipment or facilities necessary to accomplish the testing.

D. Field Performance Tests:

1. Test Fluid: Test using the intended service fluid; duration of test at each test condition, test 20 minutes minimum or longer until temperatures, vibration and flows achieve steady state at that condition.
2. Hydraulic Performance:
 - a. Measure head and efficiency versus flow from shutoff to 125 percent of rated design point flow (or maximum permissible pump run out flow as rated by the manufacturer, whichever is less) of each pump.
 - b. At each pump test revolutions per minute, test minimum of 5 different flow/head points; 1 point to be at the rated design point flow; at least 1 point above and 1 point below the rated design point flow; include specified flow points if feasible; provide temporary throttling valve or use suitable installed valving to test reduced flow/increased head conditions.
3. Acceptable Tests:
 - a. Demonstrate the pump performance meet all the requirements of this Section. If the pump system or component fails to meet the specified requirements of this Section, correct, repair or replace the causative components and repeat the testing that revealed the deficiency.
 - b. All test data is summarized in a written report to the Engineer; include copies of all raw field data sheets, make, model and calibration sheets for all test instrumentation, sample calculations and graphs of head and

efficiency versus flow report to be signed and stamped by a licensed Professional Engineer.

- E. Operational Testing: After acceptable completion of specified field performance tests, perform operational test.
 - 1. Duration: 7 days, operate each pump system including control systems as intended for long term service to demonstrate the pump, drivers, piping and control systems perform as specified.
 - 2. Acceptable Tests:
 - a. Test Success: Pump system operates as intended without failures for the specified duration.
 - b. Test Failure: Any unintended shutdown, the failure of the control system to respond as required. Minor on-line adjustments and tuning of instrumentation are not considered a failure.
 - c. Retesting: After a failure, correct, repair or replace the causative components and repeat the testing for the full specified duration at no additional cost to the Owner.
- F. Disinfection:
 - 1. Disinfect pump and pump can, and take bacteria samples in accordance with AWWA disinfection standards for new construction.
- G. Manufacturer's Field Service:
 - 1. Start-up: Factory authorized representative to inspect the system before any field performance testing or start-up and certify in writing that the system is complete and has been correctly installed and prepared for start-up; representative to observe all Field Performance Tests.
 - 2. Training: Refer to the training requirements in Article 2.12.F.

PART 5 MEASUREMENT AND PAYMENT

5.00 GENERAL

- A. The total Bid price shall cover all work necessary for the proper and successful completion of the Contract. All work not specifically set forth as a pay item in the Bidder's Bid, but necessary to meet the requirements of this Contract, shall be considered a subsidiary obligation of the Contractor, and all costs in connection therewith shall be included in the prices Bid.
- B. All estimated quantities stipulated in the Bid form are to be used only as a basis for estimating the probable cost of the work and/or for the purpose of comparing the Bids submitted for the work. The actual amounts of work completed under unit price items may differ from estimated quantities. The basis of payment for unit price work will be the actual amount of work completed. Contractor agrees to make no claim for damages anticipated profits or otherwise on account of any difference in the amounts of work actually performed, and estimated amounts therefor.
- C. Payment will be issued upon completion of each line item listed in the applicable bid schedule.

5.01 MOBILIZATION, DEMOBILIZATION, STORING, AND OTHER INCIDENTALS (BID ITEM NO. 1)

- A.** The work to be performed in accordance with this section includes the storing and movement of materials, personnel, equipment, supplies, and incidentals to the project site; for the establishment of facilities necessary for work on the project; for premiums on bonds and insurance for the project; and for all the work and operations which must be performed or cost incurred before beginning work on the various contract items.
- B.** Demobilization at the end of the job includes removal of tools, materials, equipment, and facilities used by the Contractor during construction of the project. Also included is the final clean-up to leave the site with a neat, clean appearance.
- C.** Materials shall consist of equipment and tools necessary to move to the project site to perform work. Material for bid items shall not be included in Mobilization.
- E.** Payment will be provided at the contract bid fixed lump sum price for item no. 1 upon completion of the project.

5.02 TULARCITOS PUMP (BID ITEM NO. 2)

- A.** Under this item, the Contractor shall provide all materials, as specified or as approved equal, including but not limited to the pump, motor, mechanical seals, shafts, and impellers, as necessary to provide a complete and full replacement of the Tularcitos pump, and to the satisfaction of the Public Works Director.
- B.** Under this bid item, the contractor is responsible for providing factory testing of the pump and all associated materials and reports.
- C.** Payment for the Tularcitos Pump will be made at the contract bid fixed lump sum price for item no. 2 upon completion.

5.03 TULARCITOS PUMP INSTALLATION (BID ITEM NO. 3)

- A.** Under this bid item, the contractor is responsible for furnishing all labor, deliveries, assembly, salvage, recycling, materials, tools, equipment, appurtenances, and incidentals for doing all the work involved in installing pump and motor components including, but not limited to, cases, shafts, impellers, flanges, couplings, piping, strainers, rings, seals, tie-ins, testing, troubleshooting, complete in place, suitable for its intended use, as shown on the plans, as specified in these Specifications, or as necessary to provide a complete and functional project, and to the satisfaction of the Public Works Director.
- B.** Under this bid item, the contractor is responsible for cleaning and disinfecting the pump can prior to installation of the pump, shall follow all OSHA confined space entry requirements as necessary, and provide photographic evidence of the condition of the pump can before and after cleaning, all to the satisfaction of the City.
- C.** Under this item, the Contractor will perform all specified analytical performance testing of the pump, which includes, but is not limited to, performing pump calibration, directional bump, and operational and field tests to demonstrate to the City's representative that the pump performs satisfactorily.

- D.** Under this item, the Contractor will perform all specified analytical water quality testing of the pump and pump can, which includes, but is not limited to, treating and taking samples of the pump and pump can water to test total chlorine residual, turbidity, and total coliform bacteria to meet AWWA standards for new construction disinfection.
- E.** Under this bid item, the contractor is responsible for providing factory testing of the pump and all associated materials and reports.
- F.** Payment for installation of the Tularcitos pump will be made at the contract bid fixed lump sum price for item no. 3 upon completion.

EXHIBIT "B" PLANS AND SPECIFICATIONS

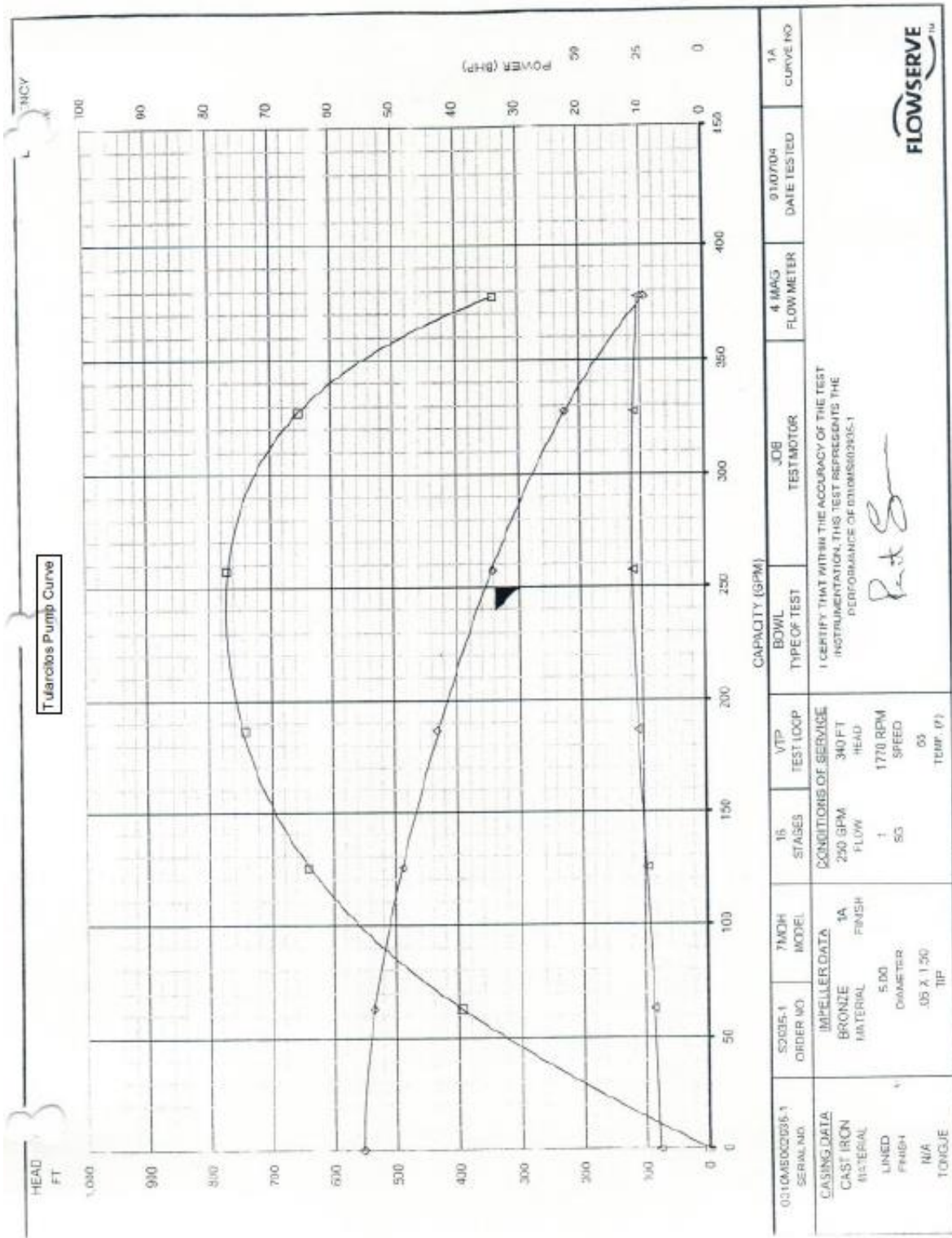


EXHIBIT "C"

SPECIAL CONDITIONS

ARTICLE 1. BONDS

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. Failure to do so may, in the sole discretion of City, result in the forfeiture of Contractor's bid security. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

ARTICLE 2. GENERAL

- A. The Contract Documents are intended to be fully cooperative and to be complementary. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
1. Change Orders or Work Change Directives, the most recent first
 2. Addenda, the most recent first
 3. Special Conditions (Exhibit E)
 4. Technical Specifications/Scope of Work (Exhibit A)
 5. Contract
 6. Insurance Requirements (Exhibit D)
 7. Schedule of Services (Exhibit B)
 8. Compensation Schedule (Exhibit C)
 9. Instructions to Bidders
 10. Notice Inviting Bids
 11. Contractor's Bid Forms
- B. Titles and headings to sections and paragraphs in these specifications are introduced merely for convenience and shall not be taken as a correct or complete segregation of the several units or materials and labor.

ARTICLE 3. ACCEPTED HOURS OF WORK

Allowable working hours shall be between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday, unless otherwise specified for off-peak hours. No work shall be performed after regular working hours, or work in excess of eight (8) hours a day, or on Saturday, Sunday, or any legal holiday. Any of the additional costs incurred by the City due to afterhours work by the Contractor will be deducted from any monies due or to become due to the Contractor.

ARTICLE 4. FINAL INSPECTION

- A. At least four (4) working days' notice shall be given to the Public Works Maintenance Manager for Utilities that the project is ready for final inspection,

that the Contractor has carefully inspected all portions of the work and that all conditions of the Contract Section have been fulfilled.

- B. Upon acceptance of notice that the work is ready for final inspection, the Public Works Maintenance Manager for Utilities together with the Contractor, shall promptly make a joint inspection of the work and note deficiencies, if any. If there are no deficiencies, or when noted deficiencies, have been corrected and Public Works Maintenance Manager for Utilities finds the work acceptable then the Contract is fully performed.

ARTICLE 5. ORDER OF WORK

- A. The contractor's schedule shall indicate the order of their work and the time period required in each area.
- B. Complete Tularcitos Pump Station Improvements.
- C. Connections to existing systems shall not be made until the new construction has been satisfactorily disinfected and tested.

ARTICLE 6. GUARANTEES

The contractor shall be held responsible for and make good any defect through faulty, improper, or inferior workmanship or materials, arising or discovered in any part of the contractor's work within one (1) year after the completion and acceptance of the work. The bond for faithful performance, furnished by the contractor, shall cover such defects and protect the City against them. Longer guarantee periods shall apply where specifically called for in the detailed specifications.

ARTICLE 7. CONDITION OF THE WORK SITE

During the period of work, the contractor shall be required to coordinate cleaning and testing activity with the Public Works Maintenance Manager for Utilities. Care should be taken to provide safety and egress and ingress to the work area.

ARTICLE 8. DAMAGE TO PROPERTY

Damage to any property, including but not limited to the existing structures, equipment, pipe covering, grounds, sidewalks, curbs, gutters, driveways, fences, etc., damaged by the Contractor during the course of his work shall be replaced or repaired by the Contractor in a manner satisfactory to the City and at the Contractor's expense, prior to final inspection and acceptance.

ARTICLE 9. STORM WATER POLLUTION PREVENTION

- A. The contractor is advised that the City of Milpitas is subject to the requirements of the Municipal Regional Storm Water National Pollutant Discharge Elimination System (NPDES) Permit. This permit prohibits the discharge of illicit discharges (non rainwater) into the storm drain system, unless specifically exempt.
- B. All work performed under this contract and all contractors and their associates and/or employees are required to comply with all applicable Storm Water regulations at all times.

ARTICLE 10. SAFETY

- A. Contractor, before beginning construction, is to provide, maintain and remove upon completion of work all barricades around openings and excavations, fences around areas and other temporary construction, warning signals, signs, and flagmen as required to direct traffic through the work area and or to redirect traffic to detours.
- B. The temporary work shall conform to all requirements of State and Local Authorities, and of the Underwriters in regard to operation, safety, and fire hazards. The Contractor shall furnish and complete all items necessary for such construction and for conformity with such requirements whether or not called for under the separate divisions of these specifications.
- C. Contractor agrees that he will assume sole and complete responsibility for job site conditions during the course of construction of this project, including safety of all persons and property; that this requirement shall apply continuously and not be limited to normal working hours.

ARTICLE 11. DISPOSAL OF MATERIAL

- A. All material shall be disposed of at the Contractors expense and shall be included as part of the appropriate bid item prices. No additional compensation shall be given for disposal of material.
- B. All unsuitable materials including packaging materials, scraps, used containers, solvents, debris, etc., shall be removed from the job site and disposed of by the contractor all to the satisfaction of the City. The hauling and disposal of materials off the job site shall be performed by the contractor.

ARTICLE 12. USE OF WATER

- A. Contractor shall follow all procedures and requirements necessary to ensure water quality in the pump can is not compromised. In the event the City finds the Contractor negligent in their process and procedure, resulting in water which does not meet City, State and Federal safe drinking water standards, the Contractor will be held responsible for the treatment of the water until it meets minimum safe drinking water standards. If it is determined by the City that the water in the pump does not meet safe drinking water standards and the water must be drained, the cost of cleaning, disinfecting, filling of the pump can and bac-T testing shall be borne by the contractor. Pump can and pump shall be drained, cleaned, disinfected and filled until it passes bac-T.
- B. Additional water shall be furnished at the current municipal water rates charged by the City to industrial/commercial customers and shall be paid for by the Contractor.

EXHIBIT "D"

**CERTIFICATION
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

PUMP REPAIR SERVICE CO.

By: _____
Signature

Name (Print)

Title (Print)

EXHIBIT "E"

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: PUMP REPAIR SERVICE CO.

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or X No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor _____

Signature _____

Name and Title _____

Dated _____

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

EXHIBIT “F”
PAYMENT AND PERFORMANCE BONDS

[BEGINS ON FOLLOWING PAGE]

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Milpitas (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's

rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__).

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

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

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

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Milpitas (hereinafter designated as the "City"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

_____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of

improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

Title _____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

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

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT "G"

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit G. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

- ☐ Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ☒ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ☐ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general

aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X_ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

___ (If Design/Build), with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake

self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

X_ Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000,000** policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status:

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the **Contractor's or Consultant's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel,

modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

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

Applicability of Coverage:

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

EXHIBIT “H”
FEDERAL REQUIREMENTS

[RESERVED]



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

2/05/2019

Agenda Item No. 8



ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



Tularcitos Pump Station.
The Tularcitos Booster Pump Station is located
off of Tularcitos Drive within the Country Club
Community.



Tularcitos Pump Station

Backup material for agenda item:

Approve Project Plans and Specifications and Authorize Advertisement for Invitation for Bids for the Americans with Disabilities (ADA) Curb Ramp Transition, Projects No. 4283 and No. 4287 (Staff Contact: Steve Chan, 408-586-3324)

Recommendation: Approve project Plans and Specifications and authorize advertisement for Invitation for Bids for the Americans with Disabilities Act (ADA) Curb Ramp Transition, Projects No. 4283 and No. 4287.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Project Plans and Specifications and Authorize Advertisement for Invitation for Bids for the Americans with Disabilities (ADA) Curb Ramp Transition, Projects No. 4283 and No. 4287
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	2/5/2019
Staff Contact:	Steve Chan, (408) 586-3324
Recommendation:	Approve Project Plans and Specifications and Authorize Advertisement for Invitation for Bids for the Americans with Disabilities Act (ADA) Curb Ramp Transition, Projects No. 4283 and No. 4287

Background: Staff completed plans and specifications for Americans with Disabilities Act (ADA) Curb Ramp Transition Project, which consists of Projects No. 4283 and No. 4287. The work will include installation of ADA compliant sidewalk ramps, repair damaged sidewalk, curb, gutters, and driveway aprons that no longer meet standards and are damaged from age and invasive street tree roots. The work will occur at street intersection locations on portions of Jacklin Road, McCarthy Boulevard, Bellew Drive, Technology Drive, SanDisk Drive, North and South Hillview Drive and Murphy Ranch Road. These project locations are prioritized with the annual street resurfacing project streets to minimize rework and permit more efficient use of funds.

The Engineer's construction estimate for the project is \$700,000. A copy of the project plan title sheet and project location exhibits are included in the Council's agenda packet, and the complete set of plans and specifications are available for review in the office of the City Engineer.

Analysis: The intent of this project is to install new and regulation compliant ADA curb ramps ahead of the annual City street repair and resurfacing project which is anticipated to start later this summer. Completion of this project ahead of the resurfacing project will allow work on both projects to progress without conflict between contractors working in the same space.

Policy Alternatives: To not proceed with this concrete work ahead of the annual street resurfacing program.

Pro: None.

Con: Not awarding this project ahead of the resurfacing project will add schedule delays to the resurfacing project as the concrete work must be completed first. Not proceeding with the concrete work at all would leave non-ADA compliant ramps in place, and the City could jeopardize its eligibility for future federal funding. Reason not recommending: The completion of concrete work ahead of the resurfacing work is standard practice and the replacement of damaged concrete and non-compliant ADA ramps is recommended.

Fiscal Impact: None. Adequate funds are available in the project budget. Annual maintenance of new concrete improvements is estimated at \$2,500.

As of December 31, 2018, the uncommitted balance to these projects are as follows:

Project No. 4283 - ADA Curb Ramp Transition Program	\$346,239
Project No. 4287 - Street Resurfacing Project 2018	\$624,315

Total Balance	\$970,554
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Summary of Estimated Construction:

Engineer Construction Estimate	\$700,000
15% Construction Contingency	\$105,000
Administration	\$40,000
Inspection	\$25,000
Total	\$870,000

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

Recommendation: Approve project plans and specifications and authorize advertisement for Invitation for Bids for the ADA Curb Ramp Transition, Projects No. 4283 and No. 4287.

Attachments:

- a) CIP No. 4283 Project Title Sheet
- b) 3 Project Area Exhibits

GENERAL NOTES:

1. ALL MATERIAL AND WORKMANSHIP SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE APPROVED PLANS, SPECIFICATIONS, LATEST EDITION OF STANDARDS AND ORDINANCES OF THE CITY OF MILPITAS AND THE LATEST STATE STANDARD. SPECIFICATIONS, STANDARD DRAWINGS AND DETAILS ARE AVAILABLE AT THE ENGINEERING DEPARTMENT, 408-586-3300. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN PERMITS NECESSARY TO PERFORM THE IMPROVEMENTS IN THESE PLANS FROM THE APPROPRIATE AGENCIES AND TO COMPLY WITH THE AGENCIES' REQUIREMENTS. THE CONTRACTOR MUST COMPLY WITH ALL APPLICABLE NATIONAL, STATE AND LOCAL LAWS.
2. CONTRACTOR MUST NOTIFY THE CITY PROJECT INSPECTOR 48 HOURS IN ADVANCE BEFORE STARTING ANY WORK FOR THIS PROJECT.
3. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES. THE CONTRACTOR SHALL NOTIFY UTILITY COMPANIES 48 HOURS IN ADVANCE OF CONSTRUCTION TO FIELD LOCATE UTILITIES. CONTACT UNDERGROUND SERVICE ALERT (USA) AT (800)-482-2444 AND OBTAIN A REFERENCE NUMBER. ANY ADDED COST ON THE PART OF THE CONTRACTOR AS A RESULT OF THE ACTUAL LOCATIONS OF EXISTING UTILITIES BEING DIFFERENT FROM THOSE SHOWN ON THE PLANS SHALL BE BORNE BY THE CONTRACTOR AND ASSUMED INCLUDED IN THE CONTRACT UNIT PRICE.
4. ALL QUANTITIES AND PAY ITEMS ARE AND WILL BE BASED ON ACTUAL FIELD MEASUREMENTS. ALL LOCATIONS OF UTILITY LIDS & COVER, MONUMENTS LIDS & COVER, AND TRAFFIC LOOPS ON PLANS ARE APPROXIMATE AND SHALL BE FIELD LOCATED PRIOR TO RESURFACING.
5. CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS AND ELEVATIONS PRIOR TO STARTING CONSTRUCTION. ANY CONFLICT WITH THE DRAWINGS OR SPECIFICATIONS SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE PROJECT ENGINEER.
6. CONTRACTOR SHALL MEET WITH PROJECT INSPECTOR AND SIGN OFF ON QUANTITIES WITHIN 48 HOURS OF COMPLETING EACH SEGMENT.
7. CONTRACTOR IS RESPONSIBLE FOR VERIFYING QUANTITIES AND SHALL OBTAIN AN APPROVED CHANGE ORDER PRIOR TO EXCEEDING ESTIMATED QUANTITIES.
8. ALL RESPONSIBLE CONTRACTOR REPRESENTATIVES (CONTRACTOR'S SUPERINTENDENT AND SUBCONTRACTOR'S SUPERINTENDENT) WILL BE REQUIRED TO ATTEND A PRE-CONSTRUCTION MEETING WHICH WILL BE SCHEDULED BY THE CITY PRIOR TO THE COMMENCEMENT OF ANY WORK.
9. CONTRACTOR SHALL SUBMIT A CONSTRUCTION SCHEDULE TO THE CITY ENGINEER (AND UPDATE AS REQUIRED PER SPECIFICATIONS) FOR APPROVAL AT LEAST 15 CALENDAR DAYS PRIOR TO THE BEGINNING OF ANY WORK WITHIN THE CONSTRUCTION SITE.
10. DETOUR OF THROUGH TRAFFIC TO NEARBY STREETS WILL NOT BE PERMITTED. CONTRACTOR MUST MAINTAIN AT LEAST ONE THROUGH TRAFFIC LANE, PER TRAVEL DIRECTION. AT ALL TIMES OR MAKE SPECIAL PROVISION TO ALLOW THROUGH TRAFFIC.
11. ALL EXISTING UTILITIES, IMPROVEMENTS, LANDSCAPING AND PROPERTY THAT BECOME DAMAGED DURING CONSTRUCTION SHALL BE COMPLETELY RESTORED TO THE SATISFACTION OF THE CITY ENGINEER. AT CONTRACTOR'S SOLE EXPENSE.
12. SAFETY MEASURES: AT ALL TIMES THE CONTRACTOR SHALL BE SOLELY AND COMPLETELY RESPONSIBLE FOR CONDITIONS OF THE JOB SITE INCLUDING PUBLIC SAFETY, WORKER SAFETY AND PROPERTY, INCLUDING COMPLIANCE WITH REQUIREMENTS AND PERMIT CONDITIONS OF THE STATE OF CALIFORNIA DIVISION OF INDUSTRIAL SAFETY. (THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT JUST DURING WORKING HOURS) AND FOR ALL NECESSARY INDEPENDENT ENGINEERING REVIEWS OF THE CONDITIONS. THE ENGINEER'S JOB SITE REVIEW IS NOT INTENDED TO INCLUDE REVIEW OF THE ADEQUACY OF THE CONTRACTOR'S SAFETY MEASURES. WHENEVER THE CONTRACTOR'S OPERATIONS CREATE A CONDITION HAZARDOUS TO TRAFFIC OR PUBLIC, CONTRACTOR SHALL FURNISH, INSTALL, AND MAINTAIN APPROPRIATE TRAFFIC SAFETY DEVICES AND SIGNAGE TO PREVENT ACCIDENTS OR DAMAGE OR INJURY TO THE PUBLIC.
13. CONTRACTOR SHALL CONFORM TO ALL APPLICABLE OCCUPATIONAL SAFETY AND HEALTH STANDARDS AND REGULATIONS BY THE CITY, STATE AND FEDERAL.
14. HAUL ROUTES SHALL BE ONLY ON THOSE STREETS AS PRE-APPROVED BY THE CITY ENGINEER. THE CONTRACTOR SHALL NOT ALLOW MATERIAL, TO BLOW OR SPILL OVER AND ADJACENT, PUBLIC OR PRIVATE PROPERTY WHEN HAULING EARTH, SAND, GRAVEL, STONE, DEBRIS, PAPER, OR ANY SUBSTANCE OVER ANY PUBLIC STREET, ALLEY OR PUBLIC PLACE.
15. ALL SURVEY MONUMENTATIONS SHALL BE PROTECTED AND PERPETUATED IN PLACE. ANY DISTURBED OR COVERED MONUMENTS SHALL BE RESET BY A CALIFORNIA LICENSED LAND SURVEYOR AT THE DIRECTION OF THE CITY ENGINEER, AT THE CONTRACTOR'S SOLE EXPENSE.
16. NO CONSTRUCTION IS PERMITTED ON THE FOLLOWING HOLIDAYS: NEW YEARS DAY, MARTIN LUTHER KING BIRTHDAY, PRESIDENTS DAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, VETERANS DAY, THANKSGIVING DAY, DAY AFTER THANKSGIVING, DAY BEFORE CHRISTMAS, AND CHRISTMAS DAY.
17. CONTRACTOR SHALL COMPLY WITH THE CITY'S NON-POINT SOURCE POLLUTION PREVENTION ORDINANCE AND THE STORM WATER POLLUTION PREVENTION PLAN (SWPPP) AND USE/INSTALLATION OF BEST MANAGEMENT PRACTICES (BMP) FOR THIS PROJECT.
18. CONTRACTOR SHALL MAINTAIN THE PROJECT SITES IN A NEAT AND PROFESSIONAL CONDITION AT ALL TIMES. CONTRACTOR SHALL NOT STORE MATERIALS ON PUBLIC ROADWAYS. CONTRACTOR SHALL REMOVE ALL DEBRIS AND EQUIPMENT AT THE END OF EACH WORKING DAY.
19. THE CONTRACTOR SHALL PROVIDE TEMPORARY PEDESTRIAN WALKWAYS/PATHS THAT ARE ADA COMPLIANT TO TRAVERSE AROUND WORK AND FOR EVERY PEDESTRIAN RAMP/SIDEWALK SECTION REMOVED.
20. ANY OPERATION THAT CREATES DUST SHALL BE STOPPED IMMEDIATELY IF DUST AFFECTS ADJACENT PROPERTIES. SUFFICIENT WATERING TO CONTROL DUST IS REQUIRED AT ALL TIMES AND A DUST PALLIATIVE MAY BE REQUIRED BY THE CITY ENGINEER. MUD TRACKED ONTO STREETS OR ADJACENT PROPERTIES SHALL BE REMOVED IMMEDIATELY BY THE CONTRACTOR. STREETS SHALL BE SWEEP AT CONTRACTOR'S EXPENSE AS REQUIRED BY THE PROJECT SPECIFICATIONS AND AS DIRECTED BY THE CITY ENGINEER.
21. CONTRACTOR SHALL COMPLY WITH THE CITY OF MILPITAS SOUND CONTROL ORDINANCE. THE CONTRACTOR SHALL NOT ENGAGE OR PERMIT OTHERS TO ENGAGE IN ANY CONSTRUCTION RELATED OPERATIONS INCLUDING DELIVERY OF MATERIALS AND/OR EQUIPMENT TO OR FROM THE CONSTRUCTION SITE EXCEPT WITHIN THE HOURS OF 7:00 AM TO 7:00 PM ON WEEKDAYS AND WEEKENDS, UNLESS OTHERWISE SPECIFIED IN SPECIFICATIONS.
22. CONTRACTOR SHALL PROVIDE ADEQUATE TRAFFIC CONTROLS INCLUDING FLAG PERSONS PER SPECIFICATIONS AND SHALL SUBMIT A TRAFFIC CONTROL PLAN SUBJECT TO THE APPROVAL OF THE CITY ENGINEER, PRIOR TO THE START OF WORK WITHIN THE PUBLIC RIGHT OF WAY. THE CITY RESERVES THE RIGHT TO REQUIRE MODIFICATIONS TO THE APPROVED PLAN IN THE FIELD.
23. AT ALL TIMES, THE CONTRACTOR SHALL HAVE A SUFFICIENT NUMBER OF CONES, TEMPORARY SIGNAGE, BARRICADES, AND OTHER TRAFFIC CONTROL AND SAFETY DEVICES AT HAND IN ORDER TO SAFELY PROSECUTE THE WORK AND TO DIRECT TRAFFIC INCLUDING BICYCLIST AND PEDESTRIANS AS DETERMINED BY THE CITY ENGINEER.
24. SIDEWALKS AND DRIVEWAYS SHALL NOT BE BLOCKED WITHOUT PRIOR APPROVAL FROM THE CITY ENGINEER.
25. CONTRACTOR'S LICENSE REQUIREMENTS ARE NOTED IN THE CONTRACT SPECIFICATIONS AND NOTICE INVITING BIDS.

CITY OF MILPITAS

ADA CURB RAMP TRANSITION PROJECT

PROJECT NO. 4283 & 4287



PROJECT SITE LOCATION

Not To Scale

SHEET INDEX:

SHEET 1	TITLE SHEET
SHEET 2	LEGEND AND DETAIL SHEET
SHEET 3 & 4	JACKLIN RD. CONCRETE IMPROVEMENT
SHEET 5 to 8	MCCARTHY BLVD. CONCRETE IMPROVEMENT
SHEET 9	MURPHY RANCH RD. CONCRETE IMPROVEMENT
SHEET 10	SANDISK DR. CONCRETE IMPROVEMENT
SHEET 11	TECHNOLOGY DR. & BELLEV DR. CONCRETE IMPROVEMENT
SHEET 12	HILLVIEW DR. CONCRETE IMPROVEMENT
SHEET 13	BLUE PRINT FOR A CLEAN BAY

GENERAL NOTES:

26. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER, THE CITY OF MILPITAS AND ITS AUTHORIZED REPRESENTATIVES AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH PERFORMANCE OF THE WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR THE ENGINEER.
27. CONTRACTOR SHALL NOTIFY MILPITAS SCHOOL DISTRICT, WASTE SERVICES, ALL TRANSPORTATION COMPANIES, VTA, AND EMERGENCY SERVICES OF PAVING SCHEDULE TO ALLOW COORDINATION. SEE SPECIFICATIONS E-42 FOR LISTINGS OF PHONE NUMBERS AND REQUIREMENTS.
28. UNLESS NOTED OTHERWISE, THERE WILL BE NO TOTAL STREET CLOSURES. CONTRACTOR MUST MAKE PROVISIONS TO ALLOW FOR THROUGH TRAFFIC AND ACCESS TO ALL DRIVEWAYS. CONTRACTOR MUST STAGE ACCORDINGLY AND NOT REMOVE ANY LARGER AREAS THAN CAN BE CONSTRUCTED AND REOPENED IN A GIVEN DAY.
29. ALL UTILITY BOXES & LID REMOVED AND REPLACED IN CONJUNCTION WITH MISCELLANEOUS CONCRETE SHALL BE INSTALLED TO FINISHED GRADE.
30. THE CITY OF MILPITAS ORDINANCE NO. 240.2, PROHIBITS POTABLE WATER USE FOR CONSTRUCTION ACTIVITIES SUCH AS DUST CONTROL, COMPACTION, AND BUILDING PAD TREATMENT. REFER TO THE LATEST "SOUTH BAY WATER RECYCLING RECYCLED WATER ACCESS POINTS PROGRAM IMPLEMENTATION PLAN" FOR PERMITTING REQUIREMENTS GUIDELINES, AND RESPONSIBLE PERSON TRAINING AND EQUIPMENT CERTIFICATION.

ABBREVIATIONS

SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
AB	AGGREGATE BASE	(N)	NEW
AC	ASPHALT CONCRETE	N.T.S.	NOT TO SCALE
ADJ	ADJUST	O.C.	ON CENTER
ASB	AGGREGATE SUB BASE	O	OTHERS
BOC	BACK OF CURB	PB	PULL BOX
BOW	BACK OF WALK	PCC	PORTLAND CEMENT CONCRETE
CKG	CURB AND GUTTER	P.S.E.	PUBLIC SERVICE EASEMENT
CONC	CONCRETE	P.U.E.	PUBLIC UTILITY EASEMENT
CONST	CONSTRUCT	R	RADIUS
DIA	DIAMETER	RCP	REINFORCED CONCRETE PIPE
DLC	DETECTOR LOOP CABLE	R/W	RECYCLED WATER
DO	DIG-OUT	R/W	RIGHT OF WAY
DWIG	DRAWING	S	SLOPE
DWY	DRIVEWAY	SD	STORM DRAIN
EA	EACH	SDMH	STORM DRAIN MANHOLE
ELEV	ELEVATION	S.T.	SLOPE EASEMENT
EP	EDGE OF PAVEMENT	SHT	SHEET
(E) EXIST.	EXISTING	SPECS	SPECIFICATION
FG	FINISHED GRADE	SS	SANITARY SEWER
FH ₁	(E) FIRE HYDRANT	SSCO	SANITARY SEWER CLEANOUT
FI	FLUSHING INLET	SSMH	SANITARY SEWER MANHOLE
FL	FACE OF CURB	ST	STREET
FOC	FACE OF CURB	STA	STATION
INV	INVERT	STD	STANDARD
LOG	LID OF GUTTER	SW	SIDEWALK
LP	LIGHT POLE	TC	TOP OF CURB
MAX	MAXIMUM	T.S.	TRAFFIC SIGNAL
MED	MEDIUM	TYP.	TYPICAL
MH	MANHOLE	UNO	UNLESS NOTED
MIN	MINIMUM	W	WATER
MON	MONUMENT	WM	WATER METER
		WV	WATER VALVE

NOTE: CONTRACTOR'S LICENSE

A prime contractor bidding on this project shall possess a Class A or C8 license from the Contractor's State License Board.

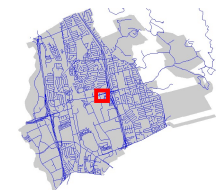
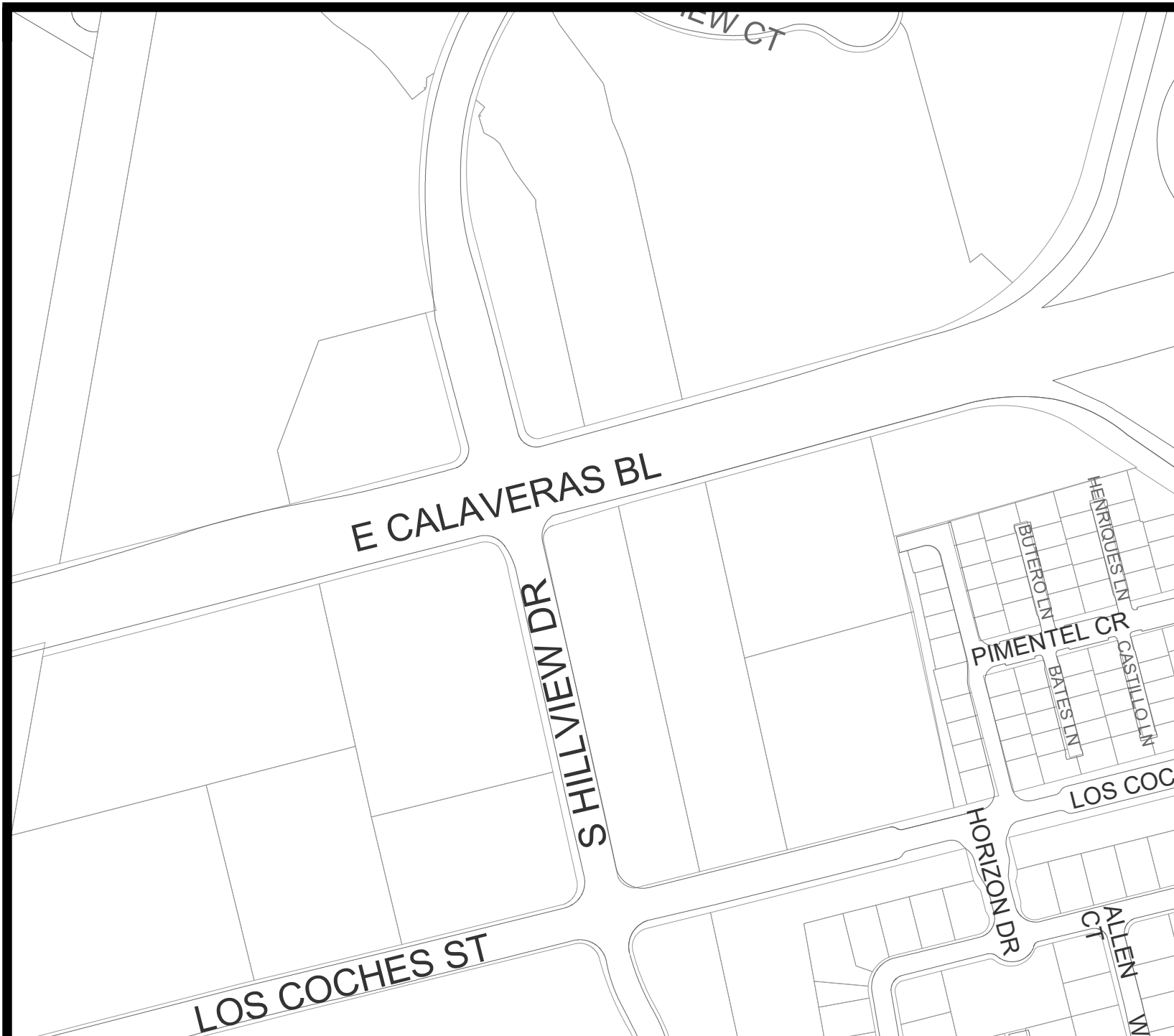
BEFORE EXCAVATING
CALL U. S. A.
UNDERGROUND SERVICE ALERT
1-800-227-2600
48 HOURS BEFORE ALL PLANNED
WORK OPERATION

CITY OF MILPITAS

ENGINEERING DIVISION

ADA CURB RAMP TRANSITION PROJECT

RECOMMENDED FOR BIDDING BY: _____	DATE: _____	EP NO.	PROJECT NO. 4283 & 4287
Steve Chan, P.E., Traffic Engineer		DRAWING NO.	
APPROVED FOR BIDDING BY: _____	DATE: _____	SCALE	N.T.S.
Steven P. Erickson, P.E., City Engineer		SHEET	1 of 13

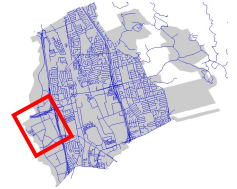
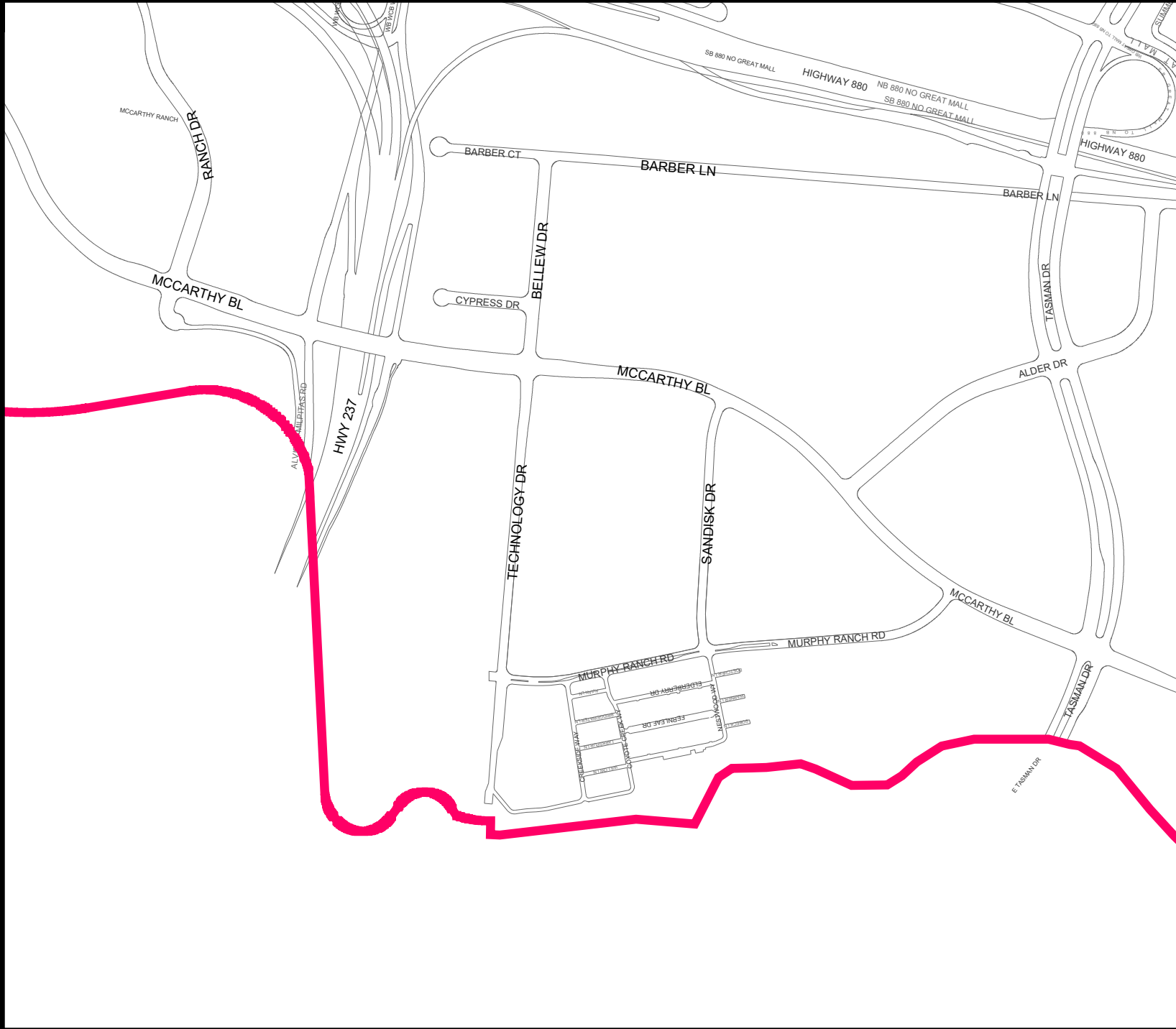


ADA Curb Ramp
Transition Project,
CIP No. 4283 & 4287

This map is a product of the
City of Milpitas GIS



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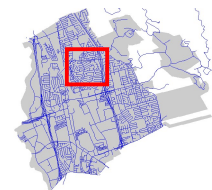
ADA Curb Ramp Transition Project, CIP No. 4283 & 4287

This map is a product of the
City of Milpitas GIS



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ADA Curb Ramp
Transition Project,
CIP No. 4283 & 4287

This map is a product of the
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Backup material for agenda item:

Adopt a Resolution Approving the Safe, Clean Water Program Grant for Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Adopt a Resolution Authorizing the City Manager or Designee to Apply for Grant Funding from the Santa Clara Valley Water District under the 2019 Safe, Clean Water and Natural Flood Protection Priority "D3" Grant Program in the Amount of \$100,000 for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 and if Awarded Grant Funding, Authorize the City Manager or Designee to Execute the Grant Funding Agreement.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Safe, Clean Water Program Grant Approval for Lower Penitencia Creek Pedestrian Bridge, Project No. 2005
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	2/5/2019
Staff Contact:	Steve Erickson, 408-586-3301
Recommendation:	Adopt a Resolution Authorizing the City Manager or Designee to Apply for Grant Funding from the Santa Clara Valley Water District under the 2019 Safe, Clean Water and Natural Flood Protection Priority “D3” Grant Program in the Amount of \$100,000 for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 and if Awarded Grant Funding, Authorize the City Manager or Designee to Execute the Grant Funding Agreement.

Background:

The City's Lower Penitencia Creek Pedestrian Bridge, Project No. 2005, ("Project") is included in the 2018-2023 Capital Improvement Program ("CIP") and provides for design and construction of a pedestrian bridge across the Penitencia East Channel between McCandless Drive and Montague Expressway. The new pedestrian bridge will connect residential developments, the Penitencia Creek multi-use trail, future McCandless Park, and the recently completed Mabel Mattos Elementary School. Both the Lower Penitencia Creek Pedestrian Bridge and McCandless Park projects are currently in the design phase. The estimated construction cost for the Lower Penitencia Creek Pedestrian Bridge is \$1,775,000, and construction is anticipated to be completed late 2020.

Analysis:

Staff is recommending the submission of an application to the Santa Clara Valley Water District ("District") to obtain \$100,000 in funding from the 2019 Safe Clean Water Priority D3 Grant Program ("Grant"). Staff have reviewed the Grant Guidelines and determined that the City's Lower Penitencia Creek Pedestrian Bridge Project meets the requirements and criteria for the 2019 Safe Clean Water Priority D3 Grant Program funding. The Grant requires the City project to be completed within five years of execution of the grant agreement, and would require the City to maintain the improvements after completion.

The 2019 Grant cycle has \$571,000 total funding available, and staff recommends requesting \$100,000 in grant funding for the City's project. The City would be responsible for a minimum of 25% of total project costs as matching grant funds. The Santa Clara Valley Water District administers this grant program, and the grant application is due February 15, 2019. The application process requires the adoption of a resolution authorizing the submission of the grant application from the governing body of the applicant and the applicant's acceptance of the grant, if awarded. **Attachment 1** is the resolution recommended for City Council approval.

Once the District Board of Directors approves the Project for Grant award in April/May 2019, the District would require the City to enter into the Safe, Clean Water Grant Program agreement by June 30, 2019. A sample grant agreement is included in **Attachment 2**, which the City Attorney has approved as to form.

If the City's Project is selected and approved for award of Grant funding, staff will return to the City Council for the acceptance of grant funds and funding appropriation equivalent to the awarded grant amount.

Policy Alternatives:

Alternative 1: Not proceed with the Grant application submittal.

Pros: None

Cons: Potential grant funding would not be obtained to help offset project costs.

Reason for Not Recommending: Alternate course of action will result in a loss of potential funds for the Project and fulfillment of a financial policy.

Fiscal Impact:

Staff is requesting \$100,000 in grant funding that would be programed for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005. The project budget has sufficient funding for the required grant funding match.

California Environmental Quality Act (CEQA):

The Project is within the City's Transit Area. In 2008, City Council approved the program Environmental Impact Report ("EIR"), State Clearinghouse No. 2006032091, for the Transit Area Specific Plan ("TASP"). An Initial Study to support an Addendum to the TASP EIR pursuant to CEQA is being prepared to demonstrate that the proposed project would not result in new or greater impacts. Initial Study/Addendum is expected to be completed by the fall of 2019.

Recommendation:

Staff recommends the City Council to adopt a resolution authorizing the City Manager or designee to apply for grant funding from the Santa Clara Valley Water District under the 2019 Safe, Clean Water and Natural Flood Protection Priority "D3" Grant Program in the amount of \$100,000 for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 and if awarded funding, authorize the City Manager or designee to execute the grant funding agreement.

Attachments (2):

1. Resolution
2. Sample Grant Funding Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING
THE CITY MANAGER OR DESIGNEE TO APPLY FOR GRANT FUNDING IN THE AMOUNT
OF \$100,000 FROM THE SANTA CLARA VALLEY WATER DISTRICT UNDER THE 2019
SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PRIORITY D3 GRANT
PROGRAM FOR THE LOWER PENITENCIA CREEK PEDESTRIAN BRIDGE, PROJECT NO.
2005, AND IF AWARDED, FUNDING AUTHORIZING THE CITY MANAGER OR DESIGNEE
TO EXECUTE THE GRANT FUNDING AGREEMENT**

WHEREAS, the Santa Clara Valley Water District (“District”) has enacted the 2019 Safe, Clean Water and Natural Flood Protection Priority D3 Grant Program (“Grant”), which provides grant funds for access to trails and open space; and

WHEREAS, the District's Civic Engagement Unit has been delegated the responsibility for the administration of the grant program, setting up necessary procedures; and

WHEREAS, the City of Milpitas concluded that the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (“Project”), meets requirements and criteria for the Grant; and

WHEREAS, said procedures established by the District require Grantee's governing body to certify by resolution the approval of Grantee to apply for and accept grant program funds for the Project; and

WHEREAS, the City of Milpitas will enter into a grant agreement with the District to accept grant funds subject to approval by the City Attorney once the Grant is approved for the Project; and

WHEREAS, the City of Milpitas will maintain the Lower Penitencia Creek Pedestrian Bridge.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Milpitas hereby finds, determines, declares, and orders as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager, or designee, is authorized to submit an application for grant funding from the District’s Safe, Clean Water and Natural Flood Protection Priority D3 Grant Program in the amount of \$100,000 for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005.
3. If the City is awarded Grant funding, the City Manager, or designee, is authorized to conduct all negotiations, and execute and submit all documents, including but not limited to, the application, grant agreement, amendments to the grant agreement, and reimbursement requests, which may be required by the District for the Grant funding and necessary for completion of the Project.

4. The City Council hereby approves the acceptance of Grant funds from the Safe, Clean Water and Natural Flood Protection Priority D3 Grant Program, upon approval of Grant funding for the Project.
5. The City of Milpitas will be responsible for the maintenance and operation of the Project.

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mary Lavelle, City Clerk

APPROVED:

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

SANTA CLARA VALLEY WATER DISTRICT
Safe, Clean Water and Natural Flood Protection Program
FY 2019 SAFE, CLEAN WATER PROJECT D3 GRANT

This FY 2019 Safe, Clean Water Project D3 Grant Agreement (Agreement), effective upon full execution, is entered into by and between the Santa Clara Valley Water District, a California special district (District) and -----, a public entity (Grantee). District and Grantee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement." This Agreement provides for funding to support Grantee's ----- (Project).

RECITALS:

- A. The District's mission is to provide Silicon Valley safe, clean water for a healthy life, environment, and economy.
- B. In November 2012, the voters of Santa Clara County passed Measure B establishing a special tax to fund the Safe, Clean Water and Natural Flood Protection program (Safe, Clean Water).
- C. The Safe, Clean Water Program special tax provides funding for activities consistent with this 2019 Safe, Clean Water Project D3, focused on wildlife habitat restoration.
- D. On ---, the Grantee's City Council adopted a Resolution authorizing Grantee's application for Grant Program funding and acceptance of the grant, if awarded, for ----- Project (see Appendix D, Resolution).
- E. Grantee submitted an application to the District's Grant Program for its Project to carry out a wildlife restoration project.
- F. On October 23, 2018, the District's Board of Directors authorized the District's Chief Executive Officer (CEO), following CEQA compliance, to approve and execute a grant agreement with Grantee to fund the Project in the amount not-to-exceed -----.
- G. Consistent with its application submitted, Grantee has secured funding from Santa Clara Valley Water District in the amount of specified above and any additional funds necessary to complete the Project will be provided by the Grantee.

The Parties agree to the following terms and conditions:

SECTION 1. SPECIAL PROVISIONS

- A. Within the Project Performance Period, Grantee will mention the Project and the District's Safe, Clean Water Program as a funding source in at least one article published in any newspaper, magazine, e-newsletter or social media that the Grantee issues or submits materials to for publication.
- B. Grantee shall post signs acknowledging the District's participation in the development of the Project and the use of Safe, Clean Water funds, should there be an implementation component. Grantee will include District logo in all collateral materials identifying the

District as a funding source for the development of those materials. District to provide sign template(s) and logo(s) to Grantee, upon request, for use in Project where feasible.

- C. Grantee shall invite, in writing, members of the District Board to participate in any groundbreaking, opening, or ribbon-cutting ceremony associated with the Project. Board members will be given the opportunity to speak if other elected officials have speaking roles. Grantee will notify the District at least two (2) weeks prior to the ceremony.
- D. After Project completion, Grantee, upon District request, will make a presentation at a District Board meeting or other venue within Santa Clara County.

SECTION 2. GENERAL PROVISIONS

A. Definitions

1. Acquisition: to obtain fee title or a lesser interest in real property, including a conservation easement or development rights.
2. Agreement: this contract between the District and the Grantee specifying the payment of funds by the District for the performance of the Project Scope within the Project Performance Period by the Grantee.
3. Application: the 2018 Safe, Clean Water Project D3 Grant Program application and accompanying attachments submitted to the District for the District's Grant Program.
4. Development: the creation, by construction of or addition to existing facilities, of new watershed activities at the Project site.
5. District: Santa Clara Valley Water District.
6. Grant Program: 2019 Safe, Clean Water Project D3 Grant Program.
7. Project: Grantee's Project as described in Appendix A, Project Scope, approved for a grant award by the District's Board of Directors.
8. Project Completion: Project completion per requirements stated in Section 2. General Provisions, G. Project Completion.
9. Project Grant Amount: the amount of Grant funds allocated by the District's Board to Grantee for the Project.
10. Project Performance Period: the Project period commencing with full execution of this Agreement by both Parties and expiring as stated in Section 2. General Provisions, H. Agreement Term.
11. Property: the real property described in Appendix A, Project Scope, for acquisition or development with the Project.

12. Safe, Clean Water: the District's Safe, Clean Water and Natural Flood Protection Program special tax approved by Santa Clara County voters in November 2012.
13. Total Project Cost: the full cost of the Project, including funds from all funding sources, as identified in Appendix C, Project Budget.

B. Project Execution

1. District hereby grants to Grantee the Project Grant Amount, in consideration of, and on condition that, the sum be expended for the sole purpose of carrying out the objectives as set forth in the Project as identified in Appendix A, Project Scope, consistent with the terms and conditions set forth in this Agreement.
2. Grantee is responsible for securing all other necessary funds to accomplish the Project. Any significant modification or alteration to the Project Scope is subject to prior consideration and approval by the District. Such a request must be submitted in writing to the District Contact, per Section 4. Miscellaneous Provisions, B. Notices, of this Agreement. District's disbursement of Grant funds is dependent on District approval of changes the District deems are significant.
3. Grantee will complete the Project in accordance with Appendix A, Project Scope, Appendix B, Project Schedule, and Appendix C, Project Budget.
4. Project Scope, Project Schedule and Project Budget may only be adjusted pursuant to a written amendment to this Agreement, signed by both Grantee and District in advance of such adjustment.
 - a. Notwithstanding the foregoing, Project Schedule adjustments that do not impact the completion of the Project Scope prior to the expiration date of this Agreement; an adjustment of the amount budgeted for a task that is not more than 10% of that budgeted amount; and does not result in an increase of total grant amount specified in Recital F of this Agreement, may be approved by District Program Administrator in writing but without a formal amendment to this Agreement.
 - b. If there is an increase in the amount budgeted for a task, there must be a correlating simultaneous decrease of the same amount to another task(s) to ensure the total Project Grant Amount specified in Recital H is not exceeded.
5. Grantee must comply with all applicable federal, state, and local codes, statutes, laws, regulations, and ordinances, including, but not limited to, financial requirements, legal requirements for construction contracts, building codes, health and safety codes, laws and codes pertaining to individuals with disabilities, and Guidelines and Standards for Land Use Near Streams (which can be found at <https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams>) and other appropriate plans.

- a. If the Grantee is a public agency, the Grantee will be the lead agency for purposes of complying with the California Environmental Quality Act (CEQA). In that case, the Grantee shall complete the CEQA review process and submit required documentation to the District prior to the District disbursing any grant funds.
 - b. The required CEQA documentation must include one of the following: a notice of exemption filed with the County Clerk in the case of an exempted project, or otherwise an environmental impact report, mitigated negative declaration or negative declaration along with a copy of the notice of determination filed with the County Clerk.
 - c. Grantee shall fulfill all the lead agency responsibilities, including consultation with the District and any other applicable responsible agencies. The disbursing of grant funds is contingent on the District completing CEQA review, if required, as a responsible agency.
 - d. If the Grantee is a non-profit entity, the District will be the lead agency for purposes of CEQA. The District may request that the Grantee provide environmental information about the project to assist the District's CEQA review. The disbursing of the grant funds is contingent upon District's completion of the CEQA review.
 - e. For projects subject to CEQA review, the District has not committed to a definite course of action by executing this Agreement and is not limited in any way in exercising any discretion with respect to the Project, including but not limited to (i) considering other feasible alternatives and mitigation measures to avoid or minimize Project impacts, (ii) requiring Grantee to make such modifications deemed necessary to reduce Project impacts, or (iii) determining not to proceed with one or more component of the Project.
6. Grantee must secure (1) fee title, (2) leasehold, (3) other real property interest, (4) permit for site access (including, if applicable, a District encroachment permit to access to District lands or easement areas), or (5) property owner's agreement for site access to the Project lands as necessary for performance of this Agreement.
 7. Grantee must enter into a Joint Use Agreement for Use of any District property prior to execution of this Grant Agreement, or prior to reimbursement of grant funds for this Project, at District's discretion. However, nothing shall alter any preexisting right the Grantee may have.
 8. Grantee must provide metadata for spatial data required for identifying the location and alignment of the Project site per District's Geographical Information System data standards.

C. Project Administration/Reporting Requirements

1. Grantee shall provide written quarterly reports (on a fiscal year schedule), using the District's standard form presented in Appendix G, Status Report Form. Reports will be completed and submitted in conjunction with invoicing (Appendix E, Invoice Form) as appropriate. Status reports shall include an update per task as included in Appendix A, Project Scope.
2. Grantee shall provide one hard copy and one electronic version of items listed in Section 2. General Provisions, G. Project Completion.
3. All reports submitted to the District must include the following certification page signed by an officer of Grantee's organization:

"I certify, under penalty of perjury under the laws of the State of California, that the Quarterly/Monthly Status Report and all attachments, signed on the date below, on behalf of Grantee, were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the loss of the current and future Grant Funding."

4. Quarterly and final reporting will end with submittal of Project Completion packet (see Section 2. General Provisions, G. Project Completion).

D. Termination of this Agreement

1. Either Grantee or District may unilaterally terminate this Agreement at any time by providing 30 days written notice to the other Party.
2. Failure by Grantee to comply with the terms of this Agreement may be cause for suspension or termination of funding by the District. Additionally, in the event of failure to complete Project, Grantee may be required to repay District for funds received, including interest earned at the District's pooled portfolio monthly interest yield corresponding to the month(s) the funds were due to the District.

E. Indemnification

(GOVERNMENT ENTITY) In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, District and Grantee agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated

to such Party under this Agreement. No party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, board members, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Party under this Agreement. The rights, duties, and obligations of the Parties as set forth above in this Section E. Indemnification, survive completion, termination, expiration, and suspension of this Agreement.

(NON-GOVERNMENT ENTITY) Notwithstanding any other provision of this Agreement, Grantee agrees to defend, hold harmless and indemnify District, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs, reasonable attorney fees, and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real, or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, to the extent any of Liabilities arise out of, pertain to, or relate to the Grantee's performance of this Agreement or obligations stated herein, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to person or damage to property to the extent arising from the negligence or willful misconduct of District. The foregoing does not limit any strict liability imposed onto the Grantee by Law. The rights, duties, and obligations of the Parties as set forth above in this Section E. Indemnification, survive completion, termination, expiration, and suspension of this Agreement.

F. Nondiscrimination

1. The District is an equal opportunity employer and requires its Grantees to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, the Grantee will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment, in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status,

gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

2. Compliance with Applicable Equal Opportunity Laws. The Grantee's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the American's with Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections 503 and 504); the Age Discrimination Act of 1975 (42 U.S.C. sec. 6101 et. seq.); California Fair Employment and Housing Act (Government Code Section 12900 et. Seq.); California Labor Code Sections 1101 and 1102.
3. Public Access to Completed Project. Project will be open to members of the public generally during hours specified by the Grantee, except as noted in the Special Provisions of this Agreement, pursuant to provisions of the enabling legislation and/or Program, or any joint use agreement with the District.

G. Project Completion

1. After Grantee completes the Project by meeting all requirements stated in Appendix A, Project Scope, Grantee must submit the Project Completion packet detailed in a. – f. below to the District Contact and it must include:
 - a. Final Payment Request Form (Appendix F);
 - b. Final Invoice (Appendix E);
 - c. Final Status Report Form (Appendix G), including documentation of accomplishments;
 - d. Notice of Completion for public works construction projects;
 - e. Written communication from Grantee stating that Project is complete, including list of tasks completed and signature by authorized representative; and
 - f. Presentation to the Board of Directors on completed Project. District will provide Grantee with approximate Board presentation date prior to expiration of the Agreement Term. Alternatively, District may require a final report which includes a presentation file and a factsheet be posted on Grantee's website and which District may post on its own website.
2. District conducts final on-site Project inspection as deemed necessary.
3. District processes Grantee's invoice for final payment.

H. Agreement Term

1. Provided District has approved of Grantee's compliance with all Insurance Requirements as set forth in Appendix H. Insurance Requirements the term of this Agreement commences upon full execution by the Parties. Approval of this Agreement by both Parties is necessary for any disbursement of Grant funds. This Agreement expires upon the earliest of: Project Completion in accordance with Section 2. General Provisions, G. Project Completion; or within five (5) years from the date this Agreement is fully executed.

I. Insurance Provisions

1. During the entire term of the Agreement, Grantee must maintain the insurance coverages described in Appendix H. Insurance Requirements.

SECTION 3. FINANCIAL PROVISIONS

A. Accounting and Audit Requirements

1. Grantee must maintain an accounting system that accurately reflects fiscal transactions, with the necessary controls and safeguards. Grantee should provide clear audit trails, especially the source of original documents such as, but not limited to, receipts, progress payments, invoices, time cards, etc. **AVOID AUDIT EXCEPTIONS—KEEP ACCURATE RECORDS.**
2. Grantee agrees that District, or its agent, has the right to review, obtain, and copy all records pertaining to performance of this Agreement. Grantee agrees to provide District, or its agent, with any relevant information requested and will permit District, or its agent, access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting or copying books, records, accounts, computerized records, and other materials that may be relevant to the matter under investigation for the purpose of determining compliance with this Agreement. Grantee further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.
3. Grantee's detailed budget is included as Appendix C, Project Budget and is consistent with Grantee's Project Proposal. The Project Budget will be used by District as the basis for evaluating Grantee's invoices for Grant funds. In cases where invoices are inconsistent with the Project Budget, invoices must either be revised for consistency or an amendment to this Agreement may be necessary to align the Project Budget with the actual reimbursable expenditures for the Project.
4. Grantee must document its eligibility for award and receipt of Safe, Clean Water Grant Funds by verifying it is not included in any current Federal List of Parties Excluded from Federal Procurement or Non-procurement Programs. Exclusion of Grantee from this list, verified at: <http://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm>, demonstrates the Grantee's good status regarding suspension and debarment and eligibility for Grant Program funds.

5. Grantee is responsible for repayment to District of any disallowed cost. Disallowed costs may be identified through audits, monitoring, or other sources of information that become available to the District after the District has satisfied an invoice from Grantee and disbursed Safe, Clean Water Grant funds.
6. Construction costs are deemed “reasonable” if obtained by competitive bidding, or by other legal means as demonstrated by either Party.

B. Eligible Costs

Total Project Grant Amount is not-to-exceed that amount identified in Recitals, Item F. and will be disbursed to Grantee according to the terms and conditions as stated in Section 3. Financial Provisions, C. Payment Request Process and D. Invoicing.

1. Only Project. Related costs incurred during the Project Performance Period, excluding costs incurred prior to and during preparation of the Grant application, specified in this Agreement are eligible for reimbursement. All such costs must be supported by appropriate documentation, including but not limited to subcontractor invoices and receipts (see Appendix E. Invoice Form).
2. Personnel or Employee Services. Services of the Grantee’s employees engaged in Project execution are eligible costs. These direct labor costs must be computed according to the Grantee’s prevailing wage or salary scales and may include fringe benefit costs such as vacation, sick leave and social security contributions that are customarily charged to the Grantee’s various projects for which the Grantee has submitted a Benefit Rate Calculation to the District. Indirect overhead is limited to 10% of Salary plus Benefits. Costs charged to the Project must be computed on actual time spent on a project, and supported by time and attendance records describing the work performed on the Project. Benefit rates shall be limited to no more than 20% of labor rates. Overtime costs may be allowed under the Grantee’s established policy; provided that the regular work time was devoted to the same Project.
3. Salaries and wages claimed for employees working on Grant-funded Project(s) must not exceed the Grantee’s established rates for similar positions.
4. Project costs for non-construction tasks are limited to 20% of District contribution to Total Project Cost, for projects that include a construction task.
5. Consultant Services. The costs of consultant services necessary for the Project are eligible. Consultants must be paid by the customary or established method and rate of the Grantee. No consultant fee may be paid to the Grantee’s own employees.
6. Construction Equipment. Equipment owned by Grantee may be charged to the Project for each use. Equipment use charges must be made in accordance with the Grantee’s normal accounting practices. The equipment rental rates published by the California Department of Transportation may be used as a guide.

- a. If the Grantee's equipment is used, a report or source document must describe the work performed, indicate the hours used and relate the use to the Project.
 - b. The purchase of equipment with Grant funds is not permissible.
7. Construction Supplies and Materials. Supplies and materials may be purchased for a specific project or may be drawn from a central stock, provided they are claimed at a cost no higher than that paid by the grant recipient. Supplies and materials purchased for the construction of a piece of equipment, a structure or a part of a structure may be charged to the Project. If charged, only that cost incurred during the Project performance period and attributed to the Project may be claimed.
8. Signs and Interpretive Aids. The cost of signs, display boards, or other minor interpretive aids relating to the Project are eligible.
9. Construction. The costs of all necessary construction activities, from site preparation (including demolition, excavation, grading, etc.) to the completion of a structure or facility are eligible.
10. Acquisition. Costs of acquiring real property interests are eligible and may include the purchase price of the property, appraisals, surveys, preliminary title reports, escrow fees, title insurance fees.
11. Relocation Costs. Relocation costs are allowable for projects that result in displacement of any person and/or business. The Grantee must comply with all federal and local laws, as well as the requirements of the State Relocation Act (Chapter 16 Government Code, Section 7260 et seq.), if applicable, even if relocation costs are not claimed for reimbursement.
12. Other Expenditures. In addition to the major categories of expenditures, reimbursements may be made for miscellaneous costs necessary for execution of the Project. Examples of such costs include:
 - a. Postage; and
 - b. Transportation costs for moving equipment and/or personnel.

C. Payment Request Process

This Grant Agreement is based on a reimbursement model with specific details as noted below.

1. Grantee may submit multiple Payment Request Forms as necessary, but not more often than monthly.
2. After Grantee completes the Project, Grantee submits the Project Completion Packet (see Section 2. General Provisions, G. Project Completion) and the Payment Request Form (Appendix E) for the final payment.

PAYMENT REQUEST PROCESS		
PAYMENT TYPE	WHEN TO SUBMIT IT	SUPPORTING DOCUMENTATION TO SEND TO PROGRAM ADMINISTRATOR
Payment Request Reimbursement (up to 90% of the total Project Grant Amount)	Once Grantee can provide evidence to show significant progress toward completing Project tasks.	• Payment Request Form (Appendix F) • Invoice Form (Appendix E) • Status Report Form (Appendix G) • For direct expenses, copies of invoices with all attachments shall be submitted • For labor costs, copies of Timesheets shall be submitted • For Benefits Costs, a Benefits Rate Calculation will be submitted • Documentation of accomplishments (i.e., draft and final plans, designs, etc.)
Final (10%)	After Grantee has completed the Project	• Project Completion packet (see Section 2. General Provisions, G. Project Completion)

D. Invoicing

1. The Project Invoice (Appendix E) and Status Report Form (Appendix G) shall accompany the Payment Request Form (Appendix F) and shall incorporate Grantee name and remittance address, a description/itemization of goods or services, dollar amount of goods or services, invoice date and number, and Agreement number. Work performed shall be determined on a per task basis as outlined in the Project Scope (Appendix A) and Project Schedule (Appendix B). All requests for reimbursements will be accompanied by materials providing evidence of significant Project progress accomplishments commensurate with level of reimbursement requested.
2. District will review Grantee's invoice within ten working days from receipt and advise Grantee of any disputed items. District will review and approve undisputed invoices within ten working days from receipt and issue payment within forty-five calendar days from receipt. District will pay invoices within forty-five calendar days from date invoice is approved by District's Program Administrator.
3. Grantee's invoice must include invoices from subcontractors documenting task, task budget, percentage complete, prior billing if any, current billing, and total billed. Documentation supporting Grantee's invoice(s) must document work performed consistent with the frequency of Grantee's invoices to District.

SECTION 4. MISCELLANEOUS PROVISIONS

A. Miscellaneous Provisions

1. Grantee's waiver of any term, condition, covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition, or covenant or breach by any other term, condition or covenant.

2. This Agreement contains the entire agreement between District and Grantee relating to the Project. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.
3. This Agreement shall be governed and construed in accordance with the laws of the State of California.
4. This Agreement may be executed in counterparts and will be binding as executed.
5. Grantee's request(s) for minor modification(s) to the Project Scope, Project Schedule, or Project Budget must be submitted in writing, prior to the expiration of this Agreement, and will be considered for approval by the District's executive management responsible for the Safe, Clean Water Grant Program provided:
 - a. The Grant award by the District's Board did not impose a restriction on such revisions; and
 - b. No additional Grant funds are requested. All such requests will be considered by the District's executive management responsible for the Safe, Clean Water Grant Program.
6. Revisions to the Project Scope, Project Schedule, or Project Budget are subject to review and prior approval of the District.
7. An extension to the term of this Agreement for a period up to twelve (12) months beyond the current expiration date may be approved by District. Requests for term extensions must be submitted in writing and received no later than sixty (60) calendar days prior to the expiration of this Agreement. Grantee must submit sufficient documentation in support of its request to enable the District's executive management to evaluate Grantee's request. The District's executive management will consider criteria such as the following:
 - a. The amount of Grant funds not yet disbursed to Grantee;
 - b. Grantee's progress in completing the Project Scope and the reasons supporting any delays;
 - c. Whether Grantee has the dedicated human and financial resources to continue to complete the Project Scope during the extension period; and
 - d. Whether such extension is in the best interest of the District.
8. If approved by District, an amendment to this Agreement, extending its Term, must be executed in full prior to the original expiration date as stated in Section 2. General Provisions, H. Agreement Term. If this Agreement is not extended prior to its expiration, any unexpended Grant funds will be retained by the District and unavailable to the Grantee for the Project.

9. All Appendices, A (Project Scope), B (Project Schedule), C (Project Budget), D (Resolution), E (Invoice Form), F (Payment Request Form), G (Status Report Form), and H (Insurance Requirements) are hereby incorporated herein by this reference and made a part hereof, as though set forth in full.
10. Severability. If any provision of this Agreement is held invalid, that invalidity shall not affect other provisions of the Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.
11. Survival. Section 3. Financial Provisions, B. Eligible Costs, C. Payment Request Process, and D. Invoicing, shall survive completion, suspension, termination or expiration of this Agreement such that any Eligible Costs incurred during the Project Performance Period may be invoiced by Grantee and paid by the District provided invoices, including final invoice, are submitted prior to the expiration date of this Agreement as stated in Section 2. General Provisions, H. Agreement Term.

B. Notices

All notices and other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To SCVWD: Rick Callender Chief of External Affairs Santa Clara Valley Water District 5750 Almaden Expressway San Jose, CA 95118-3686 E-mail: rcallender@valleywater.org	To Grantee:
Contact: Sherilyn Tran Program Administrator Santa Clara Valley Water District 5750 Almaden Expressway San Jose, CA 95118 Phone: (408) 630-2772 E-mail: stran@valleywater.org	Contact:

IN WITNESS WHEREOF, THE PARTIES HAVE SET FORTH BELOW THEIR CONSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT THROUGH THE SIGNATURES OF THEIR DULY AUTHORIZED REPRESENTATIVES.

GRANTEE

Date: _____ By: _____

SANTA CLARA VALLEY WATER DISTRICT

Date: _____ By: _____

Norma J. Camacho
Chief Executive Officer

(The remainder of this page intentionally left blank.)

**APPENDIX A
PROJECT SCOPE**

SAMPLE

**APPENDIX B
PROJECT SCHEDULE**

SAMPLE

**APPENDIX C
PROJECT BUDGET**

SAMPLE

**APPENDIX D
RESOLUTION**

SAMPLE

APPENDIX E

SAMPLE PROJECT INVOICE TEMPLATE

[illegible]

APPENDIX F PAYMENT REQUEST FORM

GRANT:																
AGREEMENT	GRANTEE:															
INVOICE NO.																
PROJECT TITLE:																
1. TYPE OF PAYMENT: ☐ Reimbursement ☐ Final																
2. PAYMENT INFORMATION (Round all figures to the nearest dollar): <table style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 60%;">a. Project Amount</td> <td style="width: 5%;">\$</td> <td style="width: 35%;">.....</td> </tr> <tr> <td>b. Funds Received to Date</td> <td>\$</td> <td>.....</td> </tr> <tr> <td>c. Available (a. minus b.)</td> <td>\$</td> <td>.....</td> </tr> <tr> <td>d. Amount of This Request</td> <td>\$</td> <td><u> </u></td> </tr> <tr> <td>e. Remaining Funds After This Payment (c. minus d.)</td> <td>\$</td> <td>.....</td> </tr> </table>		a. Project Amount	\$		b. Funds Received to Date	\$		c. Available (a. minus b.)	\$		d. Amount of This Request	\$	<u> </u>	e. Remaining Funds After This Payment (c. minus d.)	\$	
a. Project Amount	\$															
b. Funds Received to Date	\$															
c. Available (a. minus b.)	\$															
d. Amount of This Request	\$	<u> </u>														
e. Remaining Funds After This Payment (c. minus d.)	\$															
3. SEND PAYMENT TO: <table style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 35%;">Grantee Name</td> <td>.....</td> </tr> <tr> <td>Street Address</td> <td>.....</td> </tr> <tr> <td>City, State, Zip Code</td> <td>.....</td> </tr> <tr> <td>Attention</td> <td>.....</td> </tr> </table>		Grantee Name		Street Address		City, State, Zip Code		Attention								
Grantee Name																
Street Address																
City, State, Zip Code																
Attention																
4. <i>"I certify, under penalty of perjury under the laws of the State of California, that the Quarterly/Monthly Status Report and all attachments, signed on the date below, on behalf of Grantee, were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the loss of the current and future Grant Funding."</i>																
TYPED OR PRINTED NAME OF PERSON AUTHORIZED BY RESOLUTION:	Title															
5. SIGNATURE OF PERSON AUTHORIZED BY RESOLUTION:	Date															
FOR SANTA CLARA VALLELY WATER DISTRICT USE ONLY																
PAYMENT APPROVAL SIGNATURE	Date															

INSTRUCTIONS

The following instructions correspond to items on the Payment Request Form:

Agreement Number – As shown on page 1 of the Agreement following execution of the Agreement by both Parties.

Awardee – Name as shown on the Grant Agreement.

Project Title – Title of project for which payment is requested.

1. Type of Payment – Check appropriate box, and submit this form:
 - *Reimbursement* – When Awardee has periodically spent funds to implement the Project, and is requesting reimbursement; or
 - *Final* – When Awardee has completed the Project, and is requesting the final payment.
2. Payment Information:
 - a. Project Grant Amount – The amount of District grant funds allocated to this Project
 - b. Funds Received to Date – Total amount already received for this Project
 - c. Available – (a. minus b.)
 - d. Amount of This Payment Request – Amount that is requested
 - e. Remaining Funds After This Payment – (c. minus d.)
3. Send Payment to: Awardee Name, Address, and Contact Person
4. Typed or printed name of person authorized by Resolution.
5. Signature of person authorized by Resolution.
6. Payment approval signature and date—For District staff.

Additional Information to supply with Payment Request Form:

- Attached documentation to support charges (i.e., subcontractor invoices, receipts, etc.).
- Attached proof of accomplishments for those tasks being charged against (i.e., draft plans/designs, final plans/designs, environmental documentation, etc.).

SAMPLE

APPENDIX G GRANTS STATUS REQUEST FORM

Grantee: _____ Agreement No. _____ Invoice No. _____

Funding Program: _____

Project Name: _____

TASKS	NUMERICAL TARGET IF IDENTIFIED	STATUS (ON TARGET, MODIFICATION NEEDED OR COMPLETED)			COMMENTS (IDENTIFY COMPLETED TASKS AND EXPLAIN VARIATIONS)
		Scope	Schedule	Budget	
Task 1					
Task 2					
Task 3					
Task 4					
Task 5					
-					
Overall Project					
Issues or Concerns/Proposed Resolution					
Other items					

APPENDIX H INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below.

Without limiting the Grantee's indemnification of, or liability to, the Santa Clara Valley Water District ("District"), the Grantee must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

Grantee must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Grantee's insurance agent(s) and/or broker(s), who have been instructed by Grantee to procure the insurance coverage required herein. All Certificates of Insurance complete with copies of all required endorsements must be sent to: **Contract Administrator, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118.**

In addition to certificates, Grantee must furnish District with copies of original endorsements affecting coverage required by this Appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before work commences.** In the event of a claim or dispute, District has the right to require Grantee's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Appendix.

Grantee must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

Required Coverages

1. Commercial General/Business Liability Insurance with coverage as indicated:

\$1,000,000 per occurrence / **\$1,000,000** aggregate limits for bodily injury and property damage

\$1,000,000 Products/Completed Operations aggregate (to be maintained for at least three (3) years following acceptance of the work by District.

General Liability insurance must:

- a. Be written on standard ISO forms, or inspected by the District Risk Manager
- b. Include coverage at least as broad as found in standard ISO form CG 0001.
- c. Include Premises and Operations
- d. Include Contractual Liability expressly including liability assumed under this contract.
- e. If Contractor will be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- f. Include Owners and Contractors' Protective liability
- g. Include Severability of Interest

- h. Include Explosion, Collapse and Underground Hazards, (X,C, and U)
- i. Include Broad Form Property Damage liability
- j. Contain no restrictive exclusions (such as but not limited to CG 2153, CG 2144 or CG 2294)

The District reserves the right to require certain restrictive exclusions be removed to ensure compliance with the above.

2. Business Auto Liability Insurance with coverage as indicated:

\$1,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

Excess or Umbrella policies may be used to reach the above limits for the General Liability and/or Business Auto Liability insurance limits, however all such policies must contain a primacy clause (See Section 2, General Conditions) and meet all other General Conditions below.

3. Workers' Compensation and Employer's Liability Insurance

Statutory California Workers' Compensation coverage covering all work to be performed for the District.

Employer Liability coverage for not less than \$1,000,000 per occurrence.

General Requirements

With respect to all coverages noted above, the following additional requirements apply:

1. **Additional Insured Endorsement(s):** Contractor must provide an additional insured endorsement for Commercial General/Business Liability (for both on-going and completed operations) and Business Automobile liability coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, and agents, individually and collectively**, as additional insureds, and must provide coverage for acts, omissions, etc. arising out of the named insureds' activities and work. Other public entities may also be added to the additional insured endorsement as applicable and the Contractor will be notified of such requirement(s) by the District. **NOTE:** This section does not apply to the Workers' Compensation and Professional Liability policies.

(NOTE: Additional insured language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement such as Form CG 2010, CG 2033, CG 2037, or CG 2038. Editions dated 07/04 are not acceptable.)

2. **Primacy Clause:** Contractor will provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that Contractor's insurance (including any excess/umbrella policies) is primary with respect to any other insurance which may be carried by the District, its officer, agents and employees, and the District's coverage must not be called Supon to contribute or share in the loss. **NOTE:**

This section does not apply to the Workers' Compensation and Professional Liability policies.

3. **Cancellation Clause:** Contractor will provide endorsements for all policies stating that the District will be given 30 days notice of cancellation, (10 days for non-payment of premium). **NOTE:** The standard wording in the ISO Certificate of Insurance is not acceptable.
4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the District's Risk Manager. Non-Admitted companies may be substituted on a very limited basis at the Risk Manager's sole discretion.
5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Contractor and subcontractors agree that in the event of a claim they will pay down any agreed upon SIR in a prompt manner as soon as bills are incurred in order to trigger the insurance related to the SIR.
6. **Subcontractors:** Should any of the work under this Agreement be sublet, Contractor will name each of the subcontractors of any tier under its own policies, or will require each of its subcontractors of any tier to carry the aforementioned coverages. District reserves the right to accept lower limits of coverage for select subcontractors. District Risk Manager shall make all such determinations. Contractor is responsible for ensuring all evidence of insurance for any subcontractor is forwarded to the District for review prior to receipt of a Notice to Proceed.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Contractor for the benefit of the District must not be deemed to release or limit any liability of Contractor. Damages recoverable by the District for any liability of Contractor must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** With the exception of the Professional Liability/Errors and Omissions coverage mentioned above, all coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Contractor agrees to waive subrogation against the District to the extent any loss suffered by Contractor is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy, or Builders' Risk policy described in **Required Coverages** above. Contractor agrees to advise its broker/agent/insurer and agrees to provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that subrogation has been waived.

10. **Coverages to be Kept Current:** Contractor must keep all coverages required under this section accurate and current (non-expired) and immediately inform the District if there are any payments against the coverage, reduction in limits or other material changes. Contractor is responsible to ensure all subcontractors keep their coverages accurate and current in accordance with this Section 10, and this section.
11. **Non-compliance:** The District reserves the right to either halt work or withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above. District shall not be responsible for additional costs associated with lost time due to failure to comply.

CHECK LIST OF DOCUMENTS NEEDED

General Liability:	A.	Limits (\$1,000,000)	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
Auto Liability:	A.	Limits (\$1,000,000)	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
Umbrella:	A.	Limits (\$)	
	B.	Primacy (Endorsement or policy language)	
Workers Comp:	A.	Limits (\$1,000,000)	
	B.	Waiver of Subrogation (Endorsement or policy language)	
	C.	Cancellation Endorsement	



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

2/05/2019

Agenda Item No. 10



ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION





**City of Milpitas
Grant Approval for
Lower Penitencia Creek Pedestrian Bridge
Project No. 2005
McCandless Park Site**

Backup material for agenda item:

Receive a Report on Emergency Repair of Montague Expressway Storm Drain Pipeline and Authorize Payment of Invoices Associated with the Repair Activities (Staff Contact: Tony Ndah, 408-586-2602)

Recommendations: 1) Receive a report from the Public Works Director on the emergency repair work on roadway and storm drain pipeline at Montague Expressway. 2) Authorize staff to pay invoices associated with the repair activities.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive a Report on Emergency Repair of Montague Expressway Storm Drain Pipeline and Authorize Payment of Invoices Associated with the Repair Activities
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	2/5/2019
Staff Contact:	Tony Ndah, Director of Public Works, 408-586-2602
Recommendation:	1. Receive a report from the Public Works Director on the emergency repair work on roadway and storm drain pipeline at Montague Expressway. 2. Authorize staff to pay invoices associated with the repair activities.

Background: Pursuant to state public contracting law and Council Resolution No. 7779, the Director of Public Works may authorize emergency work, but must provide the City Council with a report of all such activities. Per these requirements, the Public Works Director authorized the hiring of contractors as required to complete the repair of the storm drain and roadway sinkhole on Montague Expressway.

In the evening of Friday, January 11, County of Santa Clara Roads and Airports Department (County) staff responded to a report of a sink hole on the westbound lanes of Montague Expressway, between Trade Zone and Main Street, in the vicinity of the Union Pacific Railroad tracks. By Saturday, January 12, County staff had closed down Montague Expressway to all traffic around the sink hole area and mobilized a contractor to excavate and expose the impacted area. Upon further evaluation, it was determined that the sink hole was caused by a failure in a 72-inch diameter storm drain line underneath the roadway. As part of the repair of the sink hole, City staff mobilized a contractor to complete an internal repair of the 72-inch diameter storm drain pipeline, while the County's contractor completed the repair of the roadway. The roadway was reopened to traffic on Sunday, January 13, 2019.

Analysis: Due to the size of the repair and the urgent need to restore the storm drain pipeline and Montague Expressway, the County authorized Granite Construction to complete emergency repair work on the roadway, while the Public Works Director authorized Able Underground Construction, Inc. to complete the storm drain line repair. The City crews provided oversight and assistance to Able Underground Construction in the repair of the storm drain pipeline.

City staff completed an inspection and assessment of the storm drain pipeline, to assess the damage to the pipeline and to determine the possible cause of the sink hole. During the inspection, staff discovered a 10-inch waterline, running perpendicular and cut into the bottom of the storm drain line. Our records show that the waterline was installed in 1967. The points of exit and entry for the water line through the storm drain had been eroded and over time, storm water passing through the 72-inch pipeline made its way through the entry and exits points, weakening the soil around the outside of the storm drain line and forming a void underneath the roadway.

Based on staff evaluation, it appears that the construction crews responsible for installing the 72-inch storm drain line, encountered the 10-inch waterline during construction and rather than relocate the waterline, a cut-out was made to the bottom of the storm drain pipeline to allow for the installation, without having to relocate the waterline.

Staff will be working with the County to further investigate the cause of the sink hole, which will include a review of construction drawings and any permits related to the work, to determine what actions were taken to prevent storm water from passing through the exit and entry points of the waterline during the storm drain

pipeline installation. Staff estimates repairing the roadway and storm drain pipeline could cost in the range of \$250,000 to \$350,000. Staff is recommending that Council authorize staff to pay invoices associated with the repair activities, to enable timely payments for services provided as a result of this emergency work.

Fiscal Impact: Staff estimates the repair of the roadway and storm drain pipeline could cost in the range of \$250,000 to \$350,000. As a result, there may potentially be insufficient funds available within the FY19 budget for the Public Works Operating Budget for this emergency work. If repair costs exceed the available funding, staff will recommend a budget appropriation at a future Council meeting.

California Environmental Quality Act: This emergency repair work is exempt from CEQA per CEQA Guidelines Section 15301, Existing Facilities and 15302, Replacement or Reconstruction.

Recommendations:

1. Receive a report from the Public Works Director on the emergency repair work on roadway and storm drain pipeline at Montague Expressway.
2. Authorize staff to pay invoices associated with the repair activities.

Attachment: None

Backup material for agenda item:

Receive a Report on Emergency Repair of Technology Drive Water Main and Authorize Payment of Invoices Associated with the Repair Activities (Staff Contact: Tony Ndah, 408-586-2602)

Recommendations: 1) Receive a report from the Public Works Director on the emergency repair work of a water main on Technology Drive. 2) Authorize staff to pay invoices from Preston Pipeline for work associated with the repair of the water main.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive a Report on Emergency Repair of Technology Drive Water Main and Authorize Payment of Invoices Associated with the Repair Activities
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	2/5/2019
Staff Contact:	Tony Ndah, Director of Public Works, 408-586-2602
Recommendation:	1. Receive a report from the Public Works Director on the emergency repair work of a water main on Technology Drive. 2. Authorize staff to pay invoices from Preston Pipeline for work associated with the repair of the water main.

Background: Pursuant to state public contracting law and Council Resolution No. 7779, the Director of Public Works may authorize emergency work, but must provide the City Council with a report of all such activities. Per these requirements, the Public Works Director authorized the hiring of Preston Pipeline to complete the emergency repair of a 12-inch water main on Technology Drive.

On January 6, 2019, the Public Works Department responded to a call concerning a water main break in the intersection of Technology Drive and Murphy Ranch Road, impacting both KLA Tencor and Western Digital. A 12-inch diameter asbestos cement water main failed, causing impacts to water service in the area and the flow of traffic in the intersection of Technology Drive and Murphy Ranch Road. The depth of the pipeline was approximately 10 feet and due to the size of the repair and the urgent need to restore water supply to the businesses in the area, the Public Works Director authorized Preston Pipelines to complete the water pipe line repair. The water main repairs were completed on Wednesday, January 9, 2019.

Analysis: Due to the size of the repair and the urgent need to restore the water main, the Public Works Director authorized Preston Pipeline to complete the water main repair. City crews setup temporary above-ground water supply lines (highline) to give temporary water services to the affected customers in the area. This effort minimized the disruption of water services to customers during the emergency repair work.

Crews from Preston Pipeline began excavation activities on the water main on January 7, 2019. Once the water main was exposed, it was determined that the cause of the leak was due to a beam break on the pipeline. The location of the beam break was approximately 5-feet away from where repair activities were completed on this pipeline in December 2015. Repair of the water main was completed on January 9, 2019 and City staff removed the highline from the site as well. Staff estimates the repair of the water main could cost in the range of \$25,000 to \$75,000. Staff is recommending that Council authorize staff to pay invoices associated with the repair activities, to enable timely payments for services provided as a result of this emergency work.

Fiscal Impact: Staff estimates the repair of the water main could cost in the range of \$25,000 to \$75,000. As a result, there may potentially be insufficient funds available within the FY19 budget for the Public Works Operating Budget for this emergency work. If repair costs exceed the available funding, staff will recommend a budget appropriation at a future Council meeting.

California Environmental Quality Act: This emergency repair work is exempt from CEQA per CEQA Guidelines Section 15301, Existing Facilities and 15302, Replacement or Reconstruction.

Recommendations:

1. Receive a report from the Public Works Director on the emergency repair work of a water main on Technology Drive.
2. Authorize staff to pay invoices from Preston Pipeline for work associated with the repair of the water main.

Attachment: None

Backup material for agenda item:

**Authorize Payment to County of Santa Clara Registrar of Voters for November 6, 2018 Election Costs
(Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Authorize payment in the amount of \$112,855 in total to the County of Santa Clara Registrar of Voters for its services for the November 6, 2018 election.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize Payment to County of Santa Clara Registrar of Voters for November 6, 2018 Election Costs (Staff Contact: Mary Lavelle, 408-586-3001)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	2/5/2019
Staff Contact:	Mary Lavelle, 408-586-3001
Recommendation:	Authorize payment in the amount of \$112,855 in total to the County of Santa Clara Registrar of Voters for its services for the November 6, 2018 election.

Background: In January, the City Clerk received an invoice from the County of Santa Clara Registrar of Voters for its services for the November 6, 2018 municipal election. There were thirteen candidates for elective office and one City ballot measure on the ballot (Measure R). Nine candidates (of 13 total) who chose to print a Candidate's Statement in the sample ballot pamphlet paid the cost for that service by providing a check to the City up front, in August of 2018. The City Clerk's budget is charged the cost for the remainder.

Fiscal Impact: \$97,951 shall be paid out of the approved FY 2018-19 City Clerk's operating budget and \$14,904 from the amount deposited by 9 candidates for Candidate's Statements. No further budget appropriations are requested.

Recommendation: Authorize payment in the amount of \$112,855 in total to the County of Santa Clara Registrar of Voters for its services for the November 6, 2018 election.

Attachment: Invoice

County of Santa Clara

Registrar of Voters

1555 Berger Drive, Bldg. 2

San Jose, CA 95112

Mailing Address: P.O. Box 611360, San Jose, CA 95161-1360

1(408) 299-VOTE (8683) 1(866) 430-VOTE (8683) FAX: 1(408) 998-7314

www.sccvote.org

City Clerk's Office

JAN 15 2019

RECEIVED**INVOICE**

REMIT TO: REGISTRAR OF VOTERS
PO BOX 611360
SAN JOSE, CA 95161-1360

INVOICE NO. NV18-015
INV DATE 07-Jan-19
TERM: UPON RECEIPT

BILL TO: CITY OF MILPITAS
455 E. CALAVERAS BLVD
MILPITAS, CA 95035
ATTN: MARY LAVELLE

DESCRIPTION					AMOUNT
Final billing for the cost of November 6, 2018 Gubernatorial General Election					
	Mayor	City Council	Measure R		
Base Charge	\$ 37,414	\$ 10,177	\$ 10,177	\$	57,768
Vote-by-Mail Fee	\$ 9,279	\$ 3,292	\$ 3,292	\$	15,863
Candidate Statements	\$ 4,968	\$ 9,936	\$ -	\$	14,904
Costs of Measure Pages	\$ -	\$ -	\$ 18,364	\$	18,364
Shared Ballot Printing Costs	\$ 3,654	\$ 914	\$ 914	\$	5,482
Shared Costs of PP Publication	\$ 158	\$ 158	\$ 158	\$	474
	\$ 55,473	\$ 24,477	\$ 32,905	\$	112,855
100 114 4280 \$97,951 HA 1329-2500 \$4904					
TOTAL INVOICE AMOUNT					\$ 112,855

For invoice inquiries please call Carolina Gomez at (408) 282-3012

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Susan Ellenberg, S. Joseph Simitian

County Executive: Jeffrey V. Smith

SANTA CLARA COUNTY REGISTRAR OF VOTERS
NOVEMBER 6, 2018 GENERAL ELECTION

SCHEDULE 1 - ACTUAL COSTS OF CANDIDATE STATEMENTS IN CVIG

200-WORD CANDIDATE STATEMENT	CITY	ORDERED FOR ALL LANGUAGE S	NO. OF C/S	NO. OF PAGES PER SBLT	TYPESET COST		HAND- LING	TRANS- LATION	TOT. FIXED COSTS		RUN COST PER PAGE	TOTAL COST CAND. STATEMENT				
					FIXED COST PER CAND STATEMT (200 WORDS)				COSTS							
					\$	380	\$	625	\$	474	\$	1,479	\$	0.01431		
	CITIES															
City of Campbell		26,100	5	2	\$	1,900	\$	3,125	\$	2,370	\$	7,395	\$	747	\$	8,142
City of Cupertino		36,500	7	2	\$	2,660	\$	4,375	\$	3,318	\$	10,353	\$	1,045	\$	11,398
City of Gilroy, FT		29,200	6	2	\$	2,280	\$	3,750	\$	2,844	\$	8,874	\$	836	\$	9,710
City of Gilroy, ST		29,200	2	1	\$	760	\$	1,250	\$	948	\$	2,958	\$	418	\$	3,376
City of Los Altos		23,500	5	2	\$	1,900	\$	3,125	\$	2,370	\$	7,395	\$	673	\$	8,068
Town of Los Altos Hills		7,700	3	1	\$	1,140	\$	1,875	\$	1,422	\$	4,437	\$	110	\$	4,547
Town of Los Gatos		23,000	4	1	\$	1,520	\$	2,500	\$	1,896	\$	5,916	\$	329	\$	6,245
City of Milpitas, Mayor		37,100	3	1	\$	1,140	\$	1,875	\$	1,422	\$	4,437	\$	531	\$	4,968
City of Milpitas, City Council		37,100	6	2	\$	2,280	\$	3,750	\$	2,844	\$	8,874	\$	1,062	\$	9,936
City of Monte Sereno		3,800	4	1	\$	1,520	\$	2,500	\$	1,896	\$	5,916	\$	54	\$	5,970
City of Morgan Hill, Mayor		29,200	2	1	\$	760	\$	1,250	\$	948	\$	2,958	\$	418	\$	3,376
City of Morgan Hill City Council, Dist B		7,200	3	1	\$	1,140	\$	1,875	\$	1,422	\$	4,437	\$	103	\$	4,540
City of Morgan Hill City Council, Dist D		8,300	3	1	\$	1,140	\$	1,875	\$	1,422	\$	4,437	\$	119	\$	4,556
City of Mountain View Council		41,400	6	2	\$	2,280	\$	3,750	\$	2,844	\$	8,874	\$	1,185	\$	10,059
City of Palo Alto Council		45,600	5	2	\$	1,900	\$	3,125	\$	2,370	\$	7,395	\$	1,305	\$	8,700
City of San Jose Council, Dist 7		54,200	2	1	\$	760	\$	1,250	\$	948	\$	2,958	\$	776	\$	3,734
City of San Jose Council, Dist 9		59,700	2	1	\$	760	\$	1,250	\$	948	\$	2,958	\$	854	\$	3,812
City of Santa Clara, Mayor		60,600	2	1	\$	760	\$	1,250	\$	948	\$	2,958	\$	867	\$	3,825
City of Santa Clara Council, Dist 2		10,000	3	1	\$	1,140	\$	1,875	\$	1,422	\$	4,437	\$	143	\$	4,580
City of Santa Clara Council, Dist 3		10,400	2	1	\$	760	\$	1,250	\$	948	\$	2,958	\$	149	\$	3,107
City of Santa Clara City Clerk, ST		60,600	4	1	\$	1,520	\$	2,500	\$	1,896	\$	5,916	\$	867	\$	6,783
City of Saratoga (400-WORD)		24,600	5	3	\$	2,275	\$	5,200	\$	4,740	\$	12,215	\$	1,056	\$	13,271
City of Sunnyvale Council, Seat 1		72,000	2	1	\$	760	\$	1,250	\$	948	\$	2,958	\$	1,030	\$	3,988
City of Sunnyvale Council, Seat 2		72,000	2	1	\$	760	\$	1,250	\$	948	\$	2,958	\$	1,030	\$	3,988
City of Sunnyvale Council, Seat 3		72,000	2	1	\$	760	\$	1,250	\$	948	\$	2,958	\$	1,030	\$	3,988
		881,000	90	34	\$	34,575	\$	58,325	\$	45,030	\$	137,930	\$	16,738	\$	154,667

**SANTA CLARA COUNTY REGISTRAR OF VOTERS
NOVEMBER 6, 2018 GENERAL ELECTION**

SCHEDULE 1A - ACTUAL COSTS AND BALANCE DUE ON INDIVIDUAL CANDIDATE STATEMENTS IN CVIG

CONTEST	CANDIDATE STATEMENTS - DISTRICT & NAME	CANDIDATE NAME	NO. OF CAND	INDIVIDUAL COST	BALANCE DUE TO ROV
5080	City of Milpitas, Mayor	Bob Nunez	3	1,655.98	\$ 1,656
	City of Milpitas, Mayor	Jose 'Joe' Esteves		1,655.98	\$ 1,656
	City of Milpitas, Mayor	Rich Tran		1,655.98	\$ 1,656
5081	City of Milpitas, City Council	Carmen Montano	6	1,655.98	\$ 1,656
	City of Milpitas, City Council	Garry Barbadillo		1,655.98	\$ 1,656
	City of Milpitas, City Council	Karina Dominguez		1,655.98	\$ 1,656
	City of Milpitas, City Council	Marsha Grilli		1,655.98	\$ 1,656
	City of Milpitas, City Council	Suraj "Sun" Viswanathan		1,655.98	\$ 1,656
	City of Milpitas, City Council	Van Lan Truong		1,655.98	\$ 1,656
GRAND TOTAL				\$	14,904

SANTA CLARA COUNTY REGISTRAR OF VOTERS
 NOVEMBER 6, 2018 GENERAL ELECTION
 SCHEDULE 2 - COSTS OF MEASURE PAGES IN CVIG

BALLOT ISSUES JURISDICTION	CVIG ORDERED FOR ALL LANGUAGES	NO. OF ENG FULL PAGES	NO. OF ENG TEXT PAGES	FIXED COST FOR ALL LANGUAGES PER MEASURE PAGE					RUN COST PER PAGE	TOTAL COST MEASURE PAGES					
				TYPESET (5 LANGUAGES)		HANDLING (6 LANGUAGES)	TRANSLATION (4 LANGUAGES)	TOT. FIXED COSTS							
				\$	745						\$	2,500	\$	1,920	\$
CITIES															
City of Campbell															
Measure O (General Obligation Bonds)	26,100	4.00	3.75	\$	2,980	\$	9,375	\$	7,200	\$	19,555	\$	1,494	\$	21,049
City of Los Altos - Measure C															
Measure C (Gen Plan Amendment)	23,500	10.00	9.50	\$	7,450	\$	23,750	\$	18,240	\$	49,440	\$	3,363	\$	52,803
Measure D (Transient Occupancy Tax)	23,500	3.00	3.00	\$	2,235	\$	7,500	\$	5,760	\$	15,495	\$	1,009	\$	16,504
Town of Los Gatos															
Measure G (Local General Revenue Tax)	23,000	6.00	5.75	\$	4,470	\$	14,375	\$	11,040	\$	29,885	\$	1,975	\$	31,860
City of Milpitas															
Measure R (Transient Occupancy Tax)	37,100	4.00	3.00	\$	2,980	\$	7,500	\$	5,760	\$	16,240	\$	2,124	\$	18,364
City of Morgan Hill															
Measure H (Gransient Occupancy Tax)	29,200	1.00	0.75	\$	745	\$	1,875	\$	1,440	\$	4,060	\$	418	\$	4,478
Measure I (Cannabis Business Tax)	29,200	1.00	1.00	\$	745	\$	2,500	\$	1,920	\$	5,165	\$	418	\$	5,583
Measure J (Elective to Appointive Position)	29,200	1.00	0.75	\$	745	\$	1,875	\$	1,440	\$	4,060	\$	418	\$	4,478
City of Mountain View															
Measure P (Business License Tax)	41,400	3.00	2.25	\$	2,235	\$	5,625	\$	4,320	\$	12,180	\$	1,777	\$	13,957
Measure Q (Cannabis Tax)	41,400	3.00	2.00	\$	2,235	\$	5,000	\$	3,840	\$	11,075	\$	1,777	\$	12,852
City of Palo Alto															
Measure E (Transient Occupancy Tax)	45,600	6.00	5.75	\$	4,470	\$	14,375	\$	11,040	\$	29,885	\$	3,915	\$	33,800
Measure F (Health Care Measure)	45,600	7.00	6.75	\$	5,215	\$	16,875	\$	12,960	\$	35,050	\$	4,568	\$	39,618
City of San Jose															
Measure S (Charter Amend. - Const Contracts)	570,600	2.00	1.50	\$	1,490	\$	3,750	\$	2,880	\$	8,120	\$	16,331	\$	24,451
Measure T (Disaster Prep, Public Sfty & Infr. Boni	570,600	4.00	3.25	\$	2,980	\$	8,125	\$	6,240	\$	17,345	\$	32,663	\$	50,008
Measure U (Charter Amendments)	570,600	2.00	1.25	\$	1,490	\$	3,125	\$	2,400	\$	7,015	\$	16,331	\$	23,346
Measure V (Affordable Housing Bond)	570,600	4.00	3.25	\$	2,980	\$	8,125	\$	6,240	\$	17,345	\$	32,663	\$	50,008
City of Santa Clara															
Measure M (Cannabis Business Tax)	60,600	1.00	1.00	\$	745	\$	2,500	\$	1,920	\$	5,165	\$	867	\$	6,032
Measure N (Advisory Charter Amendment)	60,600	1.00	1.00	\$	745	\$	2,500	\$	1,920	\$	5,165	\$	867	\$	6,032
City of Sunnyvale															
Measure K (Transient Occupancy Tax)	72,000	2.00	1.75	\$	1,490	\$	4,375	\$	3,360	\$	9,225	\$	2,061	\$	11,286
Measure L (Charter Amendment)	72,000	2.00	2.00	\$	1,490	\$	5,000	\$	3,840	\$	10,330	\$	2,061	\$	12,391
Total Cities			\$	49,915	\$	148,125	\$	113,760	\$	311,800	\$	127,101	\$	438,901	

SANTA CLARA COUNTY REGISTRAR OF VOTERS
NOVEMBER 6, 2018 GENERAL ELECTION
ELECTION COSTS ALLOCATION - CITIES

BALLOT ISSUES JURISDICTION	REG VOTERS 15-day close	SCH 1			SCH 2		SCH 3		SCH 4		SCH 5	
		BASE CHARGE		VOTE-BY-MAIL		CAND STMTS BALANCE DUE	MEASURE PAGES COSTS	SHARED BALLOT PRINTING COSTS	LEGAL NOTIFIC ELECTION COSTS	NO PRINT COSTS (Meas Text)	TOTAL COST OF ELECTION BY CONTEST	TOTAL COST OF ELECTION BY DISTRICT
		PER REG VOTER \$1.25\$0.34	TOTAL CHARGE	PER REG. VOTER \$0.31/\$0.11	TOTAL CHARGE							
City of Campbell Council Member	22,947	\$ 1.25	\$ 28,684	\$ 0.31	\$ 7,114	\$ 8,142		\$ 2,926	\$ 158		\$ 47,024	
City of Campbell Measure O	22,947	\$ 0.34	\$ 7,802	\$ 0.11	\$ 2,524		\$ 21,049	\$ 731	\$ 158		\$ 32,264	\$ 79,288
City of Cupertino Council Member	29,614	\$ 1.25	\$ 37,018	\$ 0.31	\$ 9,180	\$ 11,398		\$ 4,040	\$ 158		\$ 61,794	\$ 61,794
City of Gilroy Council Member, Full	24,972	\$ 1.25	\$ 31,215	\$ 0.31	\$ 7,741	\$ 9,710		\$ 1,065	\$ 158		\$ 49,889	
City of Gilroy Council Member, Short	24,972	\$ 0.34	\$ 8,490	\$ 0.11	\$ 2,747	\$ 3,376		\$ 812	\$ 158		\$ 15,583	\$ 65,472
City of Los Altos Council Member	20,320	\$ 1.25	\$ 25,400	\$ 0.31	\$ 6,299	\$ 8,068		\$ 2,620	\$ 158		\$ 42,545	
City of Los Altos - Measure C	20,320	\$ 0.34	\$ 6,909	\$ 0.11	\$ 2,235		\$ 52,803	\$ 655	\$ 158		\$ 62,760	
City of Los Altos - Measure D	20,320	\$ 0.34	\$ 6,909	\$ 0.11	\$ 2,235		\$ 16,504	\$ 655	\$ 158		\$ 26,461	\$ 131,766
Town of Los Altos Hills Council Member	5,941	\$ 1.25	\$ 7,426	\$ 0.31	\$ 1,842	\$ 4,547		\$ 1,030	\$ 158		\$ 15,003	\$ 15,003
Town of Los Gatos Council Member	19,875	\$ 1.25	\$ 24,844	\$ 0.31	\$ 6,161	\$ 6,245		\$ 2,822	\$ 158		\$ 40,230	
Town of Los Gatos Measure G	19,875	\$ 0.34	\$ 6,758	\$ 0.11	\$ 2,186		\$ 31,860	\$ 705	\$ 158		\$ 41,667	\$ 81,897
City of Milpitas Mayor	29,931	\$ 1.25	\$ 37,414	\$ 0.31	\$ 9,279	\$ 4,968		\$ 3,654	\$ 158		\$ 55,473	
City of Milpitas Council Member	29,931	\$ 0.34	\$ 10,177	\$ 0.11	\$ 3,292	\$ 9,936		\$ 914	\$ 158		\$ 24,477	
City of Milpitas - Measure R	29,931	\$ 0.34	\$ 10,177	\$ 0.11	\$ 3,292		\$ 18,364	\$ 914	\$ 158		\$ 32,905	\$ 112,855
City of Monte Sereno Council Member	2,519	MINIMUM	\$ 3,837	\$ 0.31	\$ 781	\$ 5,970		\$ 547	\$ 158		\$ 11,293	\$ 11,293
City of Morgan Hill Mayor	23,543	\$ 1.25	\$ 29,429	\$ 0.31	\$ 7,298	\$ 3,376		\$ 3,587	\$ 158		\$ 43,848	
City of Morgan Hill - Measure H	23,543	\$ 0.34	\$ 8,005	\$ 0.11	\$ 2,590		\$ 4,478	\$ 897	\$ 158	\$ 557	\$ 16,685	
City of Morgan Hill - Measure I	23,543	\$ 0.34	\$ 8,005	\$ 0.11	\$ 2,590		\$ 5,583	\$ 897	\$ 158	\$ 10,028	\$ 27,261	
City of Morgan Hill - Measure J	23,543	\$ 0.34	\$ 8,005	\$ 0.11	\$ 2,590		\$ 4,478	\$ 897	\$ 158		\$ 16,128	
City of Morgan Hill Council Member, Dist B	5,654	\$ 0.34	\$ 1,922	\$ 0.11	\$ 622	\$ 4,540		\$ 228	\$ 158		\$ 7,470	
City of Morgan Hill Council Member, Dist D	6,883	\$ 0.34	\$ 2,340	\$ 0.11	\$ 757	\$ 4,556		\$ 243	\$ 158		\$ 8,054	\$ 119,446
City of Mountain View Council Member	37,032	\$ 1.25	\$ 46,290	\$ 0.31	\$ 11,480	\$ 10,059		\$ 4,481	\$ 158		\$ 72,468	
City of Mountain View Measure P	37,032	\$ 0.34	\$ 12,591	\$ 0.11	\$ 4,074		\$ 13,957	\$ 1,120	\$ 158	\$ 5,657	\$ 37,557	
City of Mountain View Measure Q	37,032	\$ 0.34	\$ 12,591	\$ 0.11	\$ 4,074		\$ 12,852	\$ 1,120	\$ 158	\$ 4,791	\$ 35,586	\$ 145,611
City of Palo Alto Council Member	39,866	\$ 1.25	\$ 49,833	\$ 0.31	\$ 12,358	\$ 8,700		\$ 5,149	\$ 158		\$ 76,198	
City of Palo Alto Measure E	39,866	\$ 0.34	\$ 13,554	\$ 0.11	\$ 4,385		\$ 33,800	\$ 1,287	\$ 158		\$ 53,184	
City of Palo Alto Measure F	39,866	\$ 0.34	\$ 13,554	\$ 0.11	\$ 4,385		\$ 39,618	\$ 1,287	\$ 158		\$ 59,002	\$ 188,384

SANTA CLARA COUNTY REGISTRAR OF VOTERS
NOVEMBER 6, 2018 GENERAL ELECTION
ELECTION COSTS ALLOCATION - CITIES

BALLOT ISSUES JURISDICTION	REG VOTERS 15-day close	BASE CHARGE		VOTE-BY-MAIL		CAND STMTS BALANCE DUE	SCH 1		SCH 2	SCH 3	SCH 4	SCH 5	TOTAL COST OF ELECTION BY DISTRICT
		PER REG VOTER \$1.25\$0.34	TOTAL CHARGE	PER REG. VOTER	TOTAL CHARGE		MEASURE PAGES COSTS	SHARED BALLOT PRINTING COSTS	LEGAL NOTIFIC ELECTION COSTS	NO PRINT COSTS (Meas Text)	TOTAL COST OF ELECTION BY CONTEST		
City of San Jose - Measure S	454,312	\$ 1.25	\$ 567,890	\$ 0.31	\$ 140,837		\$ 24,451	\$ 62,963	\$ 158	\$ 2,307	\$ 798,606		
City of San Jose - Measure T	454,312	\$ 0.34	\$ 154,466	\$ 0.11	\$ 49,974		\$ 50,008	\$ 15,741	\$ 158	\$ 1,664	\$ 272,011		
City of San Jose - Measure U	454,312	\$ 0.34	\$ 154,466	\$ 0.11	\$ 49,974		\$ 23,346	\$ 15,741	\$ 158	\$ 3,416	\$ 247,101		
City of San Jose - Measure V	454,312	\$ 0.34	\$ 154,466	\$ 0.11	\$ 49,974		\$ 50,008	\$ 15,741	\$ 158	\$ 1,437	\$ 271,784		
City of San Jose Council Member, Dist 7	38,671	\$ 0.34	\$ 13,148	\$ 0.11	\$ 4,254	\$ 3,734		\$ 1,316	\$ 158		\$ 22,610		
City of San Jose Council Member, Dist 9	50,048	\$ 0.34	\$ 17,016	\$ 0.11	\$ 5,505	\$ 3,812		\$ 1,753	\$ 158		\$ 28,244	\$ 1,640,356	
City of Santa Clara Mayor	51,068	\$ 1.25	\$ 63,835	\$ 0.31	\$ 15,831	\$ 3,825		\$ 6,961	\$ 158		\$ 90,610		
City of Santa Clara - Measure M	51,068	\$ 0.34	\$ 17,363	\$ 0.11	\$ 5,617		\$ 6,032	\$ 1,740	\$ 158	\$ 8,235	\$ 39,145		
City of Santa Clara - Measure N	51,068	\$ 0.34	\$ 17,363	\$ 0.11	\$ 5,617		\$ 6,032	\$ 1,740	\$ 158		\$ 30,910		
City of Santa Clara City Clerk, Short Term	51,068	\$ 0.34	\$ 17,363	\$ 0.11	\$ 5,617	\$ 6,783		\$ 1,740	\$ 158		\$ 31,661		
City of Santa Clara Member, City Council, Dist 2	8,469	\$ 0.34	\$ 2,879	\$ 0.11	\$ 932	\$ 4,580		\$ 289	\$ 158		\$ 8,838		
City of Santa Clara Member, City Council, Dist 3	8,230	\$ 0.34	\$ 2,798	\$ 0.11	\$ 905	\$ 3,107		\$ 303	\$ 158		\$ 7,271	\$ 208,435	
City of Saratoga Council Member	20,421	\$ 1.25	\$ 25,526	\$ 0.31	\$ 6,331	\$ 13,271		\$ 2,801	\$ 158		\$ 48,087	\$ 48,087	
City of Sunnyvale - Measure K	61,144	\$ 1.25	\$ 76,430	\$ 0.31	\$ 18,955		\$ 11,286	\$ 7,965	\$ 158		\$ 114,794		
City of Sunnyvale - Measure L	61,144	\$ 0.34	\$ 20,789	\$ 0.11	\$ 6,726		\$ 12,391	\$ 1,991	\$ 158		\$ 42,055		
City of Sunnyvale Council Member, Seat 1	61,144	\$ 0.34	\$ 20,789	\$ 0.11	\$ 6,726	\$ 3,988		\$ 1,991	\$ 158		\$ 33,652		
City of Sunnyvale Council Member, Seat 2	61,144	\$ 0.34	\$ 20,789	\$ 0.11	\$ 6,726	\$ 3,988		\$ 1,991	\$ 158		\$ 33,652		
City of Sunnyvale Council Member, Seat 3	61,144	\$ 0.34	\$ 20,789	\$ 0.11	\$ 6,726	\$ 3,988		\$ 1,991	\$ 158		\$ 33,652	\$ 257,805	
TOTAL CITIES			\$ 1,827,344		\$ 511,338	\$ 154,667	\$ 438,900	\$ 190,041	\$ 7,110	\$ 38,092	\$ 3,167,492	\$ 3,167,492	

Backup material for agenda item:

Receive Preview List for Next Regular Council meeting: February 19, 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

**PREVIEW MILPITAS CITY COUNCIL MEETING AGENDA
JOINT MEETING WITH HOUSING AUTHORITY**

TUESDAY, FEBRUARY 19, 2019

CONSENT CALENDAR

1. Accept City Council Calendars for February and March (Mary Lavelle)
2. Approve City Council meeting minutes of January 29 and February 5, 2019 (Mary Lavelle)
3. Waive second reading and adopt Ordinance No. 208.53 for updated sewer rates (Tony Ndah)
4. Waive second reading and adopt Ordinance No. 120.48 for updated water rates (Tony Ndah)
5. HOUSING AUTHORITY: Adopt a Resolution for funding commitment for the affordable housing development at 355 Sango Ct. (Sharon Goei)
6. Adopt a Resolution to execute the Agreement with Santa Clara County for 2018 Emergency Management Performance Grant (EMPG) Funds (Toni Charlop)
7. Approve 2018 Amendments to the Water Supply Agreement with City&County of San Francisco and Wholesale Customers in Alameda, San Mateo & Santa Clara Counties (Tony Ndah)
8. Approve Agreement with Alta Planning + Design in the amount of \$193,183 for CIP No. 3448 Trails & Bikes Master Plan (Steve Erickson)
9. Consider Recommendations for Appointments to Commissions (Mayor Tran)
10. Preview next Regular City Council Agenda: March 5, 2019 (Mary Lavelle)

PUBLIC HEARING

11. Bingo Application – 461 S. Milpitas Blvd. (Mary Lavelle)

COMMUNITY DEVELOPMENT

12. Report on Short Term Rentals (Daniel Degu)

LEADERSHIP

13. Receive Report on Plan for OPEB and Pension Liabilities (Jim Steele)
14. Mid-Year Budget Update FY 2018-19 (Jim Steele)

Backup material for agenda item:

Conduct a Public Hearing to Consider Protests Against Proposed Sewer Rates for FY 2018-19 through FY 2022-23 and Introduce Ordinance No. 208.53

Recommendation:

7. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases.
8. Move to close the public hearing following all speakers.
9. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protests.
10. City Attorney shall read aloud the title of Ordinance No. 208.53.
11. If no majority protests exist, move to waive the first reading beyond the title and introduce Ordinance No. 208.53 to approve proposed sewer rates for FY 2018-19 through FY 2022-23. Ordinance No. 208.53 is entitled "AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO SEWER SERVICE CHARGES."
12. Approve subsidy program for Mobile Home Park customer class.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing to Consider Protests Against Proposed Sewer Rates for FY 2018-19 through FY 2022-23 and Introduce Ordinance No. 208.53
Category:	Public Hearings-Community Services and Sustainable Infrastructure
Meeting Date:	2/5/2019
Staff Contact:	Tony Ndah, Director of Public Works 408-586-2602
Recommendation:	1. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases. 2. Move to close the public hearing following all speakers. 3. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protests. 4. City Attorney shall read aloud the title of Ordinance No. 208.53. 5. If no majority protests exist, move to waive the first reading beyond the title and introduce Ordinance No. 208.53 to approve proposed sewer rates for FY 2018-19 through FY 2022-23. Ordinance No. 208.53 is entitled "AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO SEWER SERVICE CHARGES." 6. Approve subsidy program for Mobile Home Park customer class.

Background:

The City of Milpitas owns and operates its municipal sewer collection system consisting of 179 miles of gravity pipe and 5 miles of force main. The system also includes two pump stations, which lifts sewer out of a low-lying neighborhoods and pumps all City sewage through dual 2.5 mile force mains to the San Jose/Santa Clara Water Pollution Control Plant (WPCP).

The City of San Jose operates the WPCP and by a "Master Agreement," accepts sewage flow from the City for treatment. The WPCP serves eight cities and four sanitation districts in the region. By the terms of the agreement, the City pays a proportionate share of the Plant's operations, maintenance, and capital improvement cost each year. The infrastructure at the WPCP is at or near the end of its useful life, and is overdue for renewal and modernization.

Per Title 4, Chapter 3, Section 4.00 of the Milpitas Municipal Code, the City must set sewer rates to ensure sufficient revenues to fully recover 100% of the cost to collect and convey all the wastewater and to have it treated at the WPCP.

In August 2015, Council conducted a public hearing and adopted a new sewer rate structure for the City. The rates became effective on August 4, 2015. It has been more than three years since a formal cost of service/rate study has been performed for the City's sewer system, and major capital improvements have been made since then, and will continue to be made.

In January 2018, the City contracted with Municipal and Financial Services Group (MFSG) to conduct a cost of service analysis for the sewer system. The purpose of the analysis was to evaluate the City's sewer system revenue requirements and prepare a comprehensive sewer rate and cost of service study, to include an update of the City's existing rate structure, and financial obligations, and to develop a rate structure that identifies and projects all revenue requirements and rate adjustments needed over the five year period between FY 2018-19 to FY 2022-23, to meet all wastewater related costs, operation and maintenance costs, capital improvement

projects, capita and financial obligations, and reserve requirements for the sewer utility enterprise during this period.

On November 29, 2018 Council received a sewer rates study and presentation from staff on proposed sewer rates for Fiscal Year 2018-19 through Fiscal Year 2022-23. After careful consideration of the information presented by staff, Council directed staff proceed with community engagement on the proposed sewer rates, which included administering the Proposition 218 majority protest process and setting a public hearing for February 5, 2019.

Analysis:

The City's sewer system is operated as a self-supporting utility enterprise and the City must charge customers for these commodities at a rate that covers the City's costs and which charges ratepayers fairly for the actual services they receive. The revenue requirements for the sewer enterprise includes expenses for the City's operation and maintenance, capital improvements, existing debt service, and the City's share of the WPCP operations and capital expenses. Based on the results of MFSG's study, staff has determined that an increase in sewer service rates, fees and charges is necessary to recover current and projected costs of the City's operation and maintenance, capital improvements, existing debt service, and the City's share of the WPCP operations and capital expenses. The sewer rates study is a five year analysis for the period from fiscal years 2018/19 through 2022/23, which includes a multi-year financial forecast, a projection of revenue requirements, and rate review and analysis.

Proposed Sewer Rate (FY 2018/19 to FY 2022/23)

The Sewer Rate Study proposes an update to the current rate structure to meet the revenue requirements of the sewer fund. Rates are allocated proportionally based on recognized cost of service principles as required under Proposition 218.

The proposed rates include a "Flat Fee" to recover the City's ongoing personnel services cost, and the fee is allocated between Residential and Non-Residential customers, based on dwelling units. The "Flat Fee" for residential customers would be added to the bi-monthly fee charged. The "Flat Fee" for Non-Residential customers in FY 2019 would be \$24.30, and the fee would increase between \$0.73 and \$0.80 in each fiscal year thereafter.

The proposed sewer rates realign the City's rate calculation for mobile home parks with the allocation recommended in the City of San Jose's Residential Flow Study (2015). This results in a rate based on 141 gallons per day per unit, as opposed to the 114 gallons per day per unit used in the City's 2015 sewer rate study.

The proposed sewer rates include several increases over time, instead of a one-time more significant rate increase. The City's proposed bi-monthly rate for FY 2019 is \$97.60 for single family residential, \$74.96 for multi-family residential, and \$76.03 for mobile home parks.

Staff recommends Council implement a policy alternative to subsidize the mobile home park rate from legally available general fund revenues. Proposition 218 does not allow ratepayers to pay more than their fair share of the services they receive, so mobile home customers cannot be subsidized by sewer ratepayers. San Jose's 2015 Residential Flow Study notes that data provided by the City to determine sewer flows for mobile home park customers was disregarded due to insufficient data. As a result, a weighted average of the San Jose and West Valley Sanitation District data was used to set the City's share for mobile home park contributions for the WPCP. The City's 2015 sewer rate study set rates for mobile home parks to be equivalent to the flow of the City's single and multi-family values, due to the inconsistencies noted in San Jose's Residential Flow Study.

The proposed rate structure would realign the flow for the mobile home parks with the values recommended in San Jose's 2015 Residential Flow Study (i.e. 141 gallons per day per unit, as opposed to the 114 gallons per day per unit). This would increase the mobile home park bi-monthly service charge by \$19.06 in FY 2019.

Recognizing the significant impact of this increase, staff had proposed a mobile home park rate subsidy from unrestricted funds over a 5-year period in the amounts listed below:

	FY 2019	FY2020	FY2021	FY 2022	FY 2023
Mobile Home Park Rate Subsidy	\$45,100	\$47,400	\$51,400	\$54,800	\$57,600

The recommended policy alternative would subsidize the rate for the mobile home park customer class over the course of the five-year rate projection from unrestricted funds in order to reduce the rate impact on Mobile Home Park rate payers to equal the proposed rate impact on Single Family and Multiple Family users. As a result of the proposed rates, fees, and charges for sewer service, the standard bill for residential customers for FY 2018/19 would be as follows:

Residential Customer Class	Current Bi-monthly Rate	Proposed Maximum Bi-monthly Rate FY 2018/19	Maximum Monthly Increase
Single-Family Residential	\$90.27	\$97.60	\$3.67
Multi-Family Residential	\$69.32	\$74.96	\$2.82
Mobile Home Park (without subsidy)	\$56.97	\$76.03	\$9.53
Mobile Home Park (with subsidy)	\$56.97	\$61.61	\$2.32

In addition to the rate adjustments recommended in FY 2018/19 for the residential customer class, the rates study estimates the sewer enterprise requires overall rate increases in FY 2019/20 through FY 2022/23. Rate increases for the Non-Residential customer class will not exceed the rates shown below, and may be less in any given year if all operating, capital, and debt service obligations are covered. The proposed maximum rates are set forth in the table below.

**Proposed Maximum Bi-Monthly Rate Schedule
FY 2018-19 to FY 2022-23**

	April 1, 2019	July 1, 2019	July 1, 2020	July 1, 2021	July 1, 2022
<u>Residential (per Dwelling Unit)</u>					
Single-Family	\$97.60	\$102.52	\$111.07	\$118.34	\$124.14
Multiple-Family	\$74.96	\$78.73	\$85.30	\$90.88	\$95.34
Mobile Home Parks (without subsidy)	\$76.03	\$79.86	\$86.53	\$92.19	\$96.71
Mobile Home Parks (with subsidy)	\$61.61	\$64.70	\$70.08	\$74.66	\$78.28
Non-Residential Fixed Flat Fee (per bill)	\$24.30	\$25.03	\$25.78	\$26.55	\$27.35
<u>Commercial (per HCF)</u>					
Motels and Hotels	\$4.36	\$4.58	\$4.97	\$5.37	\$5.75
General Office	\$4.67	\$5.44	\$5.67	\$6.14	\$6.84
City of Milpitas	\$4.18	\$4.61	\$4.91	\$5.31	\$5.80
Service Stations	\$4.34	\$4.54	\$4.93	\$5.32	\$5.70
Eat/Drink Establishments	\$7.49	\$7.49	\$8.11	\$8.73	\$9.06
Convalescent Hosp/Daycare	\$4.23	\$4.46	\$4.84	\$5.23	\$5.60
Personal Services, Laundries	\$3.95	\$4.23	\$4.56	\$4.92	\$5.31
Electrical/Electronics	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
Machinery Manufacture	\$6.08	\$6.70	\$7.12	\$7.70	\$8.43
<u>Monitored Sites (per HCF)</u>					
RockTenn (Jefferson Smurfit)	\$8.35	\$8.35	\$9.39	\$10.11	\$10.46
T. Marzetti Co.	\$9.16	\$9.63	\$10.65	\$11.48	\$12.09
Prudential Overall Supply	\$6.70	\$6.70	\$7.08	\$7.66	\$8.42
Siemens Water Tech	\$4.91	\$5.61	\$5.87	\$6.36	\$7.06
Elmwood Rehabilitation	\$5.49	\$5.49	\$5.89	\$6.35	\$6.69
Linear Technology	\$4.59	\$5.47	\$5.71	\$6.18	\$6.88
DS W	\$4.59	\$4.80	\$4.92	\$5.34	\$6.04
Magic Tech & Headway Tech	\$4.62	\$5.82	\$6.07	\$6.57	\$7.32
<u>Non-Monitored Sites (per HCF)</u>					
Lucky Pure Water	\$3.94	\$4.21	\$4.54	\$4.91	\$5.29
Milpitas Materials	\$3.94	\$4.21	\$4.54	\$4.91	\$5.29
Union Pacific Railroad	\$5.11	\$5.84	\$6.12	\$6.63	\$7.35
Cisco	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
Lifescan	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
<u>Institutional (per HCF)</u>					
Schools/Colleges	\$6.31	\$7.94	\$8.05	\$8.73	\$9.99

The proposed rates include the assumption that the City will utilize bond proceeds to pay for the City's contribution for the WPCP, which would help mitigate the rate impact on customers and allow for long-term planning of rate increases. The projected total debt service obligation for the City would result in two debt issues: a debt issuance in FY 2020 for \$20 million and a debt issuance in FY 2021 for \$15 million. Staff will bring forward a discussion of various financing options to Council in early 2019, prior to proceeding with external financing.

Proposition 218 Noticing and Community Engagement

Proposition 218, a state proposition approved by California voters in 1996, added Article XIII D to the California Constitution which requires voter approval prior to the imposition of and new or increases in any existing taxes, assessments, and certain user fees. It also requires local agencies imposing any new or any increases in any existing property-related fees and charges to comply with certain procedural requirements prior to their adoption. Water Service fees and charges are subject to these procedural requirements. Pursuant to Article XIII D, section 6, the City is required to hold a public hearing to consider the proposed water service rates, fees, and charges. Additionally, it is required to provide ratepayers and property owners with a written notice of the proposed rate increases, and the date, time and location of the public hearing on the proposed rate increase. Subdivision (a) of Section 6 of the California Constitution's Article XIII D requires that 45 days must elapse from the time the notices are mailed until the public hearing on the proposed rate increases.

On December 21, 2018, the required notices were mailed to the record property owners, tenants, and businesses in the City advising them of the proposed rate changes and informing them that a public hearing on the proposed rate increases would be held on February 5, 2019. There are 20,434 separate parcels in the City; therefore, the City would need to receive 10,218 valid protests (only counting one protest per parcel) for there to be a majority protest under Proposition 218 that would preclude the Council from approving the proposed rate increases. Property owners may turn in (by mail or hand delivery) protest letters at any time prior to the close of the public hearing. Immediately after the close of the public hearing, staff will complete counting and totaling all protest letters. If there is not a majority protest, the Council can approve the rate increase and introduce the ordinance imposing the new water rates.

In an effort to educate residents on the City's water system and provide information to residents on the proposed rates, City staff held community meetings and workshops on the dates and at the locations listed below:

- January 8, 2019 – Pearl Zanker Elementary School
- January 12, 2019 – Milpitas Community Center
- January 23, 2019 – Sunnyhills Neighborhood Association at the San Jose Evergreen Community College Milpitas College Extension
- January 24, 2019 – Milpitas Community Center
- January 30, 2019 – Pioneer Mobile Home Park

In addition, a dedicated webpage on the City's website was established and updated regularly, and included a frequently asked questions section and other pertinent information. The information was posted in such a manner to allow for the translation into over 100 languages utilizing the built-in Google Translator tool. Staff also posted information about the rates on the City's social media accounts (i.e., Facebook, Nextdoor, Twitter), including a brief two-minute video. The legal notice of the Public Hearing was published in the Milpitas Post on January 25, 2019, in advance of City Council consideration of these proposed rate increases, and City staff conducted interviews with Patch.com and Milpitas Beat regarding the proposed rate changes, and, in addition, calendar events for the community meetings were published on their respective websites. Printed advertisements for the January 24 community meeting were placed in La Oferta (28,800 circulation), Vietnam Daily News (12,000 circulation) and The World Journal (42,000 circulation). In addition, FilAmStar published an article on the water and sewer services and community meetings.

Flyers were placed in City facilities and available at various events, including the Lunar New Year community event and other community events, including the Milpitas Council PTA, which were available in Chinese, English, Spanish and Vietnamese. Information was also posted to the City's local government access channel and e-mail blasts were sent to nearly 5,000 community members throughout the month of January.

Rate Subsidy Programs

California public agencies providing sewer service may implement low-income rate assistance programs, but rate discounts must be funded from non-rate sources of revenues such as late fees or other unrestricted funding sources. The City may choose to implement a low-income rate assistance program, and qualify low-income customers based on those already enrolled in existing assistance programs such as the Pacific Gas and Electric (PG&E) Care program, to minimize administration costs.

Based on Council direction on November 29, 2018, staff will evaluate various options and bring forward a discussion of various rate assistance program options for Council to consider as part of the City's annual budget process.

Policy Alternatives:

Alternative 1: Do Not Approve Proposed Sewer Rates Increases

Pros: The existing sewer rates would remain in place.

Cons: This would delay action on adjusting sewer rates and the sewer fund would be in violation of the Municipal Code, which requires that the sewer fund be operated as a self-supporting enterprise. This, in turn, will also negatively impact future credit ratings for external financing needed to fund the City's share of the capital program at the WPCP, due in July 2019. A delay in adjusting sewer rates also impacts the City's ability to fund critical capital improvement projects needed to maintain system reliability and replace/rehabilitate the pipeline infrastructure.

Reason for not Recommending: Delaying approval of the proposed rate increases would negatively impact the City's ability to obtain external financing in a timely manner and to meet its contractual obligations on the WPCP capital improvement program. This could put the City at legal and financial risk and also negatively impact any future external financing required for rehabilitation of any of the City's infrastructure. Delaying approval of rate adjustments would also impact the ability to invest in the collection system's aging infrastructure, potentially impacting the utility's ability to operate in a safe and reliable manner.

Alternative 2: Do Not Approve Subsidy Program for Mobile Home Park Customer Class

Pros: Proposed rate structure would realign the flow for the mobile home parks with the values recommended in San Jose's 2015 Residential Flow Study.

Cons: This would increase the mobile home park bi-monthly service charge by \$19.06 in FY 2019 (32%).

Reason for not Recommending: This would result in an undue burden on the mobile home park customer class.

Fiscal Impact:

If the Proposition 218 majority protest process is concluded without a majority protest and the sewer fee adjustments are adopted as presented, the new sewer rate structure would generate adequate revenues, along with external financing, to ensure the fiscal sustainability of the Sewer Fund.

California Environmental Quality Act:

This action is exempt from CEQA as there will be no physical change to the environment.

Recommendations:

1. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases
2. Move to close the public hearing following all speakers
3. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protest.
4. City Attorney shall read aloud the title of Ordinance No. 208.53.

5. If no majority protest exists, move to waive the first reading beyond the title and introduce Ordinance No. 208.53 to approve proposed sewer rates for FY 2018-19 through FY 2022-23. Ordinance No. 208.53 is entitled "AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO SEWER SERVICE CHARGES."
6. Approve subsidy program for Mobile Home Park customer class.

Attachments:

- a) Ordinance No. 208.53 for Introduction (1st Reading)
- b) Sewer Rates Study (November 2018)
- c) Proposition 218 Notice

PLEASE NOTE:

This copy of Ordinance No. 208.53 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 208.53

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTION 6 OF CHAPTER 2, TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO SEWER SERVICE CHARGES

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 _____. Said 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

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the sewage collection and treatment services of the City of Milpitas (“City”) require the City to incur capital, operating, maintenance, replacement, treatment, and other costs related to providing such services; and

WHEREAS, the City engaged Municipal Financial Services Group to prepare a cost of service analysis and sewer rate study (the “Rate Study”); and

WHEREAS, as a result of the Rate Study, the City Council has determined that increases in the rates for its sewer service charges are in the best interests of the City and in keeping with sound business and financial management of the sewer enterprises do not exceed the cost of providing such services; and

WHEREAS, the proposed rates are determined based on customer class, including residential, commercial, monitored sites, non-monitored sites, and institutional customers, which classes are determined based on common sewage characteristics, including flow and strength of sewage and patterns and levels of demands placed on the sewer system, and

WHEREAS, the proposed rates for residential customers include a flat rate, determined based on the number of dwelling units, and the proposed rates for non-residential customers include both a uniform fixed flat fee, and a variable charge measured by hundred cubic feet (HCF) of metered water consumption, which varies based on the particular property type; and

WHEREAS, as a result of the Rate Study, the City Council has determined that a subsidy of the sewer service charge is necessary for Mobile home parks, in order to offset some of the sewer service charge resulting from realigning the flow for the mobile home parks with the flow values recommended in San Jose’s 2015 Residential Flow Study, and such subsidy shall be paid by the City’s general fund from legal available funds; and

WHEREAS, the City hereby finds and determines that in accordance with the provisions of California Constitution article XIII D, section 6 (“Article XIII D”):

1. The City identified the parcels upon which the sewer service charges are proposed to be imposed, and calculated the amount of the sewer service charges proposed to be imposed on each parcel; and
2. The City caused a written notice to be mailed to the record owners of property upon which the proposed sewer service charges will be imposed and the customers of each parcel upon which the proposed increases to the sewer service charges are proposed for imposition, which explained: (a) the amount of the sewer service charges; (b) the basis on which they were calculated; (c) the reason for the increases; and (d) the date, time, and location of the public hearing on the proposed increases; and
3. On February 5, 2019 (more than 45 days after mailing the notice), the City conducted a public hearing and considered all written protests against the proposed increases to the rates for the sewer service charges; and
4. At the conclusion of the public hearing, written protests against the proposed increases to the rates for the sewer service charges were not presented by a majority of property owners of record and customers subject to the proposed water service charges; and

WHEREAS, the adoption of the proposed increases to sewer service charges is statutorily exempt from the requirements of the California Environmental Quality Act under California Resources Code Section 21080 (b)(8).

NOW THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-2-6.01

Section VIII-2-6.01 of the Milpitas Municipal Code is hereby amended to read as follows:

VIII-2-6.01 - Sewer Service Charges

The charges for sewer service shall be as set forth below and are limited to the actual cost of providing sewer service. The rates and effective dates for the sewer charges shall be those set forth below.

~~The rates for Fiscal Year 2015-16 shall be those set forth below.~~

The following amounts shall be assessed upon each premise maintaining a sewer connection with the City's sewage system.

(a) Residential - Bimonthly for Each Dwelling Unit.

Category	FY15-16 Charge <u>Sewer Charge</u> <u>4/1/2019</u>	<u>Sewer Charge</u> <u>7/1/2019</u>	<u>Sewer Charge</u> <u>7/1/2020</u>	<u>Sewer Charge</u> <u>7/1/2021</u>	<u>Sewer Charge</u> <u>7/1/2022</u>
Single-family	\$97.60 <u>\$90.27</u>	<u>\$102.52</u>	<u>\$111.07</u>	<u>\$118.34</u>	<u>\$124.14</u>
Multi-family	\$74.96 <u>\$69.32</u>	<u>\$78.73</u>	<u>\$85.30</u>	<u>\$90.88</u>	<u>\$95.34</u>
Mobile home parks	\$61.61 <u>\$56.97</u>	<u>\$64.70</u>	<u>\$70.08</u>	<u>\$74.66</u>	<u>\$78.28</u>

(b) Commercial, Industrial and Miscellaneous Premises.

(1) Flat Rate: For non-residential accounts, there shall be a flat rate assessed every billing cycle during which normal billing takes place, regardless of the amount of sewage discharged. The Flat Rates and effective dates for the sewer charges shall be those set forth below, ~~in the amount of \$14.97 per bimonthly period to defray billing and sewer system administration costs.~~

	<u>4/1/2019</u>	<u>7/1/2019</u>	<u>7/1/2020</u>	<u>7/1/2021</u>	<u>7/1/2022</u>
<u>Flat Rate</u>	<u>\$24.30</u>	<u>\$25.03</u>	<u>\$25.78</u>	<u>\$26.55</u>	<u>\$27.35</u>

(2) Quantity and Strength Charges: For each commercial, industrial, or miscellaneous premises, a charge for each 100 cubic feet of water used per billing cycle shall be charged as follows:

Category	FY15-16 <u>4/1/2019</u> Rate	<u>7/1/2019</u> Rate	<u>7/1/2020</u> Rate	<u>7/1/2021</u> Rate	<u>7/1/2022</u> Rate
Motels, hotels & senior citizen housing developments	\$4.36 <u>\$4.36</u>	<u>\$4.58</u>	<u>\$4.97</u>	<u>\$5.37</u>	<u>\$5.75</u>

General offices, banks, government offices, general merchandise, retail, and shopping centers; building, hardware, and gardening material facilities; amusement centers, and theaters	<u>\$4.67</u> \$4.67	<u>\$5.44</u>	<u>\$5.67</u>	<u>\$6.14</u>	<u>\$6.84</u>
City of Milpitas	<u>\$4.18</u> \$4.18	<u>\$4.61</u>	<u>\$4.91</u>	<u>\$5.31</u>	<u>\$5.80</u>
Service stations, repair shops, and car washes	<u>\$4.34</u> \$4.34	<u>\$4.54</u>	<u>\$4.93</u>	<u>\$5.32</u>	<u>\$5.70</u>
Eating and drinking establishments	<u>\$7.49</u> \$7.49	<u>\$7.49</u>	<u>\$8.11</u>	<u>\$8.73</u>	<u>\$9.06</u>
Convalescent hospitals, day care centers and health service facilities	\$4.23	\$4.46	\$4.84	\$5.23	\$5.60
Personal services - laundry, barber/beauty shops, cleaners	<u>\$3.95</u> \$3.95	<u>\$4.23</u>	<u>\$4.56</u>	<u>\$4.92</u>	<u>\$5.31</u>
Electrical and electronics design, fabrication, assembly and storage facilities	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
Metal fabrication, machinery, and tool fabrication facilities	\$6.08	\$6.70	\$7.12	\$7.70	\$8.43
RockTenn (Jefferson Smurfit Corporation*)	<u>\$8.35</u> \$7.66	\$8.35	\$9.39	\$10.11	\$10.46
T. Marzetti Co.*	<u>\$9.16</u> \$8.34	<u>\$9.63</u>	<u>\$10.65</u>	<u>\$11.48</u>	<u>\$12.09</u>
Prudential Overall Supply	<u>\$6.70</u> \$6.70	<u>\$6.70</u>	<u>\$7.08</u>	<u>\$7.66</u>	<u>\$8.42</u>
Loral Fairchild Lockheed*	\$4.59				
Siemens Water (previously US Filter)	<u>\$4.91</u> \$4.91	<u>\$5.61</u>	<u>\$5.87</u>	<u>\$6.36</u>	<u>\$7.06</u>
Elmwood Rehabilitation center	<u>\$5.49</u>	<u>\$5.49</u>	<u>\$5.89</u>	<u>\$6.35</u>	<u>\$6.69</u>
Linear Technology Corporation	<u>\$4.59</u>	<u>\$5.47</u>	<u>\$5.71</u>	<u>\$6.18</u>	<u>\$6.88</u>
DS Water	<u>\$4.59</u>	<u>\$4.80</u>	<u>\$4.92</u>	<u>\$5.34</u>	<u>\$6.04</u>
Headway Technology Corporation	<u>\$4.62</u>	<u>\$5.82</u>	<u>\$6.07</u>	<u>\$6.57</u>	<u>\$7.32</u>
Lucky Pure Water*	<u>\$3.94</u> \$3.94	<u>\$4.21</u>	<u>\$4.54</u>	<u>\$4.91</u>	<u>\$5.29</u>
DS Water	\$4.59				
Milpitas Materials*	<u>\$3.94</u> \$3.94	<u>\$4.21</u>	<u>\$4.54</u>	<u>\$4.91</u>	<u>\$5.29</u>
Union Pacific Railroad	<u>\$5.11</u> \$5.11	<u>\$5.84</u>	<u>\$6.12</u>	<u>\$6.63</u>	<u>\$7.35</u>
Cisco* Headway Technology Corporation	\$4.59 \$4.53	<u>\$5.35</u>	<u>\$5.58</u>	<u>\$6.04</u>	<u>\$6.72</u>
Lifescan	<u>\$4.59</u>	<u>\$5.35</u>	<u>\$5.58</u>	<u>\$6.04</u>	<u>\$6.72</u>
Schools, colleges and churches	<u>\$6.31</u>	<u>\$7.94</u>	<u>\$8.05</u>	<u>\$8.73</u>	<u>\$9.99</u>
Electrical and electronics design, fabrication, assembly and storage facilities	\$4.59				
Metal fabrication, machinery, and tool fabrication facilities	\$6.08				
Linear Technology Corporation	\$4.59				
Recycled water cooling towers	\$4.59				

Cisco*	\$4.59				
Schools, colleges and churches	\$6.34				
Convalescent hospitals, day care centers and health service facilities	\$4.23				
Elmwood Rehabilitation center	\$5.49				

*These industrial customers are subject to sewer charge adjustments based on their sewer volumes, as indicated in their sewer flow adjustment agreements.

(3) City of San Jose for properties known as North McCarthy Properties: \$555.00 bimonthly for any discharge up to 75,000 gallons per day (maximum flow). Excess flow charge of \$100.00 for each 1,000 gallons per day in excess of the maximum flow or part thereof.

(c) Purpose of Charge. The purpose of the sewer service charges stated herein is to defray the City's cost for operation and maintenance of the City's facilities, capital improvement costs, the City's proportionate share of costs at the San Jose-Santa Clara Water Pollution Control Plant and the debt service related thereto, and other costs related to the provision of sewage collection and treatment.

(d) Billing. After the ordinance adopting the charges set forth herein goes into effect, customers shall be subject to the sewer service charges set forth in 6.01, for services provided on or after April 1, 2019, July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022 respectively. ~~in effect as of the beginning date of the bimonthly billing period for which a customer is charged.~~ In the absence of amendment of the rates set forth herein or adoption of a new rate ordinance, the rates in effect on July 1, 2022, and set forth herein shall remain in effect ~~for billing periods and service years subsequent to Fiscal Year 2015-16~~ until amended or repealed.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. ORDINANCE PREVAILS

To the extent that any other provision of local law relating to the establishment of sewer service charges is inconsistent with this Ordinance, the provisions of this Ordinance shall prevail. This Ordinance shall supersede all other previous City Council resolutions and ordinances that may conflict with, or be contrary to, this Ordinance.

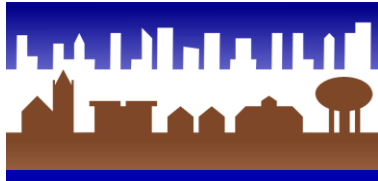
SECTION 5. EFFECTIVE DATE AND POSTING

This Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.



City of Milpitas
Sewer Rate Study
Draft Report
November 2018

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Municipal & Financial Services Group

November 28, 2018

Tony Ndah, P.E.
Public Works Director
City of Milpitas Public Works Department
1265 N. Milpitas Blvd
Milpitas, CA 95035

RE: Sewer Rate Study Results

Dear Mr. Ndah,

The Municipal & Financial Service Group is pleased to submit to the City of Milpitas this report summarizing our completed sewer rate study. This document represents the results of our analysis of the forecasted costs of providing sewer service to the City's customers and our recommendations for recovering these costs over the next five years. The study provides recommendations that will enhance the financial health and stability of the City's sewer operations while equitably charging its customers for the services provided.

It has been a distinct pleasure to work with the City of Milpitas. The dedication and assistance provided by City staff was essential to the completion of this study and should be acknowledged. Thank you for the opportunity to work with the City on this important project.

Very truly yours,

Eric Callocchia
Senior Manager
Municipal & Financial Services Group

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EXECUTIVE SUMMARY

This document has been prepared to present the work performed by the Municipal & Financial Services Group during the sewer rate study for the City of Milpitas. The study provides a financial plan for funding the operating and capital costs of the City's sewer system over a five-year planning period (FY 2019 through FY 2023), as well as a cost of service analysis and rate study. Although this report details rates for five years, the five-year financial plan takes into account the long-term (ten-year) financial needs of the City's system and prepares the City's Sewer Fund for those long-term revenue needs.

Objective and Scope

The City identified six generally stated work elements in the Scope of Services in its RFP for the Sewer Rate Study:

- Comprehensive financial review of sewer and wastewater finances
- Comprehensive review of financial obligations related to O&M and CIP for the water pollution control plant
- Development of sewer rate structure
- Assessment of the current rate structure as baseline for considering alternative rate designs
- Assessment of the rate design equity among the various customer classes
- Preparation comprehensive final report

The sewer rate study has been completed based on the above stated scope of services, and MFSG's recommendations are documented in this report.

Guiding Principles

The following principles were used to guide the rate study and were developed with the assistance of City staff:

- The City's Sewer Fund must be financially self-supporting. It is assumed that the cost of operating and maintaining the sewer system must be supported by the sewer fees and charges collected from customers with no support from other City funds. If at any time, other City resources must be used to support the sewer system, repayment, with interest, shall be made in an appropriate amount of time.
- The City should maintain reserves to provide for contingencies and unplanned expenses and to ensure that sufficient funds are generated each fiscal year to allow for appropriate system replacement. The two reserves considered in this report are restricted reserves for capital spending and unassigned, unrestricted reserves based on the City's two reserve policies:

"The City will maintain working capital...of approximately 25% of the annual operating and maintenance expenses for the Sewer Utility Fund."

"In addition, the City will maintain Infrastructure Replacement funds for both Water and Sewer Utilities. The goal is to accumulate at least \$2 million a year from each utility fund to set aside for replacement of infrastructure as the infrastructure reaches the end of its useful life"

- Sewer rates and charges shall be kept as low as possible *over time*. It is possible to keep rates low for a period by not investing sufficiently in the maintenance of the sewer system, but eventually the system will deteriorate and require substantial investments, leading to the need for significant and immediate rate increases. The assumption that the City will continually reinvest in the sewer system to replace assets as they reach the end of their useful lives is built into the analysis and allows for timely and predictable rate increases.

Assumptions

The following high-level assumptions were used to guide the rate study and were developed with the assistance of City staff:

- Operating and maintenance expenses: 3.0% escalation rate per year for all operating expenses (personnel, planning, facilities, technology, etc.)
- Customer and water usage/sewage generation changes: 0.0% growth per year
- Miscellaneous (non-rate) revenues: 0.0% growth per year
 - These are the Pooled Interest revenues allocated to the Sewer Fund
- All City of Milpitas capital projects are funded on a PAYGO (cash) basis with no additional debt issued
- CIP spending related to the San José/Santa Clara Regional Waste Water Facility is funded on a PAYGO (cash) basis except for three debt issues of:
 - \$20.0 million in FY 2020
 - \$15.0 million in FY 2021
 - \$5.0 million in FY 2025
- Minimum unassigned, unrestricted cash balance requirement: 90 days (25%) of annual operating expenses
- Minimum of \$2.0 million in Infrastructure Replacement set aside per year.

Depending on availability of data, actual Fiscal Year (FY) 2017, estimated FY 2018 or budgeted FY 2019 data was used as the base upon which forecasted figures were developed. All years within this report refer to the City's fiscal year (June 1 to July 31). While the study identifies needed sewer rates on a year-by-year basis for a 10-year planning period (FY 2019 – FY 2028), the charts and tables within this report provide data for the first five years in which rates and charges have been calculated.

Findings

The following findings were developed during the study:

- The City's current (FY 2018) sewer rates are not sufficient to fully fund the operating, capital, and cash reserve needs of the City's sewer system.
- The City's current planned reinvestment in its buried sewer assets is insufficient to fully fund the cost of rehabilitation and replacement needs of its buried assets and will allow the continuing decline in the physical condition of its sewer collection system.
- The City's rate calculation methodology generally complies with the Water Environment Federations Manual of Practice 27 - *Financing and Charges for Wastewater Systems*.
- The City currently collects 64% of its Personnel Services costs attributable to the sewer system in its bi-monthly Flat Fee.

- The City charges its Mobile Home Park customer class based on a per person flow assumption of 51 GPD and 2.24 persons per dwelling unit, resulting in a per dwelling unit flow assumption of 114 GPD.
- The City's Sewer Fund contains appropriate reserves given the operational and capital expenses of the City's system and the City's reserve policies.

Conclusions

Based on our findings, the following conclusions were drawn:

- The City needs to increase sewer rates over the five years of the planning period (FY 2019 to FY 2023) to increase projected revenues to match related expenses.
- The City will need to increase investment in its buried sewer infrastructure over the short and long term.
- Given the City's Sewer Fund balances (restricted for CIP and unassigned, unrestricted) rate increases can be phased-in over a number of years to mitigate the one-time impact on the City's customers.

Recommendations

Based on our conclusions, MFSG recommends that:

- The City implement rate increases through a multi-year financial plan that utilizes both increased rate revenues and the use of a portion of current cash on hand from the City's Sewer Fund reserves. This will allow the City to smooth rate increases over the planning period and mitigate customer rate shock while meeting both its funding and cash reserve requirements.
- The City collect 100% of its Personnel Services attributable to the sewer system costs in its bi-monthly Flat Fee.
- The City allocate costs to its Mobile Home Park customer class based on the same flow assumption used by the City of San José to allocate operating costs to the City of Milpitas, which is 63 GPD per person and 2.24 persons per dwelling unit, which equals 141 GPD per dwelling unit.
- The City adopt the following rates for the next five fiscal years:

Exhibit 1.1.1 Recommended Bi-Monthly Sewer Rates

	Current FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Sewer User Rate Revenue Increase Month of Implementation		4.0% February	8.0% July	8.0% July	7.0% July	6.0% July
<u>Residential (per Dwelling Unit)</u>						
Single-Family	\$90.27	\$97.60	\$102.52	\$111.07	\$118.34	\$124.14
Mobile Home Parks	\$56.97	\$76.03	\$79.86	\$86.53	\$92.19	\$96.71
Multiple-Family	\$69.32	\$74.96	\$78.73	\$85.30	\$90.88	\$95.34
Non-Residential Fixed Flat Fee (per bill)	\$15.27	\$24.30	\$25.03	\$25.78	\$26.55	\$27.35
<u>Commercial (per HCF)</u>						
Motels and Hotels	\$4.36	\$4.36	\$4.58	\$4.97	\$5.37	\$5.75
General Office	\$4.67	\$4.67	\$5.44	\$5.67	\$6.14	\$6.84
City of Milpitas	\$4.18	\$4.18	\$4.61	\$4.91	\$5.31	\$5.80
Service Stations	\$4.34	\$4.34	\$4.54	\$4.93	\$5.32	\$5.70
Eat/Drink Establishments	\$7.49	\$7.49	\$7.49	\$8.11	\$8.73	\$9.06
Convalescent Hosp/Daycare	\$4.23	\$4.23	\$4.46	\$4.84	\$5.23	\$5.60
Personal Services, Laundries	\$3.95	\$3.95	\$4.23	\$4.56	\$4.92	\$5.31
Electrical/Electronics	\$4.59	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
Machinery Manufacture	\$6.08	\$6.08	\$6.70	\$7.12	\$7.70	\$8.43
<u>Monitored Sites (per HCF)</u>						
RockTenn (Jefferson Smurfit)	\$4.67	\$8.35	\$8.35	\$9.39	\$10.11	\$10.46
T. Marzetti Co.	\$8.34	\$9.16	\$9.63	\$10.65	\$11.48	\$12.09
Prudential Overall Supply	\$6.70	\$6.70	\$6.70	\$7.08	\$7.66	\$8.42
Siemens Water Tech	\$4.91	\$4.91	\$5.61	\$5.87	\$6.36	\$7.06
Elmwood Rehabilitation	\$5.49	\$5.49	\$5.49	\$5.89	\$6.35	\$6.69
Linear Technology	\$4.59	\$4.59	\$5.47	\$5.71	\$6.18	\$6.88
DS W	\$4.59	\$4.59	\$4.80	\$4.92	\$5.34	\$6.04
Magic Tech & Headway Tech	\$4.53	\$4.62	\$5.82	\$6.07	\$6.57	\$7.32
<u>Non-Monitored Sites (per HCF)</u>						
Lucky Pure Water	\$3.94	\$3.94	\$4.21	\$4.54	\$4.91	\$5.29
Milpitas Materials	\$3.94	\$3.94	\$4.21	\$4.54	\$4.91	\$5.29
Union Pacific Railroad	\$5.11	\$5.11	\$5.84	\$6.12	\$6.63	\$7.35
Cisco	\$4.59	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
Lifescan	\$4.59	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
<u>Institutional (per HCF)</u>						
Schools/Colleges	\$6.31	\$6.31	\$7.94	\$8.05	\$8.73	\$9.99

- The City review rates and charges on an annual basis and revise as needed and consider a full cost of service study for all rates and charges every five years.

1. BASIS FOR THE STUDY

1.1 Objective and Scope

The objective and scope of services set forth between the City of Milpitas (“The City”) and the Municipal & Financial Services Group (“MFSG”) consisted of several related tasks with the goal of developing sewer rate study that would:

- A. Identify and document all current fees and charges levied by the City.
- B. Identify the current rate and fee structure used by the City.
- C. Identify and analyze the costs (personnel, operating, capital, debt service, etc.) incurred to provide each service.
- D. Compile data to develop the total costs associated with each fee area and develop the total costs to include direct plus indirect costs of each service.
- E. Develop and justify rate and user fee recommendations, taking the factors identified above into consideration.
- F. Project any revenue impact of implementing the rate and fee recommendations, as well as the anticipated impact on various user categories.
- G. Provide rate scenarios best suited to meeting the City’s goals of a user-equitable, self-supporting structure that will also encourage conservation.
- H. Present at a City Council meeting the completed study methods, results, analyses and recommendations.

The sewer rate study has been completed based on the above stated scope of services, and MFSG’s recommendations are documented in this report.

1.2 Study Background

The City of Milpitas was incorporated in 1954, together with the Milpitas Sanitary District. In 1980, the Sanitary District was dissolved, and the wastewater system moved under the jurisdiction (ownership and operation) of the City government. Since its incorporation, the City has continued to grow, with a current population of about 77,000. The City’s sewer system is operated as a self-supporting enterprise serving about thirteen square miles within the urban service area. Sewage is collected via about 140 miles of sewer collection mains in two service areas – the Valley Floor (mixed use, including residential, commercial and industrial) and the Hillside area, which is residential and located on the east side of the City.

Residential customers are billed bi-monthly on an equivalent dwelling unit (EDU) basis. Non-residential customers are billed monthly based on metered water consumption, with the unit of measurement being one hundred cubic feet (HCF), an amount equal to 748 gallons. Non-residential sewage rates vary based on the use of the property, with rates adjusted to reflect sewage strength (units of pollutants per quantity of sewage).

It has been more than three years since a formal cost of service / rate study has been performed for the City’s sewer system, and major capital improvements have been made and will continue to be made. Rates were last adjusted in August 2015. The City solicited bids for an independent review of the sewer system’s finances, with a focus on long-term sustainability, equitable treatment of the City’s’ customers

and compliance with legal and regulatory requirements, especially the evolving case law related to Proposition 218 and (to a lesser extent) Prop 26.

1.3 Guiding Principles

The following principles were used to guide the rate study and were developed with the assistance of City staff:

- The City's Sewer Fund must be financially self-supporting. It is assumed that the cost of operating and maintaining the sewer system must be supported by the sewer fees and charges collected from customers with no support from other City funds. If at any time, other City resources must be used to support the sewer system, repayment shall be made in an appropriate amount of time.
- The City should maintain reserves to provide for contingencies and unplanned expenses and to ensure that sufficient funds are generated each fiscal year to allow for appropriate system replacement. The two reserves considered in this report are restricted reserves for capital spending and unassigned, unrestricted reserves based on the City's two reserve policies:

"The City will maintain working capital...of approximately 25% of the annual operating and maintenance expenses for the Sewer Utility Fund."

"In addition, the City will maintain Infrastructure Replacement funds for both Water and Sewer Utilities. The goal is to accumulate at least \$2 million a year from each utility fund to set aside for replacement of infrastructure as the infrastructure reaches the end of its useful life"

- Sewer rates and charges shall be kept as low as possible *over time*. It is possible to keep rates low for a period by not investing sufficiently in the maintenance of the sewer system, but eventually the system will deteriorate and require substantial investments, leading to the need for significant and immediate rate increases. The assumption that the City will continually reinvest in the sewer system to replace assets as they reach the end of their useful lives is built into the analysis and allows for timely and predictable rate increases.

1.4 Assumptions

The following high-level assumptions were used to guide the rate study and were developed with the assistance of City staff:

- Operating and maintenance expenses: 3.0% escalation rate per year for all operating expenses (Finance Operations, Public Works Administration, Utility Engineering, etc.)
- Customer accounts and sewage generation changes: 0.0% growth per year
- Miscellaneous revenues: 0.0% growth per year
- All City of Milpitas capital projects are funded on a PAYGO (cash) basis with no additional debt service being issued
- CIP spending related to the San José/Santa Clara Regional Waste Water Facility is funded on a PAYGO (cash) basis except for three debt issues of:
 - \$20.0 million in FY 2020
 - \$15.0 million in FY 2021

- \$5.0 million in FY 2025
- Minimum unassigned, unrestricted cash balance requirement: 90 days (25%) of annual operating expenses
- Minimum of \$2.0 million in Infrastructure Replacement set aside per year.

Depending on availability, actual Fiscal Year (FY) 2017, estimated FY 2018 or budgeted FY 2019 data was used as the base upon which forecasted figures were developed. All years within this report refer to the City's fiscal year (June 1 to July 31). While the study identifies needed sewer rates on a year-by-year basis for a 10-year planning period (FY 2019 – FY 2028), the charts and tables within this report provide data for the first five years in which rates and charges have been calculated.

2. REVENUE REQUIREMENTS

This section of the report outlines the historical and future costs of operating and maintaining the City's sewer system, which constitute the sewer system's revenue requirements (i.e., the amount of revenue required to be collected from customers). Our approach includes a detailed review of each of the costs incurred by the City attributable to the sewer system. The cost analysis is broken into two main categories of costs: (1) operating costs and (2) capital costs (including debt and cash funding). This section describes each of the categories of costs incurred by the City as it provides sewer service. The costs are based on official documents and data provided by the City.

2.1 Operating Costs

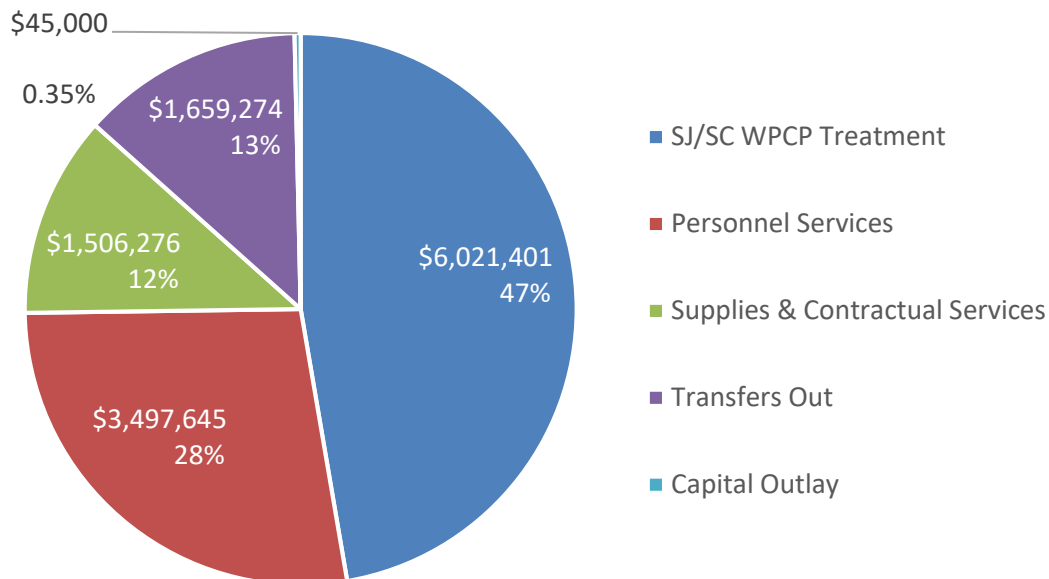
The day-to-day operating and maintenance (O&M) expenses of the sewer system are grouped into the following categories:

- Personnel Services
- Supplies and Contractual Services
- SJ/SC Regional Water Pollution Control Plant (WPCP)
- Transfers Out
- Capital Outlay

The City's largest operating budget line item is the annual payment to the City of San José for Milpitas' proportional share of sewage treatment services provided by the treatment facility owned by the City of San José. This single line item accounts for over 65% of the City's sewer operating budget. Transfers Out of the Sewer Operating Fund include transfers to the City's General Fund, Street Improvement Fund, Park Improvement Fund, General Government Fund, and Storm Drain Fund.

Projected FY 2019 sewer operating expenses total approximately \$12.7 million. This total does not include expenses related to debt service or capital improvements, which are accounted for in our study separately. Exhibit 2.1.1 provides a breakdown of the projected sewer operating expenses by category (with percent of total budget) for FY 2019.

Exhibit 2.1.1 FY 2019 Projected Sewer Operating Expenses¹



It should be noted that the Personnel Services shown above are the salary and benefit costs directly attributable to the Sewer Fund from Finance Operations, Public Works Administration, Utility Engineering, and Utility Maintenance.

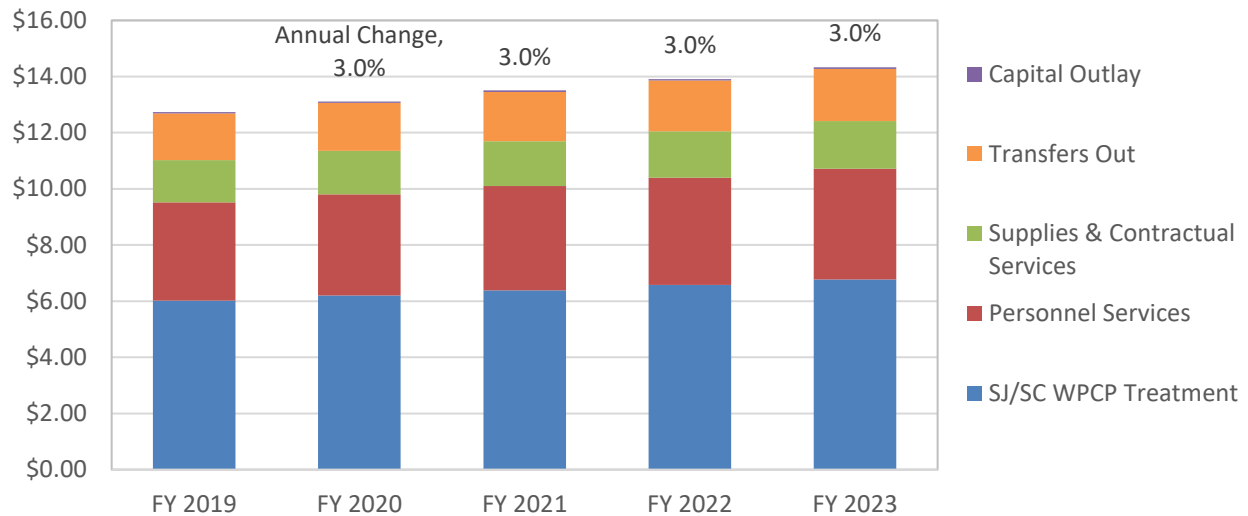
Transfers Out include costs that are incurred by other City funds that directly benefit the City's sewer system, and therefore are properly allocated to be collected via sewer rates within the Sewer Fund. These costs include not only personnel costs, but materials, supplies, and other costs related to projects that impact the sewer system. These are projects performed by other City departments that impact or are in the vicinity of the sewer utility, therefore it is proper that the sewer budget includes these transfers out to pay back other City departments for doing work on the sewer system. These transfers are assumed to continue at the same level as the FY 2019 budget, with 3.0% inflation per year to account for ongoing increases in costs related to City projects.

To project all other operating expenses, FY 2019 sewer budget line items were escalated using various inflation factors on a line item basis. The inflation assumptions for each line item are based on both the City's historical cost increases and the overall trend of the increasing cost of operating wastewater utilities nationwide, which has outpaced overall inflation over the past twenty years.

On average, the sewer operating budget is assumed to increase 3.0% per year. Exhibit 2.1.2 shows sewer budgeted O&M expenses for the base year (FY 2019) and projected O&M expenses for the remaining four fiscal years of the planning period (FY 2020 to FY 2023) with percent change from the previous year.

¹ Source: CityofMilpitasbudgetFY2018-19.pdf

Exhibit 2.1.2 Projected Sewer Operating Expenses



Increases in years beyond FY 2023 are assumed to continue at the pace of 3.0% per year.

2.2 Capital Costs

The annualized capital costs related to providing sewer service are generally comprised of existing debt service and any anticipated capital projects, which may be funded via the issuance of debt (typically bonds, loans or similar financial instruments) or funded from cash (either reserves on hand or cash collected from rates). This section will detail the capital costs that are projected for the City's sewer system over the next ten years.

2.2.1 Existing Debt Service

On December 1, 2006, the Milpitas Public Financing Authority issued Certificates of Participation, 2006 Series A (Sewer COPs), in the original principal amount of \$9,535,000 to finance certain sewer facilities within the City. These sewer facilities included replacement of appurtenances at the Main Sewage Pump Station (February 2007 to November 2008), and the improvements were constructed to provide sewer service for all customers within the City. The Sewer COPs are collateralized by net revenues from the City's Sewer System Installment Sale Agreement. In FY 2018, the City refinanced the 2006 COPs with new Wastewater Bonds with a principal balance of \$4,725,000. Annual principal and interest payments continue through FY 2027.

Exhibit 2.2.1 shows the future debt payments included in this analysis related to the 2017 Wastewater Bonds.

Exhibit 2.2.1 2017 Wastewater Bond Payment Schedule²

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Principal	\$480,000	\$460,000	\$475,000	\$495,000	\$515,000
Interest	\$170,273	\$187,500	\$173,700	\$154,700	\$134,900
Total Debt Service	\$650,273	\$647,500	\$648,700	\$649,700	\$649,900
% Change		(0.4%)	0.2%	0.2%	0.0%

The City's sewer debt service payments are accounted for in MFSG's rate projections.

2.2.2 Planned City of Milpitas Sewer Capital Improvement Projects

The City's capital improvement program (CIP) includes two distinct cost centers. The first is a list of projects approved by the City of Milpitas to repair, rehabilitate, or replace the City's sewer assets. The other capital cost is the portion of the SJ/SC WPCP capital improvements that the City of Milpitas is obligated to pay towards the repair, rehabilitation and replacement of the WPCP's assets.

Included in MFSG's rate projections is an analysis of the City's buried infrastructure. MFSG used data provided by the City to identify the average useful life and replacement cost of the City's sewage collection system pipes. The City's asset database contains information regarding the material, length, and vintage of its sewer pipes, which is summarized below.

Exhibit 2.2.2 Summary of City of Milpitas Sewer Pipes³

Pipe Material	Total Length (LF)	% of Total Length	Avg Year Installed	Avg Year to Replace	Total Replacement Cost
Reinforced Concrete	40,060	5.35%	1984	2009	\$36,778,618
Vitrified Clay	665,389	88.83%	1973	2048	\$386,045,097
Acrylonitrile-Butadiene-Styrene (ABS)	6,975	0.93%	1978	2035	\$4,083,750
Polyvinyl Chloride (PVC)	14,250	1.90%	1984	2044	\$8,426,500
Cured in Place	50	0.01%	1975	1980	\$32,500
Ductile Iron	280	0.04%	1965	2025	\$126,000
Stainless Steel	22,015	2.94%	1980	2060	\$14,644,507
Total/Average	749,019	100.0%	1974	2046	\$450,136,972

Based on the install year and the assumed useful life of each the City's sewer pipe segments, about 3.7% of the total length of the City's pipe has reached the end of its useful life, with a replacement cost of \$25,128,616. MFSG's analysis calculated that on average, an additional \$3.38 million is needed each year to properly reinvest in the City's Sewer System. However, this additional line replacement cost is not included in this analysis because the City is currently planning a detailed condition assessment of its buried assets within the next fiscal year, the results of which will be a much more detailed and accurate sewer line replacement plan that the City plans to implement at the end of that study. It is anticipated that the results of that study will be incorporated into the City's next cost of service study, impacting rates beginning in FY 2024.

Exhibit 2.2.3 provides a breakdown of the City of Milpitas' planned CIP spending included in this analysis.

² Source: 2017 Wastewater Bond Debt Service Schedule.pdf

³ Source: SW depreciation.xlsx, Tab B-Sewer Pipe Components

Exhibit 2.2.3 Planned Sewer Capital Improvement Projects⁴

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Sewer Condition Assessment (6119)	\$100,000	\$50,000	\$50,000	\$50,000	\$50,000
Sewer Overflow Improvement (6123)	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000
Pump Station Treatment Improv. (6125)	\$150,000				
Minor Sewer Projects (6126)	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Supervisory Control and Data Acquisition		\$1,550,000			
System Hydraulic Modeling 17-19 (6129)	\$50,000	\$50,000			
Sewer Cathodic Protection Improv (6131)	\$625,000				
Master Plan 2019 (6132)	\$450,000				
Seismic Study 19 - 20		\$100,000			
System Replacement (6133)	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
Pump Station Treatment Improv (6125)	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Main Lift Station Odor Control (6130)	\$300,000	\$1,950,000	\$0	\$0	\$0
MFSG Model Adjustment	\$115,000	\$184,910	\$1,225,000	\$1,225,000	\$1,225,000
Total City of Milpitas Capital Expenses	\$2,515,000	\$4,609,910	\$2,000,000	\$2,000,000	\$2,000,000

The model adjustment listed above is a placeholder that aligns the model's project listing with the City's policy of setting aside at least \$2.0 million per year in Infrastructure Replacement. Although the City has not identified specific projects in fiscal years 2021, 2022, and 2023, as projects are added to the City's adopted CIP, the adjustment can be removed, and the actual projects entered. The above projections ensure that the rates recommended by MFSG are in compliance with the City's reserve policy.

The above planned projects are assumed to be 100% funded by the City's sewer user rates, as opposed to the capacity fees it charges new customers, for several reasons. First, historically the City has used capacity fees collected each year to reduce the cost of treatment capital allocated to the City by San José, not reduce the spending on City CIP projects. Second, the City's CIP projects are all rehabilitative in nature and are not increasing the capacity of the system, and therefore should be paid for by the current users of the system. Finally, capacity fees are unpredictable and if the City based its CIP funding on the collection of a certain amount of capacity fees, in cases where the City collects less in capacity fees than planned, user rates would need to be adjusted to make up the shortfall. For these reasons, 100% of the City's CIP is assumed to be funded with user rates.

All the City of Milpitas CIP costs shown above are assumed to be PAYGO (cash) funded each year. That is, the City will not issue any debt to pay for the sewer asset rehabilitation projects listed above.

2.2.3 SJ/SC Regional Waste Water Facility Capital Expenses and Projected Debt Service

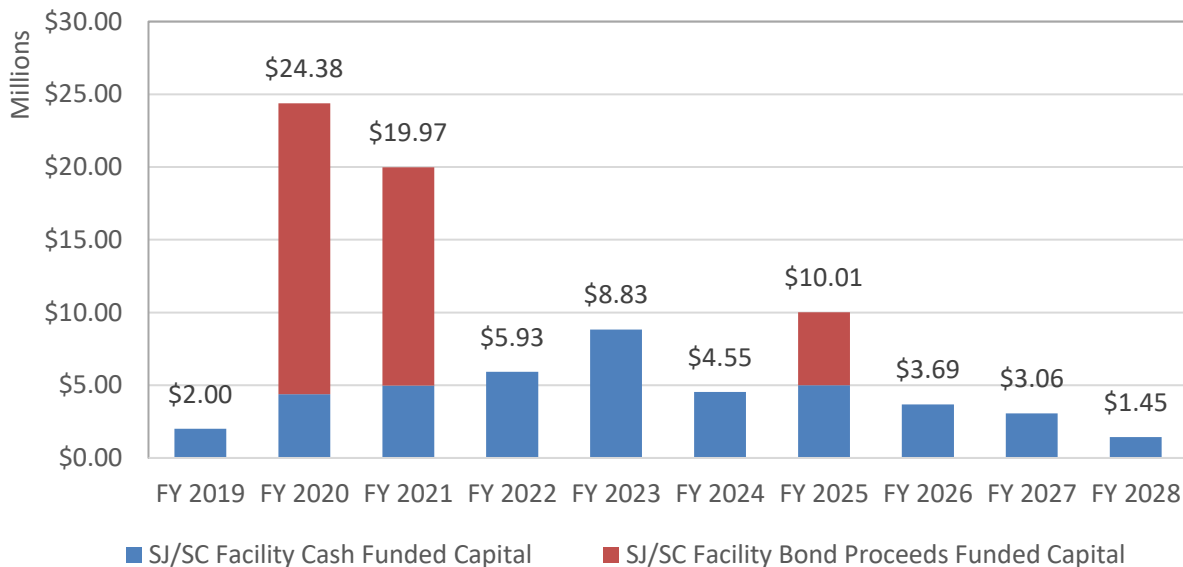
One hundred percent of the City of Milpitas' sewer flow is transported to and processed at the SJ/SC Regional Waste Water Facility. Therefore, the City pays a share of both the operating and capital costs of the facility. For operating costs, the City is billed based on the proportional flow sent to the facility from the City as a percentage of the facility's total flow each year. For capital costs, the City is billed a fixed percentage of the facility's capital program based on the City's buy-in of the facility's total treatment capacity. Currently, the City's capacity buy-in is 7.65% of the facility's total capacity.

Each year, the City of San José gives to the City of Milpitas a ten-year projection of the capital costs related to the SJ/SC Regional Waste Water Facility and the portion of those costs that the City of Milpitas is

⁴ Source: City of Milpitas 2018 Capital Improvement Plan

obligated to pay. These costs have been historically volatile, with large differences in the amount due on a year to year basis. The current projected ten-year SJ/SC Regional Waste Water Facility capital costs that must be recovered by the City of Milpitas, along with the funding source assumed each year, are shown in Exhibit 2.2.4.

Exhibit 2.2.4 Ten-Year Projection of SJ/SC Regional Waste Water Facility Capital Costs⁵



MFSG's analysis included the assumption that the City will utilize three debt issues to pay for the SJ/SC Regional Waste Water Facility capital payments during the next ten years:

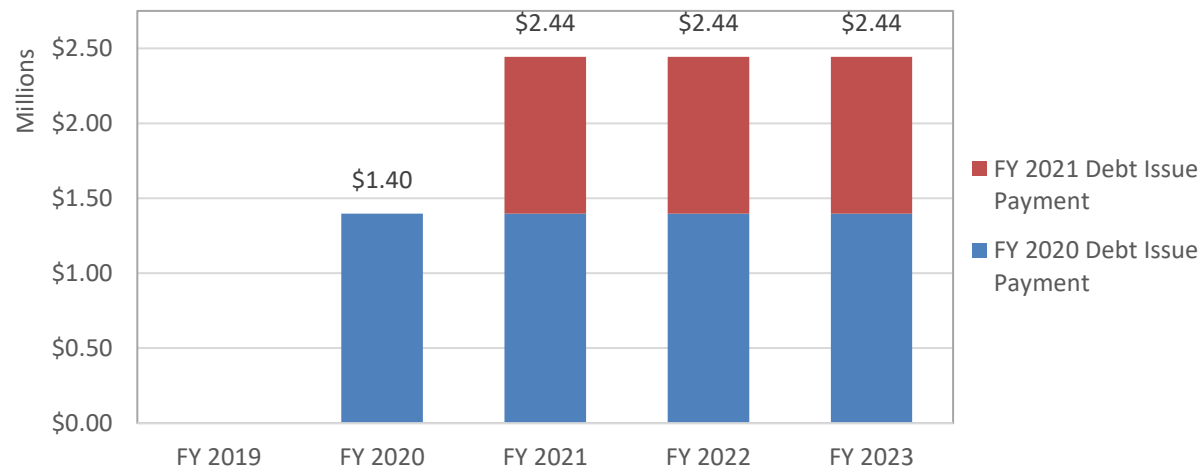
- \$20,000,000 in FY 2020
- \$15,000,000 in FY 2021
- \$5,000,000 in FY 2025

The use of bond proceeds to fund this major expense will smooth out the rate impact on the City's customers and allow for the long-term planning of rate increases due to SJ/SC Regional Waste Water Facility capital expenses. Over the ten-year projection shown above, the average annual cash spending on SJ/SC Regional Waste Water Facility capital is about \$4.38 million dollars. The City's rates must also support the debt service resulting from the three new bond issues assumed above.

Each of these bond issues is assumed to have issuance costs equal to 1.5% of the principal amount, an interest rate of 5.5% and a payment term of 30 years. These are conservative assumptions, as the City may qualify for lower interest rate terms. The projected total debt service obligation of the City of Milpitas that is the result of the two debt issues within the five-year planning period is shown below in Exhibit 2.2.5.

⁵ Source: CIP Allocation for RWF (17MAY2018).pdf

Exhibit 2.2.5 Projected New Debt Service Payments



The impact of these additional debt service payments has been factored into MFSG's rate projections. Overall, MFSG's approach takes into account the annual cash needs of the City's sewer system, so the capital cash needs vary from the actual spending in years where the City issues debt. To illustrate the impact on rates, Exhibit 2.2.6 shows the sources and uses of capital funds for the five-year projection.

Exhibit 2.2.6 Sources and Uses of Sewer Capital Funds

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Sources of Capital Funds:					
City of Milpitas Sewer Rates	\$4,515,000	\$10,386,512	\$9,416,007	\$10,371,129	\$13,271,577
Loan Proceeds	\$ -	\$20,000,000	\$15,000,000	\$ -	\$ -
Total Sources of Capital Funds:	\$4,515,000	\$30,386,512	\$24,416,007	\$10,371,129	\$13,271,577
Uses of Capital Funds:					
City of Milpitas Capital Projects	\$2,515,000	\$4,609,910	\$2,000,000	\$2,000,000	\$2,000,000
SJ/SC Capital Projects	\$2,000,000	\$24,379,853	\$19,971,696	\$5,926,818	\$8,827,266
SJ/SC Debt Service	\$ -	\$1,396,749	\$2,444,311	\$2,444,311	\$2,444,311
Total Uses of Capital Funds:	\$4,515,000	\$30,386,512	\$24,416,007	\$10,371,129	\$13,271,577

The sources for the above table are as follows: Loan Proceeds: Exhibit 2.2.4; City of Milpitas Capital Projects: Exhibit 2.2.3; SJ/SC Capital Projects, Exhibit 2.2.4; SJ/SC Debt Service: Exhibit 2.2.5.

The total capital needs each year that must be generated from rates is the first line under sources of capital funds, City of Milpitas Sewer Rates. That is the total cash capital spending and debt service that must be supported by rates each year.

2.3 Sewer Revenue Requirements

The total annual cost of operating the City's sewer system (the gross revenue requirements) includes operating and maintenance expenses and current and future capital costs. The sum of these costs, less any miscellaneous revenues, is the amount that needs to be recovered from user rates (referred to as the net revenue requirement).

The term “miscellaneous revenues” refers to two distinct revenue sources of the Sewer Fund. The first is the amount of interest income generated by the Sewer Fund reserves, which is allocated to the Fund each year. These revenues are estimated to be \$395,000 in FY 2018 and are estimated to be \$446,000 in FY 2019. MFSG’s model projects that these revenues will remain constant throughout the projection period.

The other miscellaneous revenue that is accounted for within the Sewer Fund is called Development revenue. These are the capacity charges levied by the City to new customers of the sewer system. These charges were estimated to be \$1.0 million in FY 2018 and FY 2019. MFSG’s analysis does not include these revenues going forward for two reasons. First, these revenues are unpredictable. The City is reaching buildout, and although some infill development will result in capacity fees being paid to the City’s Sewer Fund in the years to come, MFSG considered the conservative approach of not reducing the revenue needs of the sewer system by any amount of Development revenue. Second, in the case that the City does collect Development revenue, those monies are directed to the City’s capital improvement plan to pay down projects that have been approved each fiscal year. In the case that those projects are fully funded, the City augments its capital reserves with the Development revenue. In either case, MFSG’s approach does not include Development revenues in order to avoid any case in which the City collects less in Development revenues than projected, resulting in the need to either draw down on capital reserves more than predicted, or raise user rates to compensate for the difference in projected vs. actual revenues.

MFSG’s calculated rates assume that the entire system must be supported by its existing customer base. This is a conservative approach that will result in rates that will fully fund the projected costs of the system without the use of any Development revenue. Any Development revenue collected in fiscal years 2019 to 2023 will only improve the financial forecasts provided in this study.

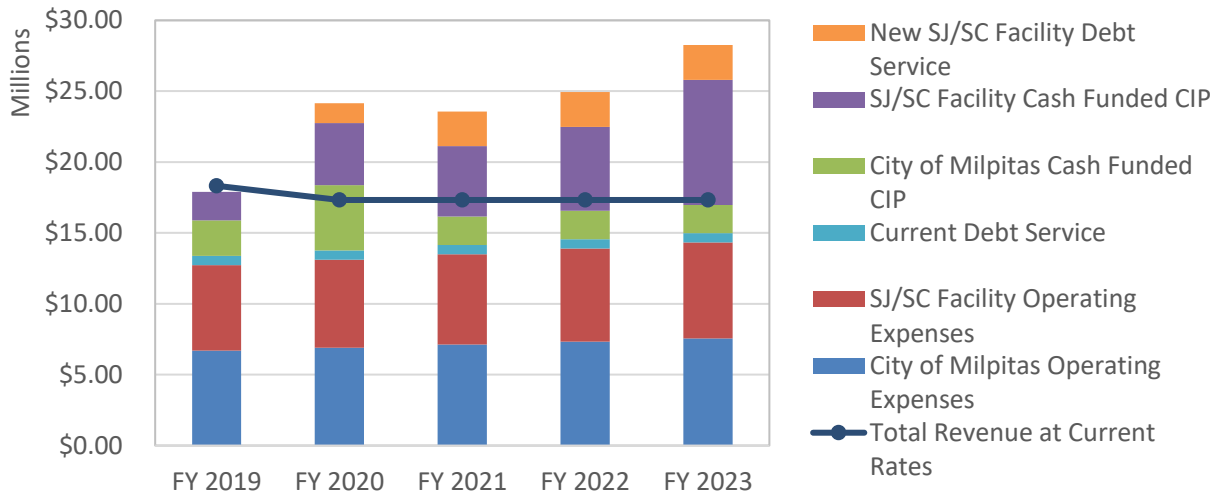
Exhibit 2.3.1 shows the revenue requirements (with percent change from the previous year) for the first five years of the planning period for the City’s sewer system.

Exhibit 2.3.1 Sewer Net Revenue Requirements Projection

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
City of Milpitas Operating Expenses	\$6,708,195	\$6,909,441	\$7,116,724	\$7,330,226	\$7,550,133
SJ/SC Facility Operating Expenses	\$6,021,401	\$6,202,043	\$6,388,104	\$6,579,747	\$6,777,140
City of Milpitas Cash Funded CIP	\$2,515,000	\$4,609,910	\$2,000,000	\$2,000,000	\$2,000,000
SJ/SC Facility Cash Funded CIP	\$2,000,000	\$4,379,853	\$4,971,696	\$5,926,818	\$8,827,266
Current Debt Service	\$650,273	\$647,500	\$648,700	\$649,700	\$649,900
New SJ/SC Facility Debt Service	\$ -	\$1,396,749	\$2,444,311	\$2,444,311	\$2,444,311
Total Revenue Requirement	\$17,894,869	\$24,145,496	\$23,569,536	\$24,930,803	\$28,248,750
Less Miscellaneous Revenues	(\$1,446,000)	(\$446,000)	(\$446,000)	(\$446,000)	(\$446,000)
Net Revenue Requirement	\$16,448,869	\$23,699,496	\$23,123,536	\$24,484,803	\$27,802,750
% Change		44.1%	(2.4%)	5.9%	13.6%

The revenue requirements of the City’s sewer system fluctuate greatly with the varying levels of capital infrastructure investment. Exhibit 2.3.2 shows how the revenue requirements of the system compare on an annual basis to the City’s revenues at the current (FY 2018) sewer rates.

Exhibit 2.3.2 Sewer Revenue Requirement vs. Revenue at Current Rates



The City's current rates cannot support the long-term cash needs of the system, specifically the major capital investment needed to fund the SJ/SC Facility capital requirements. MFSG's rate plan phases in rate increases to account for the overall trend in capital investment, as well as the increases in ongoing operating costs. However, before calculating rates, a detailed customer and consumption analysis must be performed. The next section of this report details this analysis.

3. CUSTOMERS AND USAGE

This section provides a summary of sewer customer accounts and sewage generation.

3.1 Customer Account and Usage Summary

The City currently provides sewer service to a population of over 77,000. Exhibit 3.1.1 provides a breakdown of most recently available (FY 2017) sewer customers by class. The rightmost column shows the percentage of metered water that is considered as billable sewer flow for each customer class. For example, Lucky Pure Water is only billed based on 29.19% of its metered water usage, because it has been determined based on their commercial process that 70.81% of its metered water does not end up as sewer effluent.

Exhibit 3.1.1 FY 2017 Customers and Usage by Class⁶

Customer Class	FY 2017 Accounts	FY 2017 Adjusted Usage (HCF)	% of Billed Water Used for Sewer
<u>Residential Dwelling Units*</u>			
Single-Family	12,427	1,097,580	100.00%
Mobile Home Parks	521	35,847	100.00%
Multiple-Family	10,067	682,820	100.00%
<u>Commercial</u>			
Motels and Hotels	25	102,661	100.00%
General Office	355	174,990	100.00%
City of Milpitas	35	12,680	100.00%
Service Stations	38	17,654	100.00%
Eat/Drink Establishments	179	212,372	100.00%
Convalescent Hosp/Daycare	21	16,397	100.00%
Personal Services, Laundries	58	35,194	100.00%
Electrical/Electronics	147	150,403	100.00%
Machinery Manufacture	18	4,349	100.00%
<u>Monitored Sites</u>			
RockTenn (Jefferson Smurfit)	1	2,848	29.76%
T. Marzetti Co.	2	13,815	79.84%
Prudential Overall Supply	2	19,742	100.00%
Siemens Water Tech	2	43,450	100.00%
Elmwood Rehabilitation	5	93,018	100.00%
Linear Technology	6	105,018	100.00%
DS W	2	654	100.00%
Magic Tech & Headway Tech	4	43,542	100.00%

⁶ Source: FY 18-19_Forms 1-6.xls

Customer Class	FY 2017 Accounts	FY 2017 Adjusted Usage (HCF)	% of Billed Water Used for Sewer
<u>Non-Monitored Sites</u>			
Lucky Pure Water	1	352	29.19%
Milpitas Materials	1	16	0.72%
Union Pacific Railroad	1	26	100.00%
Cisco	5	11,752	21.00%
Lifescan	1	221	100.00%
	9	12,366	
<u>Institutional</u>			
Schools/Colleges	64	23,803	100.00%

* Residential Customers are measured in Dwelling Units and billed a bi-monthly fixed fee without measured usage. The usage shown is an estimate based on per Dwelling Unit values of: 3.54 persons per Single Family, 2.24 persons per Mobile Home, and 2.73 persons per Multiple-Family unit.

Residential customers are measured in Dwelling Units in order to estimate the billable flow from each residential account without the use of measured water consumption.

Each residential account is one Dwelling Unit. However, the number of persons per Dwelling Unit vary for each class. The source of these values in San José's 2015 Flow Study, Table 2.5 on page 11. The values are based on census track data from the 2012 American Community Survey (ACS) data, estimated to 2015 values:

- 3.54 persons per Single Family
- 2.24 persons per Mobile Home
- 2.73 persons per Multiple-Family.

To estimate the total flow of each residential class, a value of 51 gallons per day (GPD) is assigned to each person. Therefore, each Single Family account is assumed to use 51 GPD times 3.54 persons, equal to 181 GPD per account. Multiple-Family accounts are assumed to use 51 GPD times 2.73 persons, equal to 139 GPD per account. As of FY 2018, Mobile Home Parks are not charged the full allocation for the assumption of 35,847 HCF per year assessed by the SJ/SC facility, based on 63 GPD per person, or 141 GPD per account. Mobile Home accounts are assumed to use 51 GPD (in line with Single and Multiple Family allocations) times 2.24 persons, equal to 114 GPD per account.

The City currently bills Mobile Home Parks for 114 GPD per unit, resulting in a bi-monthly rate that is lower than the cost incurred by the City to provide sewer service to such Mobile Home Park. MFSG's study assumes that the Mobile Home Park rate is immediately brought to an allocation of 141 GPD per dwelling unit, in line with the flow parameters used by the City of San José when allocating operational treatment costs to the City of Milpitas. Section 6.2 of this report contains a more thorough discussion of this issue.

Several of the City's sewer customers receive sewer bills based on adjusted usage. MFSG's analysis assumes that these usage adjustments will remain constant for the entire projection period. The usage values above represent the adjusted usage that is used to calculate each customer's sewer bill.

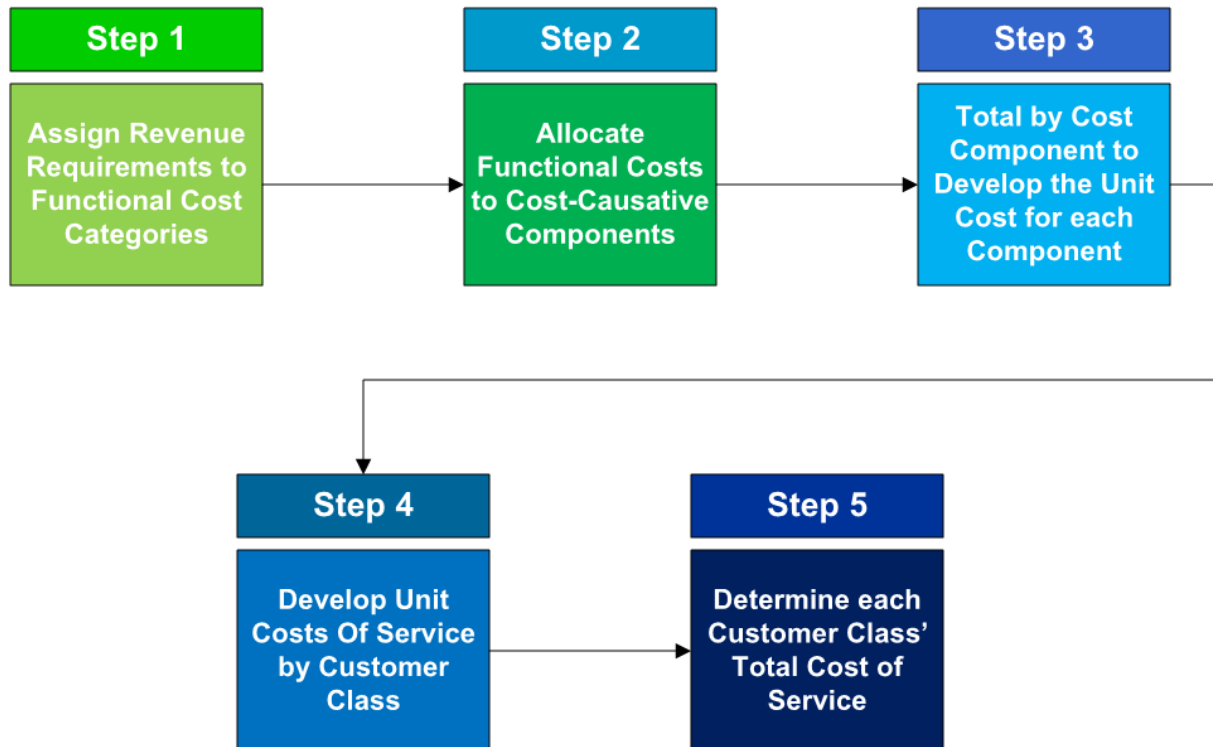
The number of customer accounts and dwelling units was held at its current level for MFSG's analysis, with zero growth in the number of customers each year. This is a conservative projection, as the City will experience some development, and therefore increase in customers, over the five-year planning period.

4. COST OF SERVICE ANALYSIS

4.1 General Overview of Cost of Service Principles

The general industry standard practice of allocating sewer costs among a system's customer is outlined in the Water Environment Federation's *Manual of Practice 27: Financing and Charges for Wastewater Systems*.

Exhibit 4.1.1 General Cost of Service Process



The first step of the cost of service analysis is to determine the revenue requirement, which was outlined in Section 2 of this report. Once the operating and capital costs are determined, they each must be separated into functional cost categories. Then, each functional cost category must be allocated to one of four cost causative components: Flow, Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS) and Total Nitrogen (NH₃). A brief description of each of these components is as follows:

- Flow is simply the volume of effluent that must be treated by a treatment process.
- Biochemical Oxygen Demand (BOD) is the amount of dissolved oxygen needed (i.e. demanded) by aerobic biological organisms to break down organic material present in a given water sample.
- Total suspended solids (TSS) is the dry-weight of suspended particles, that are not dissolved, in a sample of water that can be trapped by a filter that is analyzed using a filtration apparatus.

- Ammonia Nitrogen (NH₃) must undergo nitrification, the microbial process by which reduced nitrogen compounds (primarily ammonia) are sequentially oxidized to nitrite and nitrate.

Because each customer class produces different levels of flow and concentration of pollutants, it is important to properly allocate the costs of the sewer system to these cost causative components to properly charge each customer class based on the costs that it incurs.

In general, the City's current rates adhere to the industry standard outlined above. The cost of service exercise performed for the City of Milpitas includes two separate allocations:

1. Allocation of Personnel Services costs to a "Flat Fee" based on Dwelling Units per customer class; and
2. Allocation of all other O&M and Capital costs based on the four cost causative components of Flow, BOD, TSS and NH₃.

The resulting rates represent the equitable distribution of the City's sewer costs among each of its customer classes. MFSG's cost of service allocations utilize the same framework as the City's current rate calculations, however MFSG's analysis assumes a greater allocation of costs to the City's Flat Fee, as detailed in the next section.

4.2 Allocation of Personnel Services to a Flat Fee

The City's FY 2019 Sewer Fund Personnel Services cost is equal to \$3,497,645, as set forth in the City's budget. These costs are all related to the direct administration and customer service functions of the City's Sewer Fund. Currently, the City allocates a portion of its Personnel Services costs to a "Flat Fee" that is allocated between Residential and Non-Residential customers based on Dwelling Units (residential customers) and accounts (non-residential customers). In FY 2018, the City allocated about \$2.2 million to this fee. MFSG's recommendation is to include the full cost of Personnel Services in the Flat fee and continue to allocate those costs between Residential and Non-Residential customers based on Dwelling Units and accounts.

The City's Personnel Services costs are the salaries and benefits directly associated with providing sewer service to the City's customers through the functions of Finance Operations, Public Works Administration, Utility Engineering and Utility Maintenance. The most equitable method of distributing these costs between Residential and Non-Residential customers is doing so based on Dwelling Units (for residential) and accounts (for non-residential). The costs are distributed to residential and non-residential customers based on the total number of dwelling units or accounts in each class, as shown in O.

Exhibit 4.2.1 FY 2019 Allocation of Personnel Services Costs

	DU / Accounts	% Allocation	FY 2019 Costs
Personnel Services			\$3,497,645
Flat Fee Cost Allocation			
Residential	23,015	95.9%	\$3,355,774
Non-Residential	973	4.1%	\$141,871
Flat Fee per Month per Account (Non-Residential)			\$12.15
Additional Cost per HCF for Residential			\$1.85

The \$3,355,774 (Source: Exhibit 2.1.1) then must be allocated to the three residential customer classes. MFSG recommends that the City continue to allocate these costs to the three residential classes based on each class' assumed flow (HCF per year, Source: Exhibit 3.1.1), as shown in Exhibit 4.2.2.

Exhibit 4.2.2 FY 2019 Allocation of Personnel Services Costs to Residential Customers

Residential Flat Fee Allocation	HCF per Year	% Allocation	Residential Flat Fee Costs
Single-Family (70)	1,097,580	60.4%	\$2,027,935
Mobile Home Parks (72)	35,847	2.0%	\$66,232
Multiple-Family (71)	682,820	37.6%	\$1,261,607
Total Residential Flat Fee Revenue			\$3,355,774

The above costs are included in the proposed FY 2019 bi-monthly fee charged to all Residential customer accounts. Added to these costs are the other operational and capital costs described in the next section.

For Non-Residential customers, the proposed FY 2019 Flat Fee revenue is \$141,871. There are 973 non-residential accounts, so this revenue is collected as a \$24.30 fee per bi-monthly bill for each Non-Residential customer account.

4.3 Development of Unit Costs of Service for Non-Personnel Operating and Capital Cost Categories

The first step of the remaining cost of service exercise is to isolate the operating costs the City incurs between collection costs (allocated 100% based on Flow) and treatment costs (allocated to Flow, BOD, TSS and NH₃). This is simple for the City of Milpitas, because the only operating cost related to treatment is the line item in the City's budget that is the operating payment to the SJ/SC Regional Waste Water Facility. The other costs of the city can be split between Supplies and Contractual Services, Capital Outlay, and Transfers Out to other funds, which are purely related to the City's operation and maintenance of its collection system. Supplies and Contractual Services include the cost the City pays for the material it needs to complete its work, such as minor tools, chemicals, and small equipment. The City also uses contractual services to support staff with repair and maintenance work. The City budgets for Services and supplies each year to the annual budget process and the budgeted amounts are based on the projected work-plan for the upcoming fiscal year.

The second step in the City's cost of service process is also very straightforward. Because 100% of the City's costs are not related to treatment, those cost categories can be allocated 100% to the cost causative component of flow. The allocation percentages for treatment costs related to the SJ/SC Facility are given to the City of Milpitas by the City of San José on an annual basis.

The third step in the cost of service process is to simply multiply each cost category's total by the percentage allocation for each cost causative component, resulting in the total operating cost by cost causative component Source: Exhibit 2.1.1). The first three steps of the cost of service process for the system's operating costs are shown in Exhibit 4.3.1.

Exhibit 4.3.1 FY 2019 Operating Costs by Functional Cost Categories and Cost Causative Components

Functional Cost Categories	FY 2019 Costs	Flow	BOD	TSS	NH ₃
Supplies & Contractual Services	\$1,506,276	100.0%	0.0%	0.0%	0.0%
Capital Outlay	\$45,000	100.0%	0.0%	0.0%	0.0%
Transfers Out	\$1,659,274	100.0%	0.0%	0.0%	0.0%
SJ/SC WPCP Treatment	\$6,021,401	33.8%	24.9%	21.6%	19.6%
Total	\$9,231,951	\$5,248,734	\$1,501,978	\$1,300,803	\$1,180,435

The system's capital costs (Sources: Exhibits 2.2.1, 2.2.3 and 2.2.4) must also be allocated to the four cost causative components in the same manner. The functional cost categories for capital expenses are the City's existing debt, the City's CIP and the CIP payment the City of Milpitas must pay for the treatment services provided at the SJ/SC Regional Waste Water Facility. The first three steps of the cost of service allocation is shown in Exhibit 4.3.2.

Exhibit 4.3.2 FY 2019 Capital Costs by Functional Cost Categories and Cost Causative Components

Functional Cost Categories	FY 2019 Costs	Flow	BOD	TSS	NH ₃
Existing Debt Service	\$650,273	69.7%	13.5%	7.3%	9.5%
City of Milpitas Capital Projects	\$2,515,000	81.7%	9.0%	5.8%	3.4%
SJ/SC Facility Capital Projects	\$2,000,000	81.7%	9.0%	5.8%	3.4%
Total	\$5,165,273	\$4,143,347	\$495,564	\$309,455	\$216,906

Although the City's capital projects are focused on the collection system owned by the City, those projects are necessary to provide both collection and treatment services for the City's customers, and therefore it is appropriate to allocate those capital costs in the same way as the SJ/SC Facility costs.

The debt service allocations are based on the use of the funds raised by the 2006 Series A Sewer Certificates of Participation. Both the City of Milpitas CIP and SJ/SC Facility CIP are allocated based on the total plant costs given to the City of Milpitas by the City of San José.

Using the above allocations, MFSG has calculated the cost basis for each of the City's sewer service functions, completing steps one, two and three of the cost of service process. The fourth step is developing units of service for each customer class.

4.4 Development of Unit Costs of Service by Cost Causative Component

The City collects data on each of its customer classes, including the "loading" of each pollutant tracked within the sewer cost of service analysis. Flow is tracked as million gallons per day (MGD), while the pollutant loadings are tracked as pounds per day (lbs/day) based on the yearly active days for each customer class, which range from 176 to 365. Exhibit 4.4.1 shows the annual loadings of each cost causative component for the most recently available Fiscal Year.

Exhibit 4.4.1 Cost Causative Component Data by Customer Class

Customer Class	FY 2017 Units (HCF)	Flow (MGD)	BOD (lbs/day)	TSS (lbs/day)	NH3 (lbs/day)	Days Active
Single-Family	1,097,580	2.249	4.693	4.693	0.657	365
Mobile Home Park	35,847	0.073	0.153	0.153	0.021	365
Multiple-Family	682,820	1.399	2.919	2.919	0.409	365
Motels and Hotels	102,661	0.210	0.544	0.212	0.012	365
General Office	174,990	0.502	0.544	0.335	0.046	261
City of Milpitas	12,680	0.029	0.032	0.020	0.003	323
Service Stations	17,654	0.036	0.054	0.085	0.000	365
Eat/Drink Establishments	212,372	0.435	4.540	2.034	0.036	365
Convalescent Hosp/Daycare	16,397	0.034	0.064	0.024	0.004	365
Personal Services, Laundries	35,194	0.072	0.090	0.066	0.003	365
Electrical/Electronics	150,403	0.431	0.108	0.054	0.108	261
Machinery Manufacture	4,349	0.012	0.030	0.057	0.000	261
RockTenn (Jefferson Smurfit)	2,848	0.006	0.109	0.006	0.001	365
T. Marzetti Co.	13,815	0.033	0.659	0.066	0.000	313
Prudential Overall Supply	19,742	0.057	0.250	0.134	0.001	261
Siemens Water Tech	43,450	0.125	0.009	0.367	0.001	261
Elmwood Rehabilitation	93,018	0.191	0.660	0.497	0.035	365
Linear Technology	105,018	0.301	0.234	0.179	0.050	261
DS W	654	0.002	0.000	0.000	0.000	261
Magic Tech & Headway Tech	43,542	0.125	0.447	0.002	0.001	261
Lucky Pure Water	352	0.001	0.001	0.000	0.000	365
Milpitas Materials	16	0.000	0.000	0.000	0.000	365
Union Pacific Railroad	26	0.000	0.000	0.000	0.000	261
Cisco	11,752	0.034	0.008	0.004	0.008	261
Lifescan	221	0.001	0.000	0.000	0.000	261
Schools/Colleges	23,803	0.101	0.110	0.084	0.025	176
Total	2,901,202	6.458	16.260	11.991	1.423	

To determine the unit rate for operating expenses, each customer class' loading in each cost causative component is multiplied by that customer class' days active. These values are summed to arrive at the blended unit rate of operating costs. For example, Single Family users produced 4.693 lbs/day of BOD, times 365 days active, giving a total lbs/year of 1,712.79. The lbs/year value is determined for each customer class, and then they are added together to arrive at the total lbs/year of 5,708.85. In step three, the annual operating cost of BOD treatment was determined to be \$1,501,978 (see Exhibit 4.3.1), therefore the per unit operating cost of BOD treatment is \$1,501,978 divided by 5,708.85, which equals \$263. This method of determining the unit cost of operating the system is used because it takes into account both the volume and strength of each class' sewer effluent as well as the number of days per year each customer class is active, resulting in a blended per unit cost of operating the whole system on an annual basis.

The capital unit rate is simply the total cost of each cost causative component (as identified in step three) divided by the total loading in each cost causative component shown at the bottom of the above exhibit. For example, the total capital cost of treating TSS was calculated as \$309,455 per year (see exhibit 4.3.2), and the total loading of TSS is 11.991 lbs/year. Therefore, the total capital unit rate for TSS is \$309,455 divided by 11.991, which equals \$25,807. This method of calculating capital costs is straightforward and does not take into account the days active of each customer class, because the capital needs of the system are present regardless of how much the system is being utilized throughout the year. It is assumed that

all customers have access to the system at all times during the year and that capital costs must be recovered from all customers proportionately based on flow and strength of their sewer effluent.

Exhibit 4.4.2 shows the unit rates for each cost causative component.

Exhibit 4.4.2 Blended Unit Rate by Cost Causative Component

Unit Rates	Flow	BOD	TSS	NH ₃
Operating	\$2,419	\$263	\$307	\$2,398
Capital	\$641,539	\$30,478	\$25,807	\$152,394

4.5 Determination of Cost of Service by Customer Class

The last step of the cost of service process is simple. Each customer class' appropriate cost in each or the cost causative components are equal to:

- Operating: Unit Rate x Customer Class Loading x Days Active
- Capital: Unit Rate x Customer Class Loading

Each of these calculations results in a class by class accounting for the costs caused by each customer class.

Exhibit 4.5.1 FY 2019 Operating Costs by Customer Class and Cost Causative Component

Customer Class	FY 2019 Total \$	Flow (\$/year)	BOD (\$/year)	TSS (\$/year)	NH3 (\$/year)
Single-Family	\$3,537,074	\$1,985,696	\$450,629	\$525,614	\$575,135
Mobile Home Park	\$115,520	\$64,852	\$14,717	\$17,166	\$18,784
Multiple-Family	\$2,200,463	\$1,235,329	\$280,343	\$326,992	\$357,800
Motels and Hotels	\$272,549	\$185,730	\$52,265	\$23,795	\$10,759
General Office	\$409,578	\$316,585	\$37,359	\$26,816	\$28,819
City of Milpitas	\$29,679	\$22,940	\$2,707	\$1,943	\$2,088
Service Stations	\$46,626	\$31,939	\$5,219	\$9,469	\$0
Eat/Drink Establishments	\$1,079,785	\$384,215	\$435,964	\$227,812	\$31,795
Convalescent Hosp/Daycare	\$42,210	\$29,665	\$6,193	\$2,670	\$3,682
Personal Services, Laundries	\$82,391	\$63,672	\$8,670	\$7,416	\$2,635
Electrical/Electronics	\$351,387	\$272,103	\$7,410	\$4,322	\$67,553
Machinery Manufacture	\$14,521	\$7,868	\$2,071	\$4,582	\$0
RockTenn (Jefferson Smurfit)	\$16,916	\$5,153	\$10,425	\$661	\$678
T. Marzetti Co.	\$85,868	\$24,993	\$54,309	\$6,380	\$186
Prudential Overall Supply	\$64,128	\$35,716	\$17,145	\$10,706	\$562
Siemens Water Tech	\$109,006	\$78,608	\$628	\$29,380	\$390
Elmwood Rehabilitation	\$318,396	\$168,284	\$63,411	\$55,645	\$31,055
Linear Technology	\$251,991	\$189,994	\$16,091	\$14,303	\$31,603
DS W	\$1,186	\$1,183	\$2	\$0	\$0
Magic Tech & Headway Tech	\$110,378	\$78,774	\$30,662	\$158	\$782
Lucky Pure Water	\$823	\$636	\$75	\$54	\$58
Milpitas Materials	\$36	\$28	\$3	\$2	\$3
Union Pacific Railroad	\$69	\$47	\$8	\$14	\$0
Cisco	\$27,456	\$21,261	\$579	\$338	\$5,278
Lifescan	\$516	\$400	\$11	\$6	\$99
Schools/Colleges	\$63,396	\$43,063	\$5,082	\$4,560	\$10,691
Total Operating Costs	\$9,231,951	\$5,248,734	\$1,501,978	\$1,300,803	\$1,180,435

Exhibit 4.5.2 FY 2019 Capital Costs by Customer Class and Cost Causative Component

Customer Class	FY 2019 Total \$	Flow (\$/year)	BOD (\$/year)	TSS (\$/year)	NH3 (\$/year)
Single-Family	\$1,807,244	\$1,443,005	\$143,020	\$121,101	\$100,117
Mobile Home Park	\$59,024	\$47,128	\$4,671	\$3,955	\$3,270
Multiple-Family	\$1,124,312	\$897,714	\$88,975	\$75,339	\$62,284
Motels and Hotels	\$158,913	\$134,970	\$16,588	\$5,482	\$1,873
General Office	\$353,972	\$321,734	\$16,582	\$8,640	\$7,016
City of Milpitas	\$20,726	\$18,838	\$971	\$506	\$411
Service Stations	\$27,048	\$23,210	\$1,656	\$2,182	\$0
Eat/Drink Establishments	\$475,597	\$279,209	\$138,366	\$52,488	\$5,535
Convalescent Hosp/Daycare	\$24,779	\$21,557	\$1,966	\$615	\$641
Personal Services, Laundries	\$51,189	\$46,270	\$2,752	\$1,709	\$459
Electrical/Electronics	\$297,655	\$276,529	\$3,289	\$1,392	\$16,445
Machinery Manufacture	\$10,392	\$7,996	\$919	\$1,476	\$0
RockTenn (Jefferson Smurfit)	\$7,323	\$3,744	\$3,309	\$152	\$118
T. Marzetti Co.	\$43,032	\$21,180	\$20,100	\$1,714	\$38
Prudential Overall Supply	\$47,493	\$36,297	\$7,609	\$3,450	\$137
Siemens Water Tech	\$89,727	\$79,887	\$279	\$9,467	\$95
Elmwood Rehabilitation	\$160,644	\$122,292	\$20,125	\$12,821	\$5,406
Linear Technology	\$212,529	\$193,085	\$7,142	\$4,608	\$7,693
DS W	\$1,204	\$1,202	\$1	\$0	\$0
Magic Tech & Headway Tech	\$93,907	\$80,056	\$13,609	\$51	\$190
Lucky Pure Water	\$509	\$462	\$24	\$12	\$10
Milpitas Materials	\$22	\$20	\$1	\$1	\$0
Union Pacific Railroad	\$56	\$48	\$3	\$4	\$0
Cisco	\$23,258	\$21,607	\$257	\$109	\$1,285
Lifescan	\$437	\$406	\$5	\$2	\$24
Schools/Colleges	\$74,283	\$64,900	\$3,345	\$2,179	\$3,860
Total Capital Costs	\$5,165,273	\$4,143,347	\$495,564	\$309,455	\$216,906

By adding each customer class' operating and capital cost recovery, it can be determined what percentage of annual rate revenue should be generated by each customer class. Exhibit 4.5.3 shows the results of the cost of service analysis.

Exhibit 4.5.3 Cost of Service Result by Customer Class

Annual Cost Recovery Per Class	Total O&M	Total Capital	Total \$	O&M %	Capital %
Single-Family	\$3,537,074	\$1,807,244	\$5,344,318	38.3%	35.0%
Mobile Home Park	\$115,520	\$59,024	\$174,544	1.3%	1.1%
Multiple-Family	\$2,200,463	\$1,124,312	\$3,324,775	23.8%	21.8%
Motels and Hotels	\$272,549	\$158,913	\$431,462	3.0%	3.1%
General Office	\$409,578	\$353,972	\$763,550	4.4%	6.9%
City of Milpitas	\$29,679	\$20,726	\$50,404	0.3%	0.4%
Service Stations	\$46,626	\$27,048	\$73,674	0.5%	0.5%
Eat/Drink Establishments	\$1,079,785	\$475,597	\$1,555,382	11.7%	9.2%
Convalescent Hosp/Daycare	\$42,210	\$24,779	\$66,990	0.5%	0.5%
Personal Services, Laundries	\$82,391	\$51,189	\$133,580	0.9%	1.0%
Electrical/Electronics	\$351,387	\$297,655	\$649,043	3.8%	5.8%
Machinery Manufacture	\$14,521	\$10,392	\$24,913	0.2%	0.2%
RockTenn (Jefferson Smurfit)	\$16,916	\$7,323	\$24,240	0.2%	0.1%
T. Marzetti Co.	\$85,868	\$43,032	\$128,900	0.9%	0.8%
Prudential Overall Supply	\$64,128	\$47,493	\$111,621	0.7%	0.9%
Siemens Water Tech	\$109,006	\$89,727	\$198,733	1.2%	1.7%
Elmwood Rehabilitation	\$318,396	\$160,644	\$479,040	3.4%	3.1%
Linear Technology	\$251,991	\$212,529	\$464,520	2.7%	4.1%
DS W	\$1,186	\$1,204	\$2,389	0.01%	0.02%
Magic Tech & Headway Tech	\$110,378	\$93,907	\$204,284	1.2%	1.8%
Lucky Pure Water	\$823	\$509	\$1,332	0.01%	0.01%
Milpitas Materials	\$36	\$22	\$59	0.0004%	0.0004%
Union Pacific Railroad	\$69	\$56	\$124	0.001%	0.001%
Cisco	\$27,456	\$23,258	\$50,714	0.3%	0.5%
Lifescan	\$516	\$437	\$954	0.01%	0.01%
Schools/Colleges	\$63,396	\$74,283	\$137,679	0.7%	1.4%
Total Annual Cost	\$9,231,951	\$5,165,273	\$14,397,224	100.00%	100.00%

The results shown above allow the equitable distribution of annual costs to each customer class. In any given fiscal year, the net operating revenue requirement is multiplied by the O&M percentage shown above for each customer class to determine that class' O&M cost responsibility. The same is done for annual capital costs. In each year, the rate determined for each customer class is equal to:

- Residential Customers:

$$\frac{[Flat Fee Allocation + (O\&M Net Revenue Requirement \times \% O\&M Allocation from Cost of Service) + (Capital Net Revenue Requirement \times \% Capital Allocation from Cost of Service)]}{(Billable Dwelling Units \times 6)}$$

The total residential costs are divided by six times the residential billable dwelling units to account for bi-monthly billing. Each customer will receive six sewer bills throughout the year, and therefore the total annual cost must be spread over six times the number of customers.

- Non-Residential Customers:

$$\begin{aligned} & \text{Bi Monthly Flat Fee} \\ & + \\ & \frac{[(O\&M \text{ Net Revenue Requirement} \times \% O\&M \text{ Allocation from Cost of Service}) + \\ & \text{(Capital Net Revenue Requirement} \times \% \text{ Capital Allocation from Cost of Service)}]}{\text{Annual Billable Units in HCF}} \end{aligned}$$

Non-residential customers are billed on flow, so the basis for each rate is the total flow in HCF from each customer class.

The City's rates can now be calculated on an annual basis, given assumed operating and capital costs. The next section of this report details a financial plan developed by MFSG to plan for the major operational and capital investments that the City will need to make in its sewer system over the next five to ten years.

5. FINANCIAL PLAN AND PROPOSED RATES

5.1 Total Revenue Projections at Current Rates

In Section 2, the projected costs (revenue requirements) of the system were presented and, in Section 3, projected customers and sewage generation were presented. In this section, we use the results of the cost of service analysis presented in Section 4 to determine an appropriate financial plan and set sewer rates for the next five years.

5.1.1 Revenues vs. Expenses at Current Rates

The adequacy of revenues from current rates was evaluated in order to determine if existing rates are sufficient to recover the revenue requirements. Exhibit 5.1.1 compares the revenue requirements with total revenue projections at current rates for the base year and the first five years of the planning period.

Exhibit 5.1.1 Sewer Revenue Requirements and Revenue at Current Rates

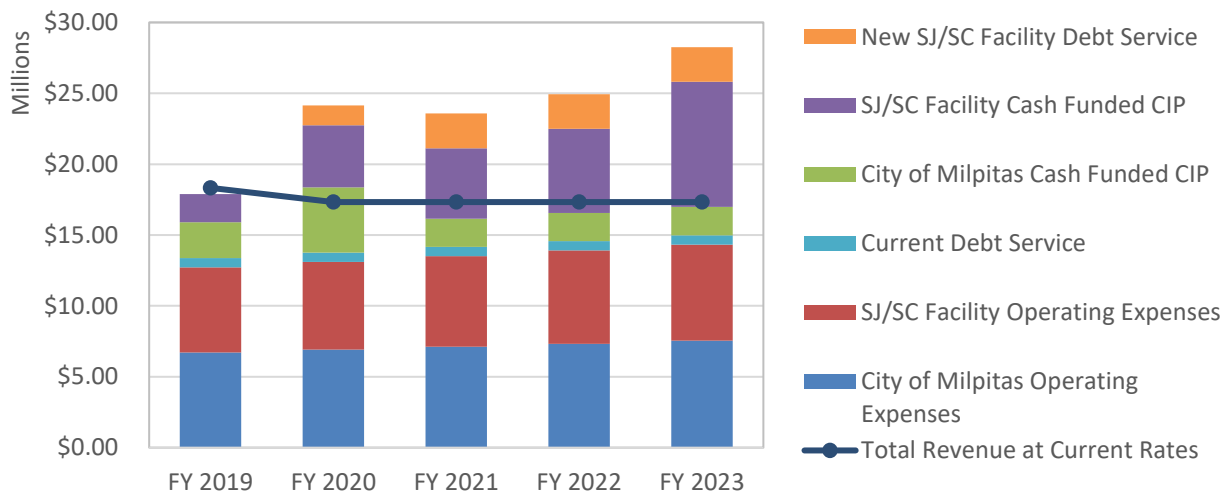
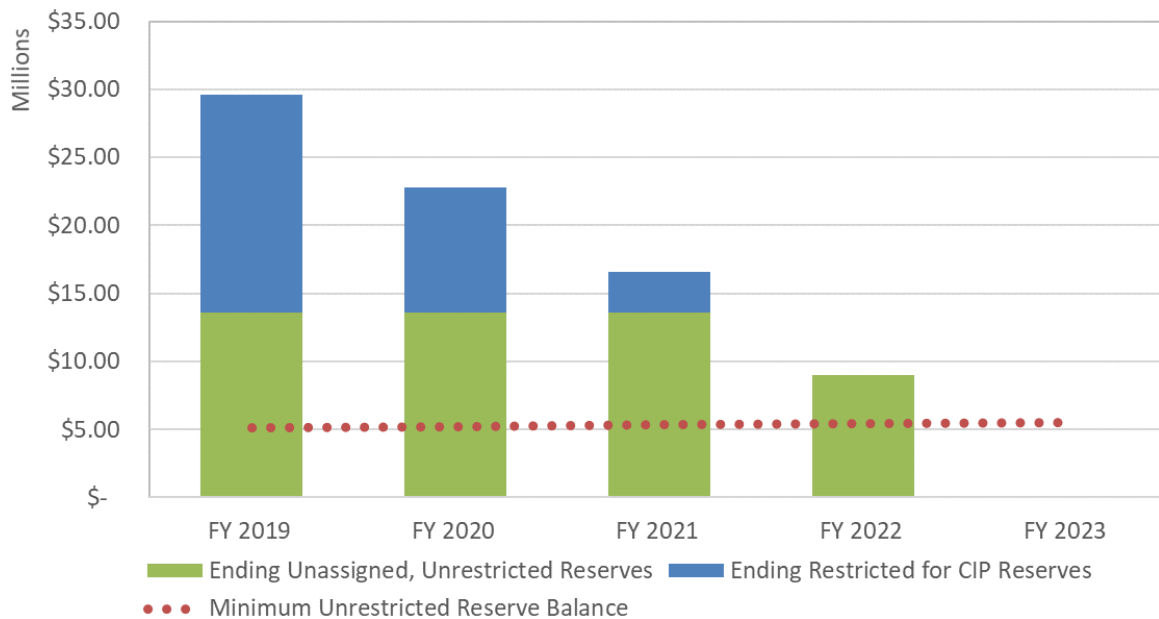


Exhibit 5.1.1 demonstrates that revenue collected at current sewer rates is insufficient to cover the revenue requirements in some years from FY 2020 to FY 2023. Current sewer rates would continue to not to generate sufficient revenue to fund the revenue requirements over the remainder of the long-term planning period. This has a significant impact on the sewer fund's financial health.

5.1.2 Projected Sewer Fund Cash Balances at Current Rates

When considering the five-year rate plan, it is important to consider the long-term impact of rate changes made in early years. If the City were to not adjust rates in the five-year timeframe, the sewer system would experience heavy deficits over both the five-year and ten-year timeframe. Exhibit 5.1.2 shows the five-year sewer fund cash balance projection under the scenario in which the City does not adjust rates in any fiscal year. To be consistent with the City's budget documents, all cash balance charts in this report show the combined balance of the City's Sewer Fund, Sewer Fund CIP, Treatment Plant Construction Fund, Sewer 2017 Bonds Fund, and Sewer Infrastructure Replacement Fund.

Exhibit 5.1.2 Sewer Fund End of Year Balance at Current Rates (Five-Year Projection)



Under the current sewer rates, the Sewer Fund operating cash balance would be completely depleted in FY 2023. MFSG recommends that the City implement annual rate increases immediately to position the fund for the future investments needed in the sewer system.

5.2 Recommended Financial Plan and Rates

Given the results of the projections under current rates, MFSG recommends a phased in financial plan that will generate sufficient revenue over the five-year planning period to fully fund the sewer system and maintain the recommended minimum cash balance in the sewer fund, as well as position the fund for the long-term investments needed in the City's sewer infrastructure. Exhibit 5.2.1 shows MFSG's recommended sewer rates. It should be noted that in FY 2019, the projections assume that the City implement the new rates on February 1, 2019, just over halfway through the Fiscal Year. Each subsequent year assumes that the City adopt rates effective on July 1 of each Fiscal Year.

Exhibit 5.2.1 Recommended Sewer Rates

	Current FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Sewer User Rate Revenue Increase per Year		4.0%	8.0%	8.0%	7.0%	6.0%
Month of Implementation		February	July	July	July	July
<u>Residential (per Dwelling Unit)</u>						
Single-Family	\$90.27	\$97.60	\$102.52	\$111.07	\$118.34	\$124.14
Mobile Home Parks	\$56.97	\$76.03	\$79.86	\$86.53	\$92.19	\$96.71
Multiple-Family	\$69.32	\$74.96	\$78.73	\$85.30	\$90.88	\$95.34
Non-Residential Fixed Flat Fee (per bill)	\$15.27	\$24.30	\$25.03	\$25.78	\$26.55	\$27.35
<u>Commercial (per HCF)</u>						
Motels and Hotels	\$4.36	\$4.36	\$4.58	\$4.97	\$5.37	\$5.75
General Office	\$4.67	\$4.67	\$5.44	\$5.67	\$6.14	\$6.84
City of Milpitas	\$4.18	\$4.18	\$4.61	\$4.91	\$5.31	\$5.80
Service Stations	\$4.34	\$4.34	\$4.54	\$4.93	\$5.32	\$5.70
Eat/Drink Establishments	\$7.49	\$7.49	\$7.49	\$8.11	\$8.73	\$9.06
Convalescent Hosp/Daycare	\$4.23	\$4.23	\$4.46	\$4.84	\$5.23	\$5.60
Personal Services, Laundries	\$3.95	\$3.95	\$4.23	\$4.56	\$4.92	\$5.31
Electrical/Electronics	\$4.59	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
Machinery Manufacture	\$6.08	\$6.08	\$6.70	\$7.12	\$7.70	\$8.43
<u>Monitored Sites (per HCF)</u>						
RockTenn (Jefferson Smurfit)	\$4.67	\$8.35	\$8.35	\$9.39	\$10.11	\$10.46
T. Marzetti Co.	\$8.34	\$9.16	\$9.63	\$10.65	\$11.48	\$12.09
Prudential Overall Supply	\$6.70	\$6.70	\$6.70	\$7.08	\$7.66	\$8.42
Siemens Water Tech	\$4.91	\$4.91	\$5.61	\$5.87	\$6.36	\$7.06
Elmwood Rehabilitation	\$5.49	\$5.49	\$5.49	\$5.89	\$6.35	\$6.69
Linear Technology	\$4.59	\$4.59	\$5.47	\$5.71	\$6.18	\$6.88
DS W	\$4.59	\$4.59	\$4.80	\$4.92	\$5.34	\$6.04
Magic Tech & Headway Tech	\$4.53	\$4.62	\$5.82	\$6.07	\$6.57	\$7.32
<u>Non-Monitored Sites (per HCF)</u>						
Lucky Pure Water	\$3.94	\$3.94	\$4.21	\$4.54	\$4.91	\$5.29
Milpitas Materials	\$3.94	\$3.94	\$4.21	\$4.54	\$4.91	\$5.29
Union Pacific Railroad	\$5.11	\$5.11	\$5.84	\$6.12	\$6.63	\$7.35
Cisco	\$4.59	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
Lifescan	\$4.59	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
<u>Institutional (per HCF)</u>						
Schools/Colleges	\$6.31	\$6.31	\$7.94	\$8.05	\$8.73	\$9.99

Note that the impact of the revenue increase identified on the top line of the above chart does not necessarily reflect the rate increase for any given customer class. The rates charged to each class consider a number of factors, including that class' allocation of Flow, BOD, TSS and NH₃ costs. The financial plan only defines the total increase in revenue each year. The rates are calculated to meet that revenue target given the changing allocations of operating and capital expenses that are projected each year.

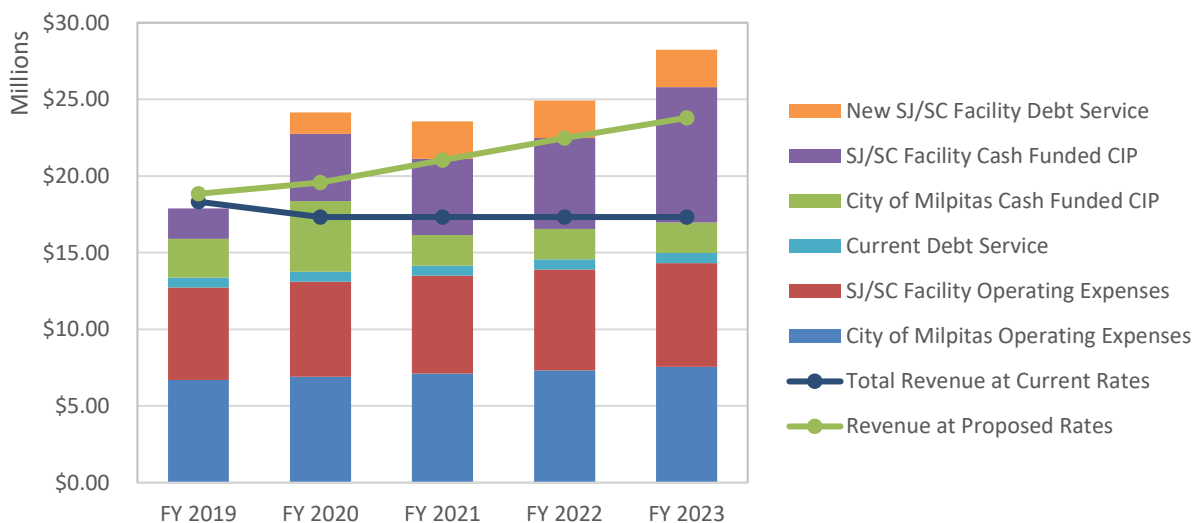
5.3 Total Revenue Projections at Proposed Rates

To maintain the financial health of the City's sewer operations over the first five years of the planning period, sewer rate revenue needs to be increased. In addition to covering the revenue requirements, revenue must also be enough to satisfy the minimum cash balance specified of 180 days operating expenses outlined in Section 2.1.

5.3.1 Sewer Revenues vs. Expenses at Proposed Rates

MFSG proposes the use of the current cash balance as well as adjusting rates on a multi-year basis to provide a sound financial basis for the City's sewer system. The flowing exhibit shows the revenue increases proposed by MFSG's rate plan.

Exhibit 5.3.1 Sewer Revenue vs. Expenses Under Proposed Revenue Increases



MFSG's rate plan for the sewer system depends on the multi-year usage of cash on hand to mitigate ("smooth out") one-time rate increases. Over the five-year rate plan, the City's sewer system will depend on a blend of increased rate revenues and the spending down of cash reserves. Due to the cash balance position of the sewer fund at the beginning of FY 2019, MFSG believes that a long-term phase-in is appropriate for the City's sewer rates.

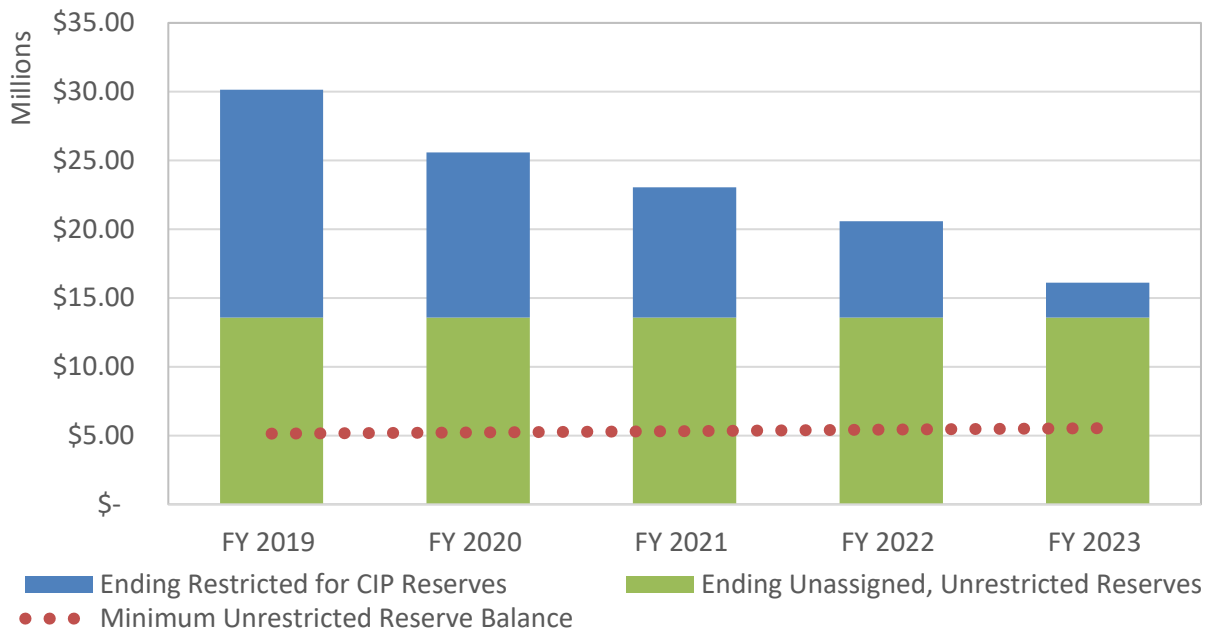
5.4 Sewer Fund Cash Balance Projections at Proposed Rates

Under MFSG's proposed financial plan the City maintains the recommended reserve balance in each year of the five-year planning period. Under the proposed plan, the City maintains at least 180 days of cash within the Sewer Fund, which is the minimum that MFSG recommends.

5.4.1 Sewer Fund Balance at Proposed Rates

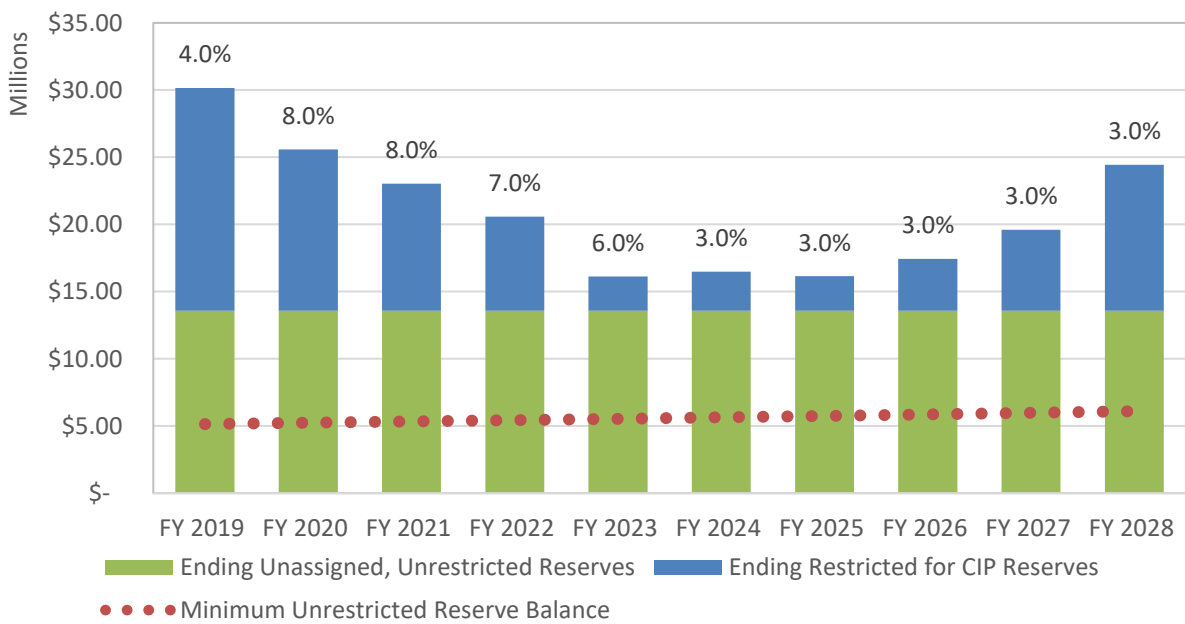
Sewer fund cash on hand will be used to phase in the revenue increases needed to support the long-term financial needs of the sewer system. Exhibit 5.4.1 shows the proposed draw-down on the sewer system's cash balance to phase in the appropriate rate increases.

Exhibit 5.4.1 Sewer Fund Projected Balance under Proposed Rates (Five-Year)



The sewer system's cash on hand will be utilized over portions of the projection to mitigate the need for higher sewer rate increases. Under the current projections the City's sewer rates will be consistently cash flow positive in year six of the projection (FY 2024). However, at no time with the City's Sewer Fund fall below the recommended 180 days of operating expenses. Exhibit 5.4.2 shows the long term (ten-year) projection of the City's Sewer Fund balance.

Exhibit 5.4.2 Sewer Fund Projected Balance under Proposed Rates (Ten-Year)



The long-term projection includes 3.0% increases in operating expenses, the continuation of the City's FY 2023 CIP, the long-term projections of the SJ/SC WPCP capital costs, and 3.0% rate increase in each year after FY 2023. The percentages shown above the bars in the exhibit are the assumed revenue increases each fiscal year. It should be noted that the City will re-examine its sewer rate each year, and that these long-term projections will change with each future analysis.

A major consideration when projected the future revenue needs of the City's system is the impact that the proposed rates will have on the City's customers. The following section describes the projected impact on the City's sewer customers.

6. CUSTOMER BILL IMPACTS AND BILL COMPARISON

6.1 Bi-monthly Bill Impact of Recommended Rates

Exhibit 6.1.1 shows the percentage impact each year on customer bills. Because MFSG recommends adjusting rates to account for the updated cost of service results, the impact differs amongst the customer classes.

Exhibit 6.1.1 Sample Percentage Change in Bi-Monthly Bills by Customer Class

		FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Sewer User Rate Revenue Increase		4.0%	8.0%	8.0%	7.0%	6.0%
Month of Implementation		February	July	July	July	July
<u>Residential (per Dwelling Unit)</u>						
Single-Family		8%	5%	8%	7%	5%
Mobile Home Parks		33%	5%	8%	7%	5%
Multiple-Family		8%	5%	8%	7%	5%
<u>Commercial (per HCF)</u>		Average Bi-Monthly Usage (HCF)*				
Motels and Hotels	684	0%	5%	9%	8%	7%
General Office	82	2%	16%	4%	8%	11%
City of Milpitas	60	3%	10%	6%	8%	9%
Service Stations	77	3%	4%	8%	8%	7%
Eat/Drink Establishments	198	1%	0%	8%	8%	4%
Convalescent Hosp/Daycare	130	2%	5%	8%	8%	7%
Personal Services, Laundries	101	2%	7%	8%	8%	8%
Electrical/Electronics	171	1%	16%	4%	8%	11%
Machinery Manufacture	40	3%	10%	6%	8%	9%
<u>Monitored Sites (per HCF)</u>						
RockTenn (Jefferson Smurfit)	475	79%	0%	12%	8%	4%
T. Marzetti Co.	1,151	10%	5%	11%	8%	5%
Prudential Overall Supply	1,645	0%	0%	6%	8%	10%
Siemens Water Tech	3,621	0%	14%	5%	8%	11%
Elmwood Rehabilitation	3,101	0%	0%	7%	8%	5%
Linear Technology	2,917	0%	19%	4%	8%	11%
DS W	55	3%	4%	3%	8%	12%
Magic Tech & Headway Tech	1,814	2%	26%	4%	8%	11%
<u>Non-Monitored Sites (per HCF)</u>						
Lucky Pure Water	59	4%	7%	7%	8%	7%
Milpitas Materials	3	35%	4%	4%	5%	5%
Union Pacific Railroad	4	24%	8%	4%	6%	7%
Cisco	392	0%	16%	4%	8%	11%
Lifescan	37	5%	15%	4%	8%	10%
<u>Institutional (per HCF)</u>						
Schools/Colleges	62	2%	25%	1%	8%	14%

* Average bi-monthly usage for Non-Residential customers is calculated for each customer class as:
(Total Annual Flow/Customer Accounts)/6

The sample bill increases for each customer class vary from year to year due to varying levels of operating and capital spending needs. Each year, rates are calculated based on that year's operating and capital costs, which are allocated to each customer class based on the Flow, BOD, TSS, and NH₃ loadings show in Exhibit 4.4.1 of this report.

The total Sewer Fund rate revenue increase each year will be equal to the percentage shown on the top line of the above table.

6.2 Consideration of Mobile Home Park General Fund Subsidy

In 2015, the City of San José was presented with "Technical Memorandum No. 3" as a part of the "Phase 3 Flow and Load Study" performed by Carollo Engineers. The purpose of the study was to update the flow data used when allocating the treatment costs of the SJ/SC Regional Waste Water Facility to the Facility's Tributary Agencies, which include the Cities of San José, Santa Clara and Milpitas, as well as Cupertino Sanitary District, County Sanitation District No. 2-3, West Valley Sanitation District, and Burbank Sanitary District. The conclusion of that analysis was:

"Milpitas' mobile home data showed very low per-capita flow rates (approximately 30 GPCD in some years). After a close examination of the mobile home data, Carollo found two issues. The first was that the number of data points was very small, totaling only four accounts. The other issue was that although the consumption values for each account changed significantly from year to year, the number of units was relatively consistent. These issues led to the conclusion that the number of units in the database was incorrect, possibly due to fluctuating vacancies, and the number of data points too small to draw large conclusions. Therefore, Milpitas's mobile home data was not used in this analysis because a statistically significant number of reliable data points were not available."

– Carollo Engineers, Technical Memorandum No. 3 (2015) at p. 12

The final recommendation of Carollo's Flow study was to allocate 141 GPD per person to the City of Milpitas Mobile Home account, equivalent to 63 GPD per person. This was based on a weighted average of all Tributary Agencies due to the lack of data quoted above. City staff has since replaced the water meters at the mobile home parks and the more accurate data from the new water meters and sewer flow monitoring will be incorporated into future flow and load studies.

As a matter of rate setting policy, the 2015 sewer rate study set Mobile Home Park sewer rates based on an allocation of 51 GPD, which is in line with both Single Family and Multiple Family flow data. This resulted in a rate for Mobile Home Park customers based on 114 GPD per dwelling unit (2.24 persons per unit) rather than 141 GPD per unit. Therefore, the City's Mobile Home Park customers were paying a rate to the City of Milpitas that was lower than the costs allocated to those customers by the City of San José.

MFSG recommends aligning the City's rate calculation with the cost allocation made by the City of San José. That is, MFSG recommends that the City of Milpitas calculate Mobile Home Park rates using the 141 GPD per dwelling unit. This allocation results, as shown previously, in a significant increase in Mobile Home Park rates when compared with Single Family and Multiple Family rates.

MFSG was asked to consider mitigating the impact of the rate increases on Mobile Home Park customers via the use of a subsidy from unrestricted non-rate revenues. California's Proposition 218 does not allow the subsidy of any rate class via charging other rate classes higher fees within the same fund. That is, in

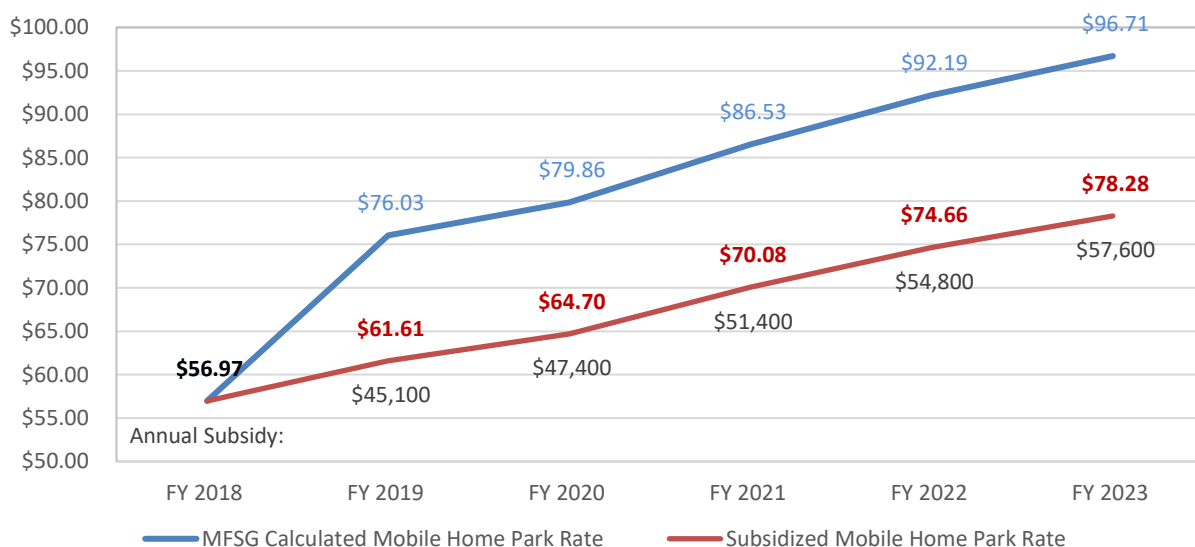
order to reduce the cost for any given rate payer, the City is only allowed to introduce the subsidy from unrestricted revenues, typically from the General Fund. MFSG considered a subsidy over the course of the five-year rate projection from the City's general fund to reduce the rate impact on Mobile Home Park rate payers to equal the proposed rate impact on Single Family and Multiple Family users. This analysis is shown in Exhibit 6.2.1.

Exhibit 6.2.1 Mobile Home Park Subsidy Calculation

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
MFSG Calculated Mobile Home Park Rate	\$56.97	\$76.03	\$79.86	\$86.53	\$92.19	\$96.71
% Increase		33%	5%	8%	7%	5%
Mobile Home Park Rate Subsidy	\$45,100	\$47,400	\$51,400	\$54,800	\$57,600	
Subsidized Mobile Home Park Rate	\$61.61	\$64.70	\$70.08	\$74.66	\$78.28	
	8%	5%	8%	7%	5%	

This subsidy brings the Mobile Home Park rate increases in line with those of SFR and MFR customers. Exhibit 6.2.2 shows the subsidy graphically.

Exhibit 6.2.2 Percentage Change in Bi-Monthly Bills by Customer Class



The annual subsidy to the Sewer Fund would not impact the total revenue projections presented in this report, as the subsidy would be transferred into the Sewer Fund to compensate for the reduced revenue generated from Mobile Home Park customers each year. All other rates shown in MFSG's recommended rate table remain unchanged under this scenario. While the total amount of the subsidy from the General Fund to offset mobile home park sewer costs would be \$45,100 in the first year of the plan, the subsidy would gradually increase each year to account for the compounding nature of the proposed rate increases.

6.3 Single Family Bi-Monthly Sewer Bill Comparison

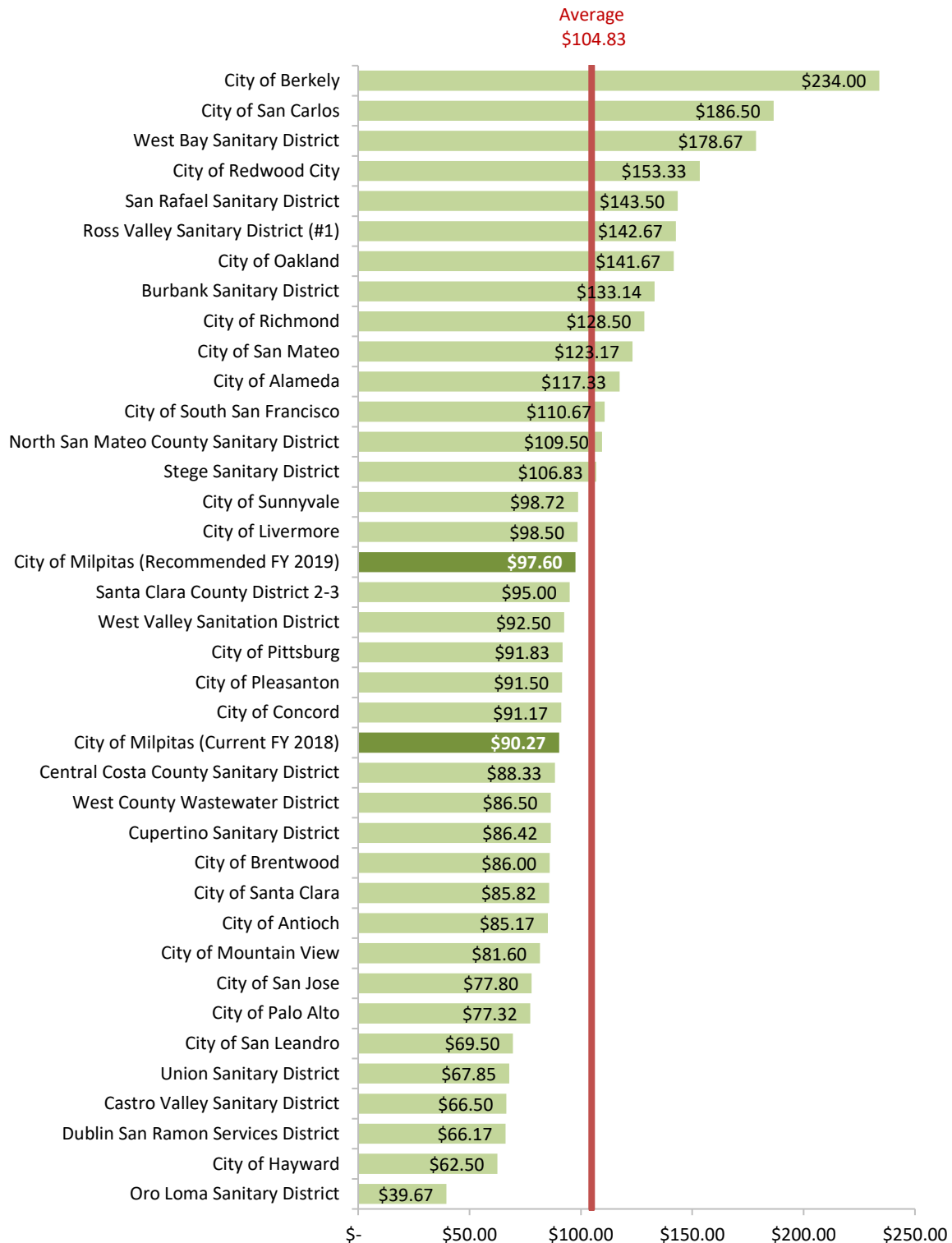
Exhibit 6.3.2 shows the City's current FY 2018 and recommended FY 2019 Single-Family bi-monthly rate as compared to several other wastewater agencies. In general, the wastewater agencies listed above meet two criteria:

1. Within 50 miles of the City of Milpitas
2. Have at least 100 miles of collection system and/or 5 MGD of treatment capacity.

Several notes should be made about the exhibit below. It is important to recognize the context of the chart. The bi-monthly cost shown is as of the latest available data, with all rates being currently effective as of the time of this report. That is, the chart does not reflect the individual financial performance of each agency's sewer system.

While the comparison is relevant in terms of customer perception, it cannot be relied upon for the purposes of rate setting. Our report details the specific and unique financial and operational profile of the City of Milpitas' sewer system, and MFSG has recommended rates that will raise the appropriate revenue to meet the City's costs. The other service providers shown below may or may not be charging rates that fully fund the operating, capital and reserve needs of each system.

Exhibit 6.3.2 Single Family Bi-Monthly Sewer Bill Comparison



7. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The following findings, conclusions and recommendations were developed during the study.

7.1 Findings

The following findings were developed during the study:

- The City's current (FY 2018) sewer rates are not sufficient to fully fund the operating, capital, and cash reserve needs of the City's sewer system.
- The City's current planned reinvestment in its buried sewer assets is insufficient to fully fund the cost of rehabilitation and replacement needs of its buried assets and will allow the continuing decline in the physical condition of its sewer collection system.
- The City's rate calculation methodology generally complies with the Water Environment Federations Manual of Practice 27 - *Financing and Charges for Wastewater Systems*.
- The City currently collects 64% of its Personnel Services costs in its bi-monthly Flat Fee.
- The City charges its Mobile Home Park customer class based on a per person flow assumption of 51 GPD and 2.24 persons per dwelling unit, resulting in a per dwelling unit flow assumption of 114
- The City's Sewer Fund contains appropriate reserves given the operational and capital expenses of the City's system and the City's reserve policies.

7.2 Conclusions

Based on our findings, the following conclusions were drawn:

- The City needs to increase sewer rates over the five years of the planning period (FY 2019 to FY 2023) to increase projected revenues to match related expenses.
- The City will need to increase investment in its buried sewer infrastructure over the short and long term.
- Given the City's Sewer Fund balances (restricted for CIP and unassigned, unrestricted) rate increases can be phased-in over a number of years to mitigate the one-time impact on the City's customers.

7.3 Recommendations

Based on our conclusions, MFSG recommends that:

- The City implement rate increases through a multi-year financial plan that utilizes both increased rate revenues and the use of a portion of current cash on hand. This will allow the City to smooth rate increases over the planning period and mitigate customer rate shock while meeting both its funding and cash reserve requirements.
- The City collect 100% of its Personnel Services costs in its bi-monthly Flat Fee.
- The City allocate costs to its Mobile Home Park customer class based on the same flow assumption used by the City of San José to allocate operating costs to the City of Milpitas, which is 63 GPD per person and 2.24 persons per dwelling unit, which equals 141 GPD per dwelling unit.
- Adopt the following rates for the next five fiscal years:

Exhibit 7.3.1 Recommended Bi-Monthly Sewer Rates

	Current FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Sewer User Rate Revenue Increase		4.0%	8.0%	8.0%	7.0%	6.0%
Month of Implementation		February	July	July	July	July
<u>Residential (per Dwelling Unit)</u>						
Single-Family	\$90.27	\$97.60	\$102.52	\$111.07	\$118.34	\$124.14
Mobile Home Parks	\$56.97	\$76.03	\$79.86	\$86.53	\$92.19	\$96.71
Multiple-Family	\$69.32	\$74.96	\$78.73	\$85.30	\$90.88	\$95.34
Non-Residential Fixed Flat Fee (per bill)	\$15.27	\$24.30	\$25.03	\$25.78	\$26.55	\$27.35
<u>Commercial (per HCF)</u>						
Motels and Hotels	\$4.36	\$4.36	\$4.58	\$4.97	\$5.37	\$5.75
General Office	\$4.67	\$4.67	\$5.44	\$5.67	\$6.14	\$6.84
City of Milpitas	\$4.18	\$4.18	\$4.61	\$4.91	\$5.31	\$5.80
Service Stations	\$4.34	\$4.34	\$4.54	\$4.93	\$5.32	\$5.70
Eat/Drink Establishments	\$7.49	\$7.49	\$7.49	\$8.11	\$8.73	\$9.06
Convalescent Hosp/Daycare	\$4.23	\$4.23	\$4.46	\$4.84	\$5.23	\$5.60
Personal Services, Laundries	\$3.95	\$3.95	\$4.23	\$4.56	\$4.92	\$5.31
Electrical/Electronics	\$4.59	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
Machinery Manufacture	\$6.08	\$6.08	\$6.70	\$7.12	\$7.70	\$8.43
<u>Monitored Sites (per HCF)</u>						
RockTenn (Jefferson Smurfit)	\$4.67	\$8.35	\$8.35	\$9.39	\$10.11	\$10.46
T. Marzetti Co.	\$8.34	\$9.16	\$9.63	\$10.65	\$11.48	\$12.09
Prudential Overall Supply	\$6.70	\$6.70	\$6.70	\$7.08	\$7.66	\$8.42
Siemens Water Tech	\$4.91	\$4.91	\$5.61	\$5.87	\$6.36	\$7.06
Elmwood Rehabilitation	\$5.49	\$5.49	\$5.49	\$5.89	\$6.35	\$6.69
Linear Technology	\$4.59	\$4.59	\$5.47	\$5.71	\$6.18	\$6.88
DS W	\$4.59	\$4.59	\$4.80	\$4.92	\$5.34	\$6.04
Magic Tech & Headway Tech	\$4.53	\$4.62	\$5.82	\$6.07	\$6.57	\$7.32
<u>Non-Monitored Sites (per HCF)</u>						
Lucky Pure Water	\$3.94	\$3.94	\$4.21	\$4.54	\$4.91	\$5.29
Milpitas Materials	\$3.94	\$3.94	\$4.21	\$4.54	\$4.91	\$5.29
Union Pacific Railroad	\$5.11	\$5.11	\$5.84	\$6.12	\$6.63	\$7.35
Cisco	\$4.59	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
Lifescan	\$4.59	\$4.59	\$5.35	\$5.58	\$6.04	\$6.72
<u>Institutional (per HCF)</u>						
Schools/Colleges	\$6.31	\$6.31	\$7.94	\$8.05	\$8.73	\$9.99

- The City review rates and charges on an annual basis and revise as needed and consider a full cost of service study for all rates and charges every five years.



PROPOSED MAXIMUM BI-MONTHLY RATE SCHEDULE

FY 2018/19 to FY 2022/23

Bi-Monthly Water Rates - Meter Charges

<u>Meter Size</u>	<u>Current</u>	<u>Proposed</u> <u>2018/19</u>	<u>\$ Increase</u>	<u>Proposed</u> <u>2019/20</u>	<u>\$ Increase</u>	<u>Proposed</u> <u>2020/21</u>	<u>\$ Increase</u>	<u>Proposed</u> <u>2021/22</u>	<u>\$ Increase</u>	<u>Proposed</u> <u>2022/23</u>	<u>\$ Increase</u>
5/8"	\$19.44	\$27.01	\$7.57	\$28.63	\$1.62	\$30.34	\$1.72	\$32.17	\$1.82	\$34.10	\$1.93
3/4"	29.16	40.51	11.35	42.94	2.43	45.52	2.58	48.25	2.73	51.14	2.89
1"	48.60	67.52	18.92	71.57	4.05	75.86	4.29	80.41	4.55	85.24	4.82
1-1/2"	97.20	135.03	37.83	143.13	8.10	151.72	8.59	160.83	9.10	170.48	9.65
2"	155.52	216.05	60.53	229.02	12.96	242.76	13.74	257.32	14.57	272.76	15.44
3"	291.60	405.10	113.50	429.40	24.31	455.17	25.76	482.48	27.31	511.43	28.95
4"	486.00	675.16	189.16	715.67	40.51	758.61	42.94	804.13	45.52	852.38	48.25
6" & above	972.00	1,350.33	378.33	1,431.35	81.02	1,517.23	85.88	1,608.26	91.03	1,704.76	96.50
<u>Detector Check/ RPDa/DCDA</u>											
2 inch	31.10	43.21	12.11	45.80	2.59	48.55	2.75	51.46	2.91	54.55	3.09
3 inch	58.32	81.02	22.70	85.88	4.86	91.03	5.15	96.50	5.46	102.29	5.79
4 inch	97.20	135.03	37.83	143.13	8.10	151.72	8.59	160.83	9.10	170.48	9.65
6 inch and above	194.40	270.07	75.67	286.27	16.20	303.45	17.18	321.65	18.21	340.95	19.30
Volumetric Charges (per hcf)											
Residential	5.13	5.31	0.18	5.63	0.32	5.97	0.34	6.32	0.36	6.70	0.38
Commercial/Industrial/Institutional and Construction	5.13	5.31	0.18	5.63	0.32	5.97	0.34	6.32	0.36	6.70	0.38
Potable Irrigation	5.13	5.31	0.18	5.63	0.32	5.97	0.34	6.32	0.36	6.70	0.38
Santa Clara County (Ed Levin Park)	3.79	4.10	0.31	4.10	0.00	4.10	0.00	4.10	0.00	4.47	0.37
Recycled Irrigation	2.78	3.57	0.79	3.79	0.21	4.01	0.23	4.25	0.24	4.51	0.26
Recycled Water Industrial / Dual Plumbed	2.78	3.57	0.79	3.79	0.21	4.01	0.23	4.25	0.24	4.51	0.26
Recycled Water: City of Milpitas	2.78	3.57	0.79	3.79	0.21	4.01	0.23	4.25	0.24	4.51	0.26
Capital Surcharge (all potable use, per hcf)	1.30	1.08	-0.22	1.08	0.00	1.08	0.00	1.08	0.00	1.08	0.00



Critical Information to Know About **Milpitas' Water and Sewer Systems** and Proposed Rate Change

**IMPORTANT
PROPOSED RATE
INFORMATION INSIDE**

December 2018

Get Involved with Your **Water & Sewer** Utility Rate Change

The City of Milpitas is dedicated to providing our community with important information you need to understand the water and sewer systems in Milpitas. We are also dedicated to providing you, your family, your community and the businesses in our City high quality, reliable water and sewer service. We efficiently serve over 77,000 customers and we're on the job 24/7. In accordance with the Milpitas Municipal Code, the City must set water and sewer rates to ensure sufficient revenues to fully recover 100 percent of the cost of services. The City retained an independent water rate consultant and an independent sewer rate consultant, to evaluate the City's infrastructure needs and operations and maintenance costs, and to prepare rate studies and cost of service analyses for the City. Based on these studies, water and sewer rate increases are proposed to take effect April 1, 2019, and to be increased each July 1 thereafter, commencing July 1, 2019, through and including July 1, 2022.

Why are you receiving this notice?

The City is mailing this notice to you because you are a water and/or sewer customer who is responsible for payment of water and sewer fees or you are the owner of record for a property that receives water and sewer services from the City. This notice describes proposed increases in water and sewer rates for the next five years. This notice also provides information about upcoming workshops and the City Council public hearing to consider these proposed changes. The enclosed rate notice is also posted online at <http://www.ci.milpitas.ca.gov/watersewer2018>.

Why are the rate increases necessary?

The primary reasons for the proposed water rate increases are to pay for increased cost of wholesale potable water from the San Francisco Public Utility Commission and the Santa Clara Valley Water District, and the increased cost in purchasing recycled water from South Bay Water Recycling. Our water fund balance is depleting since we have not passed on cost increases from wholesale water purchases since 2016. Our water system also requires capital improvements to ensure the safe and reliable delivery of water to residents 24/7.

The primary reasons for the proposed sewer rate increases are to pay for the City's share of maintenance, operational and capital improvement costs for the City of San Jose's Regional Wastewater Facility. San Jose treats the sewage generated by Milpitas. The costs are essential to allow for the treatment of wastewater collected throughout the City. Our own sewer system also requires capital improvements to ensure the safe and reliable collection of wastewater generated by residents in the City.

Rates for both water and sewer service are also increasing to keep pace with the inflation and the increased costs in operating the water and sewer systems. For more information, please see the City's water and sewer rate studies and cost of service analyses, available at <http://www.ci.milpitas.ca.gov/watersewer2018>.

Public Hearing on Proposed Water and Sewer Rates

On February 5, 2019 at 7 p.m., the Milpitas City Council will consider approving proposed changes to water and sewer charges. If approved, the rate adjustments will take effect April 1, 2019, and will be adjusted over a period of 5 years, in accordance with the rate schedules included with this notice.

Tuesday, February 5, 2019 at 7 p.m.
City of Milpitas City Hall Council Chambers
455 E Calaveras Blvd., Milpitas, CA 95035



Public Invited to Workshops

In addition to the public hearing on February 5, 2019, the City of Milpitas is hosting a series of workshops to help our community better understand the budget and infrastructure challenges facing the water and sewer systems and review proposed rate increases. Please join us!

Water & Sewer Rate Community Workshops

Tuesday, January 8, 2019, 6-8 p.m.

Pearl Zanker Elementary School
1585 Fallen Leaf Drive
Milpitas, CA 95035

Thursday, January 24, 2019, 6-8 p.m.

Milpitas Community Center Auditorium
457 East Calaveras Blvd.
Milpitas, CA 95035

Want a presentation for your organization?

Is your neighborhood, association or community/civic group interested in having a presentation about the water and sewer systems and proposed rate increases? Please contact milpitasworks@ci.milpitas.ca.gov or call (408) 586-2600.

For more information, please visit ci.milpitas.ca.gov/watersewer2018.

Chinese:

有關更多信息, 請訪問 www.ci.milpitas.ca.gov/watersewer2018

Spanish:

Para obtener más información, visite www.ci.milpitas.ca.gov/watersewer2018

Vietnamese:

Để biết thêm thông tin, hãy truy cập www.ci.milpitas.ca.gov/watersewer2018

How can I protest the proposed increases?

The City Council will hear and consider all written and oral protests to the proposed rate adjustments at the public hearing on Tuesday, February 5 at 7 p.m. Oral comments at the hearing will not count as formal protests unless accompanied by a written protest. Under California's Proposition 218, only one protest per parcel per utility can be counted. Written protests must include:

- The address of the property for which the protest is made
- A statement whether the protest is submitted in opposition to increases to the water and/or sewer rate
- The name and signature of the person submitting the protest

The City Clerk will count all timely written protests and report the total to the City Council. Written protests must be received by the City Clerk's office no later than 5 p.m. on February 5, 2019 or be submitted in writing in the Council Chambers before the public hearing is closed. The City Council will consider all protests and may approve the proposed rate changes.

Please send written protests to:

City of Milpitas Water and Sewer Rate Changes
City of Milpitas – Office of the City Clerk
455 E Calaveras Blvd.
Milpitas, CA 95035





Critical Information to Know About Milpitas' Water System and Proposed Rate Increases

What services are paid for by water rates?

The City is dedicated to providing you, your family, your community and the businesses in our City high quality, reliable water service. We efficiently serve over 77,000 customers and we're on the job 24/7. Water rates pay for the capital, operational, and maintenance costs of the water system, including underground pipes, pump stations, wells, valves, water tanks and reservoirs. We ensure safe reliable delivery of water each day. Water rates also pay for the City to purchase treated water from two water agencies—San Francisco Public Utilities Commission and Santa Clara Valley Water District—also known as our wholesale water agencies. The City also purchases recycled water from South Bay Water Recycling; however, the cost for purchasing recycled water is only paid for by recycled water customers. Water from these agencies is delivered to us and then it goes through our pump stations and pipelines to your homes or businesses every day. The City also has hundreds of miles of water pipelines which are at or near the end of their useful life. Water rates are used to update and replace critical infrastructure to continually maintain a safe, efficient and reliable system.

Why is the City of Milpitas proposing water rate increases?

Water rate increases are necessary for a number of reasons, including increases in the wholesale cost of water for the treated water we purchase from San Francisco Public Utilities Commission and Santa Clara Valley Water District. Our water fund balance is depleting since we have not passed on wholesale water supply rate increases to our customers for the past two years. Additionally, as our water infrastructure continues to age, leaks and failures begin to compromise the reliability of our water system. The City of Milpitas has hundreds of miles of water pipelines which are at or near the end of their useful life.

What will the proposed water rate increases fund?

Based on the water rate study, the proposed water rate increases are necessary to:

- Recover treated current and projected costs of operations and maintenance including cost increases from the water purchased from outside agencies
- Continue necessary infrastructure improvements to provide safe and reliable drinking water
- Ensure favorable credit ratings to minimize debt service costs
- Avoid operations deficits and lack of adequate services
- Continue to maintain the high service levels

How are the proposed water rates structured?

The proposed water rates are comprised of three components: a fixed meter charge, which is charged based on the size of the meter serving the property, and recovers a substantial portion of the City's fixed costs to operate and maintain the water system; a volumetric charge, measured in dollars per hundred cubic feet (or 748 gallons) of water delivered to a parcel; and a capital surcharge. The volumetric charge recovers a portion of the City's fixed costs, and all of the City's variable costs including the costs of purchasing potable and recycled water. The rate for the volumetric charge is determined based on customer class, and customer classes include (a) Residential, (b) Industrial, Institutional, and Construction, (c) Potable Irrigation, (d) Ed Levin Park; (e) City of Milpitas; (f) Recycled Irrigation; (g) Recycled Industrial, Dual-plumbed, Construction; and (h) Recycled City of Milpitas. The capital surcharge collects funds for the City's capital program, which reinvests, replaces and refurbishes the assets that are essential to the provision of potable water. The capital surcharge is imposed on all potable water customers, measured in dollars per hundred cubic feet of potable water delivered to the property. Recycled water customers do not pay the capital surcharge because they do not benefit from the infrastructure funded by the surcharge.

In addition, the District imposes a fire meter charge for properties served by a private fire meter. The fire meter charge is determined based on the size of the fire meter serving the property, and is only imposed on properties with a private fire service meter.

The proposed water rates will phase in the increases over a five year period, commencing April 1, 2019, and each July 1 thereafter beginning July 1, 2019, through and including July 1, 2022.

When was the most recent water rate increase?

The most recent water rate increase was in April 2016. There haven't been any water rate increases since then.

What happens if the water rate increases are not approved?

If the proposed water rates are not adopted, the City will not have adequate funding to meet its capital, operational, and reserve requirements. This would not only violate the municipal code, which requires the water fund to be operated as a self-supporting enterprise, but it would also negatively impact the City's credit rating and would place the water utility at risk of critical infrastructure failure. This would result in much higher costs in the future that would then need to be passed on to the rate payers.





Proposed Maximum Bi-Monthly **Water Rate Schedule**

FY 2018/19 to FY 2022/23

Meter Size	Current	Proposed April 1, 2019	\$ Increase	Proposed July 1, 2019	\$ Increase	Proposed July 1, 2020	\$ Increase	Proposed July 1, 2021	\$ Increase	Proposed July 1, 2022	\$ Increase
5/8"	\$19.44	\$27.01	\$7.57	\$28.63	\$1.62	\$30.34	\$1.72	\$32.17	\$1.82	\$34.10	\$1.93
3/4"	\$29.16	\$40.51	\$11.35	\$42.94	\$2.43	\$45.52	\$2.58	\$48.25	\$2.73	\$51.14	\$2.89
1"	\$48.60	\$67.52	\$18.92	\$71.57	\$4.05	\$75.86	\$4.29	\$80.41	\$4.55	\$85.24	\$4.82
1-1/2"	\$97.20	\$135.03	\$37.83	\$143.13	\$8.10	\$151.72	\$8.59	\$160.83	\$9.10	\$170.48	\$9.65
2"	\$155.52	\$216.05	\$60.53	\$229.02	\$12.96	\$242.76	\$13.74	\$257.32	\$14.57	\$272.76	\$15.44
3"	\$291.60	\$405.10	\$113.50	\$429.40	\$24.31	\$455.17	\$25.76	\$482.48	\$27.31	\$511.43	\$28.95
4"	\$486.00	\$675.16	\$189.16	\$715.67	\$40.51	\$758.61	\$42.94	\$804.13	\$45.52	\$852.38	\$48.25
6" & above	\$972.00	\$1,350.33	\$378.33	\$1,431.35	\$81.02	\$1,517.23	\$85.88	\$1,608.26	\$91.03	\$1,704.76	\$96.50
Fire Service Charge											
2 inch	\$31.10	\$43.21	\$12.11	\$45.80	\$2.59	\$48.55	\$2.75	\$51.46	\$2.91	\$54.55	\$3.09
3 inch	\$58.32	\$81.02	\$22.70	\$85.88	\$4.86	\$91.03	\$5.15	\$96.50	\$5.46	\$102.29	\$5.79
4 inch	\$97.20	\$135.03	\$37.83	\$143.13	\$8.10	\$151.72	\$8.59	\$160.83	\$9.10	\$170.48	\$9.65
6 inch and above	\$194.40	\$270.07	\$75.67	\$286.27	\$16.20	\$303.45	\$17.18	\$321.65	\$18.21	\$340.95	\$19.30
Volumetric Charges (per hcf)											
Residential	\$5.13	\$5.31	\$0.18	\$5.63	\$0.32	\$5.97	\$0.34	\$6.32	\$0.36	\$6.70	\$0.38
Commercial/ Industrial/ Institutional and Construction	\$5.13	\$5.31	\$0.18	\$5.63	\$0.32	\$5.97	\$0.34	\$6.32	\$0.36	\$6.70	\$0.38
Potable Irrigation	\$5.13	\$5.31	\$0.18	\$5.63	\$0.32	\$5.97	\$0.34	\$6.32	\$0.36	\$6.70	\$0.38
Santa Clara County (Ed Levin Park)	\$3.79	\$4.10	\$0.31	\$4.10	\$0.00	\$4.10	\$0.00	\$4.10	\$0.00	\$4.47	\$0.37
Recycled Irrigation	\$2.78	\$3.57	\$0.79	\$3.79	\$0.21	\$4.01	\$0.23	\$4.25	\$0.24	\$4.51	\$0.26
Recycled Water Industrial / Dual Plumbed	\$2.78	\$3.57	\$0.79	\$3.79	\$0.21	\$4.01	\$0.23	\$4.25	\$0.24	\$4.51	\$0.26
Recycled Water: City of Milpitas	\$2.78	\$3.57	\$0.79	\$3.79	\$0.21	\$4.01	\$0.23	\$4.25	\$0.24	\$4.51	\$0.26
Capital Surcharge (all potable use, per hcf)	\$1.30	\$1.08	-\$0.22	\$1.08	\$0.00	\$1.08	\$0.00	\$1.08	\$0.00	\$1.08	\$0.00





Critical Information to Know About Milpitas' Sewer System and Proposed Rate Increases

What services are paid for by sewer rates?

As part of its primary responsibilities to residents, the City must ensure that it can continue to protect public health and safeguard the environment by providing residents and businesses with a reliable, high-quality and cost-effective sewer system. Sewer rates provide funds for staff to maintain the sewer system to ensure sewer pipes are cleaned, aging pipes are repaired and replaced and pump stations are maintained and operated 24/7. In addition, sewer rates provide funds for staff to reduce the number of sanitary sewer overflows and provide emergency response to overflows in order to quickly mitigate impacts to residents and the environment. Milpitas also contracts with the City of San Jose for the treatment of the wastewater collected in the City. Rates are used to pay our share of the City of San Jose's cost to operate and upgrade the wastewater treatment facility.

Why is the City of Milpitas proposing sewer rate increases?

We contract with the City of San Jose for the treatment of sewage generated from the homes and businesses in our city. Our city manages the collection system. The City of San Jose wastewater treatment facility is over 50 years old and has reached the end of its useful life. Major facility reconstruction is needed over the next decade so it continues to operate efficiently and reliably. Milpitas is required to fund its share of the City of San Jose's cost to operate and upgrade the wastewater treatment facility. Milpitas also needs to address its own collection system infrastructure projects which must be complete in the next five years.

What will the proposed sewer rate increases fund?

Based on the sewer rate study, the proposed sewer rate increases are necessary to:

- Recover current and projected costs of the City's operations and maintenance
- Improve infrastructure
- Ensure favorable credit ratings to minimize debt service costs
- Cover the City's share of the San Jose treatment plant operations and infrastructure expenses
- Ensure favorable credit ratings to minimize debt service costs
- Continue high service levels

How are the proposed sewer rates structured?

The City is proposing to charge customers for sewer service based on customer classes, including residential customers and non-residential customers. Residential customers are further categorized as single-family, multi-family, and mobile home parks. Non-residential customers are broken down into commercial customers, monitored sites, non-monitored sites, and institutional customers, and each class of non-residential customers is further broken down into sub-classes. Customer classes are determined based on common sewage characteristics, including flow and strength (units of pollutant per quantity of sewage) of sewage, and accordingly, common patterns and levels of demands placed on the sewer system. As such, different rates are proposed for each type of residential use, and for each non-residential sub-class.

For residential customers, the proposed sewer rates consist of a flat bi-monthly charge per dwelling unit, which varies depending on whether the property is single-family, mobile home, or multi-family residential. For non-residential customers, the proposed sewer rates include a bi-monthly fixed flat fee, and an additional variable charge, measured by hundred cubic feet of metered water consumption. While the fixed flat fee is uniform for all non-residential customer classes, the rate for the variable component will depend on the type of non-residential use, and is determined based on shared characteristics of strength and flow of sewage.

When was the most recent sewer rate increase?

The most recent sewer rate increase was in August 2015. There have not been any sewer rate increases since then.

What happens if the rate increases are not approved?

If the proposed sewer rates are not adopted, the City will have insufficient funds to meet its capital, operational, and reserve requirements. This would not only violate the municipal code, which requires the sewer fund to be operated as a self-supporting enterprise, but it would also negatively impact the City's credit rating and would place the sewer utility at risk of critical infrastructure failure. This would result in much higher costs in the future that would then need to be passed on to the rate payers. Additionally, the City would not be able to meet its contractual obligations to pay for its share of the San Jose-Santa Clara Regional Wastewater Facility capital improvements, thus placing itself at legal risk.





Proposed Maximum Bi-Monthly Sewer Rate Schedule

FY 2018/19 to FY 2022/23

	Current	Proposed April 1, 2019	\$ Increase	Proposed July 1, 2019	\$ Increase	Proposed July 1, 2020	\$ Increase	Proposed July 1, 2021	\$ Increase	Proposed July 1, 2022	\$ Increase
Residential (per Dwelling Unit)											
Single-Family	\$90.27	\$97.60	\$7.33	\$102.52	\$4.92	\$111.07	\$8.55	\$118.34	\$7.27	\$124.14	\$5.80
Multiple-Family	\$69.32	\$74.96	\$5.64	\$78.73	\$3.77	\$85.30	\$6.57	\$90.88	\$5.58	\$95.34	\$4.46
Mobile Home Parks (with subsidy)	\$56.97	\$76.03	\$19.06	\$79.86	\$3.83	\$86.53	\$6.67	\$92.19	\$5.66	\$96.71	\$4.52
Mobile Home Parks (without subsidy)	\$56.97	\$61.61	\$4.64	\$64.70	\$3.09	\$70.08	\$5.38	\$74.66	\$4.58	\$78.28	\$3.62
Non-Residential Fixed Flat Fee (per bill)	\$15.27	\$24.30	\$9.03	\$25.03	\$0.73	\$25.78	\$0.75	\$26.55	\$0.77	\$27.35	\$0.80
Commercial (per HCF)											
Motels and Hotels	\$4.36	\$4.36	\$0.00	\$4.58	\$0.22	\$4.97	\$0.39	\$5.37	\$0.40	\$5.75	\$0.38
General Office	\$4.67	\$4.67	\$0.00	\$5.44	\$0.77	\$5.67	\$0.23	\$6.14	\$0.47	\$6.84	\$0.70
City of Milpitas	\$4.18	\$4.18	\$0.00	\$4.61	\$0.43	\$4.91	\$0.30	\$5.31	\$0.40	\$5.80	\$0.49
Service Stations	\$4.34	\$4.34	\$0.00	\$4.54	\$0.20	\$4.93	\$0.39	\$5.32	\$0.39	\$5.70	\$0.38
Eat/Drink Establishments	\$7.49	\$7.49	\$0.00	\$7.49	\$0.00	\$8.11	\$0.62	\$8.73	\$0.62	\$9.06	\$0.33
Convalescent Hosp/ Daycare	\$4.23	\$4.23	\$0.00	\$4.46	\$0.23	\$4.84	\$0.38	\$5.23	\$0.39	\$5.60	\$0.37
Personal Services, Laundries	\$3.95	\$3.95	\$0.00	\$4.23	\$0.28	\$4.56	\$0.33	\$4.92	\$0.36	\$5.31	\$0.39
Electrical/ Electronics	\$4.59	\$4.59	\$0.00	\$5.35	\$0.76	\$5.58	\$0.23	\$6.04	\$0.46	\$6.72	\$0.68
Machinery Manufacture	\$6.08	\$6.08	\$0.00	\$6.70	\$0.62	\$7.12	\$0.42	\$7.70	\$0.58	\$8.43	\$0.73
Monitored Sites (per HCF)											
RockTenn (Jefferson Smurfit)	\$4.67	\$8.35	\$3.68	\$8.35	\$0.00	\$9.39	\$1.04	\$10.11	\$0.72	\$10.46	\$0.35
T. Marzetti Co.	\$8.34	\$9.16	\$0.82	\$9.63	\$0.47	\$10.65	\$1.02	\$11.48	\$0.83	\$12.09	\$0.61
Prudential Overall Supply	\$6.70	\$6.70	\$0.00	\$6.70	\$0.00	\$7.08	\$0.38	\$7.66	\$0.58	\$8.42	\$0.76
Siemens Water Tech	\$4.91	\$4.91	\$0.00	\$5.61	\$0.70	\$5.87	\$0.26	\$6.36	\$0.49	\$7.06	\$0.70
Elmwood Rehabilitation	\$5.49	\$5.49	\$0.00	\$5.49	\$0.00	\$5.89	\$0.40	\$6.35	\$0.46	\$6.69	\$0.34
Linear Technology	\$4.59	\$4.59	\$0.00	\$5.47	\$0.88	\$5.71	\$0.24	\$6.18	\$0.47	\$6.88	\$0.70
DS W	\$4.59	\$4.59	\$0.00	\$4.80	\$0.21	\$4.92	\$0.12	\$5.34	\$0.42	\$6.04	\$0.70
Magic Tech & Headway Tech	\$4.53	\$4.62	\$0.09	\$5.82	\$1.20	\$6.07	\$0.25	\$6.57	\$0.50	\$7.32	\$0.75
Non-Monitored Sites (per HCF)											
Lucky Pure Water	\$3.94	\$3.94	\$0.00	\$4.21	\$0.27	\$4.54	\$0.33	\$4.91	\$0.37	\$5.29	\$0.38
Milpitas Materials	\$3.94	\$3.94	\$0.00	\$4.21	\$0.27	\$4.54	\$0.33	\$4.91	\$0.37	\$5.29	\$0.38
Union Pacific Railroad	\$5.11	\$5.11	\$0.00	\$5.84	\$0.73	\$6.12	\$0.28	\$6.63	\$0.51	\$7.35	\$0.72
Cisco	\$4.59	\$4.59	\$0.00	\$5.35	\$0.76	\$5.58	\$0.23	\$6.04	\$0.46	\$6.72	\$0.68
Lifescan	\$4.59	\$4.59	\$0.00	\$5.35	\$0.76	\$5.58	\$0.23	\$6.04	\$0.46	\$6.72	\$0.68
Institutional (per HCF)											
Schools/Colleges	\$6.31	\$6.31	\$0.00	\$7.94	\$1.63	\$8.05	\$0.11	\$8.73	\$0.68	\$9.99	\$1.26





City of Milpitas
Public Works
455 E Calaveras Blvd.
Milpitas, CA 95035

Information Enclosed

Proposed Water and Sewer Rate Change

PRESORT
STANDARD
U.S. POSTAGE PAID
SANTA CLARA, CA
PERMIT NO. 294

*****ECRWSSDDM*****
POSTAL CUSTOMER



**Proposed Water and
Sewer Rate Change
Information Enclosed**

330

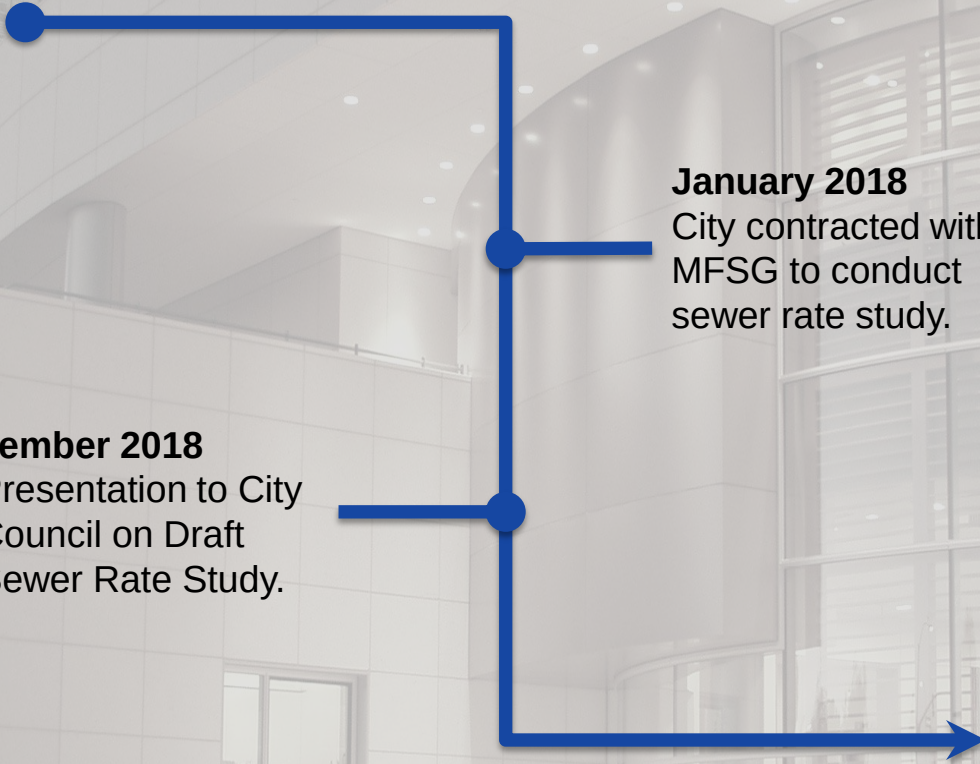
Public Hearing
Proposed Sewer Rate Update
FY2018/19 through FY2022/23

February 5, 2019

City of Milpitas

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Timeline



August 2015

Council Adopted
Sewer Rates.

January 2018

City contracted with
MFSG to conduct
sewer rate study.

September 2018

- Presentation to City
Council on Draft
Sewer Rate Study.

November 29, 2018

- Follow-up
Presentation to City
Council on Draft
Sewer Rate Study.
- Council approves
community
engagement and
Prop 218 process

Community Engagement

27,273 – Prop 218 mailers
with background information

3 – Community Workshops

2 – neighborhood meetings

3 – multilingual outreach material

7 – articles/advertisements

4,800 – e-blast subscribers

3 – newspaper articles

1 – informational video

28 – social media posts

7,000 – people reached
through social media posts and
events

1 – dedicated website

Why are we proposing sewer rate changes?

To ensure adequate funding to operate and maintain the sewer system

- No sewer rate increases since August 2015 despite inflation/cost increases.
- Recover cost for City's O&M of collection system and City's share of O&M for the SJ/SC Treatment Facility.

To ensure adequate investment in the aging infrastructure for collection and treatment systems

- City's share for treatment facility capital costs is expected to be approximately \$65 million over the next 5 years.
- Over \$10 million needed to improve reliability of City's collection system over the next 5 years.

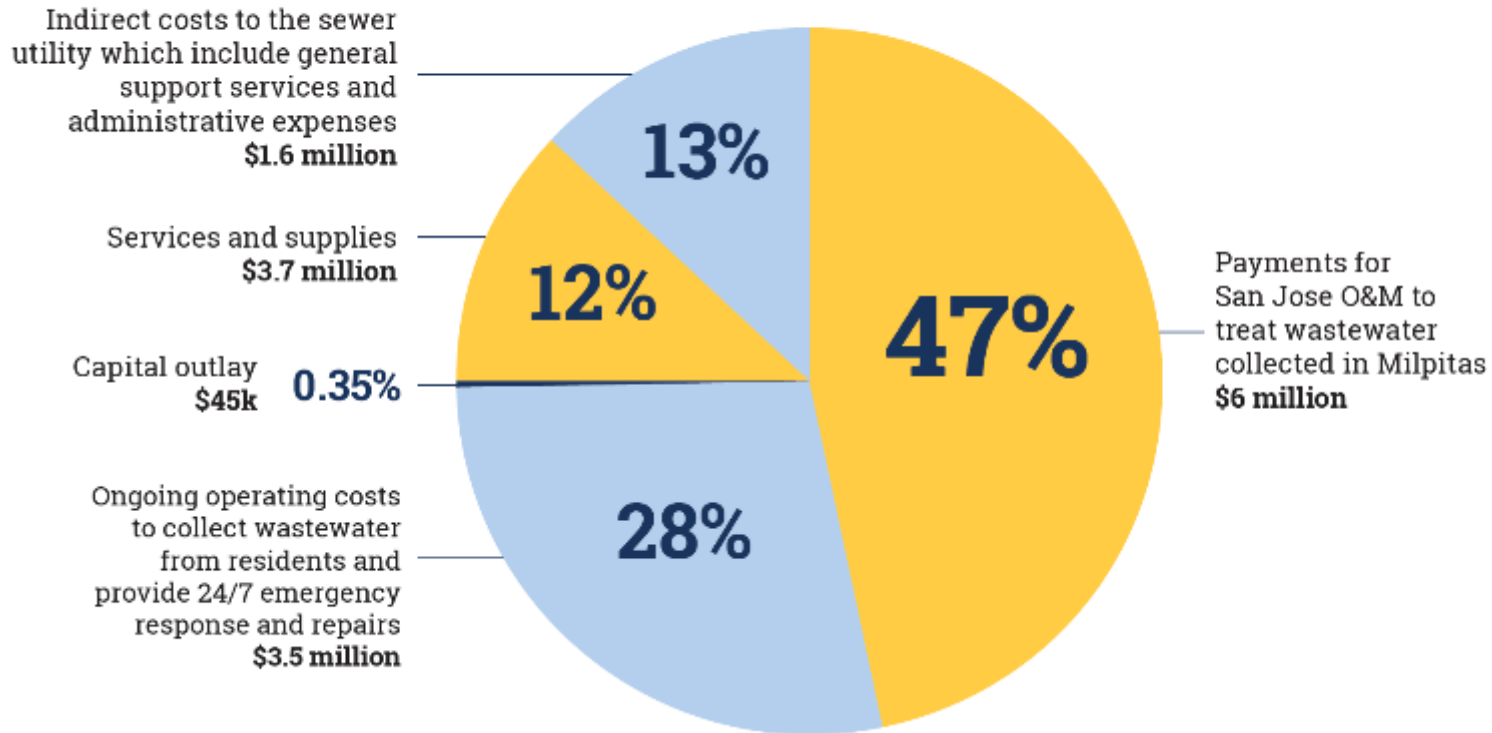
To update the sewer rate structure

- Recover personnel costs through the flat rate
- Recover cost of service based on 2015 flow assumptions used by the City of San José to allocate costs to the City.

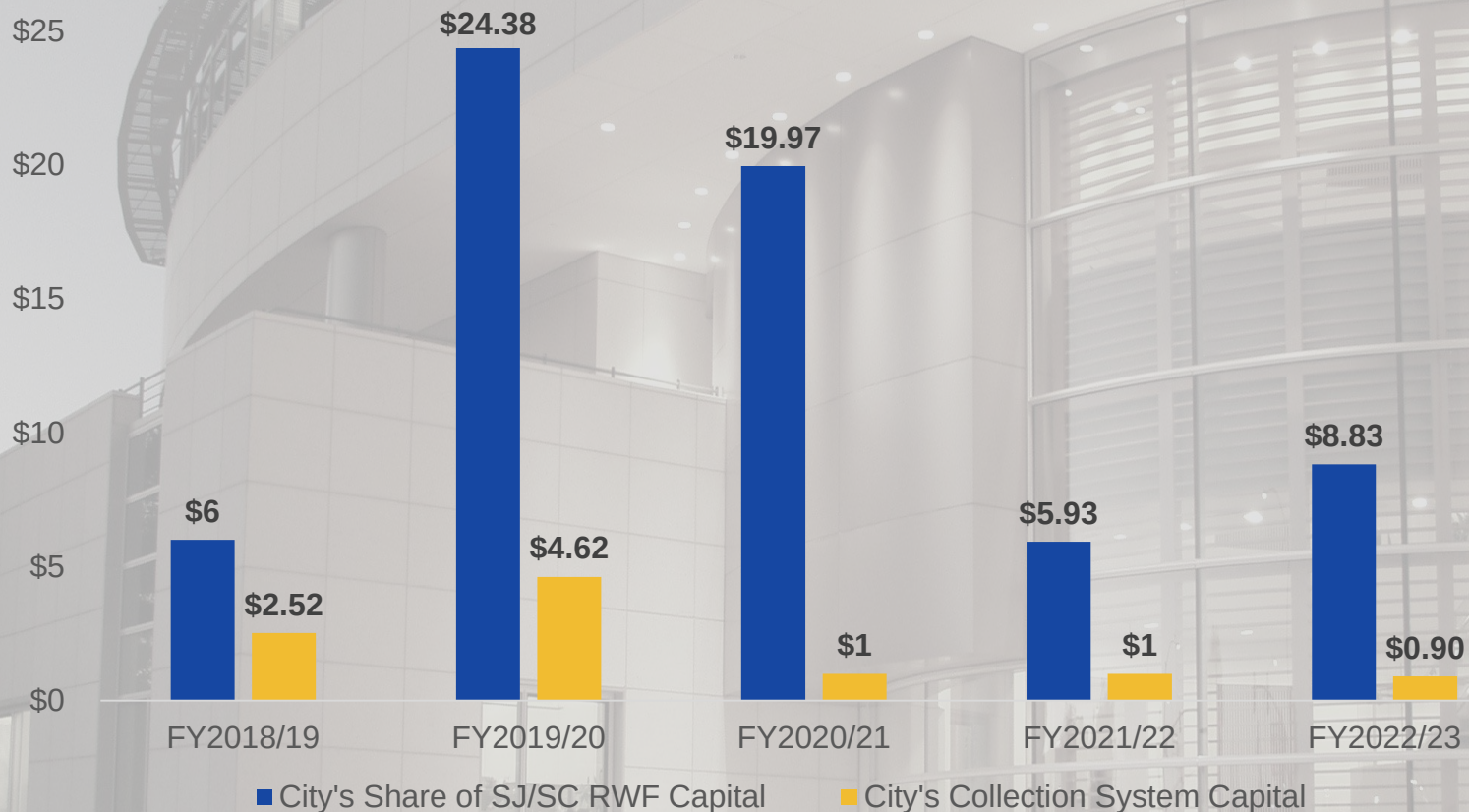
What services are paid for by the sewer rates?

Sewer Operating Expenses

FY 2018/19 - \$14.8 million



What capital improvements are paid for by the sewer rates?



Projected Capital Expenses (\$ in millions)
City's share for SJ/SC Treatment Facility and City's Collection System

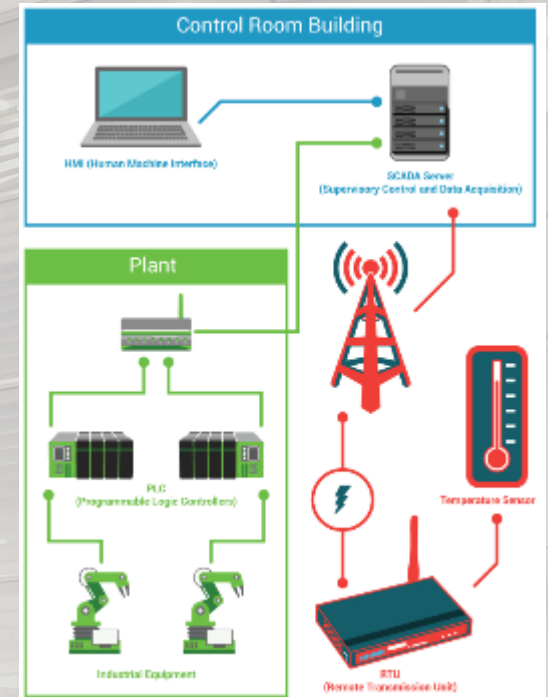
Key Capital Improvement Projects



RWF projects for reliable treatment and odor mitigation



Main Lift Odor Emissions Control



SCADA System

Financing Capital Improvement Projects

Existing Debt

- In 2017, the City refinanced the 2006 COPs with new Wastewater Bonds with a principal balance of \$4,725,000. Annual principal and interest payments of approx. \$650,000 will continue through FY 2027.

Proposed New Bonds

Proposed two debt issues to cover City's share of Capital Improvements at SJ/SC Regional Wastewater Facility

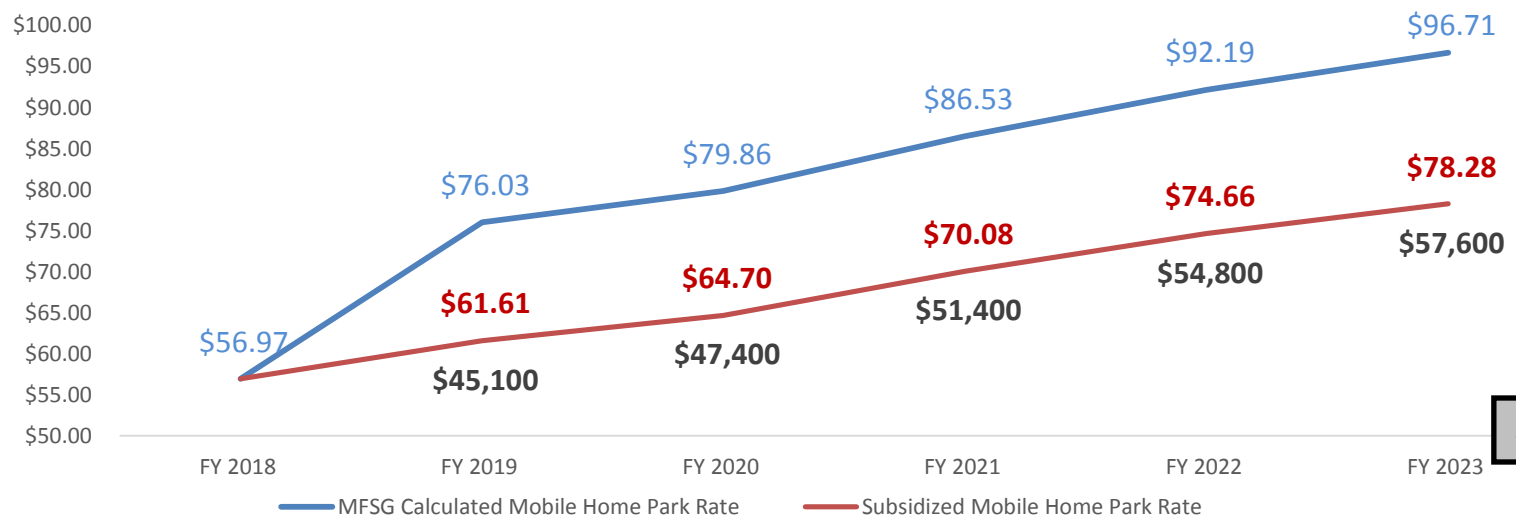
- debt issuance in FY 2020 for \$20 million and a debt issuance in FY 2021 for \$15 million.
- Each bond issues is assumed to have issuance costs equal to 1.5% of the principal amount, an interest rate of 5.5% and a payment term of 30 years.

How are the proposed sewer rates structured?

- Residential customer class structure is based on household size and flow
- Commercial customer class structure is based on flow and effluent strength
 - Effluent strength (BOD, TSS, NH_3) data is collected on a customer class basis
- Flat Fee costs are allocated based between Residential and Non-Residential based on Dwelling Unit
 - Flat Fee costs are allocated between Residential classes (Single Family, Multiple Family, Mobile Homes) based on Flow

Mobile Home Park Rates

- San Jose's 2015 study updated the flow allocation for Mobile Home Parks (63 gpd).
- City's 2015 sewer rate study set Mobile Home Park sewer rates at 51 gpd, based on the flow allocation for SFR and MFR.
- Rate study aligns mobile home park flow with allocation from San Jose's to match San Jose's annual billing for sewer treatment.
 - disproportionate increase in Mobile Home Park rates when compared to SFR and MFR rates.



Bill Impact

Residential Customer Class	Current Bi-Monthly Rate	Proposed Maximum Bi-Monthly Rate FY 2018-19	Maximum Monthly Increase
Single-Family Residential	\$90.27	\$97.60	\$3.67
Multi-Family Residential	\$69.32	\$74.96	\$2.82
Mobile Home Park (without subsidy)	\$56.97	\$76.03	\$9.53
Mobile Home Park (with subsidy)	\$56.97	\$61.61	\$2.32

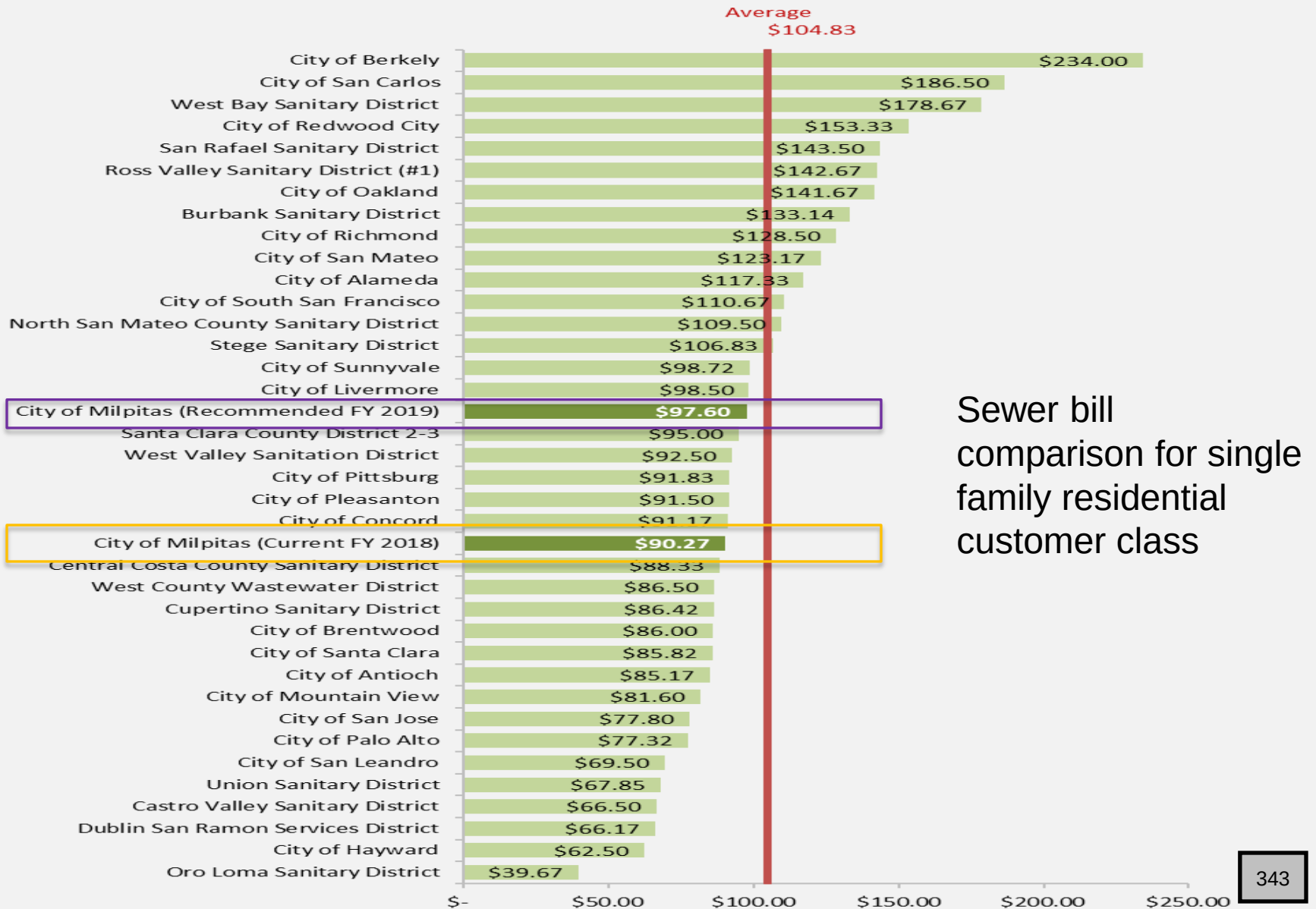
**Bi-Monthly Sewer Bill Example FY 2018/19:
Residential Customer Class**

Proposed Sewer Rate Fee Schedule

	Proposed FY 2019	Proposed FY 2020	Proposed FY 2021	Proposed FY 2022	Proposed FY 2023
<u>Residential (per Dwelling Unit)</u>					
Single-Family	\$97.60	\$102.52	\$111.07	\$118.34	\$124.14
Multiple-Family	\$74.96	\$78.73	\$85.30	\$90.88	\$95.34
Mobile Home Parks (without subsidy)	\$76.03	\$79.86	\$86.53	\$92.19	\$96.71
Mobile Home Parks (with subsidy)	\$61.61	\$64.70	\$70.08	\$74.66	\$78.28
Non-Residential Fixed Flat Fee (per bill)	\$24.30	\$25.03	\$25.78	\$26.55	\$27.35

In addition to the fixed flat fee, commercial, monitored sites, non-monitored sites, and institutional customers are billed based on Flow (HCF) and effluent strength.

Sewer Bill Comparison

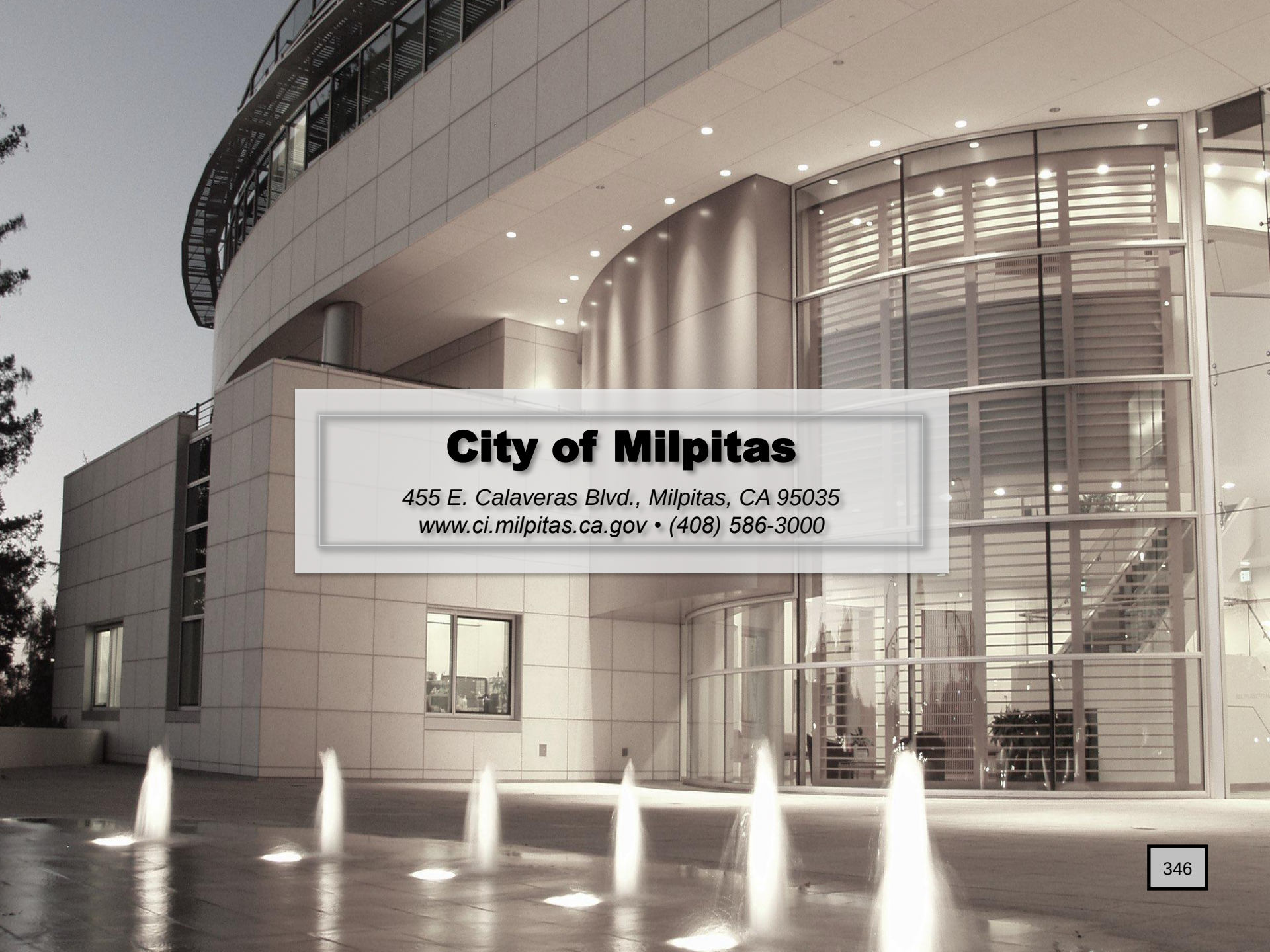


Next Steps/Follow-up Actions

- Proceed with actions to secure bonds for FY2020
 - funding needed by July 1, 2019 for capital contribution
- Evaluate options for subsidy programs and bring forward for Council consideration as part of the FY 19-20 budget process.
 - Leverage existing subsidy programs to minimize administrative costs to the City
 - Evaluate all potential subsidy programs in the context of other Council and community priorities

Recommendations

1. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases.
2. Move to close the public hearing following all speakers.
3. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protests.
4. City Attorney shall read aloud the title of Ordinance No. 208.53.
5. **If no majority protests exist,** move to waive the first reading beyond the title and introduce Ordinance No. 208.53 to approve proposed sewer rates for FY 2018-19 through FY 2022-23. Ordinance No. 208.53 is entitled “AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO SEWER SERVICE CHARGES.”
6. Approve subsidy program for Mobile Home Park customer class

A photograph of the City of Milpitas building at dusk. The building is a modern, curved structure with a light-colored stone or concrete facade and large glass windows. The interior lights are on, and the building is reflected in the water of a fountain in the foreground. The fountain has several jets of water spraying upwards. The sky is dark, and some trees are visible on the left side of the frame.

City of Milpitas

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Backup material for agenda item:

Conduct a Public Hearing to Consider Protests Against Proposed Water and Recycled Water Rates for FY 2018-19 through FY 2022-23

Recommendation:

1. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases
2. Move to close the public hearing following all speakers
3. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protest.
4. City Attorney shall read aloud the title of Ordinance No. 120.48.
5. If no majority protest exists, move to waive the first reading beyond the title and introduce Ordinance No. 120.48 to approve updated water and recycled water rates for FY 2018-19 through FY 2022-23. Ordinance is entitled: "AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 1 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO WATER SERVICE CHARGES."



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing to Consider Protests Against Proposed Water and Recycled Water Rates for FY 2018-19 through FY 2022-23
Category:	Public Hearings-Community Services and Sustainable Infrastructure
Meeting Date:	2/5/2019
Staff Contact:	Tony Ndah, 408-586-2602
Recommendation:	1. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases 2. Move to close the public hearing following all speakers 3. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protest. 4. City Attorney shall read aloud the title of Ordinance No. 120.48. 5. If no majority protest exists, move to waive the first reading beyond the title and introduce Ordinance No. 120.48 to approve updated water and recycled water rates for FY 2018-19 through FY 2022-23. Ordinance is entitled: "AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 1 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO WATER SERVICE CHARGES."

Background:

The City of Milpitas owns and operates a safe drinking water distribution system in accordance with State regulations, and per Title 4, Chapter 3, Section 4.00 of the Milpitas Municipal Code, must set water rates to ensure sufficient revenues to fully recover 100% of the cost to provide water to approximately 17,000 customer accounts, serving a population of about 77,000 residents in the City.

The City purchases potable water from the San Francisco Public Utilities Commission (SFPUC), which delivers treated water through its Hetch Hetchy Aqueduct from the Sierra Nevada mountain range. The City also purchases potable water from the Santa Clara Valley Water District (SCVWD), which receives its raw water from the Sacramento-San Joaquin River Delta, delivered through the State Water Project and Federal San Felipe Project. The City also purchases Recycled water from South Bay Water Recycling (SBWR) and the water is retailed to customers in the City. Historically, the City's potable water supply has consisted of 67% SFPUC treated water and 33% SCVWD treated water.

In December 2015, Council adopted a uniform rate structure for the City, which was implemented over two years, with the first rate increase occurring in January 2016, and the second rate increase occurring in April 2016. There have been no increases in the water rates since then to keep pace with inflation and increases in the cost to purchase wholesale water from SCVWD and SFPUC. As a result, the water utility operating fund is projected to lose \$2.4 million by the end of FY 2018/19 and not meet the reserve fund target of 30% (110 days) of annual operating and maintenance expenses, as required by the Council's reserve policies.

In September 2016, Council approved the creation of a citizen's task force on water rates and one of the objectives of the task force was to explore the feasibility of alternative water rate structures. At a special Council meeting in October 2017, the citizen's task force on water rates recommended Council direct staff to work with a consultant to prepare a comprehensive water rate study, and include an assessment of alternative rate structures for the City that does not violate the conditions of Proposition 218. In November 2017, B Wells Associates (BWA) was retained to prepare a comprehensive water rate and cost of service study,

include an update of the City's existing uniform rate structure and analyze feasible alternative water rate structures for Council consideration. BWA presented the preliminary results of their analysis at the City Council's April 17, 2018 meeting. Following the April 2018 council meeting, staff continued to work with BWA, City Attorney's Office, Finance Department, and City Manager's Office to review and update the results of the study to ensure the proposed rates and structure are in accordance with the provisions of Article XIII D, Section (6)(b) of the California Constitution (commonly referred to as Proposition 218).

On November 29, 2018 Council received an updated water rates study and presentation from staff on proposed water rates for Fiscal Year 2018-19 through Fiscal Year 2022-23. After careful consideration of the information presented by staff, Council directed staff proceed with community engagement on the proposed water rates, which included administering the Proposition 218 majority protest process and setting a public hearing for February 5, 2019.

Analysis:

Based on the updated results of BWA's study, staff has determined that increases in water service rates, fees and charges are necessary to recover current and projected costs of operations and maintenance, including cost increases in purchased wholesale water, and continue the capital infrastructure improvements necessary to provide safe and reliable drinking water; maintain the operational and financial stability of the City; ensure favorable credit ratings to minimize debt services costs related to financing necessary infrastructure improvements; avoid operational deficits and the depletion of reserves; and continue to maintain our high levels of service.

The draft water rates study is a five-year analysis for the period from fiscal years 2018/19 - 2022/23, which includes a multi-year financial forecast, a projection of revenue requirements, and a rate review and analysis. The rate review and analysis includes modifications to the current rates to improve the City's revenue and financial stability and fund the City's water system capital program.

The City is committed to efficiently providing high quality, reliable water service at the lowest possible rates for residents, while protecting the water resources and public health of our community. In addition, it is critically important that the City continually invests in its water system and the assets it holds and keeps pace with inflation and other cost increases.

Operating Costs

For sound financial operations of the City's water system, the revenues it generates must be sufficient to meet its operating expenditures. Revenue needs are defined as the amount of revenues that must be recovered through water service rates, fees and charges to cover annual operating expenditures. Use of the City's General Fund is not recommended to support water operating expenditures since the users of the utility should be paying for the cost of service, in accordance with industry practices and the City's Municipal Code. Using General Fund revenues to support water operating expenditures presents an inequitable disconnect between those who pay and those who benefit. Additionally, General Fund tax revenues are required to fund the City's general services, such as police, fire, and parks. Operating expenses for the water fund consists of the costs to purchase wholesale water, direct personnel costs, indirect personnel costs, and costs for services and supplies. Approximately 63% of the City's operating expenses is attributed to the purchase of water from SFPUC and SCVWD. In 2018-2019, it is estimated that the operating costs of the water utility system will be approximately \$28 million. BWA's study estimates that the total volume of potable water purchased from water wholesalers will increase slightly each fiscal year and operating costs for the water utility will increase by 4% each year through FY 2022/23.

Capital Improvement Program

As a water service provider, the City must maintain the distribution system that provides water to our customers in compliance with numerous federal and state laws and regulations. This includes 200 miles of pipeline, 4 pump stations, 5 storage tanks and other equipment. The City has identified approximately \$46.3 million of high priority projects in its water system Capital Improvement Program needed over the next 5 years. Some of the critical projects include:

- **Well Upgrade Project** – project would be used to construct a new well and improve the reliability, taste, odor, and water hardness at the City’s existing wells. Historically, the City’s wells have provided the City with emergency water supply, in case SFPUC and/or SCVWD systems are not available due to an earthquake or other catastrophe.
- **Aging Water System/Seismic Improvements Projects** – project components include seismic rehabilitation to the City’s “back-bone” water system and purchase of water system materials and equipment for emergency response to a major disaster. These seismic features provide additional reliability and redundancy to the City’s water system.
- **Water Supervisory Control and Data Acquisition (SCADA) Project** – SCADA also allows for remote monitoring and operation of pumps and valves to implement corrective actions and maintain water supply. Currently operators rely on unsophisticated alarms at limited locations and customer complaints to become aware of water system problems. Operators must drive to sites to evaluate the problem and implement corrective action, such as starting a back-up pump, when the main pumps fail.

These projects are needed to improve the reliability of the City’s water system and ensure the safe delivery of potable water to its customers.

The City’s Reserve Policies also require the City to maintain Infrastructure Replacement funds for the Water Utility, and accumulate at least \$2 million a year from the water fund to set-aside for replacement of infrastructure as the infrastructure reaches the end of its useful life. Portions of the City’s water infrastructure are over 60 years old and as the pipelines continue to age, the risk of infrastructure failure increases.

Reliability of water infrastructure can be measured by physical integrity indicators that include the rate at which buried water pipelines fail or leak. When buried water pipelines fail, they often form craters or sink holes in the ground which can cause damage to vehicles and nearby property and structures. Since 2013, City staff has responded to approximately 318 mainline and service lateral leaks and breaks. These failures in our water infrastructure highlight the fact that our system is aging and in need of replacement, as most of our water infrastructure will reach the end of its service life in the near future.

The failure of the water infrastructure deprives households and businesses of water for hours to days. Leaking pipes can allow hazardous materials to leach into treated water, creating a public health threat. The delivery of tainted water to households in Flint, Michigan has heightened consumer awareness of water quality. Criminal charges against water and environmental officials in Flint demonstrate the social responsibility inherent in the water delivery sector; hence, it is important to make key investments in our pipeline infrastructure to ensure the system continues to function as intended.

The City implemented a capital surcharge in FY 2016/17. The surcharge is designed to provide adequate ongoing cash funding for water enterprise capital projects, pipeline infrastructure renewal/replacement, and associated debt service. The rate study utilizes a combination of cash and \$20 million in debt financing to fund capital projects, smooth the impact of rate increases on customers, and ensure intergenerational equity. Intergenerational equity means that all those who benefit from infrastructure improvements pay for those improvements over the expected life of the improvements and that the costs are not borne exclusively by the current generation or future generations of water customers. Rather, the costs are equitably shared by all generations through rate adjustments which in turn help to support debt payments on long-term external financing, with terms that are matched to the expected life of the improvements. A brief report on financing options has been attached for reference. Staff, along with the City’s Financial Advisor, will engage the Council on a more in-depth discussion about financing options at the January 29, 2019 Budget Study Session. This will allow staff to receive input prior to proceeding with any external financing for water utility capital improvements.

Operating Reserve Requirement

The City’s water enterprise was in good financial standing, with an estimated \$7 million in operating reserves as of July 1, 2017; however, under the City’s current water rates, the water operating fund is projected to lose about \$2.4 million and the City would need to utilize reserve funds to meet the operating expenses need.

FY 2018/19. As such, the fund target of 30% of the annual operating and maintenance expenses will not be met, as required by the Council's reserve policies.

Tiered Rate Structure Consideration

As part of the water rates study, BWA analyzed the feasibility of implementing a tiered rate structure for the City. Recent court decisions have focused on how tiered rates are calculated. The appellate court decision in *Capistrano Taxpayers Association v. City of San Juan Capistrano* clarified that tiered rates must reflect the proportionate cost of providing the service within each tier. The most common ways agencies justify tiers include the following:

1. Differentials in source of supply costs (i.e., stacking of water supply resources to tiers);
2. Direct assignment of specific costs to specific (upper) tiers (e.g., conservation program costs);
3. Peaking costs associated with operations and maintenance; and
4. Peaking costs associated with capital improvements.

BWA's analysis determined that the City could not use differentials in source of supply costs to justify tier prices because the City does not have wholesale water purchase agreements with different pricing structures tied to amount of water used. BWA's analysis also noted that City could not use direct assignment of specific costs to specific tiers because the City does not, at this time, have direct water conservation program costs significant enough to justify establishing a tiered rate structure.

BWA also analyzed the feasibility of justifying tier costs based on peaking associated with operations and maintenance, and capital improvements. The time of greatest demand on a water system is known as "peak demand." Agencies must construct infrastructure to deliver water at peak times. There are incremental costs associated with creating this excess, peak capacity ("peaking costs") including designing (i.e., sizing), constructing, and operating and maintaining the facilities. These costs may be appropriately allocated to those water users who place greater demands and burdens on a water system. BWA's study determined that the City doesn't have sufficient data at this time to justify a tiered rate structure on the basis of peaking; however, City may begin to gather the necessary data over a multi-year period to justify a tiered rate structure in the future based on peaking factors.

Proposed Rate

The proposed rate alternative maintains the City's uniform rate structure and includes increases to the fixed Service Charge and increases to the volumetric charge for all customer classes. The proposed rate adjustments result in a decrease in the capital surcharge due to the proposed \$20 million water revenue bond.

The proposed rates are shown below.

Quantity Charges:

RATES AND EFFECTIVE DATES FOR QUANTITY CHARGES (\$/HCF)						
Customer Class	Volumetric Charge 4/1/2019	Volumetric Charge 7/1/2019	Volumetric Charge 7/1/2020	Volumetric Charge 7/1/2021	Volumetric Charge 7/1/2022	Capital Surcharge 4/1/2019
Residential:	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70	\$1.08
Commercial/ Industrial/ Institutional/ Construction Meter	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70	\$1.08

Irrigation (potable)	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70	\$1.08
City Accounts (potable)	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70	\$1.08
Ed Levin Park	\$4.10	\$4.10	\$4.10	\$4.10	\$4.47	NA
Recycled - Irrigation	\$3.57	\$3.79	\$4.01	\$4.25	\$4.51	NA
Recycled - Industrial/ Dual Plumbed/ Construction Water	\$3.57	\$3.79	\$4.01	\$4.25	\$4.51	NA
City Accounts (recycled)	\$3.57	\$3.79	\$4.01	\$4.25	\$4.51	NA

Bimonthly Water Meter Charges:

RATES AND EFFECTIVE DATES FOR WATER METER CHARGES (\$/METER SIZE)					
Water Meter Size	Charge 4/1/2019	Charge 7/1/2019	Charge 7/1/2020	Charge 7/1/2021	Charge 7/1/2022
5/8"	\$27.01	\$28.63	\$30.34	\$32.17	\$34.10
3/4"	\$40.51	\$42.94	\$45.52	\$48.25	\$51.14
1"	\$67.52	\$71.57	\$75.86	\$80.41	\$85.24
1½"	\$135.03	\$143.13	\$151.72	\$160.83	\$170.48
2"	\$216.05	\$229.02	\$242.76	\$257.32	\$272.76
3"	\$405.10	\$429.40	\$455.17	\$482.48	\$511.43
4"	\$675.16	\$715.67	\$758.61	\$804.13	\$852.38
6" and above	\$1,350.33	\$1,431.35	\$1,517.23	\$1,608.26	\$1,704.76

Fire Service Charges:

RATES AND EFFECTIVE DATES FOR FIRE SERVICE CHARGE (\$/SIZE OF FIRE SERVICE LINE)					
Fire Service Line Size	Charge	Charge	Charge	Charge	Charge

	4/1/2019	7/1/2019	7/1/2020	7/1/2021	7/1/2022
2"	\$43.21	\$45.80	\$48.55	\$51.46	\$54.55
3"	\$81.02	\$85.88	\$91.03	\$96.50	\$102.29
4"	\$135.03	\$143.13	\$151.72	\$160.83	\$170.48
6" and above	\$270.07	\$286.27	\$303.45	\$321.65	\$340.95

As a result of the proposed rates, fees, and charges for water service, the bill for the average single family residential customer, with a 5/8-inch water meter and using 14 HCF (10,473 gallons) in a two-month period will increase by approximately \$3.52 per month in FY 2018/19 as shown in the table below:

Item	Current Rates	Proposed Maximum Rates FY 2018/19
Fixed Meter Charge	\$19.44	\$27.01
Volumetric Charge	\$5.13 x 14 HCF = \$71.82	\$5.31 x 14 HCF = \$74.34
Capital Surcharge	\$1.30 x 14 HCF = \$18.2	\$1.08 x 14 HCF = \$15.12
2-month Bill Amount	\$109.44	\$116.47
1-month Bill Amount	\$54.72	\$58.24
Monthly Difference		\$3.52

In addition to the rate structure adjustments recommended in FY 2018/19, the rate study estimates the water enterprise requires overall rate increases to potable and recycled water consumption and meter charges (excluding the capital surcharge) in FY 2019/20 through FY 2022/23.

The proposed rate structure would phase in rate increases to meet the City's reserve policy overtime. The City's reserve policy requires the accumulation of 30% of the annual operating and maintenance expenses of the water system. The proposed rate structure does not provide funds to meet this reserve target until FY 2022/23. BWA determined that the City would need to generate 36.5% more revenue from water rates in FY 2018/19 to meet the reserve target in that year. Staff recommends that the City phase in the rates to meet fund reserve targets by FY 2022/23 to prevent rate shock and smooth in rate increases.

Proposition 218 Noticing and Community Engagement

Proposition 218, a state proposition approved by California voters in 1996, added Article XIII D to the California Constitution which requires voter approval prior to the imposition of and new or increases in any existing taxes, assessments, and certain user fees. It also requires local agencies imposing any new or any increases in any existing property-related fees and charges to comply with certain procedural requirements prior to their adoption. Water Service fees and charges are subject to these procedural requirements. Pursuant to Article XIII D, section 6, the City is required to hold a public hearing to consider the proposed water service rates, fees, and charges. Additionally, it is required to provide ratepayers and property owners with a written notice of the proposed rate increases, and the date, time and location of the public hearing on the proposed rate increase. Subdivision (a) of Section 6 of the California Constitution's Article XIII D requires that 45 days must elapse from the time the notices are mailed until the public hearing on the proposed rate increases.

On December 21, 2018, the required notices were mailed to the record property owners, tenants, and businesses in the City advising them of the proposed rate changes and informing them that a public hearing on the proposed rate increases would be held on February 5, 2019. There are 20,434 separate parcels in the City; therefore, the City would need to receive 10,218 valid protests (only counting one protest per parcel) for there to be a majority protest under Proposition 218 that would preclude the Council from approving the

proposed rate increases. Property owners may turn in (by mail or hand delivery) protest letters at any time prior to the close of the public hearing. Immediately after the close of the public hearing, staff will complete counting and totaling all protest letters. If there is not a majority protest, the Council can approve the rate increase and introduce the ordinance imposing the new water rates.

In an effort to educate residents on the City's water system and provide information to residents on the proposed rates, City staff held community meetings and workshops on the dates and at the locations listed below:

- January 8, 2019 – Pearl Zanker Elementary School
- January 12, 2019 – Milpitas Community Center
- January 23, 2019 – Sunnyhills Neighborhood Association at the San Jose Evergreen Community College Milpitas College Extension
- January 24, 2019 – Milpitas Community Center
- January 30, 2019 – Pioneer Mobile Home Park

In addition, a dedicated webpage on the City's website was established and updated regularly, and included a frequently asked questions section and other pertinent information. The information was posted in such a manner to allow for the translation into over 100 languages utilizing the built-in Google Translator tool. Staff also posted information about the rates on the City's social media accounts (i.e., Facebook, Nextdoor, Twitter), including a brief two-minute video. The legal notice of the Public Hearing was published in the Milpitas Post on January 25, 2019, in advance of City Council consideration of these proposed rate increases, and City staff conducted interviews with Patch.com and Milpitas Beat regarding the proposed rate changes, and, in addition, calendar events for the community meetings were published on their respective websites. Printed advertisements for the January 24 community meeting were placed in La Oferta (28,800 circulation), Vietnam Daily News (12,000 circulation) and The World Journal (42,000 circulation). In addition, FilAmStar published an article on the water and sewer services and community meetings.

Flyers were placed in City facilities and available at various events, including the Lunar New Year community event and other community events, including the Milpitas Council PTA, which were available in Chinese, English, Spanish and Vietnamese. Information was also posted to the City's local government access channel and e-mail blasts were sent to nearly 5,000 community members throughout the month of January.

Rate Subsidy Programs

California public agencies providing water service may implement low-income rate assistance programs, but rate discounts must be funded from non-rate sources of revenues such as late fees or other unrestricted funding sources. The City may choose to implement a low-income rate assistance program, and qualify low-income customers based on those already enrolled in existing assistance programs such as the Pacific Gas and Electric (PG&E) Care program, to minimize administration costs.

Based on Council direction on November 29, 2018, staff will evaluate various options and bring forward a discussion of various rate assistance program options for Council to consider as part of the City's annual budget process.

Policy Alternatives:

Alternative 1: Do Not Approve Proposed Water Rate Increases

Pros: The water customers would not have to pay additional costs for the service.

Cons: This action would delay action on adjusting water rates. The water fund is projected to lose \$2.4 million by the end of FY 2018/19, which will result in depletion of the operating reserves, with reserves falling below the level required by Council policy. Furthermore, the water fund will be in violation of the Municipal Code, which requires that the water fund be operated as a self-supporting enterprise. This, in turn, will also

negatively impact future credit ratings for any external financing. A delay in adjusting water rates also impacts the City's ability to fund critical capital improvement projects needed to maintain water system reliability and replace/rehabilitate the pipeline infrastructure.

Reason for not Recommending: Delaying approval of the proposed rate increases would result in continued operating losses for the utility, thus placing it at financial risk and negatively impacting future credit ratings for any external financing. The delay would also result in inadequate investment in aging infrastructure, potentially impacting the utility's ability to operate in a safe and reliable manner.

Fiscal Impact:

If the Proposition 218 majority protest process is concluded without a majority protest and the water rate adjustments are approved as presented, the new water rate structure would generate enough revenues that would help to ensure the fiscal sustainability of the Water Fund.

California Environmental Quality Act:

This action is exempt from CEQA as there will be no physical change to the environment.

Recommendations:

1. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases
2. Move to close the public hearing following all speakers
3. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protest.
4. City Attorney shall read aloud the title of Ordinance No. 120.48.
5. If no majority protest exists, move to waive the first reading beyond the title and introduce Ordinance No. 120.48 to approve updated water and recycled water rates for FY 2018-19 through FY 2022-23. Ordinance is entitled: "AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 1 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO WATER SERVICE CHARGES."

Attachments:

- a) Ordinance No. 120.48 for Introduction (1st Reading)
- b) Water Rates Study (November 2018)
- c) Proposition 218 Notice

PLEASE NOTE:

This copy of Ordinance No. 120.48 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 120.48

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTION 6 OF CHAPTER 1, TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO WATER SERVICE CHARGES

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 _____. Said 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

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the provision of potable and recycled water services by the City of Milpitas (“City”) require the City to incur capital, operating, maintenance, replacement, and other costs related to the provision of such services; and

WHEREAS, the City engaged Bartle Wells Associates to prepare a cost of service analysis and water rate study (the “Rate Study”); and

WHEREAS, as a result of the Rate Study, the City Council has determined that increases in the rates for its water service charges are in the best interests of the City and in keeping with sound business and financial management of the water enterprises; and

WHEREAS, the City Council hereby finds and determines the following with regard to the proposed rate increases to the water service charges:

1. The rate structure for the water service charges has three components: (a) a Water Meter Charge, which is a fixed bimonthly charge determined on the basis of the size of the water meter (in inches) serving a customer’s property and calculated to recover a portion of the City’s fixed costs in providing water service; (b) a Volumetric Charge, which is a uniform rate determined based on customer class, imposed on the basis of the amount of water delivered to a customer in hundreds of cubic feet (“HCF”) and calculated to recover a portion of the City’s fixed and variable costs of providing water service; and (c) a Capital Surcharge imposed on the basis of the amount of water delivered to a customer in HCF and calculated to recover capital costs of the water system; and
2. The rate structure also has a Fire Meter Charge which is: (a) imposed on certain properties requiring a large private fire suppression system, and upon the request of the customer or property owner for the delivery of water to the property for the purpose of fire service protection; and (b) established on the basis of the size of the fire service line (in inches) and calculated to recover the cost of providing water to such properties for private fire service protection; and

WHEREAS, the City hereby finds and determines that in accordance with the provisions of California Constitution Article XIII D, Section 6 (“Article XIII D”):

1. The City identified the parcels upon which the water service charges are proposed to be imposed, and calculated the amount of the water service charges proposed to be imposed on each parcel; and
2. The City caused a written notice to be mailed to the record owners of property upon which the proposed water service charges will be imposed and the customers of each parcel upon which the proposed increases to the water service charges are proposed for imposition, which explained: (a) the amount of the water service charges; (b) the basis on which they were calculated; (c) the reason for the increases; and (d) the date, time, and location of the public hearing on the proposed increases; and
3. On February 5, 2019 (more than 45 days after mailing the notice), the City conducted a public hearing and considered all written protests against the proposed increases to the rates for the water service charges; and
4. At the conclusion of the public hearing, written protests against the proposed increases to the rates for the water service charges were not presented by a majority of property owners of record and customers subject to the proposed water service charges; and

WHEREAS, the adoption of the proposed increases to water service charges are statutorily exempt from the requirements of the California Environmental Quality Act under California Resources Code Section 21080(b)(8).

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 Rate Study, City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.13 THROUGH VIII-1-6.16

Sections VIII-1-6.13, VIII-1-6.14, VIII-1-6.15 and VIII-6.16 of the Milpitas Municipal Code are hereby amended to read as follows:

VIII-1-6.13 - Quantity Charges

The quantity charges include a volumetric charge and a capital surcharge. The uniform rates for the quantity charges are billed bimonthly and imposed per hundred cubic feet ("HCF") for metered water service. The rates and effective dates for the quantity charges shall be those set forth below.

RATES AND EFFECTIVE DATES FOR QUANTITY CHARGES (\$/HCF)						
Customer Class	Volumetric Charge <u>1/15/2016</u> 4/1/2019	Volumetric Charge <u>4/1/2016</u> 7/1/2019	Volumetric Charge <u>7/1/2020</u>	Volumetric Charge <u>7/1/2021</u>	Volumetric Charge <u>7/1/2022</u>	Capital Surcharge <u>4/1/2016</u> 9
Residential:	\$5.31 <u>\$4.75</u>	\$5.13 <u>\$5.63</u>	<u>\$5.97</u>	<u>\$6.32</u>	<u>\$6.70</u>	\$1.08 <u>30</u>
Commercial/ Industrial/ Institutional/ Construction Meter	\$5.31 <u>\$4.75</u>	\$5.63 <u>\$5.13</u>	<u>\$5.97</u>	<u>\$6.32</u>	<u>\$6.70</u>	\$1.08 <u>30</u>
Irrigation (potable)	\$5.31 <u>\$4.75</u>	\$5.63 <u>\$5.13</u>	<u>\$5.97</u>	<u>\$6.32</u>	<u>\$6.70</u>	\$1.08 <u>30</u>
City Accounts (potable)	\$5.31 <u>\$4.75</u>	\$5.63 <u>\$5.13</u>	<u>\$5.97</u>	<u>\$6.32</u>	<u>\$6.70</u>	\$1.08 <u>30</u>
<u>Santa Clara County (Ed Levin Park)*</u>	\$4.10 <u>\$3.75</u>	\$4.10 <u>\$3.79*</u>	<u>\$4.10</u>	<u>\$4.10</u>	<u>\$4.47</u>	NA
Recycled - Irrigation	\$3.57 <u>\$2.42</u>	\$2.78 <u>\$3.79</u>	<u>\$4.01</u>	<u>\$4.25</u>	<u>\$4.51</u>	NA
Recycled - Industrial/ Dual Plumbed/ Construction Water	\$3.57 <u>\$2.42</u>	\$3.79 <u>\$2.78</u>	<u>\$4.01</u>	<u>\$4.25</u>	<u>\$4.51</u>	NA
City Accounts (recycled)	\$3.57 <u>\$2.42</u>	\$3.79 <u>\$2.78</u>	<u>\$4.01</u>	<u>\$4.25</u>	<u>\$4.51</u>	NA

The ~~County of Santa Clara~~ Santa Clara County (Ed Levin Park) rate is established by contract to be equivalent to the San Francisco Public Utilities Commission ("SFPUC") wholesale rate. The FY 2016~~8-17~~9 SFPUC rate is ~~estimated to be \$3.79~~4.10/HCF and staff will revise to actual rate each fiscal year once SFPUC adopts their ~~FY 2016-17~~ wholesale rate.

FY = Fiscal Year

1 HCF = One Hundred Cubic Feet = 748 Gallons

VIII-1-6.14 - Bimonthly Water Meter Charges

(a) Water Meter Charges: The rates and the effective dates for the bimonthly water meter charges, determined on the basis of the size of the water meter, shall be as follows:

RATES AND EFFECTIVE DATES FOR WATER METER CHARGES (\$/METER SIZE)					
Water Meter Size	Charge 4/15/2016	Charge 7/1/2016	Charge <u>7/1/2020</u>	Charge <u>7/1/2021</u>	Charge <u>7/1/2022</u>
5/8"	\$27.01 \$18.00	\$28.63 \$19.44	<u>\$30.34</u>	<u>\$32.17</u>	<u>\$34.10</u>
3/4"	\$40.51 \$27.00	\$42.94 \$29.16	<u>\$45.52</u>	<u>\$48.25</u>	<u>\$51.14</u>
1"	\$67.52 \$45.00	\$71.57 \$48.60	<u>\$75.86</u>	<u>\$80.41</u>	<u>\$85.24</u>
1½"	\$135.03 \$90.00	\$143.13 \$97.20	<u>\$151.72</u>	<u>\$160.83</u>	<u>\$170.48</u>
2"	\$216.05 \$144.00	\$229.02 \$155.52	<u>\$242.76</u>	<u>\$257.32</u>	<u>\$272.76</u>
3"	\$405.10 \$270.00	\$429.40 \$291.60	<u>\$455.17</u>	<u>\$482.48</u>	<u>\$511.43</u>
4"	\$675.16 \$450.00	\$715.67 \$486.00	<u>\$758.61</u>	<u>\$804.13</u>	<u>\$852.38</u>
6" and above	\$1,350.33 \$900.00	\$1,431.35 \$972.00	<u>\$1,517.23</u>	<u>\$1,608.26</u>	<u>\$1,704.76</u>

(b) For Temporary Construction Meter Customers, the bimonthly water meter charges shall be equal to the bimonthly water meter charges for three-inch water meters set forth in Section 6.14(a).

No adjustments shall be granted to any water account holder due to variation in the days of service for any bimonthly billing period. Acceptable days of service range from 50 to 69 days per bimonthly billing period.

VIII-1-6.15 - Fire Service Charges

The rates and effective dates for the bimonthly fire service charges, determined on the basis of the size of the fire service, shall be as follows:

RATES AND EFFECTIVE DATES FOR FIRE SERVICE CHARGE (\$/SIZE OF FIRE SERVICE LINE)					
Fire Service Line Size	Charge 4/15/2016	Charge 7/1/2016	Charge <u>7/1/2020</u>	Charge <u>7/1/2021</u>	Charge <u>7/1/2022</u>
2"	\$43.21 \$28.80	\$45.80 \$31.10	<u>\$48.55</u>	<u>\$51.46</u>	<u>\$54.55</u>
3"	\$81.02 \$54.00	\$85.88 \$58.32	<u>\$91.03</u>	<u>\$96.50</u>	<u>\$102.29</u>
4"	\$135.03 \$90.00	\$143.13 \$97.20	<u>\$151.72</u>	<u>\$160.83</u>	<u>\$170.48</u>
6" and above	\$270.07 \$180.00	\$286.27 \$194.40	<u>\$303.45</u>	<u>\$321.65</u>	<u>\$340.95</u>

Water flowing through fire suppression systems shall be used solely for the purpose of fire protection and testing of such fire protection systems. In the event that water service provided through fire suppression systems is used for purposes other than for fire protection or the testing of such fire protection systems, the quantity charges equal to the quantity charge rates (per HCF) for Commercial/Industrial/Institutional customers shall be imposed.

VIII-1-6.16 - Billing and Effective Dates of Water Rates and Charges

Billing. After the Ordinance adopting the charges set forth in this Section goes into effect, customers shall be subject to the water service charges at the rates and on the effective dates set forth in 6.13 (Quantity Charges), 6.14 (Bimonthly Water Meter Charges), and 6.15 (Fire Service Charges), for services provided on or after ~~January 15, 2016, and April 1, 2016~~April 1, 2019, July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022 respectively. In the absence of amendment of the rates set forth herein or adoption of a new rate ordinance, the rates in effect on ~~April 1, 2016~~July 1, 2022, and set forth herein shall remain in effect until amended or repealed.

SECTION 3. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional, provided, however, that if any decision of a court of competent jurisdiction invalidates the increase of the water service charges set forth in this Ordinance, then the water service charges in effect on the date of adoption shall continue in existence.

SECTION 4. ORDINANCE PREVAILS

To the extent that any other provision of local law relating to the establishment of water charges is inconsistent with this Ordinance, the provisions of this Ordinance shall prevail. This Ordinance shall supersede all other previous City Council resolutions and ordinances that may conflict with, or be contrary to, this Ordinance.

SECTION 5. EFFECTIVE DATE AND POSTING

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.



Critical Information to Know About **Milpitas' Water and Sewer Systems** and Proposed Rate Change

**IMPORTANT
PROPOSED RATE
INFORMATION INSIDE**

December 2018

Get Involved with Your **Water & Sewer** Utility Rate Change

The City of Milpitas is dedicated to providing our community with important information you need to understand the water and sewer systems in Milpitas. We are also dedicated to providing you, your family, your community and the businesses in our City high quality, reliable water and sewer service. We efficiently serve over 77,000 customers and we're on the job 24/7. In accordance with the Milpitas Municipal Code, the City must set water and sewer rates to ensure sufficient revenues to fully recover 100 percent of the cost of services. The City retained an independent water rate consultant and an independent sewer rate consultant, to evaluate the City's infrastructure needs and operations and maintenance costs, and to prepare rate studies and cost of service analyses for the City. Based on these studies, water and sewer rate increases are proposed to take effect April 1, 2019, and to be increased each July 1 thereafter, commencing July 1, 2019, through and including July 1, 2022.

Why are you receiving this notice?

The City is mailing this notice to you because you are a water and/or sewer customer who is responsible for payment of water and sewer fees or you are the owner of record for a property that receives water and sewer services from the City. This notice describes proposed increases in water and sewer rates for the next five years. This notice also provides information about upcoming workshops and the City Council public hearing to consider these proposed changes. The enclosed rate notice is also posted online at <http://www.ci.milpitas.ca.gov/watersewer2018>.

Why are the rate increases necessary?

The primary reasons for the proposed water rate increases are to pay for increased cost of wholesale potable water from the San Francisco Public Utility Commission and the Santa Clara Valley Water District, and the increased cost in purchasing recycled water from South Bay Water Recycling. Our water fund balance is depleting since we have not passed on cost increases from wholesale water purchases since 2016. Our water system also requires capital improvements to ensure the safe and reliable delivery of water to residents 24/7.

The primary reasons for the proposed sewer rate increases are to pay for the City's share of maintenance, operational and capital improvement costs for the City of San Jose's Regional Wastewater Facility. San Jose treats the sewage generated by Milpitas. The costs are essential to allow for the treatment of wastewater collected throughout the City. Our own sewer system also requires capital improvements to ensure the safe and reliable collection of wastewater generated by residents in the City.

Rates for both water and sewer service are also increasing to keep pace with the inflation and the increased costs in operating the water and sewer systems. For more information, please see the City's water and sewer rate studies and cost of service analyses, available at <http://www.ci.milpitas.ca.gov/watersewer2018>.

Public Hearing on Proposed Water and Sewer Rates

On February 5, 2019 at 7 p.m., the Milpitas City Council will consider approving proposed changes to water and sewer charges. If approved, the rate adjustments will take effect April 1, 2019, and will be adjusted over a period of 5 years, in accordance with the rate schedules included with this notice.

Tuesday, February 5, 2019 at 7 p.m.
City of Milpitas City Hall Council Chambers
455 E Calaveras Blvd., Milpitas, CA 95035



Public Invited to Workshops

In addition to the public hearing on February 5, 2019, the City of Milpitas is hosting a series of workshops to help our community better understand the budget and infrastructure challenges facing the water and sewer systems and review proposed rate increases. Please join us!

Water & Sewer Rate Community Workshops

Tuesday, January 8, 2019, 6-8 p.m.

Pearl Zanker Elementary School
1585 Fallen Leaf Drive
Milpitas, CA 95035

Thursday, January 24, 2019, 6-8 p.m.

Milpitas Community Center Auditorium
457 East Calaveras Blvd.
Milpitas, CA 95035

Want a presentation for your organization?

Is your neighborhood, association or community/civic group interested in having a presentation about the water and sewer systems and proposed rate increases? Please contact milpitasworks@ci.milpitas.ca.gov or call (408) 586-2600.

For more information, please visit ci.milpitas.ca.gov/watersewer2018.

Chinese:

有關更多信息, 請訪問 www.ci.milpitas.ca.gov/watersewer2018

Spanish:

Para obtener más información, visite www.ci.milpitas.ca.gov/watersewer2018

Vietnamese:

Để biết thêm thông tin, hãy truy cập www.ci.milpitas.ca.gov/watersewer2018

How can I protest the proposed increases?

The City Council will hear and consider all written and oral protests to the proposed rate adjustments at the public hearing on Tuesday, February 5 at 7 p.m. Oral comments at the hearing will not count as formal protests unless accompanied by a written protest. Under California's Proposition 218, only one protest per parcel per utility can be counted. Written protests must include:

- The address of the property for which the protest is made
- A statement whether the protest is submitted in opposition to increases to the water and/or sewer rate
- The name and signature of the person submitting the protest

The City Clerk will count all timely written protests and report the total to the City Council. Written protests must be received by the City Clerk's office no later than 5 p.m. on February 5, 2019 or be submitted in writing in the Council Chambers before the public hearing is closed. The City Council will consider all protests and may approve the proposed rate changes.

Please send written protests to:

City of Milpitas Water and Sewer Rate Changes
City of Milpitas – Office of the City Clerk
455 E Calaveras Blvd.
Milpitas, CA 95035





Critical Information to Know About Milpitas' Water System and Proposed Rate Increases

What services are paid for by water rates?

The City is dedicated to providing you, your family, your community and the businesses in our City high quality, reliable water service. We efficiently serve over 77,000 customers and we're on the job 24/7. Water rates pay for the capital, operational, and maintenance costs of the water system, including underground pipes, pump stations, wells, valves, water tanks and reservoirs. We ensure safe reliable delivery of water each day. Water rates also pay for the City to purchase treated water from two water agencies—San Francisco Public Utilities Commission and Santa Clara Valley Water District—also known as our wholesale water agencies. The City also purchases recycled water from South Bay Water Recycling; however, the cost for purchasing recycled water is only paid for by recycled water customers. Water from these agencies is delivered to us and then it goes through our pump stations and pipelines to your homes or businesses every day. The City also has hundreds of miles of water pipelines which are at or near the end of their useful life. Water rates are used to update and replace critical infrastructure to continually maintain a safe, efficient and reliable system.

Why is the City of Milpitas proposing water rate increases?

Water rate increases are necessary for a number of reasons, including increases in the wholesale cost of water for the treated water we purchase from San Francisco Public Utilities Commission and Santa Clara Valley Water District. Our water fund balance is depleting since we have not passed on wholesale water supply rate increases to our customers for the past two years. Additionally, as our water infrastructure continues to age, leaks and failures begin to compromise the reliability of our water system. The City of Milpitas has hundreds of miles of water pipelines which are at or near the end of their useful life.

What will the proposed water rate increases fund?

Based on the water rate study, the proposed water rate increases are necessary to:

- Recover treated current and projected costs of operations and maintenance including cost increases from the water purchased from outside agencies
- Continue necessary infrastructure improvements to provide safe and reliable drinking water
- Ensure favorable credit ratings to minimize debt service costs
- Avoid operations deficits and lack of adequate services
- Continue to maintain the high service levels

How are the proposed water rates structured?

The proposed water rates are comprised of three components: a fixed meter charge, which is charged based on the size of the meter serving the property, and recovers a substantial portion of the City's fixed costs to operate and maintain the water system; a volumetric charge, measured in dollars per hundred cubic feet (or 748 gallons) of water delivered to a parcel; and a capital surcharge. The volumetric charge recovers a portion of the City's fixed costs, and all of the City's variable costs including the costs of purchasing potable and recycled water. The rate for the volumetric charge is determined based on customer class, and customer classes include (a) Residential, (b) Industrial, Institutional, and Construction, (c) Potable Irrigation, (d) Ed Levin Park; (e) City of Milpitas; (f) Recycled Irrigation; (g) Recycled Industrial, Dual-plumbed, Construction; and (h) Recycled City of Milpitas. The capital surcharge collects funds for the City's capital program, which reinvests, replaces and refurbishes the assets that are essential to the provision of potable water. The capital surcharge is imposed on all potable water customers, measured in dollars per hundred cubic feet of potable water delivered to the property. Recycled water customers do not pay the capital surcharge because they do not benefit from the infrastructure funded by the surcharge.

In addition, the District imposes a fire meter charge for properties served by a private fire meter. The fire meter charge is determined based on the size of the fire meter serving the property, and is only imposed on properties with a private fire service meter.

The proposed water rates will phase in the increases over a five year period, commencing April 1, 2019, and each July 1 thereafter beginning July 1, 2019, through and including July 1, 2022.

When was the most recent water rate increase?

The most recent water rate increase was in April 2016. There haven't been any water rate increases since then.

What happens if the water rate increases are not approved?

If the proposed water rates are not adopted, the City will not have adequate funding to meet its capital, operational, and reserve requirements. This would not only violate the municipal code, which requires the water fund to be operated as a self-supporting enterprise, but it would also negatively impact the City's credit rating and would place the water utility at risk of critical infrastructure failure. This would result in much higher costs in the future that would then need to be passed on to the rate payers.





Proposed Maximum Bi-Monthly Water Rate Schedule

FY 2018/19 to FY 2022/23

Meter Size	Current	Proposed April 1, 2019	\$ Increase	Proposed July 1, 2019	\$ Increase	Proposed July 1, 2020	\$ Increase	Proposed July 1, 2021	\$ Increase	Proposed July 1, 2022	\$ Increase
5/8"	\$19.44	\$27.01	\$7.57	\$28.63	\$1.62	\$30.34	\$1.72	\$32.17	\$1.82	\$34.10	\$1.93
3/4"	\$29.16	\$40.51	\$11.35	\$42.94	\$2.43	\$45.52	\$2.58	\$48.25	\$2.73	\$51.14	\$2.89
1"	\$48.60	\$67.52	\$18.92	\$71.57	\$4.05	\$75.86	\$4.29	\$80.41	\$4.55	\$85.24	\$4.82
1-1/2"	\$97.20	\$135.03	\$37.83	\$143.13	\$8.10	\$151.72	\$8.59	\$160.83	\$9.10	\$170.48	\$9.65
2"	\$155.52	\$216.05	\$60.53	\$229.02	\$12.96	\$242.76	\$13.74	\$257.32	\$14.57	\$272.76	\$15.44
3"	\$291.60	\$405.10	\$113.50	\$429.40	\$24.31	\$455.17	\$25.76	\$482.48	\$27.31	\$511.43	\$28.95
4"	\$486.00	\$675.16	\$189.16	\$715.67	\$40.51	\$758.61	\$42.94	\$804.13	\$45.52	\$852.38	\$48.25
6" & above	\$972.00	\$1,350.33	\$378.33	\$1,431.35	\$81.02	\$1,517.23	\$85.88	\$1,608.26	\$91.03	\$1,704.76	\$96.50
Fire Service Charge											
2 inch	\$31.10	\$43.21	\$12.11	\$45.80	\$2.59	\$48.55	\$2.75	\$51.46	\$2.91	\$54.55	\$3.09
3 inch	\$58.32	\$81.02	\$22.70	\$85.88	\$4.86	\$91.03	\$5.15	\$96.50	\$5.46	\$102.29	\$5.79
4 inch	\$97.20	\$135.03	\$37.83	\$143.13	\$8.10	\$151.72	\$8.59	\$160.83	\$9.10	\$170.48	\$9.65
6 inch and above	\$194.40	\$270.07	\$75.67	\$286.27	\$16.20	\$303.45	\$17.18	\$321.65	\$18.21	\$340.95	\$19.30
Volumetric Charges (per hcf)											
Residential	\$5.13	\$5.31	\$0.18	\$5.63	\$0.32	\$5.97	\$0.34	\$6.32	\$0.36	\$6.70	\$0.38
Commercial/ Industrial/ Institutional and Construction	\$5.13	\$5.31	\$0.18	\$5.63	\$0.32	\$5.97	\$0.34	\$6.32	\$0.36	\$6.70	\$0.38
Potable Irrigation	\$5.13	\$5.31	\$0.18	\$5.63	\$0.32	\$5.97	\$0.34	\$6.32	\$0.36	\$6.70	\$0.38
Santa Clara County (Ed Levin Park)	\$3.79	\$4.10	\$0.31	\$4.10	\$0.00	\$4.10	\$0.00	\$4.10	\$0.00	\$4.47	\$0.37
Recycled Irrigation	\$2.78	\$3.57	\$0.79	\$3.79	\$0.21	\$4.01	\$0.23	\$4.25	\$0.24	\$4.51	\$0.26
Recycled Water Industrial / Dual Plumbed	\$2.78	\$3.57	\$0.79	\$3.79	\$0.21	\$4.01	\$0.23	\$4.25	\$0.24	\$4.51	\$0.26
Recycled Water: City of Milpitas	\$2.78	\$3.57	\$0.79	\$3.79	\$0.21	\$4.01	\$0.23	\$4.25	\$0.24	\$4.51	\$0.26
Capital Surcharge (all potable use, per hcf)	\$1.30	\$1.08	-\$0.22	\$1.08	\$0.00	\$1.08	\$0.00	\$1.08	\$0.00	\$1.08	\$0.00





Critical Information to Know About Milpitas' Sewer System and Proposed Rate Increases

What services are paid for by sewer rates?

As part of its primary responsibilities to residents, the City must ensure that it can continue to protect public health and safeguard the environment by providing residents and businesses with a reliable, high-quality and cost-effective sewer system. Sewer rates provide funds for staff to maintain the sewer system to ensure sewer pipes are cleaned, aging pipes are repaired and replaced and pump stations are maintained and operated 24/7. In addition, sewer rates provide funds for staff to reduce the number of sanitary sewer overflows and provide emergency response to overflows in order to quickly mitigate impacts to residents and the environment. Milpitas also contracts with the City of San Jose for the treatment of the wastewater collected in the City. Rates are used to pay our share of the City of San Jose's cost to operate and upgrade the wastewater treatment facility.

Why is the City of Milpitas proposing sewer rate increases?

We contract with the City of San Jose for the treatment of sewage generated from the homes and businesses in our city. Our city manages the collection system. The City of San Jose wastewater treatment facility is over 50 years old and has reached the end of its useful life. Major facility reconstruction is needed over the next decade so it continues to operate efficiently and reliably. Milpitas is required to fund its share of the City of San Jose's cost to operate and upgrade the wastewater treatment facility. Milpitas also needs to address its own collection system infrastructure projects which must be complete in the next five years.

What will the proposed sewer rate increases fund?

Based on the sewer rate study, the proposed sewer rate increases are necessary to:

- Recover current and projected costs of the City's operations and maintenance
- Improve infrastructure
- Ensure favorable credit ratings to minimize debt service costs
- Cover the City's share of the San Jose treatment plant operations and infrastructure expenses
- Ensure favorable credit ratings to minimize debt service costs
- Continue high service levels

How are the proposed sewer rates structured?

The City is proposing to charge customers for sewer service based on customer classes, including residential customers and non-residential customers. Residential customers are further categorized as single-family, multi-family, and mobile home parks. Non-residential customers are broken down into commercial customers, monitored sites, non-monitored sites, and institutional customers, and each class of non-residential customers is further broken down into sub-classes. Customer classes are determined based on common sewage characteristics, including flow and strength (units of pollutant per quantity of sewage) of sewage, and accordingly, common patterns and levels of demands placed on the sewer system. As such, different rates are proposed for each type of residential use, and for each non-residential sub-class.

For residential customers, the proposed sewer rates consist of a flat bi-monthly charge per dwelling unit, which varies depending on whether the property is single-family, mobile home, or multi-family residential. For non-residential customers, the proposed sewer rates include a bi-monthly fixed flat fee, and an additional variable charge, measured by hundred cubic feet of metered water consumption. While the fixed flat fee is uniform for all non-residential customer classes, the rate for the variable component will depend on the type of non-residential use, and is determined based on shared characteristics of strength and flow of sewage.

When was the most recent sewer rate increase?

The most recent sewer rate increase was in August 2015. There have not been any sewer rate increases since then.

What happens if the rate increases are not approved?

If the proposed sewer rates are not adopted, the City will have insufficient funds to meet its capital, operational, and reserve requirements. This would not only violate the municipal code, which requires the sewer fund to be operated as a self-supporting enterprise, but it would also negatively impact the City's credit rating and would place the sewer utility at risk of critical infrastructure failure. This would result in much higher costs in the future that would then need to be passed on to the rate payers. Additionally, the City would not be able to meet its contractual obligations to pay for its share of the San Jose-Santa Clara Regional Wastewater Facility capital improvements, thus placing itself at legal risk.





Proposed Maximum Bi-Monthly Sewer Rate Schedule

FY 2018/19 to FY 2022/23

	Current	Proposed April 1, 2019	\$ Increase	Proposed July 1, 2019	\$ Increase	Proposed July 1, 2020	\$ Increase	Proposed July 1, 2021	\$ Increase	Proposed July 1, 2022	\$ Increase
Residential (per Dwelling Unit)											
Single-Family	\$90.27	\$97.60	\$7.33	\$102.52	\$4.92	\$111.07	\$8.55	\$118.34	\$7.27	\$124.14	\$5.80
Multiple-Family	\$69.32	\$74.96	\$5.64	\$78.73	\$3.77	\$85.30	\$6.57	\$90.88	\$5.58	\$95.34	\$4.46
Mobile Home Parks (with subsidy)	\$56.97	\$76.03	\$19.06	\$79.86	\$3.83	\$86.53	\$6.67	\$92.19	\$5.66	\$96.71	\$4.52
Mobile Home Parks (without subsidy)	\$56.97	\$61.61	\$4.64	\$64.70	\$3.09	\$70.08	\$5.38	\$74.66	\$4.58	\$78.28	\$3.62
Non-Residential Fixed Flat Fee (per bill)	\$15.27	\$24.30	\$9.03	\$25.03	\$0.73	\$25.78	\$0.75	\$26.55	\$0.77	\$27.35	\$0.80
Commercial (per HCF)											
Motels and Hotels	\$4.36	\$4.36	\$0.00	\$4.58	\$0.22	\$4.97	\$0.39	\$5.37	\$0.40	\$5.75	\$0.38
General Office	\$4.67	\$4.67	\$0.00	\$5.44	\$0.77	\$5.67	\$0.23	\$6.14	\$0.47	\$6.84	\$0.70
City of Milpitas	\$4.18	\$4.18	\$0.00	\$4.61	\$0.43	\$4.91	\$0.30	\$5.31	\$0.40	\$5.80	\$0.49
Service Stations	\$4.34	\$4.34	\$0.00	\$4.54	\$0.20	\$4.93	\$0.39	\$5.32	\$0.39	\$5.70	\$0.38
Eat/Drink Establishments	\$7.49	\$7.49	\$0.00	\$7.49	\$0.00	\$8.11	\$0.62	\$8.73	\$0.62	\$9.06	\$0.33
Convalescent Hosp/ Daycare	\$4.23	\$4.23	\$0.00	\$4.46	\$0.23	\$4.84	\$0.38	\$5.23	\$0.39	\$5.60	\$0.37
Personal Services, Laundries	\$3.95	\$3.95	\$0.00	\$4.23	\$0.28	\$4.56	\$0.33	\$4.92	\$0.36	\$5.31	\$0.39
Electrical/ Electronics	\$4.59	\$4.59	\$0.00	\$5.35	\$0.76	\$5.58	\$0.23	\$6.04	\$0.46	\$6.72	\$0.68
Machinery Manufacture	\$6.08	\$6.08	\$0.00	\$6.70	\$0.62	\$7.12	\$0.42	\$7.70	\$0.58	\$8.43	\$0.73
Monitored Sites (per HCF)											
RockTenn (Jefferson Smurfit)	\$4.67	\$8.35	\$3.68	\$8.35	\$0.00	\$9.39	\$1.04	\$10.11	\$0.72	\$10.46	\$0.35
T. Marzetti Co.	\$8.34	\$9.16	\$0.82	\$9.63	\$0.47	\$10.65	\$1.02	\$11.48	\$0.83	\$12.09	\$0.61
Prudential Overall Supply	\$6.70	\$6.70	\$0.00	\$6.70	\$0.00	\$7.08	\$0.38	\$7.66	\$0.58	\$8.42	\$0.76
Siemens Water Tech	\$4.91	\$4.91	\$0.00	\$5.61	\$0.70	\$5.87	\$0.26	\$6.36	\$0.49	\$7.06	\$0.70
Elmwood Rehabilitation	\$5.49	\$5.49	\$0.00	\$5.49	\$0.00	\$5.89	\$0.40	\$6.35	\$0.46	\$6.69	\$0.34
Linear Technology	\$4.59	\$4.59	\$0.00	\$5.47	\$0.88	\$5.71	\$0.24	\$6.18	\$0.47	\$6.88	\$0.70
DS W	\$4.59	\$4.59	\$0.00	\$4.80	\$0.21	\$4.92	\$0.12	\$5.34	\$0.42	\$6.04	\$0.70
Magic Tech & Headway Tech	\$4.53	\$4.62	\$0.09	\$5.82	\$1.20	\$6.07	\$0.25	\$6.57	\$0.50	\$7.32	\$0.75
Non-Monitored Sites (per HCF)											
Lucky Pure Water	\$3.94	\$3.94	\$0.00	\$4.21	\$0.27	\$4.54	\$0.33	\$4.91	\$0.37	\$5.29	\$0.38
Milpitas Materials	\$3.94	\$3.94	\$0.00	\$4.21	\$0.27	\$4.54	\$0.33	\$4.91	\$0.37	\$5.29	\$0.38
Union Pacific Railroad	\$5.11	\$5.11	\$0.00	\$5.84	\$0.73	\$6.12	\$0.28	\$6.63	\$0.51	\$7.35	\$0.72
Cisco	\$4.59	\$4.59	\$0.00	\$5.35	\$0.76	\$5.58	\$0.23	\$6.04	\$0.46	\$6.72	\$0.68
Lifescan	\$4.59	\$4.59	\$0.00	\$5.35	\$0.76	\$5.58	\$0.23	\$6.04	\$0.46	\$6.72	\$0.68
Institutional (per HCF)											
Schools/Colleges	\$6.31	\$6.31	\$0.00	\$7.94	\$1.63	\$8.05	\$0.11	\$8.73	\$0.68	\$9.99	\$1.26





City of Milpitas
Public Works
455 E Calaveras Blvd.
Milpitas, CA 95035

Information Enclosed

Proposed Water and Sewer Rate Change

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POSTAL CUSTOMER



**Proposed Water and
Sewer Rate Change
Information Enclosed**

369



City of Milpitas Water Rate Study Draft Update

February 2019



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SECTION 1: EXECUTIVE SUMMARY

The City of Milpitas (City) provides water service to residential, commercial, industrial, and institutional customers located within the City's boundaries. The City was incorporated as a general law city on January 26, 1954 and operates under a council/manager form of government. The City encompasses 13.6 square miles in Santa Clara County, near the southern end of the San Francisco Bay, and has a population of about 70,000.

In 2015 Bartle Wells Associates (BWA) was retained to perform an analysis of the existing water rate structure to recommend adjustments, and to prepare a rate study. Consistent with BWA's study recommendation, the City increased water rates on January 15, 2016 and April 1, 2016. The 2015 rate study projected an additional 8% rate increase (excluding the capital surcharge) would be required on July 1, 2017, followed by a 5% increase (excluding the capital surcharge) on July 1, 2018. These additional increases were not implemented by the City, and this has resulted in losses to the water fund.

BWA was retained by the City to conduct a water rate study (Study) and financial plan for the next five fiscal years (FY 2018/19 to FY 2022/23). BWA's proposed rates are designed to meet operating reserve targets, fund the water enterprise's \$46.3 million five-year capital program and associated debt service, and mitigate impacts to customers.

This update to the City's water rates is based on the following main factors:

1. The City's Budget Guidelines and Fiscal Policies require a review of water customer rates and fees each year. The policies also require adjustment of water rates and fees annually, if necessary. In addition, these policies require the City to set fees and user charges for the water fund at a level that fully supports the total direct and indirect cost of the activity, including depreciation of assets, overhead charges, and reserves for unanticipated expenses and capital projects (Policy No. 20 and 21 of the 2018-2019 City of Milpitas Budget and Financial Plan).
2. The City's water enterprise was in good financial standing, with an estimated \$7 million in operating reserves as of July 1, 2017; however, in the absence of rate increases until mid FY 2018/19, BWA projects the water operating fund will lose about \$2.4 million and not meet the operating fund target of 30% of the annual operating and maintenance expenses, as required by the Council's reserve policies (Policy No. 39 of the 2018-2019 City of Milpitas Budget and Financial Plan).
3. The City purchases all of its potable water from 3rd party wholesaler San Francisco Public Utilities Commission (SFPUC) and Santa Clara Valley Water District (SCVWD). Wholesale water purchases (including recycled water) account for 64% of the City's operating expenses. Both wholesalers are facing cost increases and are planning to raise wholesale rates each year, which will result in increased cost to the City.

4. SFPUC rates are projected to be held level at \$4.10/hcf for the next four years despite escalating SFPUC debt service and operating costs through use of a balancing account, which is estimated to be \$66.4 million as of June 30, 2018. The balancing account was built up from SFPUC wholesale water sales exceeding its sales projections. The balancing account represents the amount SFPUC owes to its wholesale customers. SFPUC rates are projected to jump 23.4% to \$5.06/hcf by FY 2023/24. BWA proposed water rates are designed to phase in Milpitas water rate increases over time to avoid sharp rate increases to residents, due to the expected wholesale water rate increases from SFPUC and SCVWD.
5. SCVWD rates are projected to increase 9% per year for five years. The rates are projected to increase from \$2.93/hcf currently to \$4.52/hcf by FY 2022/23.
6. The City has identified approximately \$46.3 million of high priority capital improvement projects¹ needed over the next 5 years. These projects are needed to improve the reliability of the City's water system and ensure the safe delivery of potable water to its customers. The rate study utilizes a combination of cash and debt funding for these projects to smooth the impact of rate increases on customers and ensure intergenerational equity.
7. The City's Reserve Policies require the City to maintain Infrastructure Replacement funds for the Water Utility, and accumulate at least \$2 million a year from the water fund to set-aside for replacement of infrastructure as the infrastructure reaches the end of its useful life (Policy No. 40 of the 2018-2019 City of Milpitas Budget and Financial Plan). The City currently sets aside \$600,000 a year for water infrastructure replacement and would need to increase this amount by \$1,400,000 annually to meet the requirements of this policy.

This Study provides a cost basis for proposed water service rates for the City of Milpitas in compliance with California Constitution article XIII D, section 6 (commonly referred to as Proposition 218). Rate increases for the Study period FY 2018/19 to FY 2022/23 are recommended in the analysis. The full schedule of current and proposed rates for the City's water service fees is shown on **Table 1**.

Note: All numbers are not rounded except where indicated. The numbers are displayed rounded in the report for simplicity. This is consistent with the underlying Microsoft Excel document.

¹ The proposed 5-year capital improvement program is shown in Table 6 of this Study.

Current & Proposed Water Rates

Table 1
City of Milpitas - Water Rate Study
Current & Proposed Water Rate Schedule

Fixed Meter Charges (Bimonthly, \$/Meter Size)							
Meter Size	Current bimonthly rate	Proposed 2018/19	Proposed 2019/20	Proposed 2020/21	Proposed 2021/22	Proposed 2022/23	
5/8 inch	\$19.44	\$27.01	\$28.63	\$30.34	\$32.17	\$34.10	
3/4 inch	\$29.16	\$40.51	\$42.94	\$45.52	\$48.25	\$51.14	
1 inch	\$48.60	\$67.52	\$71.57	\$75.86	\$80.41	\$85.24	
1-1/2 inch	\$97.20	\$135.03	\$143.13	\$151.72	\$160.83	\$170.48	
2 inch	\$155.52	\$216.05	\$229.02	\$242.76	\$257.32	\$272.76	
3 inch	\$291.60	\$405.10	\$429.40	\$455.17	\$482.48	\$511.43	
4 inch	\$486.00	\$675.16	\$715.67	\$758.61	\$804.13	\$852.38	
6 inch and above	\$972.00	\$1,350.33	\$1,431.35	\$1,517.23	\$1,608.26	\$1,704.76	

Fire Meter Charges (Bimonthly, \$/Meter Size)							
Detector Check/ RPDa/DCDA	Current bimonthly rate	Proposed 2018/19	Proposed 2019/20	Proposed 2020/21	Proposed 2021/22	Proposed 2022/23	
2 inch	\$31.10	\$43.21	\$45.80	\$48.55	\$51.46	\$54.55	
3 inch	\$58.32	\$81.02	\$85.88	\$91.03	\$96.50	\$102.29	
4 inch	\$97.20	\$135.03	\$143.13	\$151.72	\$160.83	\$170.48	
6 inch and above	\$194.40	\$270.07	\$286.27	\$303.45	\$321.65	\$340.95	

Volumetric Charges (\$/HCF)												
Category	Current base rate per HCF*	Current capital surcharge rate per HCF	Proposed 2018/19 base rate per HCF	Proposed 2018/19 surcharge rate per HCF	Proposed 2019/20 base rate per HCF	Proposed 2019/20 capital surcharge rate per HCF	Proposed 2020/21 base rate per HCF	Proposed 2020/21 capital surcharge rate per HCF	Proposed 2021/22 base rate per HCF	Proposed 2021/22 capital surcharge rate per HCF	Proposed 2022/23 base rate per HCF	Proposed 2022/23 capital surcharge rate per HCF
Residential	\$5.13	\$1.30	\$5.31	\$1.08	\$5.63	\$1.08	\$5.97	\$1.08	\$6.32	\$1.08	\$6.70	\$1.08
Industrial, Institutional, Construction	\$5.13	\$1.30	\$5.31	\$1.08	\$5.63	\$1.08	\$5.97	\$1.08	\$6.32	\$1.08	\$6.70	\$1.08
Potable Irrigation	\$5.13	\$1.30	\$5.31	\$1.08	\$5.63	\$1.08	\$5.97	\$1.08	\$6.32	\$1.08	\$6.70	\$1.08
Ed Levin Park**	\$3.79	NA	\$4.10	NA	\$4.10	NA	\$4.10	NA	\$4.10	NA	\$4.47	NA
City of Milpitas	\$5.13	\$1.30	\$5.31	\$1.08	\$5.63	\$1.08	\$5.97	\$1.08	\$6.32	\$1.08	\$6.70	\$1.08
Recycled Irrigation	\$2.78	NA	\$3.57	NA	\$3.79	NA	\$4.01	NA	\$4.25	NA	\$4.51	NA
Recycled Industrial, Dual-plumbed, Construction	\$2.78	NA	\$3.57	NA	\$3.79	NA	\$4.01	NA	\$4.25	NA	\$4.51	NA
Recycled City of Milpitas	\$2.78	NA	\$3.57	NA	\$3.79	NA	\$4.01	NA	\$4.25	NA	\$4.51	NA

* 1 HCF = 748 gallons

**County of Santa Clara rate is established by contract to be equivalent to the SFPUC wholesale rate.

Summary of Water Rate Study Recommendations

- 1. Residential Rate Structure:** BWA developed a uniform residential rate structure, pursuant to which customers are charged the same rate for each unit of water use. Options for a two-tier structure where higher users pay higher rates for exceeding a set usage level per billing period were explored; however, BWA determined that the City did not have adequate data to identify peaking costs associated with the City's capital program or City operations and maintenance without additional engineering analysis.
- 2. Continue using American Water Works Association (AWWA) capacity standards to scale fixed charges:** A substantial portion of the water utility's costs to operate and maintain the water system are fixed, meaning the majority of costs remain the same regardless of how much water is used by customers. The City recovers a portion of these costs through its fixed meter charges. Aligning fixed meter charges with AWWA guidelines for water meter flow capacity provides a standard cost basis for fixed meter charges. Meter charges are considered "availability" or "readiness-to-serve" charges for providing customers with access to water at all times. These constitute a fixed portion of the customers' bills because they are levied whether or not water is used.
- 3. Utilize a long-term debt financing to fund a portion of capital projects with long-term benefit:** The City is facing a \$46.3 million capital improvement program planned over the next five years. BWA's projections include a \$20 million financing to smooth out the impact on rate payers and ensure intergenerational equity, which includes costs for all projects identified as funded from water bonds in the City's capital improvement program.
- 4. Continue to recover capital costs through a capital program surcharge:** Since the City will be making substantial improvements to the potable water system, BWA recommends that the City continue to breakout capital costs on each potable customer's bill. The capital surcharge allows users to see how much of their bill is going to fund water system capital improvements.
- 5. Phase in rate increases to meet City's Reserve Policy over time:** The City's reserve policy requires the accumulation of 30% of the annual operating and maintenance expenses of the water system. The proposed rate structure does not provide funds to meet this reserve target until FY 2022/23. BWA determined that the City would need to raise rates by 36.5% in FY 2018/19 to meet the reserve target in that year. BWA recommends that the City phase in the rates to meet fund reserve targets by FY 2022/23 to prevent rate shock and smooth in rate increases.

SECTION 2: PROPOSITION 218

Constitutional Rate Requirements

The California Constitution includes one key article that directly governs and impacts the City's water rates: Article XIII D. The water rates developed in this Study are designed to comply with the constitutional mandates of Article XIII D as well as various provisions of the California Water Code and Government Code that support and add further guidance for implementing these constitutional requirements. In accordance with the constitutional provisions, the proposed rates are designed to: a) recover the City's cost of providing water service; and b) recover revenues in proportion to the cost for serving each customer.

Article XIII D, Section 6

Proposition 218 was adopted by California voters in 1996 and added Articles XIII C and XIII D to the California Constitution. Article XIII D, Section 6 governs property-related charges, which the California Supreme Court subsequently ruled includes charges for the ongoing delivery of utility service to property, such as charges for water services. Article XIII D, Section 6 establishes: a) procedural requirements for imposing new or increasing existing property-related charges; and b) substantive requirements for the amount and use of those charges. Article XIII D also requires voter approval for new or increased property-related charges but exempts from this voting requirement rates for water service.

The substantive requirements of Article XIII D, Section 6 require the City's water rates to meet the following conditions:

- 1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service.
- 2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
- 3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
- 4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.
- 5) No fee or charge may be imposed for general governmental services, such as police or fire services, where the service is available to the public at large in substantially the same manner as it is to property owners.

The water rates derived in this Study are based on a cost-of-service methodology that fairly apportions the City's water service costs to all customers.

Use of Generally Accepted Rate-Making Principles

The rates were developed using generally accepted cost-based principles and methodologies for establishing water rates, charges, and fees contained and discussed in the AWWA's *M1 Manual, Principles of Water Rates, Fees, and Charges, Sixth Edition, 2012*. In developing water rates, it is important to know that there is no "one-size-fits-all" approach for establishing cost-based water rates—"the (M1 Manual) is aimed at outlining the basic elements involved in water rates and suggesting alternative rules of procedure for formulating rates, thus permitting the exercise of judgment and preference to meet local conditions and requirements." The cost of service principals and methodology used to calculate the City's water rates is shown on **Figure 1** below.

Tiered Rate Considerations

A uniform rate structure is currently in place. Changing the rate structure from a single charge per unit to a tiered rate where customers pay more once they exceed a set level of usage presents both financial and legal challenges. A financial downside of implementing tiered rates is that the water enterprise would have to rely more on high water users to meet its revenue requirements. A uniform rate structure provides greater revenue stability than a tiered rate structure because they provide a more consistent revenue stream.

Recent court decisions have focused on how tiered rates are calculated. The appellate court decision in *Capistrano Taxpayers Association v. City of San Juan Capistrano* clarified that tiered rates must reflect the proportionate cost of providing the service within each tier. The most common ways agencies justify tiers include the following:

1. differentials in source of supply costs (i.e., stacking of water supply resources to tiers);
2. direct assignment of costs to specific (upper) tiers (e.g., conservation program costs);
3. peaking costs associated with operations and maintenance; and
4. peaking costs associated with capital improvements.

Each of these technical approaches is discussed in more detail below.

Differentials in Source of Supply Costs – In the San Juan Capistrano case, the court primarily focused its attention on the cost of water supply as the explanatory variable for tiered pricing. For some utilities, this may be the case and the differences in water supply costs from a utility's array of water resources are easily identifiable. When a utility has multiple sources of supply, a utility may use least cost planning for supply planning and will most likely use water from their cheapest (least cost) resource first. Once that resource is fully utilized then the next most expensive water resource is utilized, and so on. In this example, it can be seen that the water resources and corresponding costs can be assigned to pricing tiers with the lowest cost water resource applied to the first price tier and subsequent water resources and costs "stacked" to the water rate tiers, with the most expensive water resource likely assigned to the top tier. The City currently purchases wholesale water from SFPUC and SCVWD, and while SCVWD water is

currently cheaper than SFPUC water, the City's water system is set up in a manner such that water from each wholesaler is fed into specific zones in the City and not mixed. Therefore, this method for justifying tier cost cannot be used for setting the City's tier pricing since the City does not stack its water supply resources.

Direct Assignment of Specific Costs to Tiers – High water use drives the cost of extraordinary water conservation and efficiency programs needed to encourage customers to reduce consumption, manage a local agency's water supplies, and comply with statewide regulatory requirements. While all customers may benefit from these programs, high volume users drive the need for such programs and benefit both directly (e.g., they may receive a rebate) and indirectly (e.g., conservation frees up additional potable water for their higher volume usage). In June 2015, the City appropriated funds to implement a water conservation program, which included the development, implementation, and management of a new City-wide water rationing and conservation plan that includes community outreach and education. The program also includes staff responses to water waste complaints and the implementation of State mandated water conservation regulations. The City's conservation program does not include any additional funding for the period covered by this Study (FY 18/19 through FY 22/23) and BWA did not identify any additional City programs which had a direct benefit to large volume customers; hence, there is no basis at this time for the City to use a tiered rate structure to allocate these costs.

Peaking Costs Associated with Operations and Maintenance – Under this method, the City may charge customers for the increased operations and maintenance costs related to meeting peak use demands on the system. The delivery of the water is a function of the volume of water being delivered, but also the rate of flow. Therefore, the City may incur additional costs on items such as increased pumping operations, increased electricity costs, etc. BWA determined that the City did not have adequate data or resources to identify peaking costs associated with the City's operations and maintenance of the water system; hence there is no basis at this time for the City to use a tiered rate structure to allocate these costs without conducting further analysis into how operations and maintenance expenses vary based on water demands on the system.

Peaking Costs Associated with Capital Improvements – Capital improvement capacity is an important concept for water utilities since utilities must incur the cost to construct facilities to meet high customer demands on the system. The capital investment needed to size and meet higher levels of water demands is greater than that of a system with lower (base) demand. The large peak demands placed on the system by large volume users requires additional oversizing of facilities to meet their peak demand requirements. BWA determined that the City did not have adequate data or resources to identify peaking costs associated with the City's capital program; hence, there is no basis at this time for the City to use a tiered rate structure for these allocating costs without conducting further analysis of the City's Capital assets, to determine what portion of the City's capital assets are related to base water usage and what portion of the assets are needed to meet peak demands.

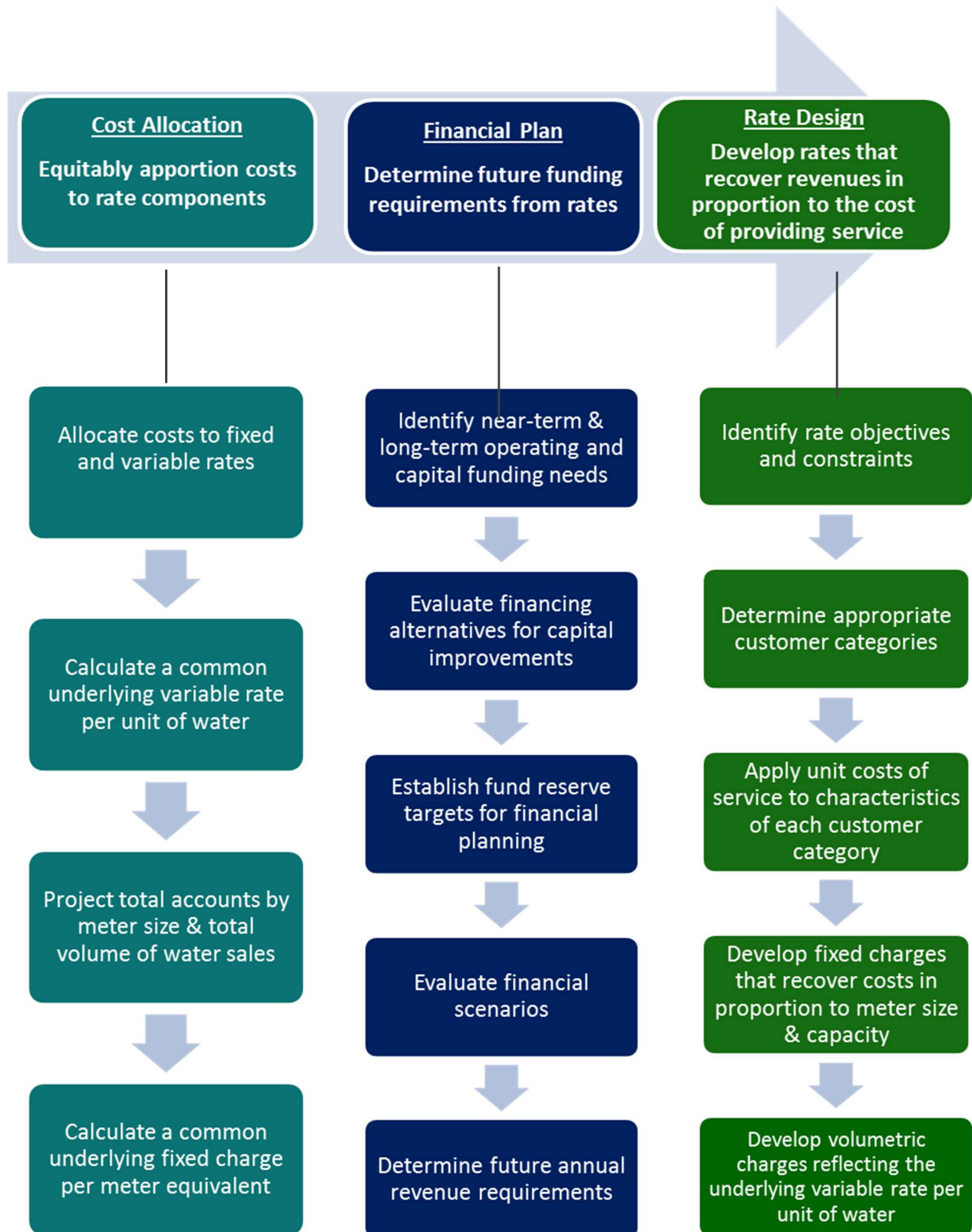
BWA conducted a survey of regional SFPUC retail agencies to examine how these agencies justify use of tiered rates and the results are shown in the table below.

	<u>Tier Cost Justification</u>			
<u>City/Water Utility</u>	Differentials in Source of Supply Costs	Direct Assignment of Specific Costs to Tiers	Peaking Costs Associated with Operations and Maintenance	Peaking Costs Associated with Capital Improvements
Redwood City	Source of supply costs	Conservation costs (water resources management program)		
Purissima Hills Water District –				Peaking costs based on capital plan. Offsetting non-rate revenues
Mid-Peninsula Water District		Conservation program	Peaking costs based on operations and maintenance	Peaking costs based on capital program
Foster City		Conservation program		
San Bruno				Peaking costs based on capital program
Mountain View	Source of supply costs		Peaking costs based on operations and maintenance	Peaking costs based on capital program, debt service
Burlingame			Peaking costs based on operations and maintenance	Peaking costs based on capital plan, debt service
Town of Hillsborough			Peaking costs based on operations and maintenance	Peaking costs based on capital program

The basis for establishing tiered water pricing is based upon the specific costs, characteristics and usage patterns of a utility's customers. BWA determined that the City did not have adequate data or resources to identify peaking costs associated with the City's capital program or City operations and maintenance. BWA recommends that the City conduct further analysis

on peaking costs associated with existing City assets and the capital improvement program to fully capture the additional expenses incurred from peak use.

Figure 1: Cost of Service Rate-Setting Methodology

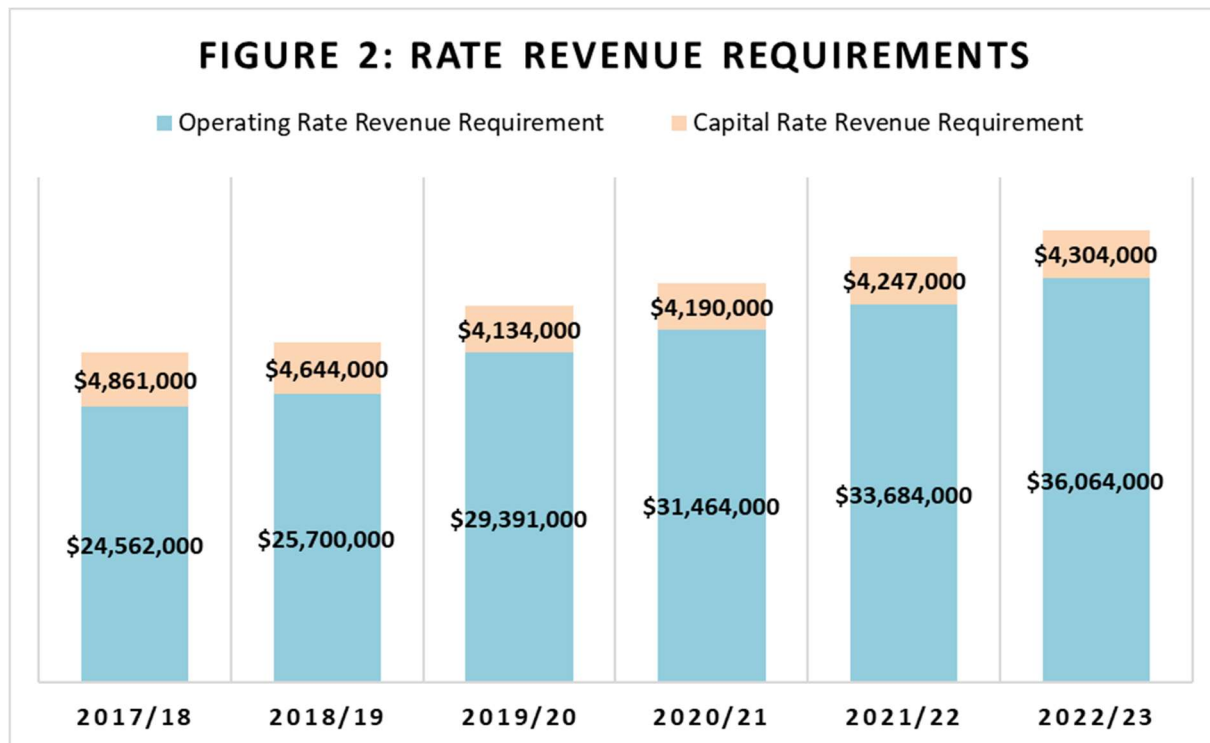


SECTION 3: COST ATTRIBUTIONS

Rate Revenue Requirements

According to the M1 Manual, a critical initial step in the ratemaking analysis is to determine the adequate and appropriate funding of a utility. This is referred to as the “revenue requirements” analysis. This analysis considers the short-term and long-term service objectives of the utility over a given planning horizon, including capital facilities, system operations and maintenance, annual debt service, and offsetting revenues to determine the adequacy of a utility’s existing rates to recover its costs. Using the water utility’s approved budget, financial reports, operating data, and capital improvement plan, the Study determined the revenue requirements for the water utility for FY 2017/18 and projected future revenue requirements for FY 2018/19 through FY 2022/23.

Figure 2 shows the operating and capital¹ rate revenue requirements for the water enterprise. Capital rate revenue requirements (recovered by the capital surcharge) are projected to fluctuate from \$4,861,000 in FY 2017/18 to \$4,304,000 in FY 2022/23. Operating rate revenue requirements are projected to increase from \$24,562,000 in FY 2017/18 to \$36,064,000 in FY 2022/23. The source of this data is **Table 9**.



¹ **Table 6** below shows the City water enterprise 5-year capital improvement program for potable water sources. **Table 7** below shows the City’s capital projects which have unidentified funding sources.

Operating Costs

In **Table 2** BWA determined the percentage of water system operating costs attributed to fixed costs (costs that do not vary based on use), and variable costs (costs that vary based on use). Total system operating costs in FY 2018/19 are estimated to be \$28 million, with approximately 20% of operating costs (not including capital costs) attributed to fixed costs and 80% attributed to variable costs.

Non-rate revenues, including interest income, and miscellaneous revenue were subtracted from the operating expenses to determine the total water rate revenue requirements

¹ for FY 2018/19 (about \$27.46 million.)

Details on the assumptions used to calculate the revenue requirements of the water utility, such as growth, water purchases, consumption characteristics of each class of customer, and drought related impacts and costs, are shown in Appendix C.

¹ The utility's "revenue requirements" are the total annual operation and maintenance expense and capital-related costs incurred in meeting various aspects of providing water utility service.

Table 2
City of Milpitas - Water Rate Study
Cost Allocation - 2018/19

	2018/19	Fixed Costs		Variable Costs	
Operating Expenses					
Potable Purchases					
SFPUC Wholesale Water	\$11,759,893	0%	\$0	100%	\$11,759,893
SCVWD Wholesale Water	5,155,120	0%	0	100%	5,155,120
Subtotal, Potable Purchases	16,915,013		0		16,915,013
Recycled Water Expenses	1,303,312	0%	0	100%	1,303,312
Non Water Purchase Operating Costs					
Personnel Services	4,060,260	60%	2,436,156	40%	1,624,104
Transfers Out (General Fund Admin Cost Reimb.)	2,705,884	60%	1,623,530	40%	1,082,354
Services and Supplies	3,688,575	60%	2,213,145	40%	1,475,430
Net Income for O&M Fund	(626,810)	60%	(376,086)	40%	(250,724)
Subtotal, Non Water Purchase Operating Costs	9,827,909		5,896,745		3,931,163
Total Operating Expenses	28,046,234	21%	5,896,745	79%	22,149,489
Less: Miscellaneous Revenue Offsets	586,194	50%	293,097	50%	293,097
Operating Revenue Requirement	27,460,040	20%	5,603,648	80%	21,856,392
Capital Expenses (Recovered Through Capital Surcharge)					
Capital Expenses	4,083,126	0%	0	100%	4,083,126
Total Revenue Requirement	31,543,165	17.8%	5,603,648	82.2%	25,939,517

Volumetric Charges

The City of Milpitas obtains all of its water through wholesale purchases from three sources: San Francisco Public Utilities Commission (SFPUC), Santa Clara Valley District (SCVWD), and recycled water from the South Bay Recycling Program (SBWR). Total annual water purchases amount to 4.7 million hundred cubic feet (hcf).

FY 2018/19 water sales of 4.27 million hcf are estimated based on a 1.4% overall increase in potable water use and flat recycled water use. The overall increase in projected use takes into account historical consumption and water purchase data, which indicate a small rebound in use as regional drought conditions relent. Detailed historical and projected water purchase costs and estimated water sales are shown in Appendix C, Tables 1 and 2.

Table 3 shows a summary of FY 2018/19 projected wholesale water purchases by source.

Table 3
City of Milpitas - Water Rate Study
FY 2018/19 Projected Wholesale Water Purchases

	Water Purchased ¹	%
SFPUC	2,606,052	55%
SCVWD	1,616,025	34%
Recycled Water	<u>479,159</u>	<u>10%</u>
	4,701,236	100%

1 Water units in hundred cubic feet (hcf)

Table 4 shows an attribution of variable operating costs (\$22,149,489 from **Table 2**) to each unit of water expected to be sold in FY 2018/19.

Non-water purchase variable costs shown in **Table 2** (includes 40% of Personnel Services, Transfer Out (General Fund Admin Cost Reimb.), Services and Supplies, and Net Income for O&M Fund minus Misc. Revenue Allocated to Variable Costs), amounts to \$3,638,066 and are attributed to each unit of water expected to be sold in FY 2018/19 (~4.27 million hcf). The calculation amounts to \$0.85 ($\$3,638,066 \div 4,272,850 = \0.85) per hcf and is referred to as the “base cost”.

FY 2018/19 recycled water costs of \$1,303,312 are shown in **Table 2**. These costs are divided by the total projected recycled units sold (479,159 from **Table 3**) to determine a cost of \$2.72 ($\$1,303,312 \div 479,159 = \2.72) per hcf. The base cost of \$0.85/hcf is added to determine a total cost of \$3.57/hcf. Recycled costs are projected to increase in later fiscal years using the assumptions in Appendix C.

As shown in Table 2, the projected potable water variable costs (SCVWD and SFPUC) for FY 2018/19 amount to \$16,915,013. These costs are divided by the projected total potable units sold (3,793,691 from **Table 3**) to determine a cost of \$4.46 ($\$16,915,013 \div 3,793,691 = \4.46) per hcf. Adding the base rate of \$0.85/hcf amounts to a total rate of \$5.31/hcf.

Table 4
City of Milpitas - Water Rate Study
Variable Rate Cost Allocation 2018/19

Total Variable Costs:	\$22,149,489
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Non Water Purchase Variable Costs	\$3,931,163
<u>Less Misc. Revenue Allocated to Variable Costs</u>	<u>(293,097)</u>
Subtotal, Costs for All Units of Usage	\$3,638,066

All Use	4,272,850
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Base Cost (\$/hcf)	\$0.85
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Recycled Costs:	\$1,303,312
------------------------	-------------

Recycled Water Sold
479,159

Cost Per HCF Sold

Recycled Cost (\$/hcf)	\$2.72
<u>+Base Cost (\$/hcf)</u>	<u>\$0.85</u>
Total Unit Rate	\$3.57

Potable Variable Costs:	\$16,915,013
--------------------------------	--------------

Potable Water Sold

SFPUC	2,341,633
SCVWD	<u>1,452,058</u>
	3,793,691

Cost Per HCF Sold

Potable Cost (\$/hcf)	\$4.46
<u>+Base Cost (\$/hcf)</u>	<u>\$0.85</u>
Total Unit Rate	\$5.31

Wholesale Water Rate Passthrough

Proposition 218 allows California agencies providing water service to authorize passing through to their customers increases in wholesale water rates. A “pass through” provision is recommended to be included in the Milpitas proposed water rate schedule and Proposition 218 notice.

While the proposed rates include projected wholesale increases, increases in the wholesale unit costs of SCVWD, SFPUC, and/or recycled water above amounts projected can be recovered through an additional per unit rate increase that passes through any increases in the wholesale cost of potable or recycled water that are imposed on the City by these agencies.

Meter Charges

Bimonthly meter charges are considered “availability” or “readiness-to-serve” charges for providing customers with access to water at all times. They are designed to recover a portion of the City’s fixed costs of providing water service. These charges constitute a fixed portion of customers’ water bills because they are levied whether or not water is used. BWA recommends allocating these costs based on each user’s proportional capacity in the system as determined by each user’s water meter flow capacity.

This assumes that larger meters have the potential to demand more capacity, or said differently, exert more peaking characteristics compared to smaller meters. The potential capacity demanded (peaking) is proportional to the potential flow through each meter size as established by the AWWA hydraulic capacity ratios which are shown in column 3 of **Figure A**. The ratios shown are the ratio of potential flow through each meter size compared to the flow through a 5/8-inch meter. For example, column 3 shows that the flow through a 2-inch meter is 8 times that of a 5/8-inch meter and therefore the meter capacity component of the meter charge is 8 times that of the 5/8-inch meter.

Table 5 shows a comparison of existing and proposed meter charges and the calculation of proposed meter charges. This Study used meter flow ratios identified by the American Water Works Association (AWWA). **Figure A** shows the AWWA recommended meter equivalents.

Figure A
American Water Works Association
Fixed Charge Meter Ratios

Water Meter Size	AWWA*(capacity)	Factor based on 5/8"
5/8 inch	20	1.00
3/4 inch	30	1.50
1 inch	50	2.50
1-1/2 inch	100	5.00
2 inch	160	8.00
3 inch	300	15.00
4 inch	500	25.00
6 inch	1,000	50.00

*Safe maximum operating capacity by meter type, per current AWWA standards, GPM.
AWWA Manual M1, Sixth Edition, 2012, Appendix B

BWA recommends that the City continue to align meter charges with the AWWA standard 5/8" meter equivalents. This provides a ratio to compare different meter sizes based on their capacity reservation in the system. For example, a 1-1/2 inch meter is rated at 2.50 because it has 2.50 times the potential flow rate as a standard 5/8 inch meter. Meter equivalents denote the maximum flow capacity of the meter. Total City water system 5/8" meter equivalents amount to 34,582 (as of 2018), as shown in Appendix C, Table 5.

BWA excluded meter growth to be conservative in revenue projections. Generally, growth in 5/8" to 2" meters is not expected to be significant, as the City has been mostly built out in this meter range. 4" and 6" meters are generally installed on industrial sites in the TASP area, which already has a large meter, resulting a net zero gain.

In **Table 5**, the proposed meter charges for FY 2018/19 were developed by taking the fixed operating revenue requirement of \$5,603,648 from **Table 2** and dividing it by total Fiscal Year 2018/2019 system meter equivalents of 34,582 to arrive at a bimonthly meter charge of \$27.01 for the base 5/8" meter. This charge is then increased based on AWWA capacity ratios for larger meters. For example, a 1" meter has a capacity ratio of 2.5 times and is recommended to be charged \$67.52 bimonthly.

Meters 6" and above were assigned a capacity ratio of 50 times.

Based on AWWA guidelines, BWA recommends that fire meters be attributed 20% of the charge of regular meters to denote that these meters are on standby for emergencies, are not regularly used, and fire flow costs are estimated at about 20% of water system fixed costs. This method is consistent with the method used in the previous rate study.

The calculated FY 2018/19 rates are the base year rates and that they will be adjusted each year thereafter in accordance with the rate model.

Table 5
City of Milpitas - Water Rate Study
Fixed Operating Cost Allocation - FY 2018/19

Fixed Operating Costs

\$5,603,648

5/8" AWWA Meter Equivalents

34,582

\$/per 5/8" Meter Equivalent

\$162.04

Bimonthly \$/per 5/8" Meter Equivalent

\$27.01

Meter Size	Current Cost Ratio	AWWA Meter Equivalents²	Current	Proposed	Bimonthly \$ Increase
5/8 inch	1.0	1.0	\$19.44	\$27.01	<i>\$7.57</i>
3/4 inch	1.5	1.5	29.16	40.51	<i>11.35</i>
1 inch	2.5	2.5	48.60	67.52	<i>18.92</i>
1-1/2 inch	5.0	5.0	97.20	135.03	<i>37.83</i>
2 inch	8.0	8.0	155.52	216.05	<i>60.53</i>
3 inch	15.0	15.0	291.60	405.10	<i>113.50</i>
4 inch	25.0	25.0	486.00	675.16	<i>189.16</i>
6 inch and above	50.0	50.0	972.00	1,350.33	<i>378.33</i>

Detector Valve (Fire Meter)	Current	Proposed	Bimonthly \$ Increase
2 inch	31.10	43.21	<i>\$12.11</i>
3 inch	58.32	81.02	<i>22.70</i>
4 inch	97.20	135.03	<i>37.83</i>
6 inch and above	194.40	270.07	<i>75.67</i>

1 Fire meter equivalents established at 20% of regular meter equivalents

2 Meter equivalents capped at 6".

Low Income Discount Program

California public agencies providing water service may implement low income rate assistance programs, but rate discounts must be funded from non-rate sources of revenue revenues – e.g., lease revenues, revenues from fines and penalties other than civil liability imposed for violations of the City’s water conservation program. If the City chooses to implement a low-income program, BWA recommends that the City qualify low income customers based on those already enrolled in the Pacific Gas and Electric (PG&E) Care program to minimize administration costs.

There are approximately 3,500 customers enrolled in the PG&E Care program in the City of Milpitas. The water enterprise generates approximately \$147,000 per year from non-rate sources; enough for a \$3.50/month discount for each PG&E Care enrolled customer.

Capital Costs

Table 6 shows the City water enterprise 5-year capital improvement program for potable water sources. The projects are identified in the City's 2018 – 2023 Capital Improvement Program. An additional \$6,050,000 of water bonds may be issued to directly offset capital surcharge funding for specific projects and reduce the need for short-term rate increases, for a total amount of bond funded projects of \$20,000,000. All \$46.3 million of potable water capital project costs are assumed to be funded in the 5-year rate Study period.

Table 6
City of Milpitas - Water Rate Study
CIP Schedule - Capital Projects

Project Expenses ¹	Total Projects											
	2018-19	2019-20	2020-21	2021-22	2022-23	Total	Water Fund	Extension Fund	Surcharge	Other	Water Bonds	N/A
2nd SCVWD Water Reservoir & Pump Sta.	\$0	\$0	\$3,250,000	\$3,250,000	\$0	\$6,500,000	\$0	\$0	\$0	\$6,500,000	\$0	\$0
SCVWD Second Water Supply Turnout	0	0	0	500,000	2,500,000	3,000,000	\$0	\$0	\$0	\$3,000,000	\$0	0
Well Upgrade Project	5,630,000	4,000,000	0	0	0	9,630,000	\$0	\$0	\$0	\$2,330,000	\$7,300,000	0
Aging Water System/Seismic Improvement	4,700,000	0	0	0	0	4,700,000	\$0	\$0	\$0	\$0	\$4,700,000	0
Hydrant Replacement Program	72,100	74,260	76,500	78,800	80,850	382,510	\$0	\$72,100	\$310,410	\$0	\$0	0
Reservoir Cleaning	150,000	0	150,000	0	150,000	450,000	\$0	\$0	\$450,000	\$0	\$0	0
Automated Meter Replacement Program	1,726,700	2,226,650	1,226,650	0	0	5,180,000	\$0	\$500,000	\$4,680,000	\$0	\$0	0
Water Supervisory Control and Data Acquisition	0	500,000	5,450,000	0	0	5,950,000	\$0	\$2,000,000	\$2,000,000	\$0	\$1,950,000	0
Annual Water Distribution Rehab. Program	600,000	600,000	600,000	600,000	600,000	3,000,000	\$0	\$300,000	\$2,700,000	\$0	\$0	0
Minor Water Projects	100,000	100,000	100,000	100,000	100,000	500,000	\$0	\$0	\$500,000	\$0	\$0	0
Water O&M Database Management	50,000	0	0	0	0	50,000	\$0	\$25,000	\$25,000	\$0	\$0	0
Water Leak Detection and Condition Asses	150,000	150,000	150,000	150,000	150,000	750,000	\$0	\$0	\$750,000	\$0	\$0	0
Water Master Plan 2019	400,000	0	0	0	0	400,000	\$0	\$0	\$400,000	\$0	\$0	0
<i>Additional SCVWD Zone 1 Pressure Red. Val</i>	0	0	0	490,000	0	490,000	\$0	\$0	\$490,000	\$0	\$0	0
Los Coches Backbone	0	850,000	3,350,000	0	0	4,200,000	\$0	\$0	\$4,200,000	\$0	\$0	0
Lower Berryessa Creek Water Line	0	0	0	0	1,025,000	1,025,000	\$0	\$0	\$1,025,000	\$0	\$0	0
Water System Replacement Study	0	100,000	0	0	0	100,000	\$0	\$100,000	\$0	\$0	\$0	0
Total	13,578,800	8,600,910	14,353,150	5,168,800	4,605,850	46,307,510	0	2,997,100	17,530,410	11,830,000	13,950,000	0

¹ Source: 2018-2023 Capital Improvements Program

Table 7 shows the City’s capital projects which have unidentified funding sources. The projects consist of \$45.7 million of recycled water projects. These projects have been excluded from this rate study and are not included in the proposed rate calculations.

Table 7
City of Milpitas - Water Rate Study
CIP Schedule - Capital Projects With Unidentified Funding Sources

Project Expenses¹	Total
Recycled Water Pipeline Segment 1	\$6,100,000
Recycled Water Pipeline Segment 2	4,755,000
Recycled Water Pipeline Segment 3	11,957,000
Recycled Water Pipeline Segment 4	19,578,193
Recycled Water Pipeline Segment 5	3,305,000
 Total	 45,695,193

1 Source: 2018-2023 Capital Improvements Program

Capital Surcharge

BWA recommends that the City continue to recover capital costs through a “capital surcharge” levied on water use to recover all system capital costs. The capital surcharge was first implemented beginning FY 2016/17.

Table 8 shows the capital surcharge calculation. The City currently sets aside \$600,000 each year to fund water infrastructure replacement and rehabilitation. City Council policy requires a minimum of \$2,000,000 each year to be set aside for water infrastructure; hence, the Capital Surcharge calculations in **Table 8** include an additional \$1,400,000 each year to meet the City’s policy requirement.

The proposed surcharge provides adequate funding for a \$2,000,000 set-aside per year for the water infrastructure fund per City policy. The surcharge¹ is designed to provide adequate ongoing cash funding for water enterprise capital projects and associated debt service. BWA projections include \$20 million of capital in FY 2018/19, as the capital fund balance is not adequate to fund all needed projects. This amount represents an additional \$6,050,000 compared to the \$13,950,000 shown in the City’s 2018 – 2023 Capital Improvement Program. **Table 8** shows proposed capital surcharge, which takes into account the additional bond funds that may be issued.

Debt Funded Capital: BWA estimates debt service on a \$20 million borrowing for potable capital to be about \$1,314,000 per year beginning in FY 2018/19 (5%, 30-year financing).

¹ The surcharge is derived by dividing the total capital costs by the projected estimated potable water use.

Table 8
City of Milpitas - Water Rate Study
Capital Surcharge Calculation

	Current		Prorated						
Capital Expense	FY 2017/18	FY 2018/19	FY 2018/19*	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	Total	
Total Water Capital CIP Funding Need			\$ -	\$ 3,750,910	\$ 7,403,150	\$ 1,418,800	\$ 2,105,850	\$ 14,678,710	
Bond Offset			\$ -	\$(2,576,650)	\$(3,473,350)			\$ (6,050,000)	
Water Infrastructure Fund per policy		\$ 1,400,000	\$ 1,400,000	\$ 1,400,000	\$ 1,400,000	\$ 1,400,000	\$ 1,400,000	\$ 7,000,000	
Annual Debt Service Payment		\$ 657,020	\$ 657,020	\$ 1,314,039	\$ 1,314,039	\$ 1,314,039	\$ 1,314,039	\$ 5,913,176	
Sub Total		\$ 2,057,020	\$ 2,057,020	\$ 3,888,299	\$ 6,643,839	\$ 4,132,839	\$ 4,819,889	\$ 21,541,886	
Projected Water Use (HCF)									
From Appendix C Table 2 - Water Use	3,743,003	3,793,691	3,793,691	3,845,065	3,897,135	3,949,910	4,003,400		
Proposed Rates									
Capital Surcharge	\$ 1.30	\$ 1.08	\$ 1.23	\$ 1.08	\$ 1.08	\$ 1.08	\$ 1.08		
% Change		-17.2%	-5.7%	0.0%	0.0%	0.0%	0.0%		
Estimated Annual Capital Surcharge Revenue		\$ 4,083,126	\$ 4,648,907	\$ 4,138,419	\$ 4,194,462	\$ 4,251,263	\$ 4,308,834	\$ 21,541,886	
Beginning Balance		\$ -	\$ -	\$ 2,591,888	\$ 2,842,008	\$ 392,631	\$ 511,055		
Expenses		\$ 2,057,020	\$ 2,057,020	\$ 3,888,299	\$ 6,643,839	\$ 4,132,839	\$ 4,819,889	\$ 21,541,886	
Projected Revenue		\$ 4,083,126	\$ 4,648,907	\$ 4,138,419	\$ 4,194,462	\$ 4,251,263	\$ 4,308,834	\$ 21,541,886	
Ending Balance		\$ 2,026,106	\$ 2,591,888	\$ 2,842,008	\$ 392,631	\$ 511,055	\$ (0)		

*Assumes new rate is effective for two billing periods

SECTION 4: RATE INCREASES

Table 9 shows a cash flow schedule for the Operating Fund. Rate increases are needed to meet key financial goals of the water enterprise including:

- Prevent further operating losses
- Meet debt service coverage requirements on any new debt issuances
- Maintain at least 30% of operating expenses in reserves by FY 2022/23
- Meet the City policy to accumulate at least \$2 million a year to set aside for replacement of infrastructure
- Fund 5-year capital program
- Smooth out impact on rate payers

In addition to the rate structure adjustments recommended in FY 2018/19, BWA estimates the water enterprise requires overall rate increases to potable and recycled water consumption and meter charges (excluding the capital surcharge) of **6%** in FY 2019/20, **6%** in FY 2020/21, **6%** in FY 2021/22 and **6%** in FY 2022/23.

Detailed projections of water use, rate increases, and revenues are shown in Appendix C.

Appendix A shows the bill impacts of the proposed rates for a typical single family residential user based on different levels of water use. The average single family residential monthly bill (using 7 HCF monthly) would increase from the current amount of \$54.73 to \$58.23.

Appendix B shows how the City's rates compare to regional agencies under the current and proposed rates.

Table 9
City of Milpitas - Water Rate Study
Detailed Cash Flow Projection

			Projected					
	2016/17	Escalation %	2017/18	2018/19 ¹	2019/20	2020/21	2021/22	2022/23
Water M&O - 400								
Beg. Fund Balance (Water M&O - 400)			\$7,065,130	\$7,966,107	\$5,587,977	\$5,534,259	\$6,448,666	\$8,414,972
Revenue								
Rate Revenue	\$22,054,033	Appendix C	\$24,562,222	\$25,699,914	\$29,390,848	\$31,463,915	\$33,684,432	\$36,064,466
Other Operating Income ²	147,340	Varies	621,655	595,000	250,000	250,000	250,000	250,000
Subtotal Revenue	22,201,373		25,183,877	26,294,914	29,640,848	31,713,915	33,934,432	36,314,466
Expenses								
Purchased Water	15,548,813	Appendix C	16,737,142	18,218,325	18,862,260	19,575,732	20,338,473	22,158,046
Personnel Services	1,107,805	3%	2,899,578	4,060,260	4,182,068	4,307,530	4,436,756	4,569,858
Transfers Out (General Fund Admin)	2,633,000	4%	2,601,952	2,705,884	2,814,119	2,926,684	3,043,751	3,165,502
Services and Supplies	1,848,628	4%	2,044,228	3,688,575	3,836,118	3,989,563	4,149,145	4,315,111
Repairs and Maintenance	451,690	4%	0	0	0	0	0	0
Subtotal Expenses	21,589,936		24,282,900	28,673,044	29,694,565	30,799,508	31,968,126	34,208,517
Net Revenue	611,437		900,977	(2,378,131)	(53,717)	914,406	1,966,306	2,105,949
Ending Fund Balance	7,065,130		7,966,107	5,587,977	5,534,259	6,448,666	8,414,972	10,520,922
Water Capital Funds - 402, 405								
Beg. Fund Balance (Water Capital Funds - 402, 405)			\$5,994,868	\$10,855,833	\$23,594,201	\$17,813,470	\$9,586,485	\$11,100,594
Revenue								
Bond (5% 30-Years)				20,200,000				
Capital Surcharges (Rate Revenue)	4,315,060	Appendix C	4,860,965	4,644,188	4,134,218	4,190,204	4,246,947	4,304,460
Subventions and Grants	88,515	0%						
Capital Contributions	814,113	0%						
Connection Fees	2,183,279	0%						
Transfers In	1,343,207	TASP Funds		2,330,000	0	3,250,000	3,750,000	2,500,000
Interest Income	(10,106)	0%						
Subtotal Revenue	4,419,008		4,860,965	27,174,188	4,134,218	7,440,204	7,996,947	6,804,460
Expenses								
Capital Expenditures	1,556,692	Table 6		13,578,800	8,600,910	14,353,150	5,168,800	4,605,850
Debt Service	0		0	857,019	1,314,039	1,314,039	1,314,039	1,314,039
Subtotal Expenses	1,556,692		0	14,435,819	9,914,949	15,667,189	6,482,839	5,919,889
Net Revenues	2,862,316		4,860,965	12,738,369	(5,780,731)	(8,226,985)	1,514,109	884,571
Ending Fund Balance	5,994,868		10,855,833	23,594,201	17,813,470	9,586,485	11,100,594	11,985,164
Total Fund Balance								
Total Fund Balance	13,059,998		18,821,940	29,182,178	23,347,730	16,035,151	19,515,566	22,506,086
Total Rate Revenue	26,369,093		29,423,186	30,344,102	33,525,066	35,654,118	37,931,379	40,368,926
Total Operating Expenses	21,589,936		24,282,900	28,673,044	29,694,565	30,799,508	31,968,126	34,208,517
Debt Service Coverage (Currently No Debt)								
Net Operating Revenues	9,345,505		5,761,941	2,266,057	4,080,501	5,104,610	6,213,254	6,410,409
Total Debt Service	0		0	857,019	1,314,039	1,314,039	1,314,039	1,314,039
Coverage >1.25x				2.64	3.11	3.88	4.73	4.88
Operating Fund Reserve Target								
30% O&M	6,477,000		7,285,000	8,602,000	8,908,000	9,240,000	9,590,000	10,263,000
Target Met	Yes		Yes	No	No	No	No	Yes

1 Assumes FY 2018/19 rate is effective for two billing periods during the year

2 Should the City opt to implement a low income discount, under BWA's proposal, this revenue would be allocated to offset the cost of the program

Proposed Rate Schedule – Bimonthly

Table 10 shows BWA’s proposed bimonthly rate schedule for FY 2018/19 to FY 2022/23. **Table 11** shows the rates **converted to monthly**.

Table 10
City of Milpitas - Water Rate Study
Water Rate Schedule (Bimonthly)

Overall % Increases (Except Capital Surcharge)

6.0%

6.0%

6.0%

6.0%

BIMONTHLY WATER RATES

Meter Charges

Meter Size	Current	Proposed 2018/19	\$ Increase	Proposed 2019/20	\$ Increase	Proposed 2020/21	\$ Increase	Proposed 2021/22	\$ Increase	Proposed 2022/23	\$ Increase
5/8"	\$19.44	\$27.01	\$7.57	\$28.63	\$1.62	\$30.34	\$1.72	\$32.17	\$1.82	\$34.10	\$1.93
3/4"	29.16	40.51	11.35	42.94	2.43	45.52	2.58	48.25	2.73	51.14	2.89
1"	48.60	67.52	18.92	71.57	4.05	75.86	4.29	80.41	4.55	85.24	4.82
1-1/2"	97.20	135.03	37.83	143.13	8.10	151.72	8.59	160.83	9.10	170.48	9.65
2"	155.52	216.05	60.53	229.02	12.96	242.76	13.74	257.32	14.57	272.76	15.44
3"	291.60	405.10	113.50	429.40	24.31	455.17	25.76	482.48	27.31	511.43	28.95
4"	486.00	675.16	189.16	715.67	40.51	758.61	42.94	804.13	45.52	852.38	48.25
6" & above	972.00	1,350.33	378.33	1,431.35	81.02	1,517.23	85.88	1,608.26	91.03	1,704.76	96.50

Detector Check/ RPDa/DCDA

2 inch	31.10	43.21	12.11	45.80	2.59	48.55	2.75	51.46	2.91	54.55	3.09
3 inch	58.32	81.02	22.70	85.88	4.86	91.03	5.15	96.50	5.46	102.29	5.79
4 inch	97.20	135.03	37.83	143.13	8.10	151.72	8.59	160.83	9.10	170.48	9.65
6 inch and above	194.40	270.07	75.67	286.27	16.20	303.45	17.18	321.65	18.21	340.95	19.30

Volumetric Charges (per hcf)

Residential	5.13	5.31	0.18	5.63	0.32	5.97	0.34	6.32	0.36	6.70	0.38
Commercial/Industrial/Institutional and Construction	5.13	5.31	0.18	5.63	0.32	5.97	0.34	6.32	0.36	6.70	0.38
Potable Irrigation	5.13	5.31	0.18	5.63	0.32	5.97	0.34	6.32	0.36	6.70	0.38
Santa Clara County (Ed Levin Park)	3.79	4.10	0.31	4.10	0.00	4.10	0.00	4.10	0.00	4.47	0.37
Recycled Irrigation	2.78	3.57	0.79	3.79	0.21	4.01	0.23	4.25	0.24	4.51	0.26
Recycled Water Industrial / Dual Plumbed	2.78	3.57	0.79	3.79	0.21	4.01	0.23	4.25	0.24	4.51	0.26
Recycled Water: City of Milpitas	2.78	3.57	0.79	3.79	0.21	4.01	0.23	4.25	0.24	4.51	0.26

Capital Surcharge (all potable use, per hcf)

1.30	1.08	-0.22	1.08	0.00	1.08	0.00	1.08	0.00	1.08	0.00
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1 Based on American Water Works Association meter equivalents (capped at 6")

Proposed Rate Schedule – Monthly

Table 11
City of Milpitas - Water Rate Study
Water Rate Schedule (Monthly) - Rounded for Bill Impacts

MONTHLY WATER RATES

Meter Charges

Meter Size	Current	Proposed 2018/19	\$ Increase	Proposed 2019/20	\$ Increase	Proposed 2020/21	\$ Increase	Proposed 2021/22	\$ Increase	Proposed 2022/23	\$ Increase
5/8"	\$9.72	\$13.50	\$3.78	\$14.31	\$0.81	\$15.17	\$0.86	\$16.08	\$0.91	\$17.05	\$0.97
3/4"	14.58	20.25	5.67	21.47	1.22	22.76	1.29	24.12	1.36	25.57	1.45
1"	24.30	33.76	9.46	35.78	2.02	37.93	2.15	40.21	2.28	42.62	2.41
1-1/2"	48.60	67.52	18.92	71.57	4.05	75.86	4.29	80.41	4.55	85.24	4.83
2"	77.76	108.03	30.27	114.51	6.48	121.38	6.87	128.66	7.28	136.38	7.72
3"	145.80	202.55	56.75	214.70	12.15	227.58	12.88	241.24	13.66	255.71	14.47
4"	243.00	337.58	94.58	357.84	20.26	379.31	21.47	402.07	22.76	426.19	24.12
6" & above	486.00	675.16	189.16	715.67	40.51	758.61	42.94	804.13	45.52	852.38	48.25

Detector Check/ RPDa/DCDA

2 inch	15.55	21.61	6.06	22.90	1.29	24.28	1.38	25.73	1.45	27.28	1.55
3 inch	29.16	40.51	11.35	42.94	2.43	45.52	2.58	48.25	2.73	51.14	2.89
4 inch	48.60	67.52	18.92	71.57	4.05	75.86	4.29	80.41	4.55	85.24	4.83
6 inch and above	97.20	135.03	37.83	143.13	8.10	151.72	8.59	160.83	9.11	170.48	9.65

Volumetric Charges (per hcf)

Residential	5.13	5.31	0.18	5.63	0.32	5.97	0.34	6.32	0.35	6.70	0.38
Commercial/Industrial/Institutional and Construction	5.13	5.31	0.18	5.63	0.32	5.97	0.34	6.32	0.35	6.70	0.38
Potable Irrigation	5.13	5.31	0.18	5.63	0.32	5.97	0.34	6.32	0.35	6.70	0.38
Santa Clara County (Ed Levin Park)	3.79	4.10	0.31	4.10	0.00	4.10	0.00	4.10	0.00	4.47	0.37
Recycled Irrigation	2.78	3.57	0.79	3.79	0.22	4.01	0.22	4.25	0.24	4.51	0.26
Recycled Water Industrial / Dual Plumbed	2.78	3.57	0.79	3.79	0.22	4.01	0.22	4.25	0.24	4.51	0.26
Recycled Water: City of Milpitas	2.78	3.57	0.79	3.79	0.22	4.01	0.22	4.25	0.24	4.51	0.26

Capital Surcharge (all potable use, per hcf)	1.30	1.08	-0.22	1.08	0.00	1.08	0.00	1.08	0.00	1.08	0.00
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1 Based on American Water Works Association meter equivalents (capped at 6")

APPENDIX A – EXAMPLES OF MONTHLY RESIDENTIAL BILL IMPACTS

<u>Current Single Family Residential, 5/8" Meter</u>				
Monthly Use (HCF)	Volumetric Charge	Capital Surcharge	Meter Charge	Monthly Bill
0	\$0.00	\$0.00	\$9.72	\$9.72
2	10.26	2.60	9.72	22.58
3	15.39	3.90	9.72	29.01
5	25.65	6.50	9.72	41.87
7	35.91	9.10	9.72	54.73
10	51.30	13.00	9.72	74.02
15	76.95	19.50	9.72	106.17
20	102.60	26.00	9.72	138.32
30	153.90	39.00	9.72	202.62
40	205.20	52.00	9.72	266.92
50	256.50	65.00	9.72	331.22

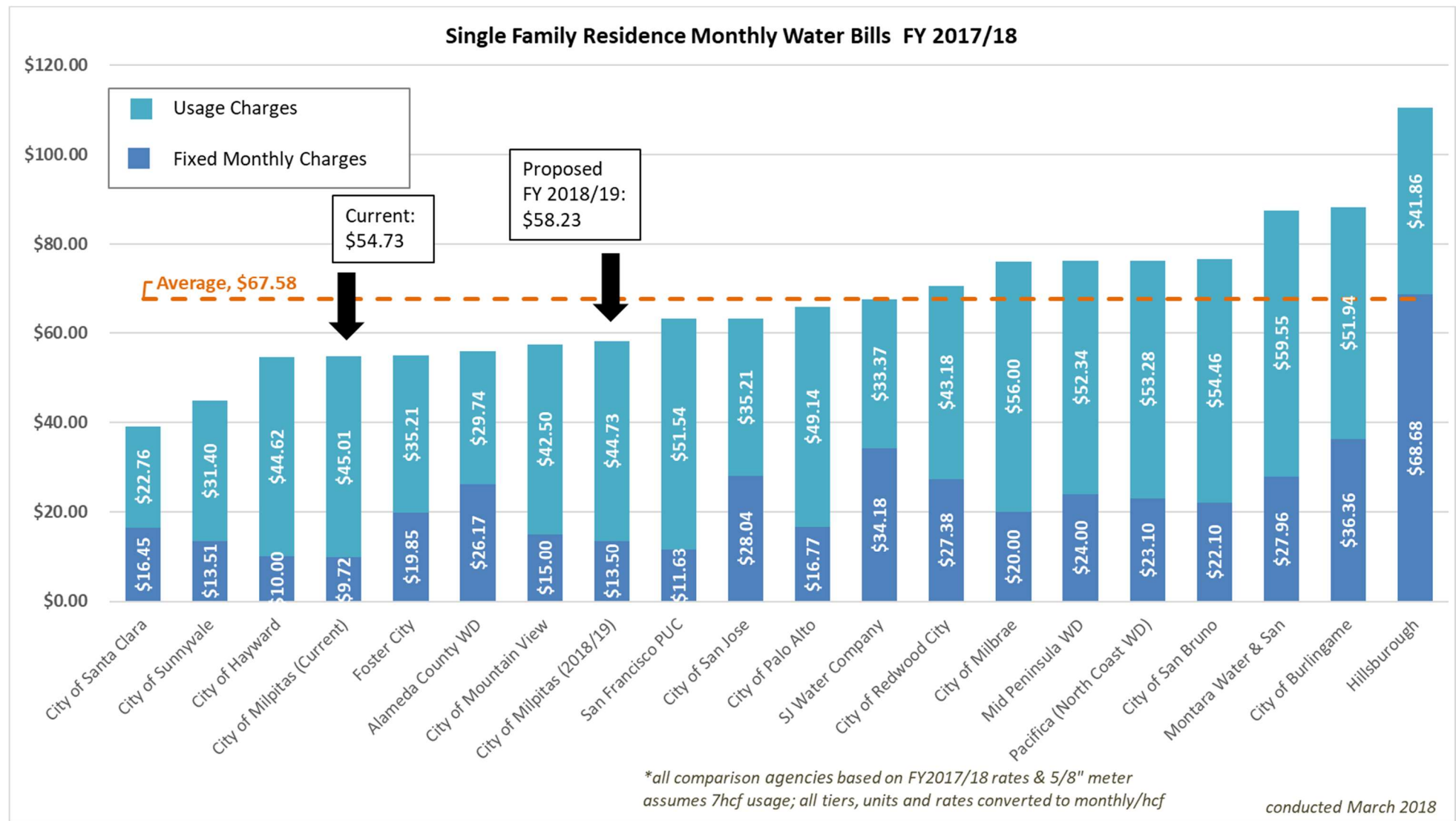
Single Family Residential FY 2017 Avg. Monthly Use: 7.285

FY 2018/19 Proposed Single Family Residential, 5/8" Meter

Monthly Use (HCF)	Volumetric Charge	Capital Surcharge	Meter Charge	Monthly Bill	Monthly \$ Increase
0	\$0.00	\$0.00	\$13.50	\$13.50	\$3.78
2	10.62	2.16	13.50	26.28	3.70
3	15.93	3.24	13.50	32.67	3.66
5	26.55	5.40	13.50	45.45	3.58
7	37.17	7.56	13.50	58.23	3.50
10	53.10	10.80	13.50	77.40	3.38
15	79.65	16.20	13.50	109.35	3.18
20	106.20	21.60	13.50	141.30	2.98
30	159.30	32.40	13.50	205.20	2.58
40	212.40	43.20	13.50	269.10	2.18
50	265.50	54.00	13.50	333.00	1.78

Single Family Residential FY 2017 Avg. Monthly Use: 7.285

APPENDIX B – REGIONAL RATE SURVEY



APPENDIX C – FINANCIAL DETAILS AND ASSUMPTIONS

Appendix C

City of Milpitas - Water Rate Study

Table 1 - Wholesale Water Purchases

Potable Water	17/18 Projected	18/19 Projected	19/20 Projected	20/21 Projected	21/22 Projected	22/23 Projected
SFPUC Quantity Charge, \$/HCF	\$4.10	\$4.10	\$4.10	\$4.10	\$4.10	\$4.47
% Increase	0%	0%	0%	0%	0%	9%
SFPUC Purchased, HCF	2,725,710	2,606,052	2,606,052	2,606,052	2,606,052	2,606,052
% Increase	14%	-4%	0%	0%	0%	0%
Subtotal: SFPUC Expenditures	\$11,175,411	\$10,684,813	\$10,684,813	\$10,684,813	\$10,684,813	\$11,649,052
% Increase	14%	-4%	0%	0%	0%	9%
SFPUC Monthly Meter Charge	\$14,022	\$14,022	\$14,022	\$14,022	\$14,022	\$14,022
BAWSCA Bond Surcharge (Monthly)	\$75,568	\$75,568	\$75,568	\$75,568	\$75,568	\$75,568
Subtotal: Annual Fixed Costs	\$1,075,080	\$1,075,080	\$1,075,080	\$1,075,080	\$1,075,080	\$1,075,080
% Increase	-4%	0%	0%	0%	0%	0%
Total \$Exp: SFPUC Purchased	\$12,250,491	\$11,759,893	\$11,759,893	\$11,759,893	\$11,759,893	\$12,724,132
% Increase	12%	-4%	0%	0%	0%	8%
SCVWD Quantity Charge, \$/HCF	\$2.93	\$3.19	\$3.48	\$3.80	\$4.14	\$4.52
% Increase	8.9%	8.9%	9.1%	9.2%	8.9%	9.2%
SCVWD Purchased, HCF	1,606,928	1,616,025	1,626,465	1,636,905	1,647,359	1,657,814
% Increase	14%	1%	1%	1%	1%	1%
Total \$Exp: SCVWD Purchased	\$4,708,299	\$5,155,120	\$5,660,098	\$6,220,239	\$6,820,066	\$7,493,319
% Increase	24%	9%	10%	10%	10%	10%
Total: Potable Purchases, HCF	4,332,638	4,222,077	4,232,517	4,242,957	4,253,411	4,263,866
% Increase	14%	-3%	0%	0%	0%	0%
Total: Potable \$Exp:	\$16,958,790	\$16,915,013	\$17,419,991	\$17,980,132	\$18,579,959	\$20,217,452
% Increase	15.3%	-0.3%	3.0%	3.2%	3.3%	8.8%

Recycled Water

WPCP Quantity Charge, \$/HCF	\$2.46	\$2.72	\$3.01	\$3.33	\$3.67	\$4.05
% Increase	11%	11%	11%	11%	10%	10%
WPCP Purchased, HCF	479,159	479,159	479,159	479,159	479,159	479,159
% Increase	0%	0%	0%	0%	0%	0%
Total: Recycled \$Exp:	\$1,178,731	\$1,303,312	\$1,442,269	\$1,595,599	\$1,758,514	\$1,940,594
% Increase	11%	11%	11%	11%	10%	10%

TOTAL: ALL PURCHASES, HCF	4,811,797	4,701,236	4,711,676	4,722,116	4,732,570	4,743,025
% Increase	13%	-2%	0%	0%	0%	0%
TOTAL: ALL PURCHASES \$EXP	\$18,137,521	\$18,218,325	\$18,862,260	\$19,575,732	\$20,338,473	\$22,158,046
% Increase	15%	0%	4%	4%	4%	9%

Appendix C
City of Milpitas - Water Rate Study
Table 2 - Water Use

Potable Water	Actual 16/17	17/18 Projected	18/19 Projected	19/20 Projected	20/21 Projected	21/22 Projected	22/23 Projected
Single Family Residential:							
Usage, HCF	1,089,226	1,227,026	1,243,642	1,260,483	1,277,553	1,294,853	1,312,388
% Increase	4%	13%	1%	1.4%	1.4%	1.4%	1.4%
Multi Family Residential:							
Usage, HCF	704,818	793,986	804,738	815,635	826,681	837,876	849,222
% Increase	4%	13%	1%	1.4%	1.4%	1.4%	1.4%
Subtotal Residential Usage, HCF	1,794,044	2,021,011	2,048,380	2,076,119	2,104,234	2,132,729	2,161,611
% Increase	4%	13%	1%	1.4%	1.4%	1.4%	1.4%
Commercial:							
Usage, HCF	542,159	610,748	619,019	627,402	635,898	644,509	653,237
% Increase	-2%	13%	1%	1.4%	1.4%	1.4%	1.4%
Industrial:							
Usage, HCF	492,128	554,388	561,895	569,505	577,217	585,033	592,956
% Increase	-11%	13%	1%	1.4%	1.4%	1.4%	1.4%
Institutional:							
Usage, HCF	103,842	116,979	118,563	120,169	121,796	123,446	125,117
% Increase	7%	13%	1%	1.4%	1.4%	1.4%	1.4%
Irrigation:							
Irrigation Usage, HCF	273,519	308,122	312,295	316,524	320,810	325,155	329,558
% Increase	16%	13%	1%	1.4%	1.4%	1.4%	1.4%
Ed Levin Park:							
Ed Levin Usage, HCF	3,373	3,800	3,851	3,903	3,956	4,010	4,064
% Increase	16%	13%	1%	1.4%	1.4%	1.4%	1.4%
CITY Domestic Accounts:							
CITY Domestic Usage, HCF	12,402	13,971	14,160	14,352	14,546	14,743	14,943
% Increase	10%	13%	1%	1.4%	1.4%	1.4%	1.4%
CITY Irrigation Accounts:							
CITY Irrigation Usage, HCF	101,183	113,984	115,527	117,092	118,678	120,285	121,914
% Increase	43%	13%	1%	1.4%	1.4%	1.4%	1.4%
Subtotal Potable Use	3,322,650	3,743,003	3,793,691	3,845,065	3,897,135	3,949,910	4,003,400
% Increase	2.4%	12.7%	1.4%	1.4%	1.4%	1.4%	1.4%
Recycled Water							
Irrigation (Piped)							
Recycled Irrigation Usage, HCF	320,780	436,147	436,147	436,147	436,147	436,147	436,147
% Increase	8%	36%	0%	0%	0%	0%	0%
Industrial Process Use							
Recycled Industrial Usage, HCF	262	356	356	356	356	356	356
% Increase	-81%	36%	0%	0%	0%	0%	0%
City of Milpitas - Irrigation Recycled							
Recycled Irrigation Usage, HCF	31,373	42,656	42,656	42,656	42,656	42,656	42,656
% Increase	-6%	36%	0%	0%	0%	0%	0%
Subtotal Recycled Use	352,415	479,159	479,159	479,159	479,159	479,159	479,159
% Increase	6%	36%	0%	0%	0%	0%	0%
TOTAL: ALL USE, HCF	3,675,065	4,222,162	4,272,850	4,324,224	4,376,294	4,429,069	4,482,559
% Total Use Increase	2.7%	14.9%	1.2%	1.2%	1.2%	1.2%	1.2%
% of Unaccounted Potable Water	12.5%	6.1%	6.1%	6.1%	6.1%	6.1%	6.1%
% Wholesale Contractual Obligation		7.5%	4.0%	3.1%	2.1%	1.0%	0.0%

Appendix C
City of Milpitas - Water Rate Study
Table 3 - Water Rates

Potable Water	Actual 17/18	18/19 Proposed	19/20 Projected	20/21 Projected	21/22 Projected	22/23 Projected
Single Family Residential:						
Rate, \$/HCF	\$5.13	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70
% Increase		3.5%	6.0%	6.0%	6.0%	6.0%
Multi Family Residential:						
Rate, \$/HCF	\$5.13	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70
% Increase		3.5%	6.0%	6.0%	6.0%	6.0%
Commercial:						
Rate, \$/HCF	\$5.13	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70
% Increase		3.5%	6.0%	6.0%	6.0%	6.0%
Industrial:						
Rate, \$/HCF	\$5.13	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70
% Increase		3.5%	6.0%	6.0%	6.0%	6.0%
Institutional:						
Rate, \$/HCF	\$5.13	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70
% Increase		3.5%	6.0%	6.0%	6.0%	6.0%
Irrigation:						
Irrigation rate, \$/HCF	\$5.13	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70
% Increase		3.5%	6.0%	6.0%	6.0%	6.0%
Ed Levin Park:						
Ed Levin rate, \$/HCF	\$3.79	\$4.10	\$4.10	\$4.10	\$4.10	\$4.47
% Increase		8.2%	0.0%	0.0%	0.0%	9.0%
CITY Domestic Accounts:						
CITY Domestic Rate, \$/HCF	\$5.13	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70
% Increase		3.5%	6.0%	6.0%	6.0%	6.0%
CITY Irrigation Accounts:						
CITY Irrigation rate, \$/HCF	\$5.13	\$5.31	\$5.63	\$5.97	\$6.32	\$6.70
% Increase		3.5%	6.0%	6.0%	6.0%	6.0%

Recycled Water

Irrigation (Piped):						
Recycled Irrigation rate, \$/HCF	\$2.78	\$3.57	\$3.79	\$4.01	\$4.25	\$4.51
% Increase		28.5%	6.0%	6.0%	6.0%	6.0%
Industrial Process Use						
Recycled Industrial rate, \$/HCF	\$2.78	\$3.57	\$3.79	\$4.01	\$4.25	\$4.51
% Increase		28.5%	6.0%	6.0%	6.0%	6.0%
City of Milpitas - Irrigation Recycled						
Recycled Irrigation rate, \$/HCF	\$2.78	\$3.57	\$3.79	\$4.01	\$4.25	\$4.51
% Increase		28.5%	6.0%	6.0%	6.0%	6.0%
Capital Surcharge (Potable Use)	\$1.30	\$1.08	\$1.08	\$1.08	\$1.08	\$1.08
		-17.2%	0.0%	0.0%	0.0%	0.0%

Appendix C
City of Milpitas - Water Rate Study
Table 4 - Water Sales Revenue

Potable Water	17/18 Projected	18/19 Projected	19/20 Projected	20/21 Projected	21/22 Projected	22/23 Projected
Single Family Residential:						
	\$6,294,641	6,603,937	7,094,970	7,622,513	8,189,281	8,798,191
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%
Multi Family Residential:						
	4,073,146	4,273,286	4,591,024	4,932,387	5,299,132	5,693,147
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%
Subtotal: Residential Revenue	10,367,787	10,877,223	11,685,994	12,554,900	13,488,414	14,491,338
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%
Commercial:						
	3,133,139	3,287,090	3,531,500	3,794,083	4,076,190	4,379,274
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%
Industrial:						
	2,844,010	2,983,754	3,205,610	3,443,961	3,700,035	3,975,150
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%
Institutional:						
	600,103	629,590	676,403	726,697	780,730	838,781
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%
Irrigation:						
	1,580,667	1,658,336	1,781,640	1,914,113	2,056,436	2,209,342
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%
Ed Levin Park:						
	14,401	15,790	16,004	16,220	16,440	18,166
% Increase	12.7%	9.6%	1.4%	1.4%	1.4%	10.5%
CITY Domestic Accounts:						
	71,671	75,193	80,784	86,790	93,244	100,177
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%
CITY Irrigation Accounts:						
	584,737	613,469	659,083	708,089	760,738	817,303
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%
Subtotal: Potable Revenue	19,196,515	20,140,445	21,637,017	23,244,854	24,972,228	26,829,530
% Increase	12.7%	4.9%	7.4%	7.4%	7.4%	7.4%

Recycled Water

Irrigation (Piped):						
	1,212,488	1,557,671	1,651,131	1,750,199	1,855,211	1,966,523
% Increase	36.0%	28.5%	6.0%	6.0%	6.0%	6.0%
Industrial Process Use						
	990	1,272	1,349	1,429	1,515	1,606
% Increase	36.0%	28.5%	6.0%	6.0%	6.0%	6.0%
City of Milpitas - Irrigation Recycled						
	118,584	152,344	161,484	171,173	181,444	192,330
% Increase	36.0%	28.5%	6.0%	6.0%	6.0%	6.0%
Subtotal: Recycled Revenue	1,332,062	1,711,287	1,813,964	1,922,802	2,038,170	2,160,460
% Increase	36.0%	28.5%	6.0%	6.0%	6.0%	6.0%

Total Use Revenue	20,528,577	21,851,731	23,450,981	25,167,656	27,010,398	28,989,990
% Increase	13.9%	6.4%	7.3%	7.3%	7.3%	7.3%

Capital Surcharge Revenue	4,860,965	4,078,981	4,134,218	4,190,204	4,246,947	4,304,460
	12.7%	-16.1%	1.4%	1.4%	1.4%	1.4%

Appendix C
City of Milpitas - Water Rate Study
Table 5 - Water Meters

Water Customers

Water Meter Size (inches)	Quantities						Meter Equivalents	
	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23		
All Accts.								
5/8	13,149	13,149	13,149	13,149	13,149	13,149	1.0	13,149
3/4	593	593	593	593	593	593	1.5	890
1	1,443	1,443	1,443	1,443	1,443	1,443	2.5	3,608
1-1/2	617	617	617	617	617	617	5.0	3,085
2	872	872	872	872	872	872	8.0	6,976
3	125	125	125	125	125	125	15.0	1,875
4	82	82	82	82	82	82	25.0	2,050
6 & above	<u>59</u>	<u>59</u>	<u>59</u>	<u>59</u>	<u>59</u>	<u>59</u>	50.0	<u>2,950</u>
Subtotal	16,940	16,940	16,940	16,940	16,940	16,940		34,582

Appendix C
City of Milpitas - Water Rate Study
Table 6 - Water Meter Rates

	Actual 17/18	Projected 18/19	Projected 19/20	Projected 20/21	Projected 21/22	Projected 22/23
All Meters						
5/8	\$19.44	\$27.01	\$28.63	\$30.34	\$32.17	\$34.10
3/4	29.16	40.51	42.94	45.52	48.25	51.14
1	48.60	67.52	71.57	75.86	80.41	85.24
1-1/2	97.20	135.03	143.13	151.72	160.83	170.48
2	155.52	216.05	229.02	242.76	257.32	272.76
3	291.60	405.10	429.40	455.17	482.48	511.43
4	486.00	675.16	715.67	758.61	804.13	852.38
6 & above	972.00	1,350.33	1,431.35	1,517.23	1,608.26	1,704.76

Appendix C
City of Milpitas - Water Rate Study
Table 7 - Water Meter Revenue

All Water Meters	Projected 17/18	Projected 18/19	Projected 19/20	Projected 20/21	Projected 21/22	Projected 22/23
Meter Size						
5/8	\$1,533,699	\$2,130,657	\$2,258,496	\$2,394,006	\$2,537,646	\$2,689,905
3/4	103,751	144,134	152,782	161,949	171,666	181,966
1	420,779	584,557	619,631	656,809	696,217	737,990
1-1/2	359,834	499,892	529,885	561,678	595,379	631,102
2	813,681	1,130,387	1,198,210	1,270,103	1,346,309	1,427,088
3	218,700	303,824	322,053	341,377	361,859	383,571
4	239,112	332,181	352,112	373,238	395,633	419,371
6 & above	<u>344,088</u>	<u>478,016</u>	<u>506,697</u>	<u>537,099</u>	<u>569,325</u>	<u>603,485</u>
	4,033,644	5,603,648	5,939,867	6,296,259	6,674,034	7,074,476

Appendix C
City of Milpitas - Water Rate Study
Table 8 - Projected Water Service Revenues

Projected Revenues	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Capital Surcharges	\$4,315,060	\$4,860,965	\$4,078,981	\$4,134,218	\$4,190,204	\$4,246,947	\$4,304,460
% Increase		12.65%	-16.09%	1.35%	1.35%	1.35%	1.35%
Water Meter Charges	4,033,644	4,033,644	5,603,648	5,939,867	6,296,259	6,674,034	7,074,476
% Increase		0.00%	38.92%	6.00%	6.00%	6.00%	6.00%
Potable Water Volumetric Charges	17,040,675	19,196,515	20,140,445	21,637,017	23,244,854	24,972,228	26,829,530
% Increase		12.65%	4.92%	7.43%	7.43%	7.43%	7.44%
Recycled Water Volumetric Charges	979,714	1,332,062	1,711,287	1,813,964	1,922,802	2,038,170	2,160,460
% Increase		35.96%	28.47%	6.00%	6.00%	6.00%	6.00%
	26,369,093	29,423,186	31,534,360	33,525,066	35,654,118	37,931,379	40,368,926
% Increase		11.58%	7.18%	6.31%	6.35%	6.39%	6.43%

Appendix C
City of Milpitas - Water Rate Study
Table 9 - Prorated Water Service Revenues

Projected Revenues	2018/19 Prorated (Rate Increase effective 2 billing periods)	Loss
Capital Surcharges	\$4,644,188	\$565,207
Water Meter Charges	4,556,979	(1,046,669)
Potable Water Volumetric Charges	19,684,465	(455,980)
Recycled Water Volumetric Charges	1,458,470	(252,816)
Total	30,344,102	(1,190,258)

Public Hearing
**Proposed Water and Recycled
Water Rate Update**
FY2018/19 through FY2022/23

February 5, 2019

City of Milpitas

455 E. Calaveras Blvd., Milpitas, CA 95035
www.ci.milpitas.ca.gov • (408)-586-3000

Timeline

December 15, 2015

- 2015 Water Rates Study Completed
- Council Adopts New Water Rates

December 2016

Water Rates Task Force is formed

Water Rate Changes

- January 2016
- April 2016 – No water rate increases since April 2016

March 20, 2018

Staff provides update on projected wholesale water rates for FY19

October 18, 2017

- Water Rates Task Force Presents Results to Council
- Staff Provides Update on 5-year Water Fund Revenue and Expenses

April 17, 2018

Presentation of preliminary water rates study results

November 29, 2018

- Updated water rates study results
- Council approves community engagement and Prop 218 process

Community Engagement

27,273 – Prop 218 mailers
with background information

3 – Community Workshops

2 – neighborhood meetings

3 – multilingual outreach material

7 – articles/advertisements

4,800 – e-blast subscribers

3 – newspaper articles

1 – informational video

28 – social media posts

7,000 – people reached
through social media posts and
events

1 – dedicated website

Why are we proposing water rate changes?

To ensure adequate funding to operate and maintain the water system

- No water rate increases since April 2016 despite increases in the cost of wholesale water.
- Water Fund will not meet the 30% reserve fund policy requirement
- Water fund is projected to lose \$2.4 million loss by the end of FY 2018/19

To ensure adequate funding for projected wholesale water rate increases

- 63% of projected water operating costs are wholesale water purchases
- Rates are expected to rise by up to 9% annually over the next 7 years (cumulative increase of approx. 66%)

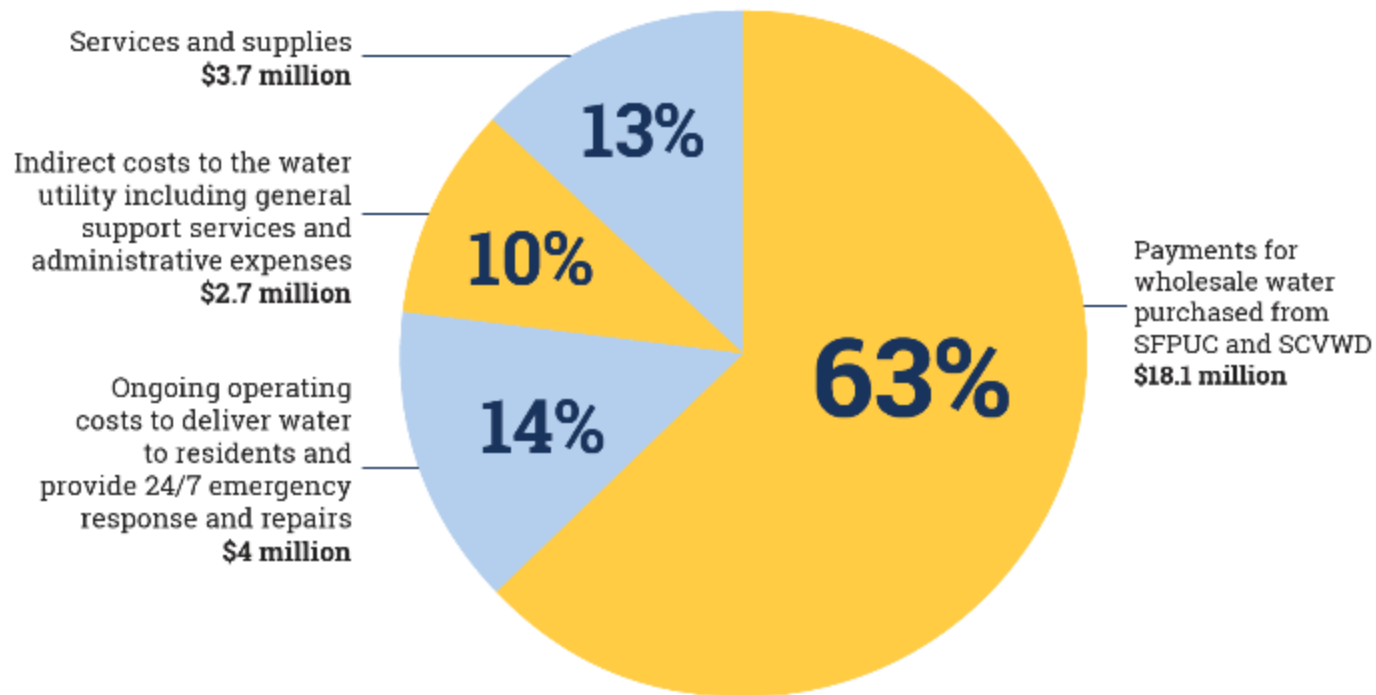
To ensure adequate investment in aging infrastructure

- Over \$46 million needed for infrastructure to improve reliability of water supply to residents (FY19 thru FY23)

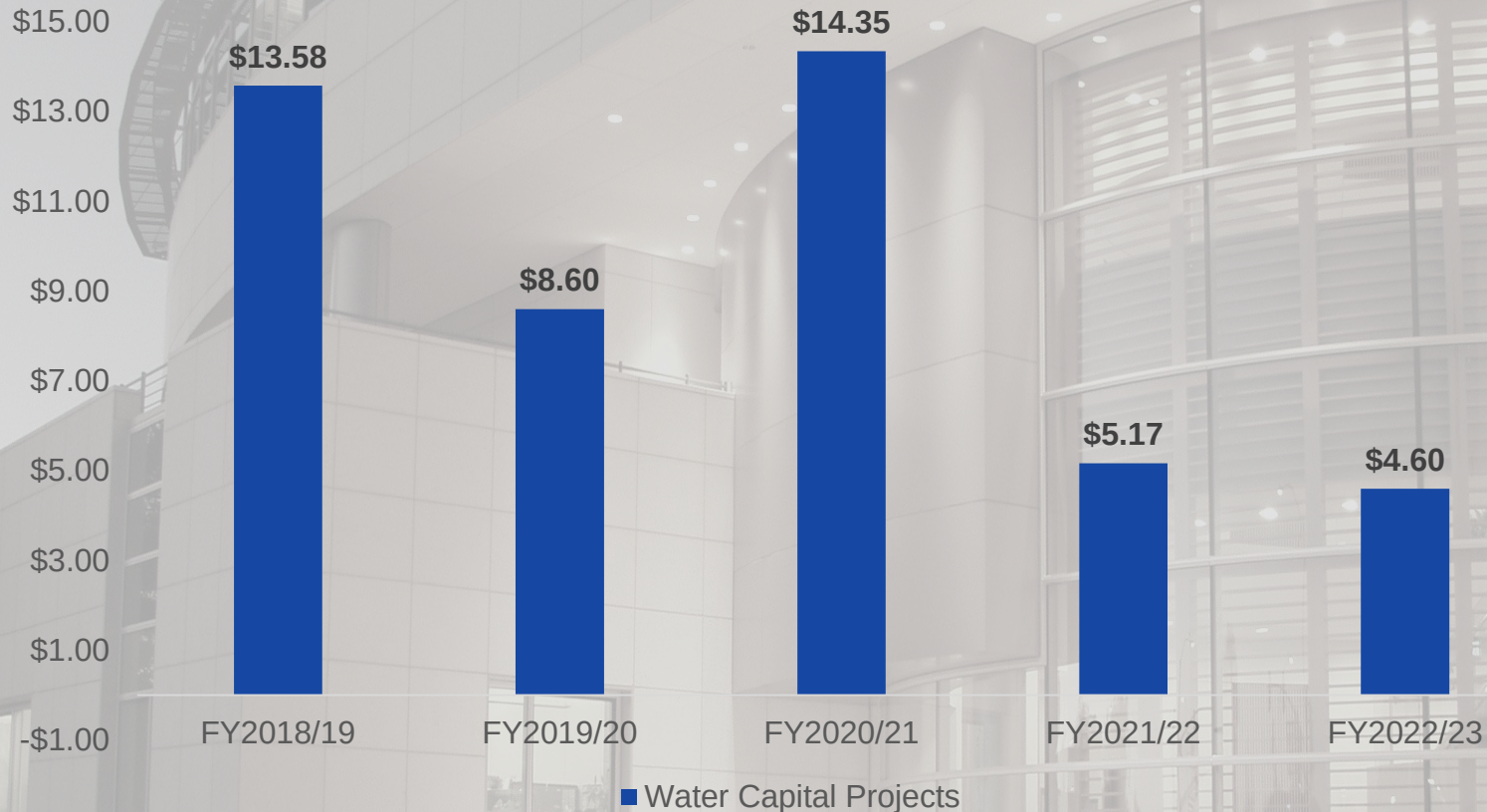
What services are paid for by the water rates?

Water Operating Expenses

FY 2018/19 - \$28.5 million



What capital improvements are paid for by the water rates?

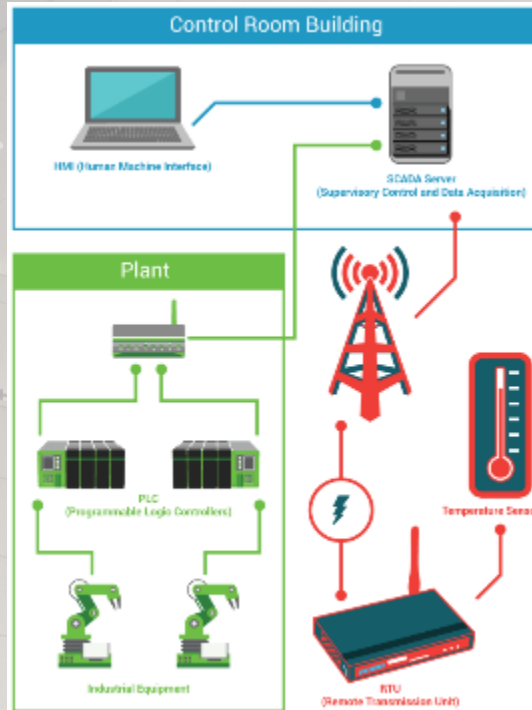


Projected Capital Expenses (\$ in millions)
\$46.3 million (FY2018/19 to FY2022/23)

Key Capital Improvement Projects



2nd SCVWD Reservoir and Turnout

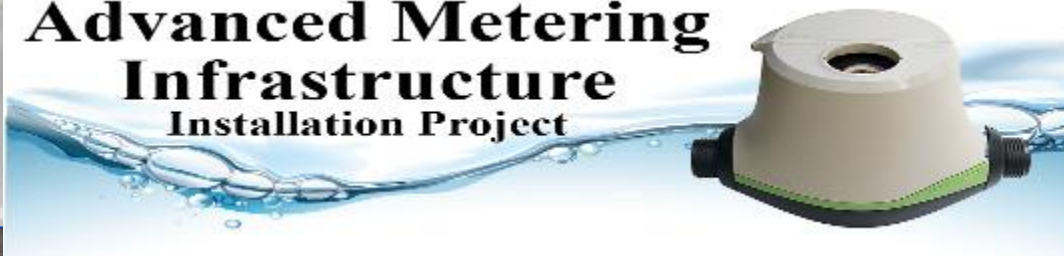


SCADA System



Replacement/Rehab of Aging Pipelines

**Advanced Metering
Infrastructure
Installation Project**



Infrastructure failures can cause severe damage to property



Dempsey Road Pipe failure resulted in loss of water to residents

Infrastructure failures can cause severe damage to roadways



Sink hole at Technology Drive,
Milpitas (January 6, 2019)



Sink hole at Montague Expwy., Milpitas
(January 11, 2019)

How are the proposed water rates structured?

- Rate study explored both uniform and tiered rate structures.
- Recent court decisions have focused on how tiered rates are calculated.
 - **Tiered rates must reflect the proportionate cost of providing service within each tier.**
- There are four main criteria cities use to justify cost for tiered rates.
- BWA's study determined the City can not justify a tiered rate structure at this time based on the outlined criteria.
- Proposed rates use a uniform rate structure
- Proposed Rate includes debt issuance of \$20 million in FY2020
 - addresses critical projects needed to for reliability of the City's water system and ensure the safe delivery of potable water.
 - assumes an interest rate of 5% and a payment term of 30 years.

Bill Impact - \$3.52 per month (FY 19)

Current Rates

Meter Charge	
5/8"	\$19.44

Quantity Charge		
Charge	# Used	Bill
\$5.13	14	\$71.82

Capital Surcharge		
Charge	# Used	Bill
\$1.30	14	\$18.20

Bi-Monthly Bill	\$109.44
-----------------	----------

Monthly Bill
\$54.72

Proposed Max. Rates

Meter Charge	
5/8"	\$27.01

Quantity Charge		
Charge	# Used	Bill
\$5.31	14	\$74.34

Capital Surcharge		
Charge	# Used	Bill
\$1.08	14	\$15.12

Bi-Monthly Bill	\$116.47
-----------------	----------

Monthly Bill
\$58.24

Bi-Monthly Water Bill Example FY 2018/19:

Base use case equates to an increase of \$3.52 per month (FY 19) for SFR

Proposed Water Rate Fee Schedule

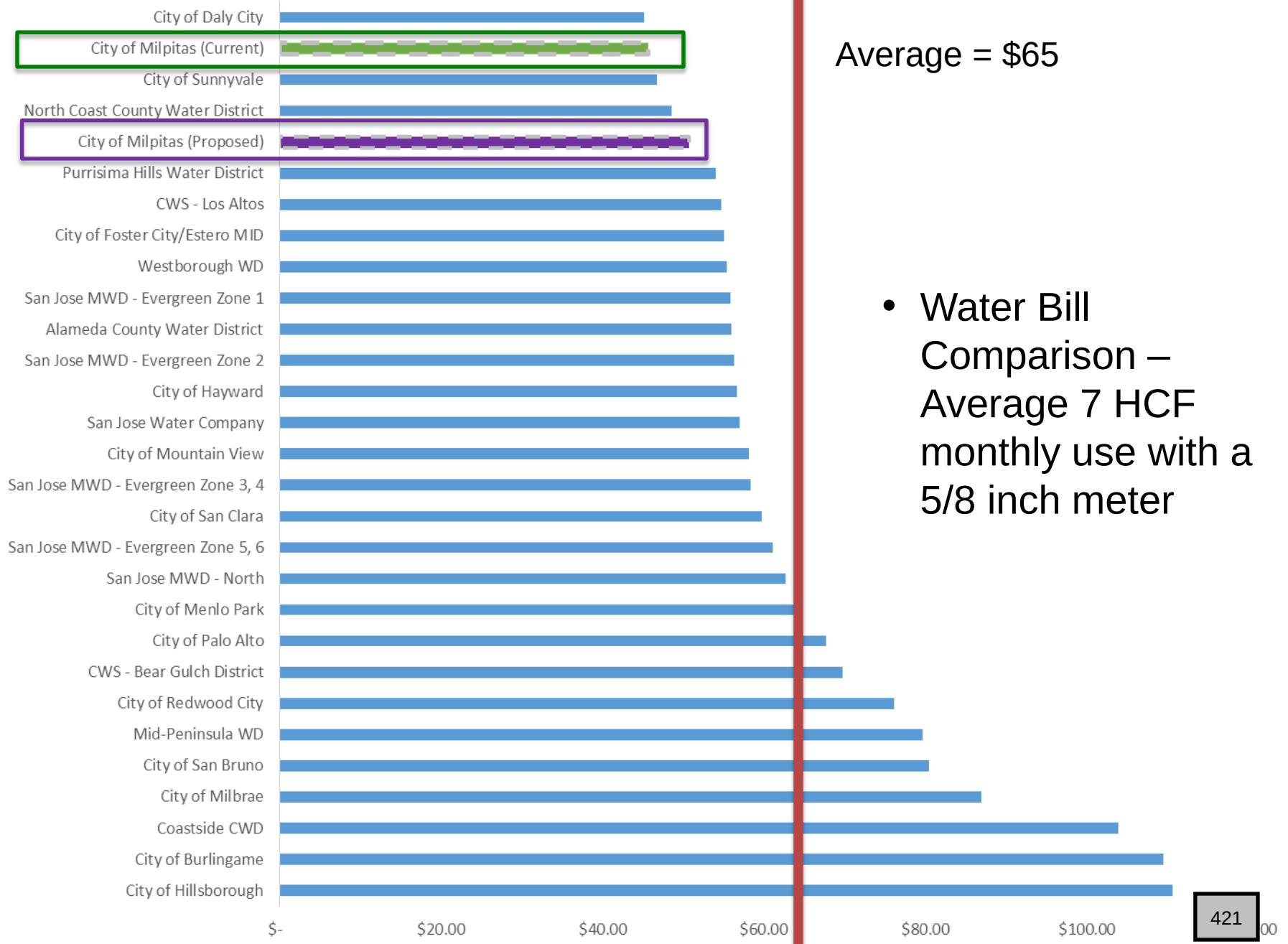
Fixed Meter Charges

<u>Meter Size</u>	<u>Proposed 2018/19</u>	<u>Proposed 2019/20</u>	<u>Proposed 2020/21</u>	<u>Proposed 2021/22</u>	<u>Proposed 2022/23</u>
5/8"	\$27.01	\$28.63	\$30.34	\$32.17	\$34.10
3/4"	\$40.51	\$42.94	\$45.52	\$48.25	\$51.14
1"	\$67.52	\$71.57	\$75.86	\$80.41	\$85.24
1-1/2"	\$135.03	\$143.13	\$151.72	\$160.83	\$170.48
2"	\$216.05	\$229.02	\$242.76	\$257.32	\$272.76
3"	\$405.10	\$429.40	\$455.17	\$482.48	\$511.43
4"	\$675.16	\$715.67	\$758.61	\$804.13	\$852.38
6" & above	\$1,350.33	\$1,431.35	\$1,517.23	\$1,608.26	\$1,704.76
<u>Detector Check/ RPDa/DCDA</u>					
2 inch	\$43.21	\$45.80	\$48.55	\$51.46	\$54.55
3 inch	\$81.02	\$85.88	\$91.03	\$96.50	\$102.29
4 inch	\$135.03	\$143.13	\$151.72	\$160.83	\$170.48
6 inch and above	\$270.07	\$286.27	\$303.45	\$321.65	\$340.95

Proposed Water Rate Fee Schedule

Quantity and Capital Surcharges

	<u>Proposed 2018/19</u>	<u>Proposed 2019/20</u>	<u>Proposed 2020/21</u>	<u>Proposed 2021/22</u>	<u>Proposed 2022/23</u>
Residential	\$ 5.31	\$ 5.63	\$ 5.97	\$ 6.32	\$ 6.70
Commercial/Industrial/Institutional and Construction	\$ 5.31	\$ 5.63	\$ 5.97	\$ 6.32	\$ 6.70
Potable Irrigation	\$ 5.31	\$ 5.63	\$ 5.97	\$ 6.32	\$ 6.70
Santa Clara County (Ed Levin Park)	\$ 4.10	\$ 4.10	\$ 4.10	\$ 4.10	\$ 4.47
Recycled Irrigation	\$ 3.57	\$ 3.79	\$ 4.01	\$ 4.25	\$ 4.51
Recycled Water Industrial / Dual Plumbed	\$ 3.57	\$ 3.79	\$ 4.01	\$ 4.25	\$ 4.51
Recycled Water: City of Milpitas	\$ 3.57	\$ 3.79	\$ 4.01	\$ 4.25	\$ 4.51
Capital Surcharge (all potable use, per hcf)	\$ 1.08	\$ 1.08	\$ 1.08	\$ 1.08	\$ 1.08



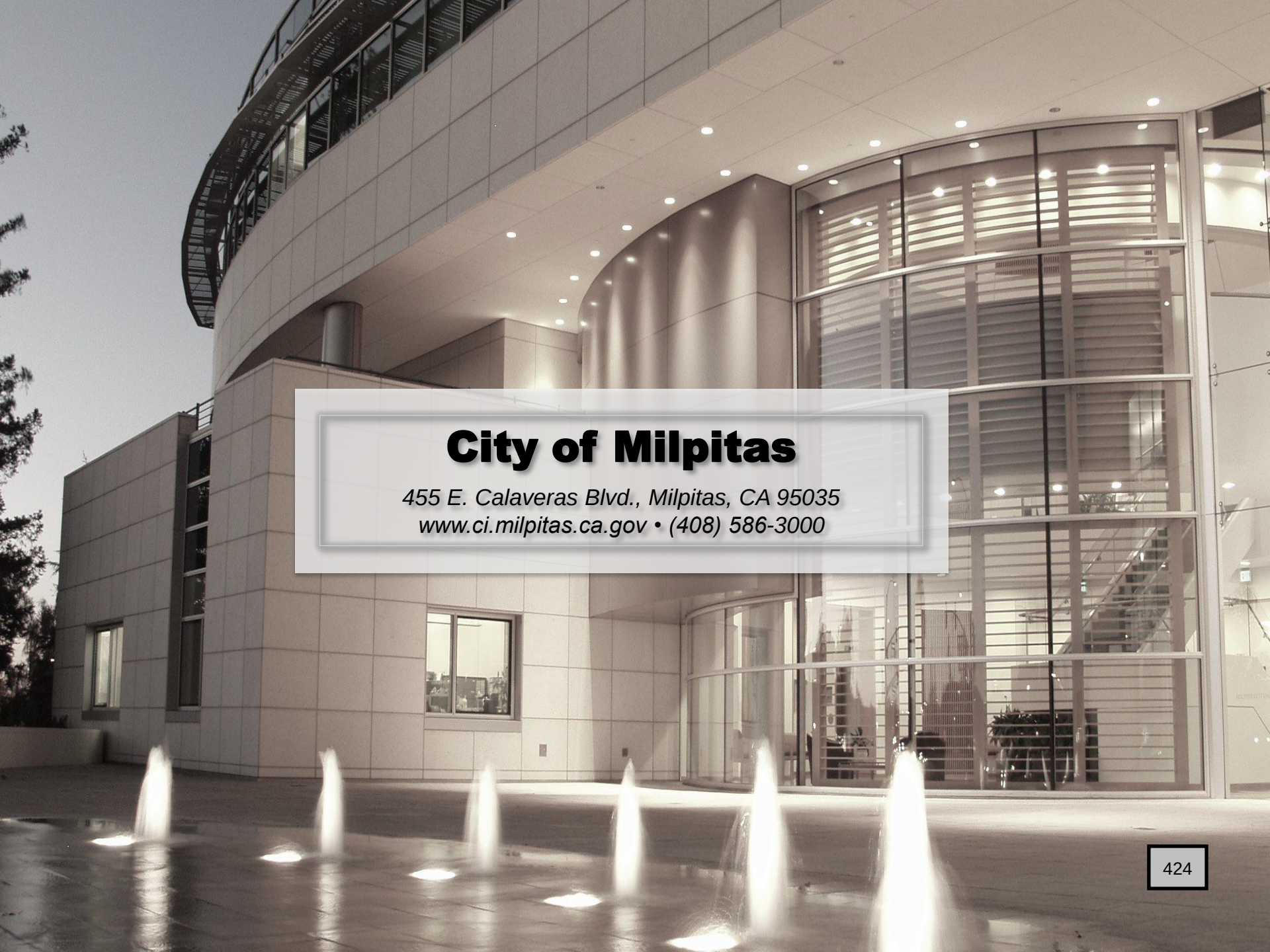
* Excludes surcharges (capital surcharge, drought surcharge, etc.)

Next Steps/Follow-up Actions

- Proceed with actions to secure bonds for FY2020
 - funding needed by July 1, 2019 for critical water system projects.
- Direct staff to explore peaking costs associated with O&M and Capital for future tiered cost considerations.
- Evaluate options for subsidy programs and bring forward for Council consideration as part of the FY 19-20 budget process.
 - Leverage existing subsidy programs to minimize administrative costs to the City
 - Evaluate all potential subsidy programs in the context of other Council and community priorities

Recommendations

1. Open Public Hearing and receive all written and verbal testimony regarding proposed rate increases.
2. Move to close the public hearing following all speakers
3. Receive a summary from the City Clerk of the number of written protest received and the number required for a majority protest.
4. City Attorney shall read aloud the title of Ordinance No. 120.48.
5. **If no majority protest exists**, move to waive the first reading beyond the title and introduce Ordinance No. 120.48 to approve updated water and recycled water rates for FY 2018-19 through FY 2022-23. Ordinance is entitled: “AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 1 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO WATER SERVICE CHARGES.”

A photograph of the City of Milpitas building at night. The building is a modern, curved structure with a light-colored, paneled facade and large glass windows. The interior lights are on, and the building is reflected in the water of a fountain in the foreground. The fountain has several jets of water spraying upwards. The sky is dark, and some trees are visible on the left side of the frame.

City of Milpitas

455 E. Calaveras Blvd., Milpitas, CA 95035
www.ci.milpitas.ca.gov • (408) 586-3000

Backup material for agenda item:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Reconsider previous Direction from the City Council to the City Manager to Conduct a Study of Potential Locations and Regulations for Digital Billboards
Category:	Community Development
Meeting Date:	2/5/2019
Staff Contact:	Michael Fossati, Senior Planner, 408-586-3274 Ned Thomas, Planning Director, 408-586-3273
Recommendation:	Direct the City Manager to provide a signature on the pending application by Outfront-Allvision LLC to obtain permits for the proposed construction of a digital billboard on City-owned property.

BACKGROUND:

Outfront-Allvision LLC, a joint venture between Allvision and Outfront Media, proposes to construct an electronic off-site advertising display (billboard), approximately 70 feet in height, within City-owned right-of-way, approximately 1,100 square feet in area, located south of State Route 237 at the northern terminus of the Barber Court cul-de-sac, all within the City of Milpitas. Attachment A is a map identifying the proposed location. Pursuant to Milpitas Municipal Code (MMC) Section XI-10-24.02, development of the proposed electronic billboard requires approval of a Site Development Permit.

The submittal of a Site Development Permit application requires the signature of the property owner. The proposed electronic billboard by Outfront-Allvision would be located on property owned by the City of Milpitas. Under direction from the City Council, the City Manager may act on behalf of the City to provide authorization for submittal of the Site Development Permit application.

Staff initially scheduled the proposed electronic billboard for consideration by the City Council on October 2, 2018, but the Council continued this item to the next meeting on October 16, 2018. Due to time constraints at the meeting on October 16, 2018, the Council again continued this item to the next available Council meeting on November 20, 2018. Staff subsequently received a memo from Councilmembers Nuñez and Phan requesting additional information regarding billboards along interstate highways beyond the scope of the application (Attachment B). This memo requested the following data:

- 1) An inventory of parcels along eligible freeways and highways within and adjacent to the City of Milpitas
- 2) Development Standards
- 3) Public Benefit Considerations
- 4) Comparative analysis of city enterprise-type billboard operations vs. lease agreements
- 5) Potential amendments(s) to the Municipal Code regarding Signs (Section XI-10-24.01)

On November 20, 2018, the City Council approved this request and directed the City Manager to conduct a study of potential locations and regulations for digital billboards across the City and to re-evaluate the current billboard application at the conclusion of the study.

At the Council meeting on January 15, 2019, the Council directed the City Manager to agendize a discussion and Council reconsideration of the previous direction given to staff regarding billboards.

ANALYSIS:

As this is a new request to reconsider prior direction from the Council, staff has not yet completed the full and complete billboard study requested previously.

POLICY ALTERNATIVES:

Alternative 1: Direct the City Manager to provide a signature to allow City's acceptance of the pending application by Outfront Allvision to allow the construction of a digital billboard on city-owned property at the terminus of Barber Lane. Review of the application would proceed without the study previously requested by the Council.

Pros: Approval will direct staff to authorize signature from the City Manager and work with the applicant to finalize the application materials in order to process the proposed billboard. Staff will use existing development standards for review and recommendation. Information and analysis pertaining to current development standards and public benefit considerations for billboards may be included in the background section of the report prepared by staff for this item.

Cons: With the exception of development standards and public benefit considerations, the City Council would lack information about other potential billboard locations along eligible freeways, comparative analysis of city enterprise-type billboard operations vs. lease agreements, and possible amendments to the existing sign ordinance. Approval of this alternative would reduce the processing time required for the pending digital billboard application to approximately three months.

Reason for Not Recommending: General Plan Policy 2.a-G-9 states "*The city should make land use decisions that improve the City's fiscal condition.*" Consistent with this policy, the City Council amended the sign ordinance on August 17, 2010, to include design standards that streamline the entitlement process and allow the construction of off-site advertising displays. These adopted design standards provide guidance to applicants and staff in preparing and reviewing billboard applications. Further consideration of these standards and potential public benefits associated with billboard locations, would help inform the Council's consideration of the pending proposal from Outfront-Allvision.

Alternative 2: Direct staff to move forward in accordance with the Council direction given on November 20, 2018, to conduct a comprehensive study of potential locations and regulations for digital billboards across the City and to re-evaluate the billboard application from Outfront-Allvision at the conclusion of the study.

Pros: Staff will have direction from the current City Council to conduct a comprehensive study of potential location and regulations for digital billboards across the City. The Council can use this analysis to inform their decision regarding the pending request by Outfront-Allvision to submit an application for a proposed digital billboard on City-owned property.

Cons: Preparation of the study requested by Council will increase the processing timeline for the pending billboard application. Depending on the priority given to the study requested by City Council, research and analysis could take up to six months to return to the Council.

Reason for Not Recommending: General Plan Policy 2.a-I-3 states "*Encourage economic pursuits which will strengthen and promote development through stability and balance.*" The City's existing billboard regulations include development standards to regulate the location and design proposed projects. While a full and complete study may identify potential sites for additional billboards, the City-owned property at the terminus of Barber Lane will remain a viable billboard site and an economic development opportunity for the City.

FISCAL IMPACT:

Approval of Alternative 1 will allow the applicant to submit their application for required development permits to construct the proposed digital billboard and pay associated fees. The applicant will pay for all staff time via a Project Job Account.

Approval of Alternative 2 will allow staff to conduct the full and complete study previously requested by the Council. The City will pay for all staff time via the General Fund.

CALIFORNIA ENVIRONMENTAL QUALITY ACT: Not Applicable.

Attachments: A: Location of Proposed Billboard

B: Memo from Councilmembers Nuñez and Phan re: City Digital Billboard Guidance Study, 10/25/2018

Barber Billboard
Proposed Location

This map is a product of the
City of Milpitas GIS



428



MEMORANDUM

Milpitas City Council



DATE: October 25, 2018
TO: Julie Edmonds-Mares, City Manager
FROM: Councilmember Bob Nuñez and Councilmember Anthony Phan
SUBJECT: City Digital Billboard Guidance Study

Purpose: The purpose of this memo is to request a study of potential electronic off-site advertising displays (Electronic Billboards) on both public and private properties adjacent to interstate highways and state routes within the jurisdiction of the City of Milpitas, prior to considering billboard proposals.

Background: We understand the City has received interest from Outfront Allvision LLC, a joint venture between Allvision and Outfront Media, in proposing an electronic billboard on a city-owned parcel. Outfront Allvision has applied for a preliminary plan review, which allows City departments, such as Planning, Building, Fire and Engineering Land Development, to comment on technical features of the potential project. This is not for a permit application, is for informational purposes only, and does not require property owner authorization. In addition, we understand lease terms and conditions have been explored between Outfront Allvision and City staff, and amenable with similar billboard proposals within the bay area.

Outfront Allvision currently seeks approval to submit an application on a city-owned parcel which cannot occur until the City Council provides authorization, pursuant to Milpitas Municipal Code Section 24 – Signs, XI-10-24.01.

Analysis: While the Outfront Allvision proposal may have its merits, it is incumbent of the City to establish policy guidance for applicants and staff when evaluating the merits of future billboard proposals along interstate highways and state routes within Milpitas' jurisdiction. At present we simply do not have enough information to understand the visual context and community impact of adding electronic billboards along the most highly traveled highways within Milpitas. In an effort to avoid the current "piece meal" approach of considering one billboard at a time, it seems we should have a plan to better understand the costs, benefits, and opportunities of this emerging billboard sign industry.

Recommendation: Prior to formal consideration of additional billboards along interstate highways and state routes, we recommend the City Council direct the City Manager to conduct a Digital Billboard Study to include:

- 1) An inventory of parcels along eligible freeways and highways within and adjacent to the City of Milpitas;
- 2) Development standards;
- 3) Public benefit considerations;
- 4) Analysis of city enterprise-type billboard operations vs. lease agreements;
- 5) Potential amendment(s) to Municipal Code Section 24 – Signs, XI-10-24.01.

cc: Milpitas City Council



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

2/05/2019

Agenda Item No. 17



ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION





MILLER STARR
REGALIA

City Clerk's Office

FEB 05 2019

RECEIVED
6:04 pm by
e-mail

MEMORANDUM

TO: Steve McHarris, Deputy City Manager, City of Milpitas
FROM: Sean Marciniak
DATE: February 5, 2019
RE: Legal requirements for lease of municipal property in City of Milpitas
CC: Jeff McCuen; Rob Goldberg; Kevin Donovan; Alex Belenson;
Anthony M. Leones; Giselle Roohparvar

We understand a question has been raised as to whether a competitive bidding process or an RFP process is necessary insofar as the City wishes to lease municipal property, located at Barber Court, to Outfront Media for purposes of operating an electronic billboard. By memorandum dated September 4, 2018, we addressed this question and determined no RFP process was necessary. On January 31, 2019, we understand the City received a letter from McCarthy Ranch, indicating an RFP process was necessary because the City required a competitive bidding process for a sign project it approved in 2009. Under this earlier project, the City approved signs applications submitted by McCarthy Ranch, CBS Outdoors (Outfront's predecessor in interest), and other parties.

There are two key differences between the 2009 approval and Outfront's proposal: (1) the 2009 signs were approved either within redevelopment areas or for redevelopment purposes; and (2) the City changed its ordinances after the 2009 sign approval to clarify that public bidding was not required, or desired, for the lease of City-owned property.

- **Redevelopment distinction.** Why does it make a difference that the 2009 signs were approved under California's redevelopment framework? Under California's redevelopment law, the default rule for leasing public land was that it had to go through a public bidding process. (Cal. Health & Safety Code sections 33430 and 33431.) A redevelopment agency could have decided to dispense with the RFP process, but it could only have done so after considering and adopting a streamlined approach at a noticed, public hearing. (Cal. Health & Safety Code section 33431.)

These redevelopment rules do not apply today. In 2011, the California Legislature adopted Assembly Bill 26, known popularly as the Dissolution Law, and eliminated the state's 400-plus redevelopment agencies.

- **The City's code change.** Something else happened since March 2009, when the City approved the sign program referenced by McCarthy Ranch. Two months after that approval, on May 5, 2009, the Milpitas City Council adopted an ordinance

clarifying the City's property disposition procedures. These included modern municipal code sections I-2-3.01 et seq, I-2-8.01 et seq, and I-2-12.01 et seq, which clarified that "the leasing of land or any interest therein" are "items that typically cannot be bid *or that the City Council has chosen to exclude from bidding.*" (See Ord. 12.12, pp. 17-18, available here: http://www.ci.milpitas.ca.gov/pdfs/council/2009/050509/item_08.pdf; see Milpitas Municipal Code section I-2-12.01-7.) In other words, when the City Council evaluated and overhauled its public bidding processes, which happened after the 2009 sign approvals, the City Council specifically excluded the leasing of City-owned land from these requirements.

For the foregoing reasons, the 2009 sign approvals are distinguishable from those being considered by the City today, and an RFP process is not only not required — it has been deemed undesirable by the City Council. Relevant excerpts from the key ordinance at issue, Ordinance 23.12, are included on the following page. Please see, in particular, section I-2-12.01-7.

REGULAR

***8**

NUMBER: 23.12

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING
CHAPTER 2 OF TITLE I OF THE MILPITAS MUNICIPAL CODE RELATING TO
CLARIFYING THE PURCHASING ORDINANCE AND AMENDING THE LOCAL
PURCHASING PREFERENCE AND OTHER PURCHASING PROCEDURES

* * *

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 2

Chapter 2 of Title I of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

* * *

Section 12 Exclusions from Chapter

I-2-12.01 Exclusions from Chapter

The provisions of this chapter shall not apply to items that typically cannot be bid or that the City Council has chosen to exclude from bidding. The following list is exemplary of these types of items and/or services, but is not intended to be all inclusive.

12.01-1 To public projects (separately governed by the provisions of the California Public Contract Code);

17

Ordinance No. 23.12

12.01-2 To franchises governed by the provisions of the California Public Utilities Code or other statute of the State of California;

12.01-3 Where State or Federal law requires a different procedure;

12.01-4 To franchises, rights, privileges, licenses and permits granted by the City of Milpitas (including, but not limited to, franchises, rights and privileges granted for refuse disposal under Title V, Chapter 200 of the Milpitas Municipal Code and the Cable Franchise under Title III, Chapter 22 of the Milpitas Municipal Code;

12.01-5 To the purchase of insurance;

12.01-6 To the purchase of art;

12.01-7 To the leasing, purchase or sale of land or any interest therein;



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

2/05/2019

Agenda Item No. 17



ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION





MCCARTHY
R A N C H

January 24, 2019

Julie Edmonds-Mares
City Manager
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035

City Clerk's Office

JAN 31 2019

RECEIVED

Re: 237 Digital Off-site Advertising (Electronic Billboard)

Dear Mrs. Edmonds-Mares:

I am writing to express McCarthy Ranch's interest in the proposed electronic billboard off of 237 and Barber Court. McCarthy Ranch is the current operator of two electronic signs off of 880 north of 237. We only recently became aware of the City's desire for an electronic billboard at this location and would like the opportunity to submit a proposal to the City. This is critical for us because the location of this sign is the start of an entrance from 237 to 880. This proposed sign will significantly impact advertising on our two existing signs.

I recognize that much of the Milpitas' history on the electronic billboards issue is gone and staff who had previously worked on this issue have left the City. However, I would like to share with you our history on this issue. Years ago, McCarthy Ranch approached Milpitas with a proposal for digital billboards. When other outdoor advertising companies, including Outfront Media, became aware of the City's discussions with McCarthy Ranch regarding digital billboards, the other companies requested to submit proposals through a competitive process.

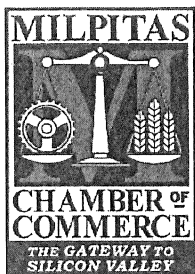
After working on the billboard issue for some time, McCarthy Ranch was then informed that the City would be issuing Request for Proposals (RFP) primarily because the City wanted to ensure that the residents got the best deal. Ultimately McCarthy Ranch did submit a winning proposal and was awarded the right to build signs on 880 north of 237. The other proposal for signs on 880 south of 237 was awarded to Outfront Media in partnership with Piercey Toyota.

Also, early during this process we were informed the City did not want billboards on 237. At the time Milpitas staff had concerns with oversaturation of digital billboards in a small area. Given the recent changes on allowing billboards on 237 and considering the impact on our existing signs, we would very much like to be part of a process where McCarthy Ranch could submit a competing proposal to the City of Milpitas. Also, if the City's desire is to complete this process as soon as possible, we are committed to an expedited process.

Sincerely,

Joey McCarthy

Cc: Mayor and City Council



City Clerk's Office

FEB 05 2019

RECEIVED

City of Milpitas
Mayor Tran
Vice-Mayor Grilli
Councilmember Nunez
Councilmember Barbadillo
Councilmember Phan
455 E Calaveras Blvd.
Milpitas, CA 95035

October 8, 2018

Dear Mayor and Council Members,

I am writing to you regarding the billboard proposed to be located on the City owned property at Barber Court and SR-237 that is currently before Council.

We have met with the applicant, Outfront Allvision LLC, and the Chamber is in favor of this project.

This billboard is an excellent use of property that has no other development potential to generate tax-free revenue to the City, brand the City and promote City initiatives. The opportunity to communicate with residents and broadcast important safety and emergency messages provides additional benefit to the City and community.

With this billboard local businesses and community groups will have a prime freeway facing advertising platform to promote their goods, services, activities, and events to both residents and people passing through the City of Milpitas.

This project is good for the City, it's residents, businesses, and community organizations. We encourages you to vote to approve this project.

Respectfully,

Tina Broyles, President
Milpitas Chamber of Commerce



CITY OF MILPITAS

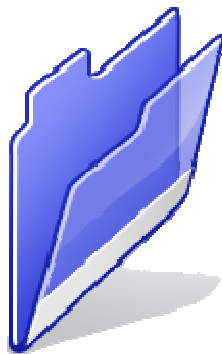
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2/05/2019

Agenda Item No. 17



ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



MEMORANDUM

Office of the City Manager



DATE: February 5, 2019

TO: Mayor and City Council

FROM: Steve McHarris, Deputy City Manager

SUBJECT: Additional Information Relating to February 5, 2019 Item 17: Digital Billboard

We are forwarding the attached memo and information received today from Silicon Valley Advisors, the representative of the proposed digital billboard on Barber Court. The information summarizes legal information provided to the City regarding its authority to lease City-owned property with or without a RFP process, and background information regarding the City's past 2011 billboard approval that did not include a competitive bidding process for the lease of City property on a City-owned parcel. This particular billboard approval was never constructed and the approval has since expired.

The attached memo concludes that a competitive bidding process or an RFP process is unnecessary insofar as the City wishes to lease the Barber Court location for an electronic billboard. Also included are example billboard approvals without competitive bid from bay area cities of Belmont and San Carlos.



MEMORANDUM

TO: Jeff McCuen
FROM: Sean Marciniak
DATE: August 30, 2018
RE: Legal requirements for lease of municipal property in City of Milpitas
CC: Anthony M. Leones

We understand there is some concern that the Milpitas City Council, City Attorney, or City Manager might need reassurance that a competitive bidding process or an RFP process is unnecessary insofar as the City wishes to lease the Barber Court location for an electronic billboard. This memorandum summarizes legal authority that Outfront can provide to the City, should decisionmakers or staff require the foregoing reassurance.

The authority is as follows:

- **California Government Code section 37380:** This state law authorizes a city to lease any property that it owns, and does not require a lease to be awarded through a competitive bidding process unless the lease term exceeds 55 years. (See *also* California Civil Code section 719 [restating same rule].)
- **Milpitas Municipal Code:** Insofar as the City's Municipal Code addresses the lease of City property, it does not require competitive bidding. (See MMC, §§ 1-2-3.01 et seq.) Nor does the "disposal" of city property, by rent or by sale, require competitive bidding, though it is unclear whether rules about disposal pertain to real property, or whether they are limited to personal property (e.g., supplies). (MMC, §§ -2-8.01, 1-2-8.03.)
- **Historically, the City has never required competitive bids for the leasehold of City property.** It does not appear the City Council has ever required a competitive bidding process for the lease of municipal property. For instance, when Outfront sought approval of an electronic display on Assessor's Parcel No. 086-03-096 in 2011, which is a City-owned parcel, no competitive bidding process was required. (See **Attachments 1 & 2.**)
- **Other cities in the San Francisco Bay Area, likewise, have not required competitive bidding processes when entering into leases with billboard companies for the use of municipal property.** The cities of Belmont and San Carlos recently approved electronic billboard projects involving the lease of municipal property without having required a competitive building process. (See **Attachments 3 & 4.**)

ATTACHMENT 1

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, August 16, 2011
Time: 7:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 7:01 PM. City Clerk Lavelle noted the roll.

PRESENT: Mayor Esteves, Vice Mayor McHugh, Councilmembers Giordano and Polanski

ABSENT: Councilmember Gomez was absent at roll call and arrived at 7:07 PM.

PLEDGE

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

INVOCATION

Councilmember Polanski provided quotes from historic figures including Presidents George Washington and Herbert Hoover regarding freedom of speech and value of the first amendment.

MINUTES

Motion: to approve City Council meeting minutes of August 2, 2011, as amended

Vice Mayor McHugh provided the correct spelling of Mr. Janitz on page one.

Councilmember Giordano requested a correction on page 10 from “the” definition to “his” definition.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Gomez)

SCHEDULE OF MEETINGS

Motion: to approve the Council Calendar/Schedule of meetings for August, as amended

City Manager Tom Williams announced the special City Council/RDA meeting on Tuesday, August 23 at 6:00 PM for adoption of required redevelopment agency actions.

Vice Mayor McHugh announced that the Sunol Smart Carpool meeting scheduled for August 8 was canceled.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Gomez)

PRESENTATION

Mayor Esteves recognized Milpitas Public Library “Read to Succeed” Tutoring Program volunteers, distributing commendations to 11 youth and Milpitas Librarian Linda Arbaugh, who thanked the young people for their valuable time tutoring younger readers.

Councilmember Giordano requested to adjourn the meeting in memory of 30 US Navy Seals, fallen military members in Afghanistan this week. She requested viewing of the presentation with the crowd present, early in the meeting rather than waiting until adjournment.

PUBLIC FORUM

Mark Henning, Milpitas resident of 76 years, commented that the thoughtful memorial threw him off. He had thought about the constitution, separation of church and state, men who prayed together, and the Library of Congress. He came before Council to recommend changing the name of the city from Milpitas to Sunflower, California.

Delores Hovey, Friendly Village resident, asked about the appointments to the Mobile Home Park Rental Review Board. Mayor Esteves told her she could speak when that agenda item was heard.

Richard Hillyard, Friendly Village resident, moved there recently because he found it affordable, in part due to the rent control, for himself and his mother. He cannot afford the rent increase.

Rudy Stefanel, Friendly Village resident, saw a big divide between the park owner and the residents. It was not friendly, a “we-they” set up, and wished the owner could know the residents. For him, it’s about a 50% rent increase and an issue of fairness.

Ronald Richard, Friendly Village resident of 20 years, for some it was a 90% increase and that was too much. He can make it with a 30% increase, but was concerned about those who could not.

Dan Pham, Friendly Village resident of ten years, lived with his family there. Rent had gone up since he lived there. The CPI percent increase was ok, but not the amount newly proposed.

Phil Kaneeny, Friendly Village resident of 41 years, wanted to understand the people were not interested in the income, but rather want to overturn the rent control in Milpitas.

Robert Marini, Milpitas resident, spoke about the new park proposed next to the Milpitas Library. There were already many parks in the City, and those used water. Perhaps there were more parks than needed. He also wanted the new Senior Center to be open on the weekends.

Councilmember Giordano recommended Mr. Marini take a look at the adopted Parks Master Plan.

Michelle Lu, Friendly Village resident, recently moved there within four years. She wanted enforcement of rent control in Milpitas, since the proposed rent increase was unreasonable.

A woman, Friendly Village resident, spoke on behalf of the elderly who lived at the park but were sick and could not attend. The rent increase was very unfair and unhelpful.

Carol Colojay, Friendly Village resident of 17 years, felt the owner company Santiago flagrantly disregarded the rent control ordinance, and did not handle basic services and safety with regard to water line, sewer line, and electricity lines. Many residents simply cannot afford the increase.

Toni Perrina, Friendly Village resident, wanted to support neighbors who spoke. After she lost a large house previously owned, she chose Friendly Village as a place to go with her kids. They need to provide a “five star” mobile park for the amount of the increase.

Dennis Knight, Friendly Village resident of 15 years, commented on the corporation’s treatment of the people who lived there and the general population. He quoted from the notification letter.

Rosemary Wood, Friendly Village resident of 17 years, lived on a fixed income with her daughter. She would not be able to manage the amount of rent increase.

Gerry Knight, Friendly Village resident, had a fire at her home three years ago, due to the electric meter shorting. She stated the park got rid of the meter that evening, so the insurance investigator could not find it.

Tracy Hunter, Friendly Village resident, knew that people there were living within their means for the most part. Also, it would be difficult to sell a mobile home right now.

Brin Shaw, Friendly Village resident of eight years, worked at the VA in Palo Alto, and had to stop working recently, due to a major back injury. She had 43 years of work in the government, but she cannot pay the rent increase and can't afford to buy a home.

Councilmember Gomez noted many issues were brought up at this meeting, some of them were code issues that need attention. He asked the City Manager if staff could meet with the residents of any mobile home park and agendize the matter for the City Council. The Chief Building Official stated he could return at the next Council meeting with his report, if desired.

Mayor Esteves remarked to the speakers, that if they have input for an agenda item, they may contact the City Manager Tom Williams, who provided his phone number.

Mayor Esteves asked City Attorney Ogaz to speak on the process. Mr. Ogaz explained that a petition was filed at City Hall, and there was a 45 day period to conduct a hearing (prior to September 28). Once the Board positions were filled, they would schedule a hearing. The Board would make a decision on the petition filed, and any decision could then be appealed to the City Council.

Denise Wong, Friendly Village resident, had a fire at her home also. She took photos of all the things that need to be fixed. She gave a disk to the Fire Marshal and he let it go. The park was actually a fire hazard, and she will send those photos to Mr. Gomez, if he was willing to receive those, and he indicated he would.

A woman, Friendly Village resident, stated she was disabled and on social security income. Electrical wires were put in near a water line and that was not good. She mentioned some decisions of the property manager.

Mario, Friendly Village resident, stated the amount of rent increase was too much and not fair. The owners did not need that money, while he did for classes, food and transportation.

Terry Rennick, Milpitas resident of many years, commented that mobile home owners would try to sell the homes, if the rent increase was approved. She had lived at Friendly Village more than 15 years and noted many hazards at the park.

ANNOUNCEMENTS

Councilmember Giordano asked colleagues to adjourn in memory of fallen soldiers, as she mentioned earlier. She commented an e-mail from Betty Yee, about a tax scam targeted to senior citizens and asked the Mayor if he could ask for a report back from Dr. Mujtaba of the Volunteer Income Tax Assistance program about that issue.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager asked that Item No. 5 be removed from the agenda, due to recent court ruling.

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

CONSENT CALENDAR

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

Mayor Esteves requested removal of agenda items No. 2 and No. 11.

Motion/Second: Councilmember Giordano/Councilmember Polanski

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

- * 6. Ordinance No. 23.13 Waived the second reading and adopted Ordinance No. 23.13, amending Chapter 2 of Title I of the Milpitas Municipal Code relating to surplus Police Department canine units.
- * 7. Resolution 673 Quince Ln. Adopted Resolution No. 8113 approving a room addition to a hillside home at 673 Quince Ln., Site Development Permit Amendment No. SA11-0002 for a 234 sq. ft. room addition
- * 8. Amendment to Agreement with HMH Inc. Approved Amendment No. 1 to the agreement with HMH Incorporated in the amount of \$977,578, Project No. 4179, subject to approval as to form by the City Attorney.
- * 9. Contract with Metropolitan for AVASA work Authorized the City Manager to execute a contract with Metropolitan Planning Group for abandoned vehicle abatement services for an amount not-to-exceed \$23,680.
- *10. Amendment to Agreement with RMC Water Authorized the City Manager to execute Amendment No. 1 to the agreement with RMC Water and Environment for \$265,000, for a total agreement amount not to exceed \$420,068 for engineering support associated with the BART extension, Project No. GT-1063, and various city capital projects.
- *12. Approve Payment to Tritech Approved the payment to Tritech for annual renewal of software support services for the 911 dispatch System for the not-to-exceed amount of \$104,767.02.

PUBLIC HEARINGS

- 1. Electronic Message Board Signs Economic Development Manager Diana Barnhart introduced the application for a new electronic message board sign along the I-880 freeway, next to the City's automobile dealers. She displayed visuals of the sign's anticipated appearance in both daytime and nighttime. The City would receive a \$50,000 payment when lights on the sign were to be turned on and annual revenue of \$47,000, with the City also gaining 5% space for advertising city events. A CBS Outdoors' representative was present to answer questions.

Vice Mayor McHugh was amazed at how long this process took. He inquired about the correct dimensions of the sign, and staff replied 12 feet by 25 feet.

Mayor Esteves asked about safety and a review by Caltrans for the sign. Staff explained that that had been done early in the planning for this new structure.

Mayor Esteves open the public hearing and heard no public comments.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

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

Councilmember Polanski felt the process, though lengthy, was successful and she looked forward to the sign being installed.

(2) Motion: to adopt Resolution No. 8112 approving Site Development Permit No. SD11-0003 approving the sign design and the Sign Lease Agreement with Milpitas Automotive Group, LLC

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

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

REPORTS OF MAYOR/COUNCIL

2. Commission Appointments

Mayor Esteves removed this item from consent calendar in order to allow speakers from the audience.

Delores Hovey, resident of Friendly Village Mobile Home Park, inquired about the appointment of members to the Mobile Home Park Rental Review Board. They need to be aware of history with the owner of the park and the history of attempts to raise rent in the past. She commented that was why there was rent control in Milpitas. She wished to know if everything would be resolved by September 28 (45 days after their petition was filed) or if that date could be extended. She asked if residents should hire a lawyer, and sought guidance and help from City Council.

Vice Mayor McHugh asked about the Board members, and the possibility of appeal to the Council. The City Attorney responded that a hearing date should be able to be scheduled within the timeframe required.

Councilmember Gomez asked about representation for residents. Mr. Ogaz replied that residents may have whoever they choose speak for them.

Mayor Esteves commented about the residents who applied for the Board vacancies and he interviewed all of those. He recommended three of four people who applied.

Motion: to appoint the following:

Arts Commission/Public Art Committee: newly appoint Nicole Phan as Alternate No. 2 to a term that expires in October 2011.

Library Advisory Commission: re-appoint Marie Pham as Alternate No. 2 to a term that expires in June 2013.

Mobile Home Park Rental Review Board: newly appoint Huy Bui to a term that expires in June 2014, and Demetrio Nitafan to a term that expires in June 2013. Newly appoint Mila Garcia as Alternate Member to a term that expires in June 2012.

Youth Advisory Commission: re-appoint Isaiah Daniels to a term that ends in September 2012.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

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

3. Councilmember Giordano

Councilmember Giordano stated her position regarding Library Advisory Commission liaison from the Council, and that she believed it was best for the City to have the same Council member serve as liaison to both the Library Advisory Commission and the Santa Clara County Joint Powers Authority. Presently, she was on the Joint Powers Authority, while the Mayor was the current liaison to the Library Commission.

Mayor Esteves responded that there could be reassignments after one year, since the date he last made appointments of Council liaisons to Commissions.

Motion: to note receipt and file the report from Councilmember Giordano

Motion/Second: Councilmember Polanski/Councilmember Gomez

Motion carried by a vote of: AYES: 4
NOES: 1 (Giordano)

NEW BUSINESS

4. Economic Development

Economic Development Manager Diana Barnhart discussed current business activity in the City, including commercial activity (e.g. Big Bear Diner and King Egg Roll restaurants), research and development, and housing planning and development. A German firm, Zollner Electronics, planned to set up its U.S. business operations in Milpitas soon. She noted recent positive economic indicators, with good general retail sales and increasing hotel room sales.

City Manager Williams noted the decrease in property tax revenue, which frankly offset some of the positive news reported.

Councilmember Polanski referred to a news article on specialty food markets and asked if the City was pursuing some of these. Staff would be meeting with the broker for Whole Foods in Fremont.

Councilmember Giordano asked about vacancy rates at Milpitas hotels, the trends and where the City was going. Ms. Barnhart responded that she could report on it next time.

Motion: to receive the Economic Development monthly update from the Economic Development Manager

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

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

ORDINANCES

One ordinance was adopted on the consent calendar.

5. Ordinance No. 282 regarding redevelopment

This item was removed from the agenda (due to the action of the California Superior Court on August 12, regarding a stay on action by Redevelopment Agencies in California).

RESOLUTION

One resolution was adopted on the consent calendar.

BIDS/CONTRACTS

Three items were approved on the consent calendar.

11. SIA and Tract Map for Los Coches residential project

Mayor Esteves requested more information regarding bike lanes along Los Coches in this new project. Planning Director James Lindsay responded about room for a bike lane shared with parking spaces on both sides in the planned residential development. Also, Engineer Fernando Bravo came to the podium to answer the Mayor's detailed questions.

Mayor Esteves expressed his concern for the safety of children, and the need for bike lanes for safety, not solely bike routes.

Councilmember Giordano felt it was a good point made by the Mayor. Maybe there was a need to bring this topic to Bicycle Pedestrian Advisory Commission for a recommendation to add this route onto the Bike Master Plan.

Motion: approve and authorize the execution of a Subdivision Improvement Agreement, covenants for an Encroachment Permit, a Stormwater Management Facilities Operation and Maintenance Agreement and approve the Final Map (Tract 10077) with street names and Public Improvement Plans No. 2-1142 for the Los Coches Residential Project

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 4
NOES: 1 (Esteves)

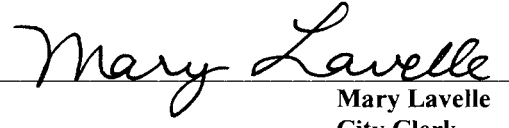
DEMAND

One demand for payment was approved on the consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the City Council meeting at 9:23 PM, in memory of recently deceased US Navy Seals in Afghanistan.

The foregoing minutes were approved by the Milpitas City Council as submitted on September 6, 2011.



Mary Lavelle
City Clerk

ATTACHMENT 2

**LIST OF ATTACHMENTS FOR PUBLIC HEARING
ITEM NO. 1 – HOLD A PUBLIC HEARING AND ADOPT
A RESOLUTION APPROVING SITE DEVELOPMENT
PERMIT NO. SD11-0003 FOR AN ELECTRONIC
MESSAGE BOARD SIGN, AND A GROUND LEASE OR
PROPERTY AT 1700 BARBER LANE WITH THE
MILPITAS AUTOMOTIVE GROUP, LLC**

- A. City Council Resolution**
- B. Sign Lease Agreement**
- C. 06/22/2011 Planning Commission Meeting Staff
Report**
- D. 06/22/2011 Planning Commission's Approved
Meeting Minutes**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD11-0003, OFF-SITE ADVERTISING DISPLAY, AND LEASE AGREEMENT TO ALLOW THE ERECTION OF A FREESTANDING OFF-SITE ADVERTISING DISPLAY LOCATED ON A CITY-OWNED PARCEL BETWEEN BARBER LANE DRIVE AND THE INTERSTATE 880 FREEWAY IN MILPITAS

WHEREAS, on May 5, 2011, an application was submitted by Milpitas Auto Properties, LLC, for a real property lease agreement between the City of Milpitas and Milpitas Auto Properties, LLC, and site development approval for the erection and operation of a freestanding off-site advertising display. The property proposed for lease is located on a parcel of land bordered on its eastern and western boundaries by the Interstate 880 Freeway and Barber Lane, respectively, which is sometimes described as Assessor's Parcel No. 086-03-096 ("Property"); 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 City Council determine that this project does not require further environmental documentation beyond the previously prepared and considered environmental documents; and

WHEREAS, on June 22, 2011, 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, as to the proposed application and its conformity with the requirements of Milpitas Municipal Code § XI-10-24.05.G (Off-Site Advertising Displays Adjacent to Interstate Highways and State Routes), and recommended approval subject to a set of proposed conditions of approval; and

WHEREAS, on August 16, 2011, the City Council reviewed the subject application and considered evidence presented by staff.

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. No further environmental review for this project is required pursuant to Section 15162 of the CEQA guidelines in that the project is consistent with the findings within the prior certified Supplemental EIR (SCH#2006082087). The Supplemental EIR identified the locations of the freeway signs and their potential impacts on the environment. No new information or changes in the scope of the proposal necessitates further environmental analysis. The certified Supplemental EIR is adequate to address the proposed lease of the Property and proposed off-site advertising display. All applicable mitigation measures identified in the Supplemental EIR that apply to future projects involving such signs have been integrated into the proposed project. These include the size, angle, light emissions, design, noise and other operating and development factors associated with freeway-oriented signs.
3. The proposed display will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual character of the site and surrounding in that the displays are angled away from neighboring properties and will include automatic dimming devices to ensure the appropriate glare level.

4. All advertising on the off-site advertising display will conform with the Outdoor Advertising Act in the California Business and Professions Code and other applicable state and federal rules and regulations.
5. The development of the off-site advertising display will result in a public benefit to the City outweighing any adverse impacts that might be caused by the advertising display. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the redevelopment project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs.
6. The development of the off-site advertising display will promote economic development within the City in that the signs provide for additional commercial corridor communication, thereby advertising the availability of goods and services within the redevelopment project area.
7. The design, including lighting, scale, size and materials, of the off-site advertising display is consistent with the intent of the design criteria of the off-site advertising display provisions in that the sign is consistent with the height, size, and lighting and is compatible in design and appearance to the commercial, office and retail structures in the surrounding area.
8. The development and location of the proposed off-site advertising display is consistent with the goals of the Milpitas General Plan in that the sign:
 - a. Provides a partnership with local business entities and provides an opportunity to promote economic activity within the City.
 - b. Allows the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
 - c. Promotes and balances economic development by creating a medium for local businesses within the redevelopment project area to advertise, and ensures quality identification.
9. The City Manager is authorized to execute that certain Sign Lease Agreement, dated August 16, 2011, between the City of Milpitas and Milpitas Auto Properties, LLC.
10. Based on the entirety of the record, which includes without limitation, the Planning Commission public hearing, including staff report, project plans and minutes prepared in connection thereto, the City Council does hereby approve Site Development Permit No. SD11-0003, subject to the above findings and the Conditions of Approval attached hereto as Exhibit 1.
11. This approval and development rights granted herein are contingent upon and shall not go into effect until the full settlement, release and dismissal with prejudice of the lawsuit commonly known as *Milpitas Mills Limited Partnership v. City of Milpitas*, California Court of Appeal Case No. H036108; Santa Clara County Superior Court No. CV119458, or the final resolution of such action to the satisfaction of the City Attorney of the City of Milpitas. Any settlement and release of said legal action must provide, amongst other things, for the disposition and demolition of the advertising display currently on the Property by a mutually agreeable date. By accepting Site Development Permit No. SD11-0003, the applicant

acknowledges that no vested right to develop is granted by the contingent approval granted by Site Development Permit No. 11-0003 and that the applicant knowingly and intentionally waives any rights it may have to bring suit against the City for all claims or possible claims arising out of or related to those matters referenced or impliedly covered in this approval.

PASSED AND ADOPTED this ____ day of _____, 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

CONDITIONS OF APPROVAL

Site Development Permit No. SD11-0003

A request for an off-site advertising display
Parcel Between Interstate 880 and Barber Lane (APN: 086-03-096)

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the City Council, in accordance with these Conditions of Approval, and the development standards set forth in Milpitas Municipal Code § XI-10-24.05.G (Off-Site Advertising Displays Adjacent to Interstate Highways and State Routes).

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the City Council, in accordance with the Zoning Ordinance. **(P)**

SD11-0003 shall become null and void if the project is not commenced within two (2) years from the date of approval. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas:

- a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of SD11-0003 if said request is made, filed and approved by the City Council prior to expiration dates set forth herein. **(P)**
 3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
 4. Prior to issuance of a building permit, the applicant shall confirm that the sign location complies with fire regulations regarding access and circulation. **(F)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

SIGN LEASE AGREEMENT

THIS SIGN LEASE AGREEMENT ("Lease") dated August 16, 2011, is entered into by and between **THE CITY OF MILPITAS**, a municipal corporation of the State of California, (hereinafter referred to as "Landlord"), and **MILPITAS AUTO PROPERTIES, LLC**, a California Limited Liability Company ("Tenant"). Landlord and Tenant may be referred to collectively herein as the "Parties."

RECITALS

The Landlord is the owner of certain real property, Assessor's Parcel Number 086-03-019 (the "Property") in Milpitas, California, which is bordered on its western side by Barber Lane and on its eastern side by a freeway interchange connecting the Interstate 880 Freeway ("Nimitz Freeway") and the Montague Expressway. The Property is shown in greater detail in the Exhibit "A" attached hereto and made a part hereof.

Therefore, in consideration of the mutual covenants and agreements herein contained, it is agreed by and between Landlord and Tenant as follows:

ARTICLE I

GRANT AND TERMS

SECTION 1.01 LEASED PREMISES. In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be observed and performed, the Landlord demises and leases to the Tenant, and Tenant rents from Landlord, that certain portion of land in Milpitas, Santa Clara County, California, consisting of approximately 781 square feet, the approximate boundary and location of which is shown on the Exhibit "B" attached hereto and made a part hereof ("Premises"), for purposes of constructing, operating,

maintaining, repairing, relocating and removing a “Sign” (an outdoor advertising display more specifically defined in Section 3.01 of this Lease and City of Milpitas Site Development Permit No. SD11-0003, approved by the City Council on August 16, 2011). The Premises is being demised “as is” and has an existing advertising structure. The Premises is a portion of the City-owned parcel known as the Property.

SECTION 1.02 LEASE TERM.

The “Term” of this Lease and Tenant’s obligation to pay rent hereunder shall commence upon completion of construction of the Sign (“Commencement Date”) and shall end at midnight on the day prior to the date that shall be the 10th anniversary of the Commencement Date, unless terminated earlier pursuant to Section 1.04 herein. The construction of the Sign shall be deemed to be completed upon the issuance of all final approvals from regulating authorities and once the Sign is fully operational and illuminated. The term “lease year” as used herein shall mean each twelve (12) month period during the Term commencing on the Commencement Date and each anniversary thereto. Contingent upon compliance with the Lease Performance Standards, as defined below, and the continued operation of the Great Mall Project Area, the Term shall be automatically extended for three (3) additional option terms of ten (10) years each (each an “Option Term”), unless Tenant shall provide Landlord with sixty (60) days written notice prior to the end of the Term or any Option Term, indicating that Tenant does not desire for such Term, or Option Term as the case may be, to be extended.

Notwithstanding the foregoing, under no circumstances may the term of this Lease extend beyond the life of the Great Mall Redevelopment Project Area including any extensions thereof. At the time of the execution of this Lease, the Parties acknowledge that the Great Mall Project Area is set to end on November 2, 2033.

SECTION 1.02.1 LEASE PERFORMANCE STANDARDS.

An Option Term may be extended to the Tenant only upon the Tenant's compliance with the performance standards listed below, with such approval to not unreasonably be withheld by Landlord:

- A. Compliance with the sizing, safety, mass, height and other limitations set forth in the Site Development Permit for the Sign.
- B. Tenant compliance with rent payment obligations set forth in this Lease, with no more than two delinquent or inadequate Rent payments over the preceding Term or Option Term, as the case may be.

SECTION 1.03 ACCESS.

Prior to the Commencement Date, Tenant, its agents, employees and representatives shall, upon prior reasonable notice to Landlord, have access to the Premises at all times subsequent to the full execution and delivery of this Lease with full right to: (i) inspect the Premises; (ii) to conduct all tests thereon including, but not limited to, soil borings and hazardous waste studies, and to make such other examinations as Tenant, its counsel, licensed engineers, surveyors or other representatives may deem necessary or desirable with respect to Tenant's Permitted use (as hereinafter defined) and proposed construction of the Sign; and (iii) to perform all work necessary to enable Tenant to construct and install the Sign and related improvements and otherwise prepare for the construction and installation of the Sign including, but not limited to, connection to electrical utilities required to provide electrical utility service to the Sign, pursuant and subject to all the terms and provisions of this Lease. Any entry on or to the Premises by Tenant or its authorized representative pursuant to the provisions hereof shall be at the risk of Tenant. Except for damages caused by the willful or negligent acts of Landlord, its

agents, employees or contractors, Landlord shall have no liability whatsoever for loss or damage to Tenant's fixtures, equipment or other property of Tenant or Tenant's contractors.

Tenant does hereby indemnify and hold harmless Landlord from and against any and all costs, expenses and liabilities including, but not limited to, reasonable attorneys' fees and court costs as same are incurred at all trial and appellate levels and whether or not suit be instituted, which may arise as a proximate result of Tenant's construction, operation or removal of the Sign or of Tenant or Tenant's agents or employees acts or omissions. Notwithstanding the foregoing, Tenant does not assume any responsibility or liability nor indemnify Landlord for any damage or loss to property or death or injury to person or any claims, penalties, demands, actions, proceedings or liabilities arising from any act or omission of Landlord, its officers, directors, employees, agents, congregants and invitees and Landlord shall indemnify Tenant therefore and hold Tenant harmless therefrom.

SECTION 1.04. SCOPE OF LEASEHOLD

Notwithstanding any other provision in this Lease to the contrary, the leasehold estate granted by this Lease shall be as follows:

- A. Tenant acknowledges that the rights granted under this Lease shall be subordinate to and subject to the limitations set forth in that certain "Agreement Between the City of Milpitas and California Department of Transportation Regarding Conveyance of Milpitas Property related to Southbound Route 880 to Westbound Montague Express Off-Ramp," dated December 18, 2001 (hereinafter referred to as the "Caltrans Conveyance Agreement"). In the event of the exercise of rights granted therein by the California Department of Transportation ("Caltrans") affecting all or the portion of the Premises occupied by the display, this Lease shall terminate pursuant to the

provisions of Section 1.05.2 of this Lease and the Premises or the affected portions thereof shall be conveyed by the Landlord to Caltrans for the purposes of the construction of highway improvements.

- B. During the Term of this Lease, Landlord shall neither cause nor permit any offsite outdoor advertising sign other than those in existence at the time of the execution of this Lease (if any), or those constructed by Tenant pursuant to the terms hereof (or otherwise) to be placed on the Premises or any property owned or controlled by the Landlord or its beneficiaries, if any, within a radius of one thousand feet (1000') from Tenant's Sign without prior written consent from the Tenant, to the extent allowed by law.
- C. Tenant acknowledges that at the time of the execution of this Lease, there is an existing advertising display on the Premises. Removal of the existing advertising display shall be the responsibility of the Tenant. Under no circumstances shall the Landlord be responsible for removal of the existing advertising display or the costs for such removal.

ARTICLE II

RENT

SECTION 2.01 BASE RENT.

Tenant agrees to pay to Landlord a "Base Rent" equal to fifteen percent (15%) of the "Adjusted Gross Revenue." For purposes of this Lease, the term "Adjusted Gross Revenue" shall mean gross receipts from the sale of advertising time by the Tenant on the Sign, less advertising agency commissions, which shall not exceed 16.667% on any given advertising sale, and electricity costs related solely to Sign operations. Base Rent payments shall be made on a

quarterly basis based on the fiscal year by the Tenant commencing on the Commencement Date. Along with each quarterly payment, Tenant shall provide an accounting demonstrating the breakdown of Adjusted Gross Revenue and payments provided.

SECTION 2.02 ADDITIONAL RENT.

In the event Tenant does not perform any obligation under this Lease, after the expiration of any applicable notice and cure period, Landlord may, at its option, cure such breach after providing Tenant fourteen (14) days notice of such failure to perform, and, if Tenant shall not cure such failure within such 14-day period, Tenant shall pay on demand to Landlord as “Additional Rent” all sums expended by Landlord to cure such default. The terms “Base Rent” and “Additional Rent” may sometimes be referred to collectively herein as the “Rent.”

SECTION 2.03 TAXES.

Tenant shall be responsible for the payment of all of the “taxes” applicable to the Premises. The term “taxes” shall mean and include all real property taxes, possessory interest taxes and, personal property taxes on Tenant’s personal property. Notwithstanding any provision to the contrary contained herein, in the event Tenant shall fail to pay any taxes applicable to the Premises when due, then Landlord shall have the right after providing Tenant with 14 days notice of such failure to make such payment of any such taxes applicable to the Premises on behalf of Tenant, and add as Additional Rent the amount of such payment in addition to the next due installment of Base Rent. Tenant shall pay all taxes due prior to delinquency of said taxes.

SECTION 2.04 PAYMENT, PAST DUE RENT.

Base Rent and Additional Rent shall be payable at the office of Landlord or at such other place as Landlord may designate without any prior demand therefore and without any set-off or deduction whatsoever, except as specifically set forth in this Lease. If Tenant shall fail to pay

Base Rent or Additional Rent, within ten (10) days after the date the same is due and payable, such unpaid amount shall thereafter bear interest at the rate of ten percent (10%) per annum from the due date until paid; provided, however, in no event shall such rate exceed the maximum non-usurious interest rate permitted under applicable law. Payment of Base Rent and Additional rent shall be made to:

City of Milpitas
Attn: Fiscal Services Division
455 East Calaveras Boulevard
Milpitas, California 95035

SECTION 2.05 COMMUNITY AND CITY ADVERTISING.

Tenant shall reserve five percent (5%) of electronic display time on the Sign for City of Milpitas-promoted community events, messages and performances. There shall be no accrual or carryover of unused time in a given monthly period

SECTION 2.06 PARTIAL PREPAYMENT OF FIRST RENTAL PAYMENT.

After the commencement of power service by Pacific Gas & Electric and concurrent with final inspection approval by the City under the Milpitas Building Code, Tenant shall pay a one-time, Fifty Thousand Dollar (\$50,000.00) advance to the City. Such advance shall be deducted from future quarterly rental payments by Tenant to the City.

ARTICLE III

CONSTRUCTION AND ACCESS

SECTION 3.01 ADVERTISING DISPLAY.

Tenant shall be solely responsible for securing a Site Development Permit from the Landlord, approved by the City Council of the City of Milpitas on August 2, 2011, and all

applicable approvals, permits and licenses from non-City of Milpitas regulatory agencies (such as the California Department of Transportation (“Caltrans”). Landlord hereby agrees to grant any ministerial permits, approvals and licenses, in addition to the Site Development Permit, that Tenant is required to obtain from Landlord, in Landlord’s municipal capacity, in order to complete the construction of the Sign and operate the same, contingent upon Tenant’s compliance with all legal requirements. Furthermore, Landlord shall use its best efforts to help Tenant obtain any permits, licenses or approvals from other municipal or regulatory agencies such, included but not limited to Caltrans, required in order to complete the construction of the Sign and operate the same. Tenant may, upon receipt of applicable governmental approvals, at its sole expense and in compliance with all applicable law, erect, maintain, place, install, relocate and remove one (1) illuminated, 12 x 25 LED Display, double-sided advertising display with up to four (4) static advertising surfaces on each side of the supporting pylon on the Premises (the “Sign”) as shown conceptually in Exhibit C attached hereto and made a part hereof. Said Sign shall, at all times during the Term of this Lease, be maintained in accordance with the Site Development Permit granted by the City of Milpitas and the permit issued by Caltrans. Tenant understands and agrees that by signing this Lease, Landlord makes no representations as to the availability of non-City of Milpitas regulatory approvals for the construction, operation, and maintenance of the Sign. The Sign located at the Premises, and all sign(s), structure(s), improvements and appurtenances thereto placed on the Premises hereafter by or for Tenant, its agent or predecessor and any and all permits related thereto shall at all times during the Lease remain the property of Tenant. Upon the end of the Lease, by termination or expiration of the rental term, Tenant shall have the obligation to remove the Sign at its sole expense, unless directed otherwise by Landlord.

Tenant shall prohibit and not display any adult-oriented content or allow the advertisement of any adult-oriented businesses or products on the Sign.

SECTION 3.02 ACCESS LICENSE/UTILITY EASEMENTS.

During the Term of this Lease, Landlord hereby grants Tenant, its agents, employees, contractors and representatives, a nonexclusive license for ingress and egress through and across such portion of the Premises as described more particularly on Exhibit A for the purpose of vehicular and pedestrian access to the Premises. Additionally, Landlord shall grant electrical utility easements upon the Premises to any electrical utility service provider designated by Tenant, as reasonably required by Tenant for the installation, placement, maintenance and operation of electrical utility lines serving the Sign.

SECTION 3.03 LOCAL TAX DESIGNATION TO THE CITY OF MILPITAS.

In order to assist Landlord in its efforts to receive direct distribution of the local tax on materials associated with the development and operation of the Project, the California Sales and Use Tax (the “Local Tax”) shall be allocated to the Premises, within the City of Milpitas, to the maximum extent reasonably possible. The construction and maintenance of the Sign, as currently envisioned, has the potential to be a significant source of additional local use tax revenue to Landlord. Tenant and all of its contractors, subcontractors, and suppliers shall cooperate with Landlord to the extent reasonably possible to maximize the allocation of the California Sales and Use Tax to the Landlord. Such cooperation shall include but not be limited to the following:

- a. Purchases: To the extent commercially reasonable, Tenant and its contractor and sub-contractor shall require equipment and material vendors and suppliers from

which they make any individual purchases, which are subject to use tax and are to be used in the Project, to allocate the local use tax to the Landlord to the extent authorized by law. The incremental Local Tax generated from the construction of Project shall accrue to the Landlord in accordance with applicable law.

ARTICLE IV

USE

SECTION 4.01 USE OF PREMISES.

The Premises shall be used solely for the purpose of erecting, operating maintaining, relocating and removing the Sign in accordance with all City of Milpitas, county, state and federal laws, the City of Milpitas Site Development Permit and this Lease for the purpose of selling and displaying advertising copy/content on each side thereon (the "Permitted Use"). Tenant shall comply with all laws, regulations, ordinances and rules, including but not limited to any and all environmental laws, rules and regulations, applicable to the construction, erection, maintenance, operation, replacement and removal of the Sign, and equipment used or placed on the Premises.

ARTICLE V

LIENS

SECTION 5.01 MECHANIC'S LIEN.

Nothing contained in this Lease shall be construed as a consent on the part of Landlord to subject the estate of Landlord to liability under the applicable law of the State of California governing mechanics' liens, it being expressly understood that Landlord's estate shall not be

subject to such liability. Tenant shall strictly comply with the applicable law of the State of California governing mechanics' liens. In the event that a claim of lien is filed against the Premises or any portion thereof in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or shall transfer same to security within thirty (30) days from the date Tenant becomes aware of the existence of such claim. In the event that Tenant fails to satisfy or transfer such claim within said thirty (30) day period, Landlord may do so and thereafter charge Tenant as Additional Rent all reasonable costs incurred by Landlord in connection with the satisfaction or transfer of such claim, including reasonable attorneys' fees. Tenant shall require that any contractors, subcontractors or suppliers who provide services or materials for construction or maintenance of the Sign on the Premises provide lien waivers and releases pursuant to Civil Code Section 3262 to the extent that payments are made to them. Tenant shall also provide Landlord written notice of any contract for improvements to the Premises within three (3) days after execution of the contract.

ARTICLE VI

MAINTENANCE AND CONDITIONS OF PREMISES

SECTION 6.01 ACCEPTANCE BY TENANT.

Tenant certifies that it has inspected the Premises and accepts the same in its existing "as is" condition subject to the rights of termination set forth in Article XI hereof. Landlord has no obligation to perform any services or work in connection with this Lease, except as expressly set forth in this Lease. Landlord has not made and does not make any representations or warranties with respect to the condition of the Premise or its fitness or suitability for any particular use and Landlord shall not be liable for any latent or patent defect therein.

SECTION 6.02 MAINTENANCE BY TENANT.

Tenant shall keep the Premises and the Sign to be erected thereon by Tenant, in good safe, order, condition and repair, damage by unavoidable casualty, Landlord or unrelated third party excepted. Tenant shall comply with the requirements of all laws, orders, ordinances and regulations of all governmental authorities and will not permit any waste of property to be committed and will take good care of and keep in a neat, clean and sanitary condition the Premises at all times. Tenant shall not permit any shrubs, trees, vines, or other obstructions to be planted or erected on the Premises which would obstruct or materially impair the visibility of the Sign. It is the understanding of the Parties that visibility of the Sign to the traveling public is the essence of this Lease. Landlord grants Tenant the right to trim, cut, or remove brush, trees, shrubs, or any vegetation on the Property, which limit the visibility of the Sign.

SECTION 6.03 LANDLORD PREMISES AND PROPERTY MAINTENANCE.

If Tenant refuses or neglects to repair the Sign or related improvements as required hereunder and such failure continues for thirty (30) days after written demand or such longer period as shall be reasonably required due to the nature of the repairs provided that Tenant commences such repairs within such thirty (30) day period, Landlord may make such repairs and upon completion thereof Tenant shall promptly pay Landlord's reasonable costs for making such repairs within fourteen (14) business days after Landlord's presentation of bill therefore, as Additional Rent. As of the Commencement Date, Landlord delivers the Property to the City "as is." Landlord shall remove or trim all vegetation or other obstructions on the Property and the Premises at its own expense. To the extent that obscuring structures or vegetation lies on real

property owned or controlled by Caltrans or other third parties, Landlord shall use commercially reasonable efforts to request their removal by the pertinent property owners.

SECTION 6.04 SURRENDER OF PREMISES.

At the expiration of the tenancy hereby created, Tenant shall surrender the Premises in good order and condition. The Sign shall be removed at the sole expense of the Tenant prior to surrender, unless directed otherwise by the Landlord.

ARTICLE VII

ASSIGNMENT AND SUBLETTING

SECTION 7.01 A. CONSENT REQUIRED.

Tenant may sublease the Premises or portions thereof, or assign this Lease only with the express written permission of the Landlord, which permission shall not be unreasonably withheld, conditioned, or delayed. Any assignment, license or subletting shall be subject to the following conditions:

- (1) that the initial Tenant and any assignee(s) of Tenant shall remain liable for the full performance of all Tenant obligations hereunder during the entire Term of this Lease; and
- (2) that subject to the terms of any sublease shall be subject and subordinate to this Lease, and the subtenant shall comply with all the terms and conditions of this Lease; and
- (3) a copy of the document of the assignment or subletting is delivered to Landlord as soon as reasonably possible after the full execution thereof by both parties thereto; and

(4) any assignee shall assume in writing all of the Tenant's obligations under this Lease; and

(5) the assignee, subtenant or licensee shall not use the Premises for any purpose other than the Permitted Use.

B. CONSENT TO SUBLEASE TO CBS OUTDOOR.

(1) Consistent with and pursuant to the terms set forth in Section 7.01.A. above, Landlord hereby consents to the subleasing of the Premises to CBS Outdoor Inc.

ARTICLE VIII

WASTE, GOVERNMENTAL REGULATIONS

SECTION 8.01 WASTE.

Tenant shall not commit or suffer to be committed any waste upon the Premises.

SECTION 8.02 GOVERNMENTAL REGULATIONS.

Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Tenant or its use of the Premises. Tenant shall bear all costs of obtaining permits for the installation and operation of the Sign. Tenant shall indemnify, defend and save Landlord harmless from penalties, fines, costs, expenses or damages resulting from Tenant's failure to perform its obligation in this Section.

ARTICLE IX

CASUALTY

SECTION 9.01 CASUALTY.

In case of fire or other casualty to the Premises or the improvements thereon including but not limited to the Sign during the term hereof, Tenant may at all times and, in Tenant's sole discretion, repair, restore, rebuild or replace the destroyed sign, or, in lieu thereof, shall remove the damaged improvements together with all rubble and debris related thereto. In the event that such casualty is not the result of Tenant's negligent acts or willful misconduct, the rent payable hereunder shall abate for the period of time reasonably necessary for Tenant to repair the Sign provided Tenant performs such repairs with diligence and in good faith.

ARTICLE X

EMINENT DOMAIN

SECTION 10.01 ACQUISITION OF PREMISES BY NON-CALTRANS GOVERNMENTAL ENTITIES.

In the event that all or the portion of the Premises occupied or needed by the Sign is acquired or sought to be acquired by or for the benefit of any entity other than Caltrans having or delegated the power of eminent domain, Tenant shall, at its election and in its sole discretion, be entitled to: (i) contest the acquisition and defend against the taking of Tenant's interest in the Premises; (ii) reconstruct the Sign on any portion of the Premises not being acquired, as reasonably approved by Landlord and permitted by law; and (iii) recover damages to and

compensation for the fair market value of its leasehold and Sign taken or impacted by the acquisition, from the taking entity, but under no circumstances from the Landlord.

SECTION 10.02 ACQUISITION OF PREMISES OR PROPERTY BY CALTRANS.

As set forth in Section 1.05, Tenant's use and enjoyment of the Premises is subject to termination at any time upon the exercise by Caltrans of its rights under the Caltrans Conveyance Agreement. By signing this Lease, the Tenant hereby releases and waives, as against Caltrans and the Landlord, any right Tenant or its subtenants, assigns, agents, representatives, employees or subcontractors may have to seek or to receive compensation for the remaining term of this Lease or for any property loss or taking, including but not limited to, the fair market value of Tenant's leasehold interest, goodwill, lost profits and any other compensation of any kind whatsoever, in the event Caltrans exercises its right under the Caltrans Conveyance Agreement and demands a transfer of all or a part of the Premises or the Property. The sole recourse of the Tenant shall be from the City fund set forth in Section 10.02.1 below, if available pursuant to terms of that subsection.

SECTION 10.02.1. LIMITED INSTALLATION COST REIMBURSEMENT RIGHT ONLY FROM THE CITY.

Upon completion of the final inspection of the Sign by the City, the City agrees to make available to the Tenant a limited time construction cost reimbursement of Four Hundred Thousand Dollars (\$400,000.00), subject to the eligibility requirements set forth herein. This amount may be available only in the event of the acquisition of the Premises and the forced removal of the Sign pursuant to the Caltrans Conveyance Agreement. Such amount shall be shall be amortized over a seven (7) year period starting from the date of final inspection using

the straight-line method of amortization in accordance with generally accepted accounting principles. Under no circumstances shall this installation cost reimbursement right be available after then end of the seven (7) year amortization period. This reimbursement right shall be available only in the event of Tenant's compliance with all other material terms of this Lease. Tenant hereby understand and acknowledges that the reimbursement shall be available only against the City and only pursuant to the terms of this Lease.

ARTICLE XI

PARTY DEFAULT AND TERMINATION RIGHTS

SECTION 11.01. LANDLORD DEFAULT AND TENANT RIGHT TO TERMINATE.

Notwithstanding any provision to the contrary contained herein, if, at any time from and after the full execution of this Lease and throughout the Term of this Lease, any zoning or other law shall be in effect or shall be adopted by any regulatory agency other than the City of Milpitas which shall prevent Tenant from conducting its use of the Premises in accordance with the terms and conditions of this Lease, Tenant shall have the right to terminate this Lease, without penalty, upon six (6) months written notice thereof to Landlord. In the event that, in Tenant's sole opinion; (a) Tenant is unable to secure or maintain any required permit or license from any appropriate governmental authority; (b) federal, state or local statute, ordinance, regulation or other governmental action precludes or materially limits use of the Premises for outdoor advertising purposes; (c) Tenant's Sign on the Premises become entirely or partially obstructed or destroyed; (d) the view of Tenant's Sign is obstructed or impaired in any way by any object or growth on the Landlord's property, the Premises or on any neighboring property; (e) the advertising value of the Sign Structure(s) is impaired or diminished; (f) there occurs a diversion

of traffic from, or a change in the direction of, traffic past the Sign; (g) Tenant is prevented from maintaining electrical power to the Premises or illuminating its Sign; (h) Tenant finds that, in Tenant's sole opinion, the continued maintenance/operation of the Sign is impractical or uneconomical due to engineering, architectural, construction or maintenance circumstances which will require structural improvements to Landlord's property; (i) maintenance will be hampered or made unsafe due to conditions caused by nearby properties, land uses, or utilities, then Tenant shall, at its option, have the right to either reasonably abate the rent until the issues with "a" through "i" above are cured, and/or terminate this Lease upon thirty (30) days notice in writing to Landlord.

SECTION 11.02 EVENTS OF TENANT DEFAULT AND LANDLORD CURE RIGHTS.

In the event of any failure by Tenant to pay any Rent or other payment due hereunder within ten (10) days after Tenant's receipt of written notice from Landlord that the same shall be due, or any failure to perform any other of the material terms, conditions or covenants of this Lease to be observed or performed by Tenant for more than thirty (30) days after Tenant's receipt of written notice from Landlord of such failure or such longer period as shall be reasonably required due to the nature of such default provided that Tenant commences to cure such default within such thirty (30) day period, or if Tenant or an agent of Tenant shall intentionally falsify any report required to be furnished to Landlord pursuant to the terms of this Lease or if Tenant shall become bankrupt or insolvent, or file any debtor proceedings or take or have taken against Tenant in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property and such petition is not dismissed

within sixty (60) days from the date of filing thereof, or if Tenant makes an assignment for the benefit of creditors, or suffer this Lease to be taken under any writ of execution or Tenant uses the Premises for purposes other than the purposes for which the same are hereby leased, or ceases to use the Premises for the purposes herein expressed, or in the event an execution or other legal process is levied upon the property of Tenant brought on the Premises and the same is not satisfied or dismissed with thirty (30) days from the date Tenant receives notice of the same then Landlord shall have any and all rights and remedies now or hereafter available at law or in equity in the State of California for such default, including, but not limited to, the right to terminate this Lease. Notwithstanding the foregoing, those conditions set forth in Section 11.03 (Special Condition Termination Rights of Landlord) below shall be subject to the separate notice and termination procedure set forth therein.

SECTION 11.03. SPECIAL CONDITION TERMINATION RIGHTS OF LANDLORD.

- A.** In the event of Caltrans' exercise of its rights under the Caltrans Conveyance Agreement, Landlord may terminate this Lease and convey all or that portion of the property occupied by the display sign part of the Premises to Caltrans upon three (3) months written notice to Tenant. Tenant shall remove the Sign at Tenant's sole expense prior to the end of the three (3) month notice period.
- B.** Tenant shall use best business efforts and exercise its fiduciary capacity as required in this Lease to maximize the revenue generated and thereby the rental payments to the city for display sign. In that endeavor, Tenant shall meet the following performance standards and fulfill the obligations set forth below.

Once a year, Tenant shall submit an estimate of the total rental payment amount for the upcoming year to the City ("Rent Projection") by February 1 of each rental year, based on the expected sign revenue and taking into consideration the current business climate and advertising space demand.

- i. For Year 1 through Year 3 of this Lease, the annual rental payment estimate to the City ("Rent Projection") shall be Forty Seven Thousand Three Hundred Dollars (\$47,300.00).
- ii. For Year 4 until the end of the end of the Lease, the Rent Projection for each upcoming annual year shall be the average of the preceding three years of actual annual rent payments.

In any year that the rental payment to the city is not at least 75% of that year's Rent Projection, the city manager/staff may upon 30 days notice, request a meeting with the Tenant to discuss the performance of the display sign and the current marketing activities being conducted to maximize the rental payment revenue. If the result of the meeting is the city reasonably believes that Tenant is not operating in good faith to maximize revenue in accordance with the Lease, the Parties shall agree on a written plan of action to improve the operation of the Sign. After the completion of the next two calendar quarters, and the rental payments associated therein, the City may upon 30 days notice, request a meeting with the Tenant to review Tenant's performance with the agreed upon plan of action. If after that period the City reasonably believes that Tenant is not acting in good faith to uphold the contractual obligation

contained in the agreement, the City may put the Tenant on notice of nonperformance. Said notice shall contain the specific area(s) of nonperformance and the grounds for the City's reasonable determination of the same. It shall also contain the specific area or measure of improvement reasonably expected by the City, within the confines of this Lease. The Tenant shall have a minimum of two complete calendar quarters to meet the agreed upon performance objectives contained in the notice of nonperformance.

In the event of Tenant's failure to meet these performance objectives by the end of this cure period, Tenant shall be declared to be in breach and the Lease terminated.

SECTION 11.04 FORCE MAJEUR.

Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.

ARTICLE XII

TENANT'S PROPERTY

SECTION 12.01 SIGN OWNERSHIP.

The Sign located at the Premises, and all sign(s), structure(s), improvements and appurtenances thereto placed on the Premises hereafter by or for Tenant, its agent or predecessor and any and all permits related thereto shall at all times during the Lease remain the property of

Tenant. All such sign(s), structure(s), improvement(s) and appurtenances shall be considered fixtures and shall be considered the property of the Landlord upon Surrender.

SECTION 12.02 LOSS AND DAMAGE.

Landlord shall not be liable for any damage to property of Tenant or of others located on the Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise, unless caused by the negligence or intentional act of Landlord, its agents invitees or employees. Landlord shall not be liable for any damage caused by occupants of adjacent property, or the public, or caused by operations in construction of any private, public or quasi-public work, unless caused by the negligence or intentional act of Landlord. Landlord shall not be liable for any latent defect in the Premises. Subject to the terms hereof, all property of Tenant kept on the Premises shall be so kept at the risk of Tenant only.

ARTICLE XIII

MISCELLANEOUS

SECTION 13.01 NO WAIVER.

The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver be in writing by Landlord. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. The receipt of Rent after breach or condition broken, or delay on the part of Landlord to enforce any

right hereunder, shall not be deemed a waiver of any preceding breach by Tenant of any term, condition or covenant of this Lease, or a waiver of the right of Landlord to annul this Lease or to reenter said Premises or to relet same. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

SECTION 13.02 ACCORD AND SATISFACTION.

No payment by Tenant or receipt by Landlord of a lesser amount than the quarterly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompany any check or payment prejudice Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

SECTION 13.03 ENTIRE AGREEMENT.

This Lease sets forth all the covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them. The Tenant acknowledges that it has not been induced to enter into this Lease by any representations of Landlord.

SECTION 13.04 NO PARTNERSHIP.

Landlord is not, in any way or for any purpose, a partner of Tenant in the conduct of its business, nor is Landlord a member of a joint enterprise with Tenant.

SECTION 13.05 NOTICES.

SECTION 13.05.1 Any notice, demand, or request or other instrument which may be or are required to be given under this Lease shall be delivered in person or sent by United States certified mail postage prepaid and shall be addressed:

If to Landlord:

City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
City Attorney
(408) 586-3040
If to MAP:

Milpitas Auto Properties, LLC
13600 Beach Boulevard
Westminster, CA 92683
Attn: Tom Chadwell, Vice President and Member
Telephone: (714) 896-9777
Facsimile: (714) 896-9779

If to CBS:

CBS Outdoor Inc.
1695 Eastshore Highway
Berkeley, CA 94710
Attn: Robert Harbin
Telephone: (510) 527-3350
Facsimile: (510) 527-7041

With a copy to:
CBS Outdoor Inc.
405 Lexington Avenue
New York, NY 10174
Attn: General Counsel
Telephone: (212) 297-6400
Facsimile: (212) 297-6552

SECTION 13.05.2 Any notice required to be given to Tenant by Landlord hereunder shall also be given to CBS Outdoor in the event that CBS Outdoor shall be a subtenant in accordance with the terms hereof.

SECTION 13.06 BROKERS COMMISSION.

Landlord and Tenant represent and warrant that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease and each agrees to indemnify the other against, and hold the other harmless from all liabilities arising from any such claim, including cost of counsel fees.

SECTION 13.07 [RESERVED]

SECTION 13.08 TIME OF ESSENCE.

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

SECTION 13.09 GOVERNING LAW.

This Lease shall be construed and interpreted according to the laws of the State of California and venue with respect to any litigation shall be Santa Clara County, California.

SECTION 13.10 HAZARDOUS MATERIALS.

Tenant shall not cause or permit any hazardous or toxic substance, material or waste which is or becomes regulated by any local, state or federal government ("Hazardous Material") to be brought, kept or used in, on or under the Premises by Tenants, its agents, employees, contractors, or invitees. Tenant indemnifies Landlord from and against any breach of the above-stated obligation, and agrees to defend and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without

limitation, diminution in value of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Term of this Lease as a result of such breach. Without limiting the foregoing, if the presence of any Hazardous Material caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions, at Tenant's sole expense, as are necessary or advisable to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises by Tenant; provided that landlord's approval of such actions and the contractors to be used by Tenant shall first be obtained.

SECTION 13.11 LANDLORD'S ACCESS.

Landlord, its employees, representatives and agents shall have access to the Premises in order to conduct inspections or to cure and enforce its rights under this Lease at reasonable times and upon reasonable notice to Tenant. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility of liability whatsoever for the care, maintenance, or repair of any improvements or personal property located on the Premises. Notwithstanding the foregoing, Landlord shall indemnify and hold harmless Tenant against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise as the result of Landlord's access to the Premises. Landlord shall use best efforts not to interfere with the normal conduct of Tenant's business at the Premises, or the business of any subtenant of Tenant at the Premises.

SECTION 13.13 WAIVER OF JURY TRIAL AND COUNTERCLAIMS.

THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE

OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY
CONNECTED WITH THIS LEASE.

SECTION 13.14 [RESERVED]

SECTION 13.15 SUCCESSORS.

All rights and liabilities, herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of said parties; and they shall all be bound by the terms, covenants and agreements herein. Nothing contained in this Lease shall in any manner restrict Landlord's right to assign or encumber this Lease and in the event Landlord sells its interest in the Premises and the purchaser assumes Landlord's obligations and covenants, Landlord shall thereupon be relieved of all further obligations hereunder.

SECTION 13.16 QUIET ENJOYMENT.

Upon payment by Tenant of the rents herein provided, and upon the observance and performance of all the obligations on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without interruption or disturbance by Landlord or any other person or persons lawfully or, equitably claiming by, through or under the Landlord, subject, nevertheless, to the terms and conditions of this Lease. Notwithstanding the foregoing, Tenant acknowledges that Tenant's right to peaceful and quiet enjoyment shall be subject to termination and disturbance by the exercise of Caltrans rights under the Caltrans Conveyance Agreement and the lawsuit notice provisions of Section 13.18, below. By signing this Lease, Tenant waives and releases Landlord from any and all claims arising from or related to the conveyance of part or all of the Premises to Caltrans, including but

not limited to claims for breach of the covenant of quiet use and enjoyment and breach of contract.

SECTION 13.17 CITY PROCESSING FEES.

Notwithstanding any other provision in this Lease, the Landlord's duty to perform under this Lease and to issue associated approval and licenses, including but not limited to building permits, shall be contingent upon the Tenant's full payment of City of Milpitas private job accounts (PJ Account) fees. All invoiced PJ Account amounts accrued up to and including the date of execution of this Lease shall be paid by Tenant within thirty (30) days of the execution of this Lease.

SECTION 13.18 LAWSUIT SETTLEMENT OR FAVORABLE FINAL RESOLUTION CONDITION PRECEDENT TO PERFORMANCE.

Notwithstanding any other provision in this Lease, the Tenant acknowledges and covenants that the Landlord's duty to perform under this Lease and to issue associated approval and licenses, including but not limited to building permits, and the effective date of City of Milpitas Site Development Permit No. SD11-0003, shall be contingent upon the full settlement, release and dismissal with prejudice of the lawsuit commonly known as *Milpitas Mills Limited Partnership v. City of Milpitas, et al.*, California Court of Appeal Case No. H036108; Santa Clara County Superior Court No. CV119458, or the final resolution of such action to the satisfaction of the City Attorney of the City of Milpitas. Any settlement and release of said legal action must provide, amongst other things, for the disposition and demolition of the advertising display currently on the Property by a mutually agreeable date. By signing this Agreement, Tenant acknowledges that it enters into this Agreement subject to the aforementioned lawsuit and that Landlord's legal right to lease the land may be affected by said lawsuit. Tenant

knowingly and intentionally holds harmless and waives any rights it may have to bring suit against the City for all claims or possible claims for, or on account of, any debt, liability, loss, injury or expense contracted or incurred by Tenant, its successors, or its assigns resulting from or arising from the maintenance of said lawsuit or any judgment or settlement arising therefrom.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed, sealed and delivered on the date set forth below each party's execution.

LANDLORD:

**CITY OF MILPITAS, A CALIFORNIA
A MUNICIPAL CORPORATION**

By: _____
Thomas C. Williams, City Manager

Dated: _____

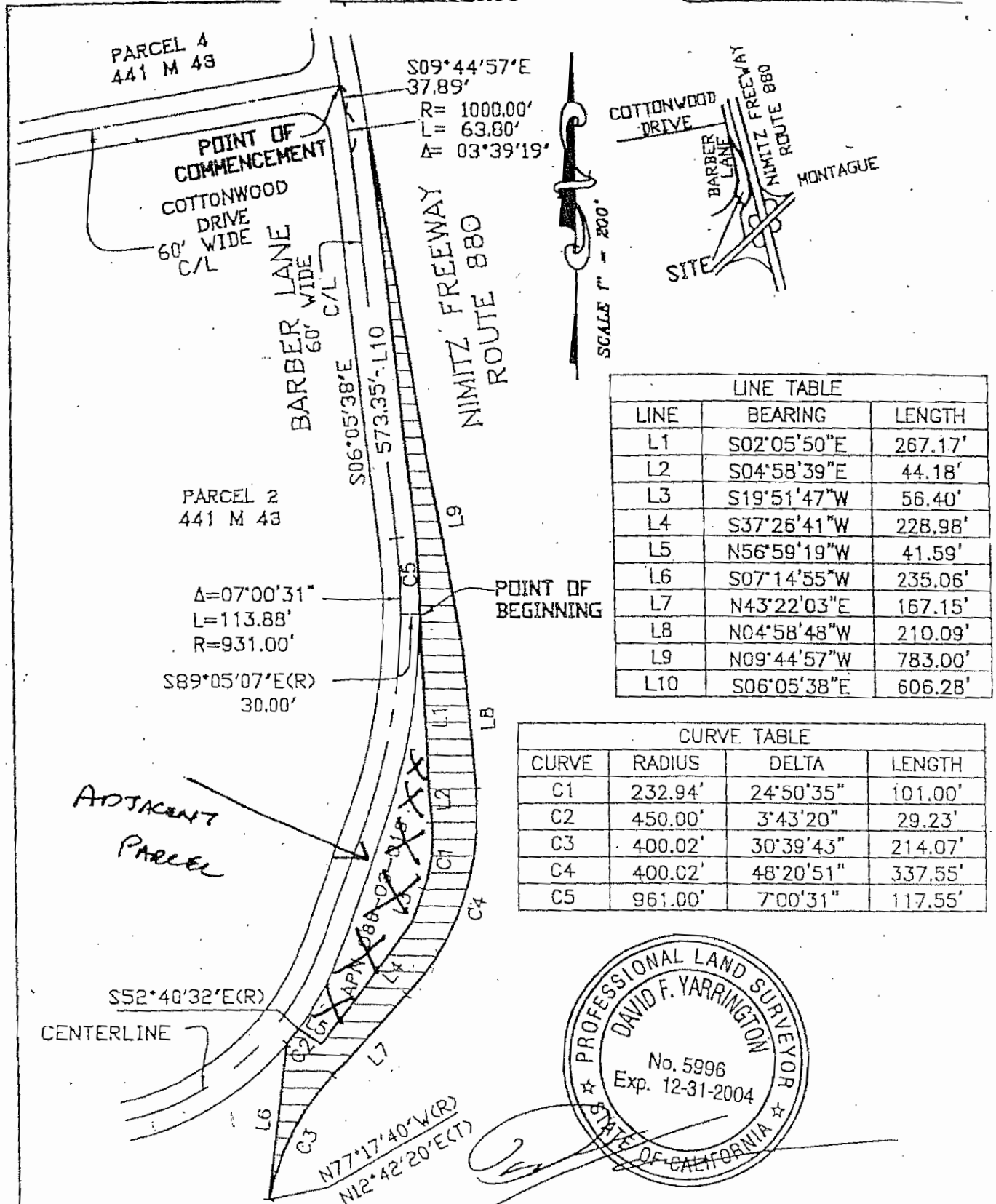
TENANT:

**MILPITAS AUTO PROPERTIES,LLC,
A CALIFORNIA LIMITED LIABILITY
COMPANY**

By: _____
Tom Chadwell, Member

Dated: _____

EXHIBIT A PROPERTY



DAVID EVANS & ASSOCIATES, INC.

ENGINEERS • PLANNERS • SURVEYORS

5000 EXECUTIVE PARKWAY - SUITE 125

SAN RAMON CALIFORNIA 94583

(925) 857-3380 FAX (925) 857-3388

NO.	BY	DATE	REVISIONS

PLAT TO ACCOMPANY
LEGAL DESCRIPTION

DRAWN BY: DWI DATE: 11/

CHECKED BY: SCALE: 1"

JOB NO. SWER0001

REF.

DWG. LOC.

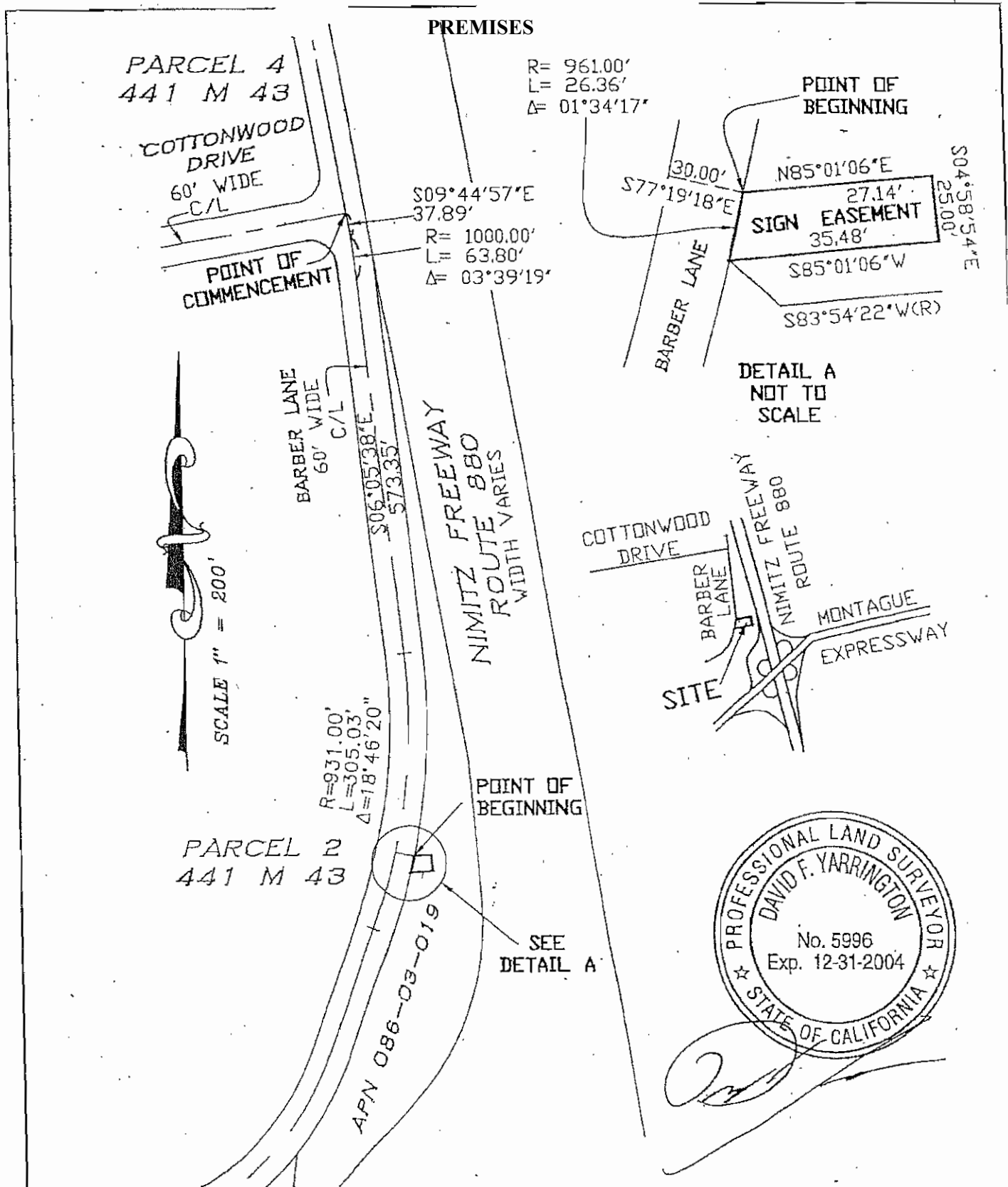
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SHEET 2 OF

A.P.N. 085-03-019

483

EXHIBIT B



DAVID EVANS & ASSOCIATES, INC.

ENGINEERS • PLANNERS • SURVEYORS
5000 EXECUTIVE PARKWAY — SUITE 125
SAN RAMON CALIFORNIA 94583
(925) 867-3380 FAX (925) 867-3388

NO.	BY	DATE	REVISIONS

RTE. 880
SIGN EASEMENT

DRAWN BY: DMI DATE: 05/18/01

CHECKED BY: SCALE: 1"=200'

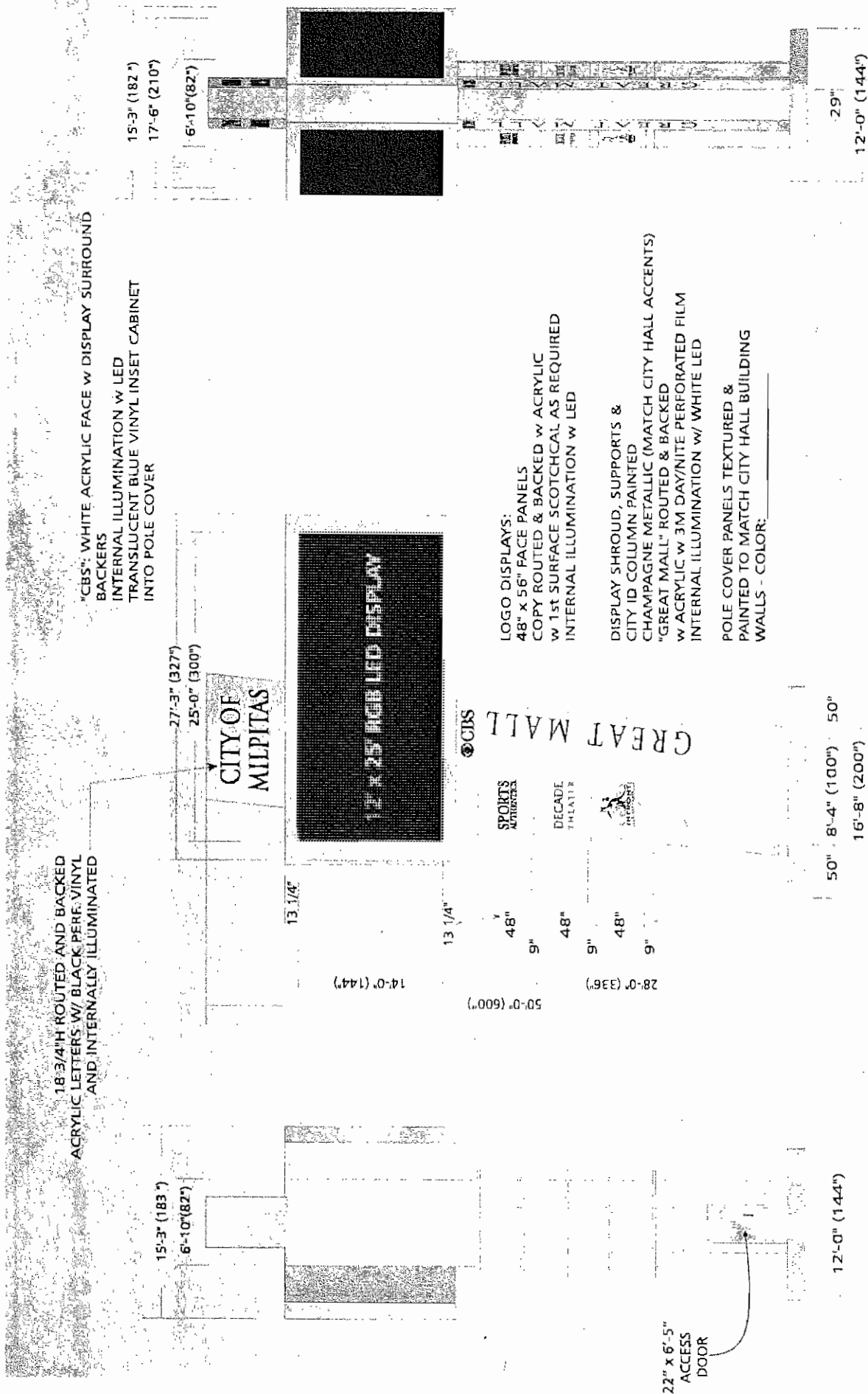
JOB NO. SWER0001

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SHEET 1 OF 484

EXHIBIT C CONCEPTUAL DRAWINGS



880 @ Montague



SIMULATED NIGHT VIEW

CITY OF
MILPITAS



GREAT MALL



880 @ Montague





MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: June 22, 2011

APPLICATION: Site Development Permit No. SD11-0003: Electronic Freeway Orientated Sign

APPLICATION SUMMARY: A public hearing for a Site Development Permit to replace an existing freeway oriented sign for off-site advertising

LOCATION: 1700 Barber Lane (APN: 086-03-096)

APPLICANT: Milpitas Auto Properties, LLC

OWNER: City of Milpitas

RECOMMENDATION: Staff recommends that the Planning Commission adopt Resolution No. 11-024 recommending approval of project to the City Council.

PROJECT DATA:

General Plan/

Zoning Designation: N/A – Right of way property

CEQA Determination: The off-site advertising display adjacent to Interstate 880 is exempt pursuant to Section 15162 of CEQA guidelines in that the project is consistent with the findings within the prior certified Supplemental EIR (SCH#2006082087)

PLANNER: Sheldon S. Ah Sing, Senior Planner

PJ: 2523

ATTACHMENTS: A. Resolution No. 11-024
B. Parcel Map
C. Sign Design

LOCATION MAP



BACKGROUND

There has been an interest by the city and private entities to erect off site advertising displays or digital billboards, also known as “changeable copy or static copy freeway signs” along Interstates 880 and 680. These signs will promote economic development, expand the communication of community services and provide a source of revenue for the city.

In November 2006, the City certified an Environmental Impact Report that summarized and identified the impacts of locating three new signs along Interstate 680 and Interstate 880 for the purposes of offsite advertising. Of those signs, two of them would be capable of transmitting electronic changeable media.

The City’s Municipal Code includes a process for off-site advertising displays adjacent to interstate highways and state routes. The Code creates specific criteria to ensure that the erection of such off-site advertising displays in the city does not create visual clutter or create other operational impacts on surrounding uses, and to promote the public health, safety and general welfare. The provisions are consistent with state and federal laws that govern such signs and with the accepted standards of the Outdoor Advertising Association of America.

This application for the Site Development Permit and the Lease Agreement are submitted pursuant to the Municipal Code ordinance [Title XI, Chapter 10, Section 24.05(G)]. The Lease Agreement is included for reference and will be considered by the City Council. The Planning Commission will make a recommendation on the Site Development Permit to the City Council.

PROJECT DESCRIPTION***Discussion***

The project includes two components. First, a Site Development Permit is submitted to consider the design and compliance of the sign with the zoning ordinance regulations. Second, a Lease Agreement between the City and Milpitas Auto Properties, LLC proposes to identify the timeframe for responsibilities, obligations and shared benefits of erecting an off-site advertising display.

Site Development Permit

The applicant proposes an off-site advertising display on the City owned parcel adjacent to southbound Interstate 880 at the Montague Expressway. In summary, the provisions and development standards are as follows:

Review Process

Two sign vendors were chosen by the city through a competitive selection process. Each sign vendor will enter into an agreement with the city regarding the location, construction, maintenance and define the public benefit of the signs. The design of the signs requires consideration of a Site Development Permit by the Planning Commission and the City Council. It is the intent that the signs by the two vendors are compatible in design, but not necessarily identical. The City approved an off-site advertising sign at the Piercey Toyota site in 2010 and construction is to begin soon.

Zoning Development Standards

Maximum Height

The overall height of the sign shall not exceed seventy (70) feet.

Distance between other off-site advertising displays.

No off-site advertising display shall be placed within one-thousand (1,000) feet from another advertising display on the same side of any portion of the interstate.

Maximum sign area

The maximum sign area shall not exceed one-thousand, two-hundred (1,200) square feet on each side. Ancillary fixed signs or logos may be permitted on the sign's supporting structure that would not count towards the maximum allowed sign area.

Illumination

The two-sided displays would use LED technology. Light intensity would be in compliance with state laws. An automatic dimming device or light sensors must be integrated into the sign and illumination must be designed to reduce glare or casting on adjacent properties.

I-880/Montague Sign Location and Design

This application considers only one sign location. The sign is proposed to be located within the City owned parcel shown on the attached site plan that is the location of the current Great Mall freeway sign. The exact location will be established when construction drawings are submitted to the City and to the California Department of Transportation (Caltrans). A condition of approval will maintain that the sign remain clear of any easements.

The main support column of the sign is 50 feet tall. The total display area is 356 square feet for each side (12 feet by 25 feet) and includes three logo signs on the support column. The structure is metallic silver in color. At the top of the support column "City of Milpitas" is displayed and "Great Mall" is positioned along side the three logo signs. Refer to the project plans for detailed information.

Illumination of the sign is by Light Emitting Diodes (LED) technology. As required by the Code, the sign will include automatic dimming circuitry or light sensors to reduce glare or casting on adjacent properties. The light intensity will be consistent with state and federal laws.

Lease Agreement Deal Points

The deal terms concerning the Lease Agreement will be made available under separate cover prior to the Planning Commission meeting.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

The table below outlines the project's consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 1
General Plan Consistency

Policy	Consistency Finding
2.a-I-3 <i>Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent. The proposed development agreement and sign promote and balances economic development by creating a medium for local businesses to advertise and ensures quality identification.
2.a-I-4 <i>Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City's location to both industrial and commercial use.</i>	Consistent. The proposed development agreement and sign allow the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
2.a-I-7 <i>Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.</i>	Consistent. The proposed development agreement and sign provide a partnership and provides an opportunity to promote businesses.

Zoning Ordinance

The proposed sign is consistent with the zoning ordinance regarding development and operational standards. The design, scale, size and materials of the sign as depicted in the project plans are consistent with the requirements of the sign ordinance. The sign complements the architectural design, materials and color of the Toyota automobile dealership sign approved by the Planning Commission and City Council in 2010. When reviewed during the plan checking stages, the lighting will be consistent with ordinance standards. At that time, the sign's exact location will be considered for any potential impacts to vehicular or pedestrian traffic.

The development of the sign will result in a public benefit to the city outweighing any adverse impacts that may be caused by the displays. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the redevelopment project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is exempt pursuant to Section 15162 in that project is consistent with the findings within the prior certified Supplemental EIR (SCH#2006082087). The Supplemental EIR identified the approximate locations of the freeway signs and their potential impacts on the environment. No

new information or changes in the scope of the proposal necessitates further environmental analysis. The certified Supplemental EIR is adequate to address the freeway signs. All applicable mitigation measures identified in the Supplemental EIR will apply to future projects involving such signs have been integrated to the extent possible in the proposed ordinance. These include the size, angle, light emissions, design, noise and other operating and development factors associated with the signs.

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.

CONCLUSION

The City has expressed a desire to allow off-site advertising displays to promote economic development. Through prior certification of an EIR and through the concurrent processing of an amendment to the city's sign ordinance, the city has considered the potential visual impacts of these displays. Specific provisions and development and operational standards ensure compatibility with surrounding uses and acknowledge that the public benefits outweigh adverse impacts. The proposed sign is consistent with the provisions of the sign ordinance.

RECOMMENDATION

STAFF RECOMMENDS that the Planning Commission close the public hearing and adopt Resolution No. 11-024, recommending approval of the project to the City Council.

Attachments:

- A. Resolution No. 11-024
- B. Parcel Map
- C. Sign Design

RESOLUTION NO. 11-024

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE A REAL PROPERTY LEASE AGREEMENT AND SITE DEVELOPMENT PERMIT NO. SD11-0003, OFF-SITE ADVERTISING DISPLAY, TO ALLOW THE ERECTION OF A FREESTANDING OFF-SITE ADVERTISING DISPLAY LOCATED ON A CITY-OWNED PARCEL BETWEEN BARBER LANE DRIVE AND THE INTERSTATE 880 FREEWAY IN MILPITAS, CALIFORNIA

WHEREAS, on May 5, 2011, an application was submitted by Milpitas Auto Properties, LLC, for a real property lease agreement between the City of Milpitas and Milpitas Auto Properties, LLC, and site development approval for the erection and operation of a freestanding off-site advertising display. The property proposed for lease is located on a parcel of land bordered on its eastern and western boundaries by the Interstate 880 Freeway and Barber Lane, respectively, which is sometimes described as Assessor's Parcel No. 086-03-096. The subject parcel is located in the right of way; 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 determine this project is categorically exempt; and

WHEREAS, on June 22, 2011, 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, as to the proposed application and its conformity with the requirements of Milpitas Municipal Code § XI-10-24.05.G (Off-Site Advertising Displays Adjacent to Interstate Highways and State Routes).

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

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is exempt from further environmental review pursuant to Section 15162 of CEQA guidelines in that the project is consistent with the findings within the prior certified Supplemental EIR (SCH#2006082087). The Supplemental EIR identified the locations of freeway signs and their potential impacts on the environment. No new information or changes in the scope of the proposal necessitates further environmental analysis. The certified Supplemental EIR is adequate to address the freeway signs. All applicable mitigation measures identified in the Supplemental EIR will apply to future projects involving such signs have been integrated to the extent possible in the proposed ordinance. These include the size, angle, light emissions, design, noise and other operating and development factors associated with the signs.

Section 3: The proposed display will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual

character of the site and surrounding in that the displays are angled away from neighboring properties and will include automatic dimming devices to ensure the appropriate glare level.

Section 4: All advertising on the off-site advertising display will conform with the Outdoor Advertising Act in the California Business and Professions Code and other applicable state and federal rules and regulations.

Section 5: The development of the off-site advertising display will result in a public benefit to the City outweighing any adverse impacts that might be caused by the advertising display. The proposed display will present a positive image of the City of Milpitas and increase its visibility and presence to the traveling public, thereby informing travelers of amenities and products available in the redevelopment project area. The proposed display will also provide opportunities for advertising or information regarding community events and programs..

Section 6: The development of the off-site advertising display will promote economic development within the City in that the signs provide for additional commercial corridor communication, thereby advertising the availability of goods and services within the redevelopment project area.

Section 7: The design, including lighting, scale, size and materials, of the off-site advertising display is consistent with the intent of the design criteria of the off-site advertising display provisions in that the sign is consistent with the height, size, and lighting and is compatible in design and appearance to the commercial, office and retail structures in the surrounding area.

Section 8: The development and location of the proposed off-site advertising display is consistent with the goals of the Milpitas General Plan in that the sign:

- a. provides a partnership with local business entities and provides an opportunity to promote economic activity within the City.
- b. allows the City to position itself for appropriate identification for businesses and projects a positive quality image for Milpitas.
- c. promotes and balances economic development by creating a medium for local businesses within the redevelopment project area to advertise and ensures quality identification.

Section 9: The Planning Commission of the City of Milpitas hereby recommends approval of a Real Property Lease Agreement and Site Development Permit No. SD11-0003, Off-site advertising display, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on June 22, 2011.

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 June 22, 2011, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
John Luk				

EXHIBIT 1

CONDITIONS OF APPROVAL

Site Development Permit No. SD11-0003

A request for an off-site advertising display
Parcel Between Interstate 880 and Barber Lane(APN: 086-03-096)

General Conditions

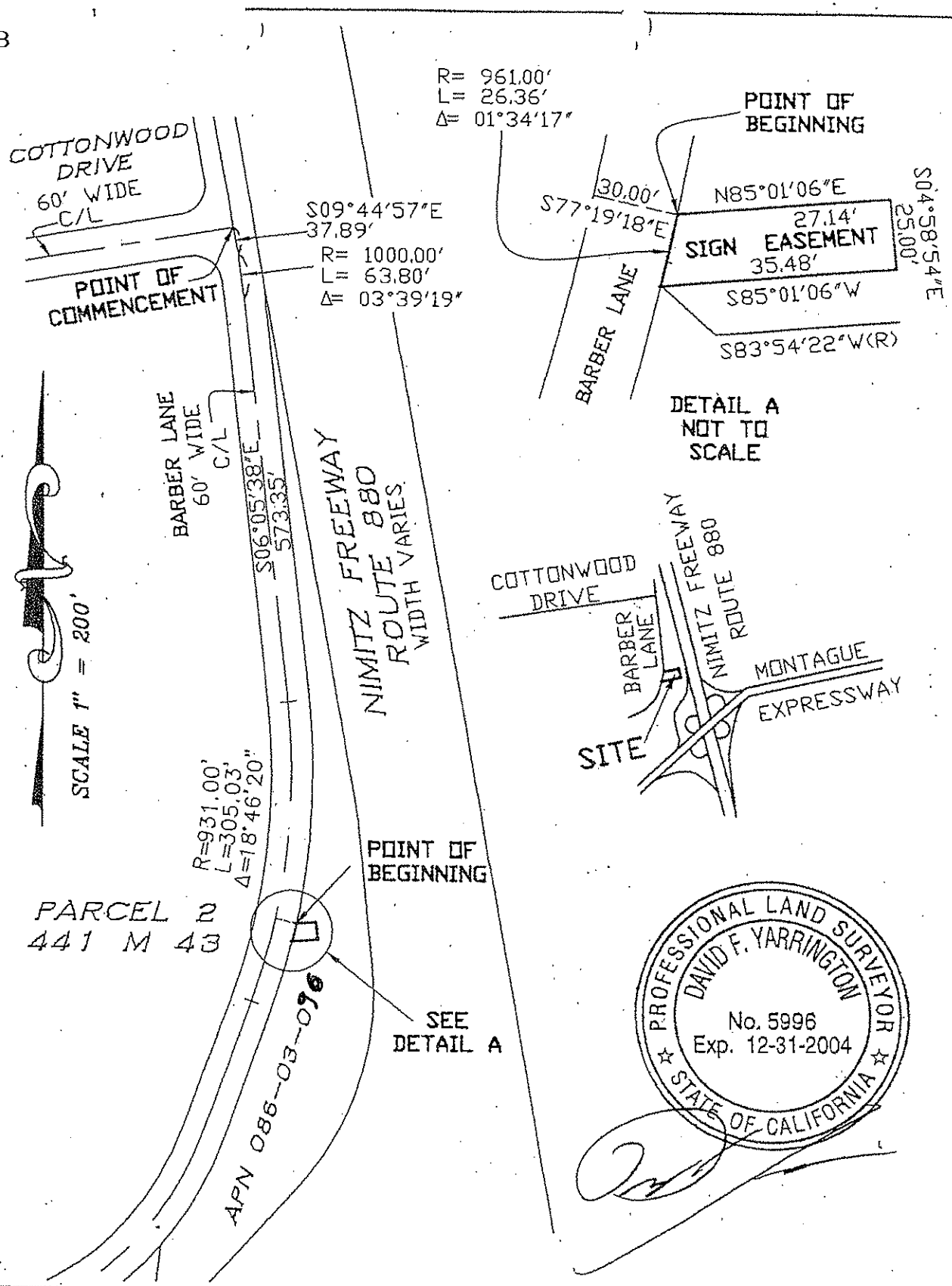
1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the City Council, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the City Council, in accordance with the Zoning Ordinance. **(P)**

SD11-0003 shall become null and void if the project is not commenced within two (2) years from the date of approval. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas:

- a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
2. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of SD11-0003 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
 3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
 4. Prior to issuance of a building permit, the applicant shall confirm that the sign is located outside any easements. **(E)**
 5. Prior to issuance of a building permit, the applicant shall confirm that the sign location complies with fire regulations regarding access and circulation. **(F)**

(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention

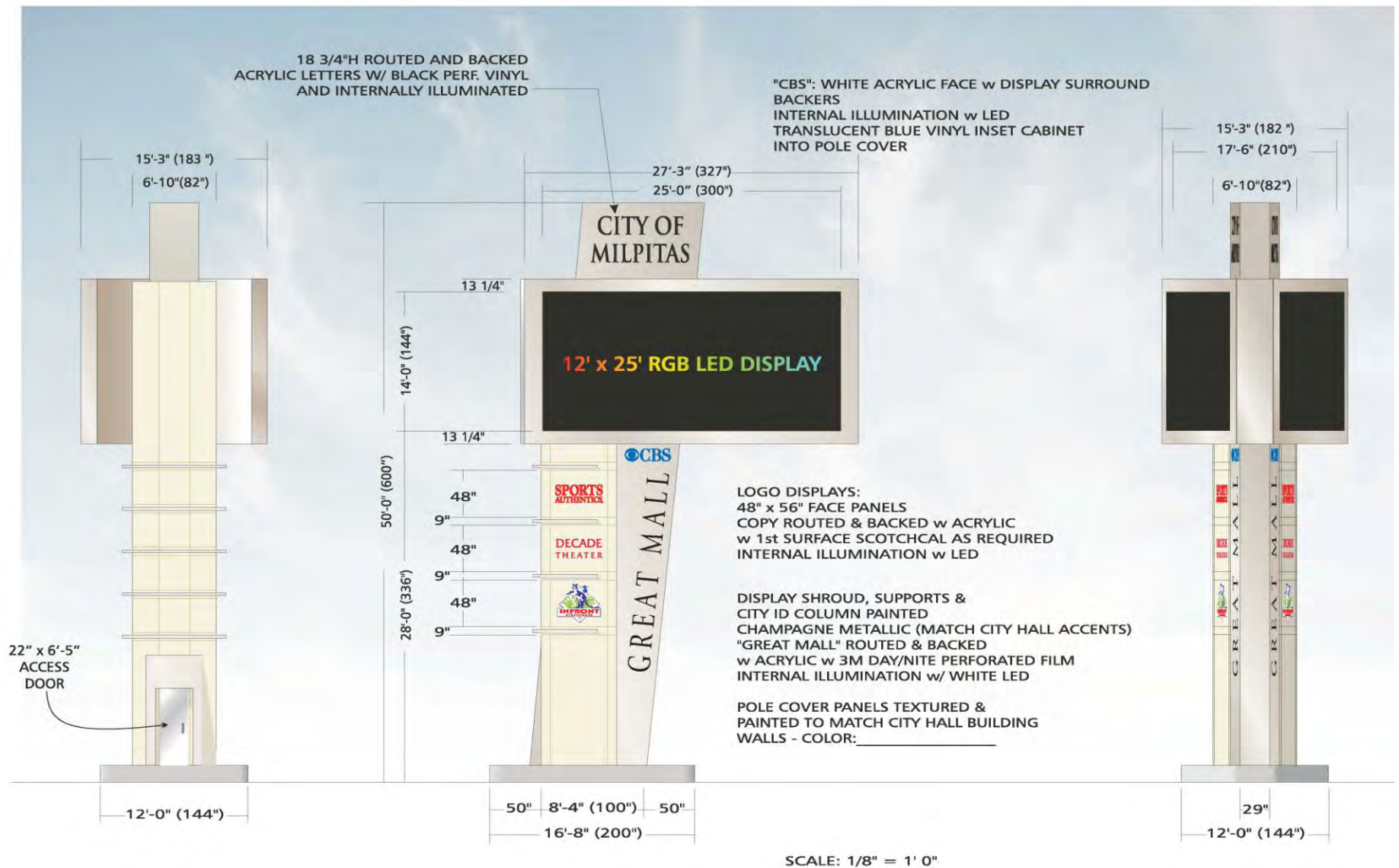


VID EVANS & ASSOCIATES, INC.
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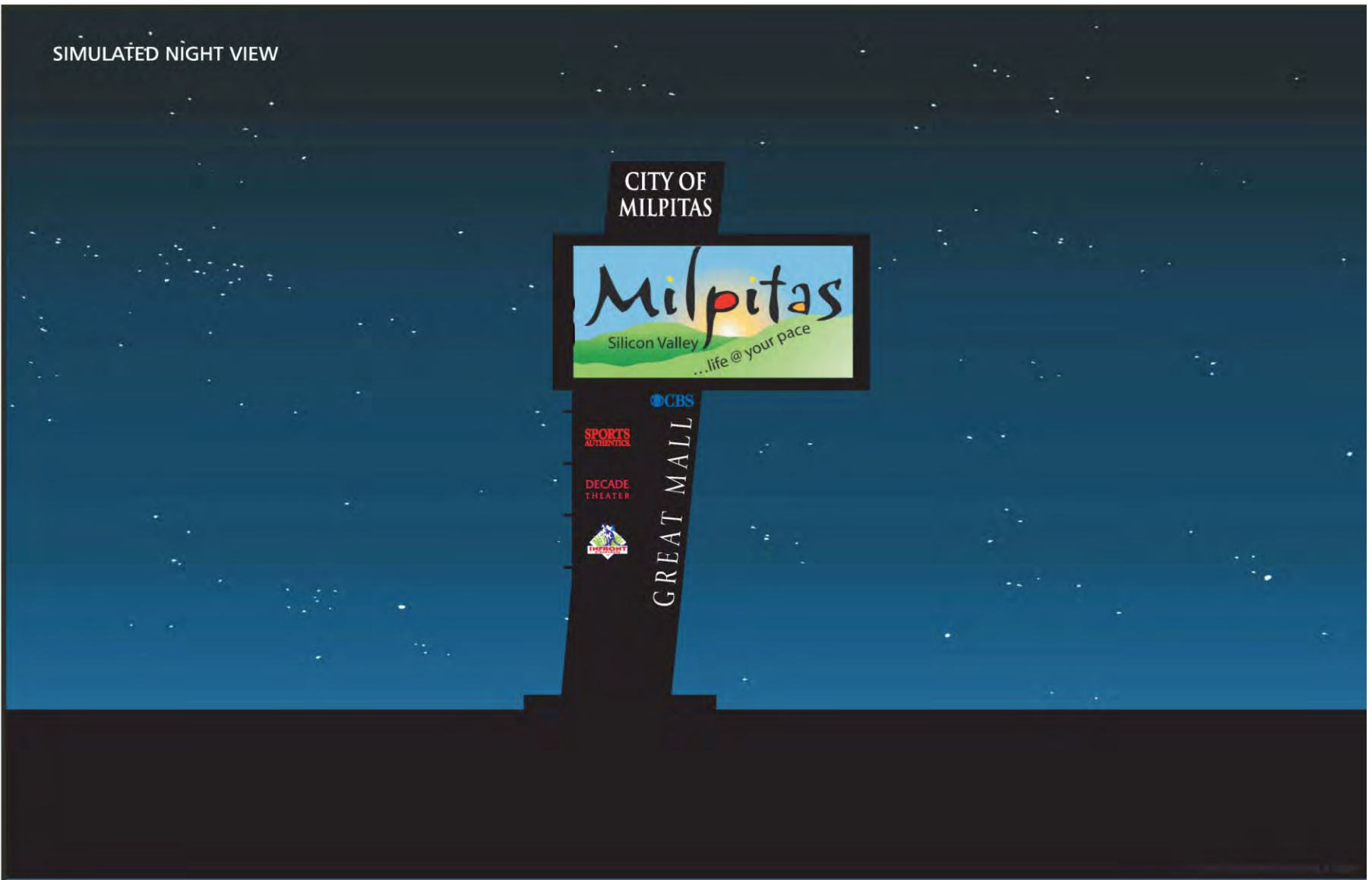
BY	DATE	REVISIONS

RTE. 880
SIGN EASEMENT

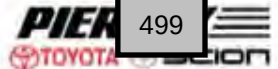
DRAWN BY: DMI	DATE: 05/18/01
CHECKED BY:	SCALE: 1"=200'
JOB NO. SWER0001	
REF.	
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SHEET 1	OF 1



SIMULATED NIGHT VIEW



880 @ Montague



499

M/S: Ciardella, Tabladillo

AYES: 6

NOES: 0

ABSENT: 2 (John Luk and Zeya Mohsin)

ABSTAIN: 0

VIII. CONSENT CALENDAR

Chair Tiernan asked whether staff, the Commission, or anyone in the audience wish to remove or add any items to the consent calendar.

There were no changes to the Consent Calendar.

Motion to approve the Consent Calendar as submitted.

M/S: Ciardella, Sandhu

AYES: 5

NOES: 0

ABSENT: 2 (John Luk and Zeya Mohsin)

ABSTAIN: 1 (Sudhir Mandal)

1. **TIME EXTENSION NO. TE11-0003:** A request for a Time Extension for previously approved Site Development Permit Amendment No. SA09-0002 located at 898 Calaveras Ridge Drive. There are no modifications or changes to the previously approved permit SA09-0002. (APN: 029-06-038) zoned Single Family Residential with Hillside Combining District (R1-H). Applicant: Haresh Panchal. Staff Contact: Tiffany Brown (408) 586-3283. PJ # 3187.
(*Recommendation: Adopt Resolution No. 11-023 subject to the restated conditions of approval.*)
2. **PERMIT REVIEW NO. PR11-0003:** A twelve month review of Conditional Use Permit No. UP08-0015 which allows for the operations of an approximate 40,000 square foot religious facility located at 1221 California Circle (APN: 022-52-017) zoned Industrial Park with Site and Architectural Overlay (MP-S). Applicant: Shirdi Sai Parivaar. Staff Contact: Cindy Hom (408) 586-3284.
(*Recommendation: Note, Receipt, and File*)

IX. PUBLIC HEARING

1. SITE DEVELOPMENT PERMIT NO. SD11-0003

Sheldon Ah Sing, Senior Planner, gave a presentation on the electronic freeway orientated sign. A public hearing for a Site Development Permit to replace an existing freeway oriented sign for off-site advertising located at 1700 Barber Lane. Mr. Ah Sing recommended adopting Resolution No. 11-024 recommending approval to the City Council.

Commissioner Tabladillo asked who will maintain the site. Mr. Ah Sing stated the operator is responsible for maintenance.

Vice-Chair Mandal asked if other businesses able to promote their ads on the sign.

Bob Harbin, CBS, stated they will make it available for sale or rent to the community for announcements.

Vice-Chair Mandal asked about maintenance. Mr. Harbin stated CBS will do the maintenance on the sign and the surrounding landscape.

Commissioner Tao asked if the sign has graffiti how they would address that. Mr.

APPROVED
Planning Commission Minutes

June 22, 2011

Harbin stated graffiti will be taken care of immediately. Commissioner Tao asked if these signs would be static displays or video. Mr. Harbin stated the signs will be static.

Commissioner Ciardella asked who is in charge of the sign from the City. Diana Barnhart, Economic Development Manager, stated it has not yet been decided. At this point it would go through the City Manager's office. Commissioner Ciardella asked if some of the advertisements be available to non-profit organizations. Ms. Barnhart stated it is for City sponsored events.

Chair Tiernan asked will the sign have emergency public announcements like Amber Alerts. Mr. Harbin stated yes.

Commissioner Tao asked if the lighting would impact the surrounding neighborhoods. Mr. Harbin stated no. Commissioner Tao asked if the sign malfunctions who would be responsible for the fixing. Mr. Harbin stated the sign has a sensor on the unit to detect malfunction and that would notify CBS.

Chair Tiernan opened the public hearing.

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 2 (John Luk and Zeya Mohsin)

ABSTAIN: 0

Motion to adopt Resolution No. 11-024 recommending approval to the City Council.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 2 (John Luk and Zeya Mohsin)

ABSTAIN: 0

**X.
ADJOURNMENT**

The meeting was adjourned at 7:35 p.m. to the next meeting of July 13, 2011.

Respectfully Submitted,

James Lindsay
Planning & Neighborhood
Services Director

Yvonne Andrade
Recording Secretary

APPROVED
Planning Commission Minutes
June 22, 2011

ATTACHMENT 3

RESOLUTION NO. 2015-094

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A RELOCATION AGREEMENT AND LEASE TO INSTALL A DIGITAL ELECTRONIC BILLBOARD FOR CLEAR CHANNEL OUTDOOR (CCO) ON CITY-OWNED PROPERTY AT 1385 SHOREWAY ROAD (APN 040-371-130 & 140)

WHEREAS, Clear Channel Outdoor, Inc. (CCO) has proposed a Relocation Agreement and 30 Year Lease with the City of Belmont for the installation of a new Digital Billboard on the City's sewer pump station property at 1385 Shoreway Road (APN 040-371-130 & 140) (the "Property"); and,

WHEREAS, the City owns fee title in the Property; and,

WHEREAS, the Relocation Agreement provides that CCO will permanently remove eight billboard faces, as follows: four 12 foot by 25 foot billboard faces along U.S. 101 (and Shoreway Road), and four billboard faces along El Camino Real: a double-sided 12 foot by 25 foot billboard, and two single-facing signs sized 12 feet by 25 feet and 14 feet by 48 feet, respectively, in the City of Belmont; and,

WHEREAS, the Lease with CCO provides that the City of Belmont will receive \$75,000 as a one-time non-refundable payment, and guaranteed annual payments equal to the greater of \$150,000 or 30% of the gross advertising revenue actually received in a calendar year; the minimum rent will increase by 3% per year; and,

WHEREAS, the Lease with CCO will allow the City of Belmont to display City messages on the Digital Billboard promoting City and community activities; and,

WHEREAS, the City does not anticipate that the lease premises are or will be needed for future capital improvements for the sewer pump station or other city purposes;

WHEREAS, the Relocation Agreement and Lease with CCO directly benefits the City through significant annual income to assist the City in providing vital services to its residents and elimination of the old static billboards within the city; and,

WHEREAS, the Draft Relocation Agreement and Lease set forth the business terms of the agreements.

WHEREAS, on September 8, 2015, the City Council also reviewed and considered all factors relating to the General Plan consistency of the CCO Lease with the City of Belmont.

NOW, THEREFORE, the City Council of the City of Belmont hereby resolves as follows:

SECTION 1. The proposed Lease is consistent with the following Belmont General Plan goals and policies:

General Community

Goal 1015.5

To maintain and enhance the appearance of the City through controlling the location, timing, design and landscaping of new development and encouraging renovation of older areas.

Goal 1015.7

To guide the timing and location of growth and development to ensure the availability of services and protection of sensitive natural environments.

Commercial Areas

2025 Goals

- 2. To promote commercial development, which meets the needs of local residents for convenience goods and services and which is fiscally beneficial to the city.*

2026 Policies

- 1. Commercial and office uses should be located on or near major thoroughfares to discourage traffic in residential neighborhoods and should include sufficient off-street parking to prevent disruption of traffic flow on major streets.*
- 6. Highway commercial uses shall be permitted outside of the Central Business District only at already established locations along El Camino Real, Ralston Avenue east of El Camino Real, Old County Road and the U.S. 101/Ralston interchange. To avoid additional strip commercial development, businesses should be grouped, to the extent possible, and separated by landscaped open space/parking areas, offices or multiple family housing.*

The project is consistent with Belmont's General Plan based upon the following principles:

- The project will not interfere with use of the property for the City's pump station.
- The billboard relocation associated with the lease eliminates legal non-conforming static billboards along El Camino Real and US Highway 101 within the City, thus enhancing the aesthetics of these areas.
- This action is consistent with and advances the general plan goal of maintaining and enhancing the appearance of the City through controlling the location, timing, design and landscaping of new development and encouraging renovation of older areas.

SECTION 2. The City Council finds that the lease is within the scope of the Mitigated Negative Declaration, and accordingly finds that no additional environmental review is required.

SECTION 3. The City Council finds that the lease premises are not required for other city purposes.

SECTION 4. The foregoing Recitals are true and correct and are incorporated herein.

SECTION 5. The Council hereby authorizes the City Manager to negotiate final terms and to execute the Agreement and Lease and any related documents, and to take all additional actions necessary for the implementation of the Relocation Agreement and Lease for the City-owned property located at 1385 Shoreway Road (APN 040-371-130 & 140).

* * *

ADOPTED September 8, 2015, by the City of Belmont City Council by the following vote:

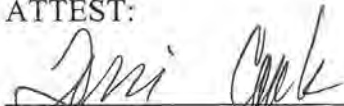
Ayes: Reed, Lieberman, Stone, Braunstein

Noes:

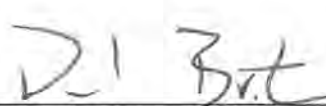
Absent: Wright

Abstain:

ATTEST:



City Clerk



Mayor

APPROVED AS TO FORM:



City Attorney

EXECUTION COPY

**BILLBOARD RELOCATION AGREEMENT
BETWEEN
THE CITY OF BELMONT
AND
CLEAR CHANNEL OUTDOOR, INC.**

This BILLBOARD RELOCATION AGREEMENT ("AGREEMENT") is entered between the CITY OF BELMONT, a California municipal corporation ("CITY") with its principal place of business located at One Twin Pines Lane, Belmont, CA 94002 and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation ("CLEAR CHANNEL"), with its principal place of business located at 555 – 12th Street, Suite 950, Oakland, CA 94607. CITY and CLEAR CHANNEL may be referred to individually as a "PARTY" or collectively as the "PARTIES" to this AGREEMENT.

RECITALS

- A. CLEAR CHANNEL proposes to lease from the City that property identified as APNs 040-371-130 and 040-371-140, as described in attached EXHIBIT "A" ("LEASE") in order to erect a new, V-shaped LED outdoor advertising structure containing two 14' x 48' nominal face size sign faces, located along Highway 101 ("Bayshore Freeway"), ("NEW BILLBOARD") and to permanently remove the billboards commonly described and shown by maps in the attached EXHIBIT "B," ("REMOVED BILLBOARDS"); and
- B. The City intends this AGREEMENT to be consistent with the City's General Plan and Section 23A of the City's Zoning Ordinance in that removal of five

- (5) billboard structures, comprising eight (8) billboard faces, and an overall reduction of billboards along the surface streets and freeways in the CITY, will preserve or further the public health, safety and welfare; and
- C. The Parties intend that this Agreement serves the purposes enumerated in the California Outdoor Advertising Act, including, but not limited to, BUSINESS AND PROFESSIONS CODE Section 5412 and constitutes a relocation agreement as defined in BUSINESS AND PROFESSIONS CODE Section 5412; and
- D. The NEW BILLBOARD will overhang the City right-of-way requiring an Encroachment Permit ("ENCROACHMENT PERMIT") from the CITY for which CLEAR CHANNEL has submitted an application to the City and when issued will be attached as EXHIBIT "C", to this Agreement; and
- E. The CITY has prepared an Initial Study pursuant to the California Environmental Quality Act. Based on the Initial Study, CITY has prepared, posted, circulated and, on August 25, 2015, adopted a mitigated negative declaration (File No. 2015-088) which confirms based on substantial evidence that CLEAR CHANNEL's proposed removal of the REMOVED BILLBOARDS and construction of the NEW BILLBOARD in accordance with this AGREEMENT would not have the potential for significant environmental impacts; and
- F. On September 8, 2015, the City Council adopted a resolution authorizing the City Manager to negotiate and execute this AGREEMENT on behalf of the CITY; and
- G. The CITY believes that the fulfillment of the terms and conditions of this AGREEMENT will preserve or further the public health, safety and welfare.

AGREEMENT

The Parties agree as follows:

SECTION 1. RECITALS.

The parties acknowledge that the foregoing recitals are true and correct and are incorporated herein as a part of this AGREEMENT.

SECTION 2. CLEAR CHANNEL AND CITY AUTHORITY AND STATUS.

- A. CLEAR CHANNEL hereby represents and warrants for the benefit of CITY all of the following:
1. That the information in this AGREEMENT is true and accurate to the best of CLEAR CHANNEL's knowledge after a diligent inquiry; and
 2. That CLEAR CHANNEL is a duly organized, validly existing corporation in good standing under the laws of its place of incorporation and of the State of California; and
 3. That CLEAR CHANNEL's execution of this AGREEMENT is authorized by resolution, bylaws, or articles of incorporation of CLEAR CHANNEL, which resolution, bylaw or articles of incorporation is currently in full force and effect, and that Bryan Parker, Executive Vice President, is authorized to execute this AGREEMENT on CLEAR CHANNEL's behalf and bind CLEAR CHANNEL thereby; and
 4. That CLEAR CHANNEL is duly authorized to perform or to cause to be performed all of the obligations of CLEAR CHANNEL, or CLEAR CHANNEL's contractors, subcontractors or other agents, under and in accordance with the terms and conditions of this AGREEMENT; and

5. That CLEAR CHANNEL is duly authorized to permanently remove or cause to be permanently removed the above ground portions of the REMOVED BILLBOARDS including the associated structures and appurtenances from the real property where they are located.
- B. CITY hereby represents and warrants for the benefit of CLEAR CHANNEL all of the following:
1. That the information in this AGREEMENT is true and accurate to the best of CITY's knowledge after a diligent inquiry; and
 2. That CITY's execution of this AGREEMENT is authorized by the City Council and that the City Manager is authorized to execute this Agreement on the City's behalf and to bind the CITY thereby; and
 3. That the CITY is duly authorized to perform or to cause to be performed all of the obligations of CITY under and in accordance with the terms and conditions of this AGREEMENT.

SECTION 3. EFFECTIVE DATE OF AGREEMENT.

- A. The AGREEMENT shall become effective when fully executed by the Parties and conditioned upon (i) the execution by the CITY and CLEAR CHANNEL of the LEASE and (ii) the issuance of the ENCROACHMENT PERMIT with an effective term at least as long as the term of the LEASE, including any renewal, extension or modification thereof (the "EFFECTIVE DATE").
- B. The AGREEMENT shall commence upon the EFFECTIVE DATE and terminate upon termination or expiration of the Lease.

SECTION 4. BILLBOARD STATUS.

A. The PARTIES hereto acknowledge that CLEAR CHANNEL will permanently remove the above ground portions of the REMOVED BILLBOARDS and associated structures and appurtenances in consideration for approval to construct the NEW BILLBOARD.

B. CLEAR CHANNEL represents and warrants all of the following for the benefit of the CITY, and the CITY is specifically relying upon each and every one of CLEAR CHANNEL's representations and warranties in its decision to enter into this AGREEMENT:

1. The NEW BILLBOARD will at all times be maintained lawfully and in a manner that is in full compliance with federal, state and local laws, rules and regulations; and
2. CLEAR CHANNEL's fulfillment of the terms and conditions of this AGREEMENT will not violate and will not result in the violation of any federal, state or local laws, rules or regulations.

SECTION 5. THE PARTIES' RIGHTS AND OBLIGATIONS.

CLEAR CHANNEL shall not be obligated to remove the REMOVED BILLBOARDS or be permitted to erect the NEW BILLBOARD pursuant to this AGREEMENT unless and until CLEAR CHANNEL has received (i) all required approvals and permits to construct the NEW BILLBOARD from the CITY, California Department of Transportation (CalTrans"), the San Francisco Bay Conservation and Development Commission ("BCDC"), Silicon Valley Clean Water, and any other required governmental and non-governmental approvals and permits

("PERMITS"), as are necessary to allow CLEAR CHANNEL to construct the NEW BILLBOARD and remove the REMOVED BILLBOARDS at its sole cost and expense.

- A. CLEAR CHANNEL must use reasonable commercial efforts to obtain the necessary PERMITS to allow CLEAR CHANNEL to construct the NEW BILLBOARD and remove the REMOVED BILLBOARDS at its sole cost and expense.
- B. The CITY shall cooperate with CLEAR CHANNEL, if necessary, to obtain Permits from CalTrans, and any other oversight agency for the construction of the NEW BILLBOARD and removal of the REMOVED BILLBOARDS, but the City shall not be obligated to incur any costs or expenses related to the obtaining such Permits. .

SECTION 7. RELATIONSHIP OF PARTIES.

Under no circumstances shall this AGREEMENT be construed as one of agency, partnership, joint venture or employment between CLEAR CHANNEL and the CITY, notwithstanding that concurrently the parties will be entering into the LEASE. Each party acknowledges and agrees that it neither has, nor will it give, the appearance or impression of having any legal authority to bind or commit the other party in any way, notwithstanding that this AGREEMENT is binding on and between the PARTIES.

SECTION 8. INSURANCE REQUIREMENTS.

CLEAR CHANNEL agrees to have and maintain the policies of insurance set forth in EXHIBIT "D" entitled "INSURANCE," attached hereto and incorporated herein by this reference.

SECTION 9. RELEASE.

CLEAR CHANNEL, on behalf of its predecessors, successor and assigns , hereby releases the City and its employees, officers, elected officials, agents, successor and assigns from liability regarding any and all actions, causes of action, claims, demands, damages, costs, liens, expenses, liabilities, defenses, lost profits, lost revenues or rents, lost opportunity, loss of business goodwill, loss of machinery, loss of leasehold value (bonus value), loss of fixtures or equipment, loss of improvements pertaining to realty, pre-condemnation damages or damages related to unreasonable conduct, severance damages, relocation benefits, attorneys' fees and debts whatsoever, in law or in equity, arising out of or related to the removal of the REMOVED BILLBOARDS.

CLEAR CHANNEL acknowledges that it has read section 1542 of the Civil Code of the State of California which in its entirety states: **A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the creditor.** CLEAR CHANNEL hereby expressly waives any right or benefit which it might

have under section 1542 of the Civil Code of the State of California. CLEAR CHANNEL understands and agrees that by signing this AGREEMENT it is giving up any and all claims that it may have against the other, including claims that it may not presently know or suspect to exist.

SECTION 10. INDEMNIFICATION AND HOLD HARMLESS.

CLEAR CHANNEL agrees to protect, defend at its expense, indemnify and hold harmless the CITY, its officers, employees and agents (collectively, "Indemnified Parties") from any and all third party liabilities, losses, damages, suits, actions, or claims, including without limitation reasonable attorneys' fees, (collectively, "Claims"), resulting or arising from performance, or failure to perform, under this AGREEMENT (with the exception of claims resulting from the sole negligence or willful misconduct of the CITY) including without limitation:

- A. The performance of CLEAR CHANNEL's obligations under this AGREEMENT (including any amendments hereto) by CLEAR CHANNEL, its employees, agents, representatives or subcontractors;
- B. The failure of CLEAR CHANNEL, its employees, agents, representatives or subcontractors to comply and conform with applicable laws in the performance of CLEAR CHANNEL's obligations under this AGREEMENT;
- C. Any negligent act or omission of CLEAR CHANNEL, its employees, agents, representatives or subcontractors, in the performance of CLEAR CHANNEL's obligations under this AGREEMENT, whether or not such negligence is claimed to be either solely that of CLEAR CHANNEL, its employees, agents, representatives or subcontractors, or to be in conjunction with the actual negligence of others;

D. Any reckless or intentional wrongful act or omission of CLEAR CHANNEL, its employees, agents, representatives or subcontractors in the performance of CLEAR CHANNEL's obligations under this AGREEMENT;

E. Any injury, medical condition, illness, disease, or death caused, in whole or in part, or aggravated, by CLEAR CHANNEL's removal of the REMOVED BILLBOARDS or the construction, operation or maintenance of the NEW BILLBOARD; and,

F. Any Claim of economic injury or property damage, including interference with contract or reasonable expectation of economic advantage, by any person with an alleged economic or property interest in or related to the REMOVED BILLBOARDS or the real property on which the REMOVED BILLBOARDS are located.

SECTION 11. TERMINATION.

A. If CLEAR CHANNEL or the CITY fails to perform any of its material obligations under this AGREEMENT after written notice of same and an opportunity to cure such failure, in addition to all other remedies provided by law or in equity, the other PARTY may terminate this AGREEMENT upon thirty days written notice to the other party.

B. If CLEAR CHANNEL is required to stop work due to termination of this AGREEMENT, all work shall stop immediately, except for all work necessary to prevent an immediate danger or hazard or to secure a building site.

SECTION 12. NOTICES.

Any communication or notice which either PARTY is required to send to the other or which either PARTY desires to send to the other, shall be in writing and shall be either personally delivered or mailed using the United States Postal Service, postage prepaid, to the respective PARTY addressed as follows:

TO THE CITY:	Finance Director One Twin Pines Lane Belmont, CA 94002
TO CLEAR CHANNEL:	CLEAR CHANNEL OUTDOOR, INC. 555 – 12 th St., Suite 950 Oakland, CA 94607 Attention: President/General Manager, Northern California Division
WITH A COPY TO:	CLEAR CHANNEL OUTDOOR, INC. 2325 East Camelback Road, Suite 400 Phoenix, AZ 85016 Attention: General Counsel

Either party may change its address by sending notice of the new address to the other party pursuant to this SECTION.

SECTION 13. ENTIRE AGREEMENT.

This AGREEMENT, including its exhibits, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

SECTION 14 AUTHORITY; RIGHTS; SEVERABILITY.

The PARTIES agree and acknowledge that,

A. CCO intends to vest its rights to construct the New Billboard by obtaining a building permit, performing substantial work, and incurring substantial liabilities in good faith reliance on the building permit and this Agreement;

B. if any provision of this AGREEMENT is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then said provision shall be severed, and the remaining provisions shall remain in full force and effect. Notwithstanding any provision declared illegal, invalid, or unenforceable, this AGREEMENT has valid purposes, which include *inter alia* facilitating the net reduction of billboard signs in the CITY in order to preserve and improve urban aesthetics and traffic safety;

C. nothing in this AGREEMENT shall be read to impermissibly interfere with the lawful exercise of the CITY's police powers to protect the public from health or safety threats; and

D. this SECTION shall apply to all portions of this AGREEMENT; and to the extent any language in this AGREEMENT is deemed inconsistent or contrary to this SECTION, the language contained in this SECTION shall control.

SECTION 15. MISCELLANEOUS PROVISIONS.

A. The parties agree that this AGREEMENT shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this AGREEMENT, the parties agree that venue shall be exclusively vested in the state courts of the County of San Mateo, or, where otherwise appropriate, exclusively in the United States District Court, Northern District of California.

B. The headings of the sections and subsections of this AGREEMENT are inserted for convenience only. They do not constitute a part of this AGREEMENT and shall not be used in its construction.

C. The parties acknowledge that this AGREEMENT is the product of negotiation and compromise on the part of both parties, and the parties agree, that since both parties have participated in the negotiation and drafting of this AGREEMENT, this AGREEMENT shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it.

D. The waiver by any party to this AGREEMENT of a breach or violation of any provision of this AGREEMENT shall not be deemed a continuing waiver, a waiver of any other term or condition contained herein, or a waiver of any subsequent

breach or violation of that or any other provision of this AGREEMENT.

E. Any and all exhibits that are referred to in this AGREEMENT are incorporated herein by reference and are deemed a part of this AGREEMENT.

F. This AGREEMENT may be amended only by written agreement executed by both parties.

G. Where this AGREEMENT refers to the CITY and no officer of the CITY is named, the City Manager of the CITY shall have the authority to act on behalf of the CITY

In executing this Agreement, the CITY and CLEAR CHANNEL do hereby agree to the full performance of the terms set forth herein

CITY OF BELMONT, CALIFORNIA

a California Municipal Corporation

Approved as to form:



Scott M. Rennie
City Attorney



Greg Scoles
City Manager

Date: 10/3/14

CLEAR CHANNEL OUTDOOR, INC.

a Delaware Corporation

By: 

Name: Bryan Parker
Title: Env, Real Estate / Public Affairs

Date: _____

EXHIBIT "A"

Lease Agreement

EXHIBIT B

REMOVED BILLBOARDS

CLEAR CHANNEL shall remove the following REMOVED BILLBOARDS in accordance with the terms and conditions of this AGREEMENT:

Billboards to be Removed

- Sign 1: Located at APN 044-410-010.
El Camino Real east side .5 miles north of Ralston
Number of sides: 1 – 14' x 48'
- Sign 2: Located at APN 044-410-010.
El Camino Real east side 100' south of Anita
Number of sides: 2 – 12' x 25'
- Sign 3: Located at APN 044-172-200.
El Camino Real west side 60' south of Belmont Avenue
Number of sides: 1 – 12' x 25'
- Sign 4: Located at APN 037-371-005.
Bayshore Freeway west side 650' south of Ralston
Number of sides: 2 – 12' x 25'
- Sign 5: Located at APN 040-360-070
Bayshore Freeway west side 2640' north of Ralston
Number of sides: 2 – 12' x 25'

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
City of Belmont
One Twin Pines Lane
Belmont, California 94002-3893
Attention: City Clerk, Suite 375

Exempt from recording fee under
Government Code §27383.

EXHIBIT "C" ENCROACHMENT PERMIT



AGREEMENT FOR Administrative Permanent Encroachment Permit

Application	Permittee Name	Property Address of Encroachment	Assessor's Parcel Number
	Clear Channel Outdoor, Inc.	1385 Shoreway Road	040-371-140
	Permittee Mailing Address	City State Zip	
	555 12 th Street, Suite 950	Belmont, CA 94002	
	City State Zip	Description of Encroachment	
	Oakland CA 94607	Install a digital billboard on the City's sewer pump station property at 1385 Shoreway Road. Said billboard will encroach onto the public right-of-way as identified in Exhibit A attached.	
	Phone No. (Day/Night)		
	510-446-7215		
	Email Address		
	brucequalls@clearchannel.com		

Agreement	In consideration for permission to install the administrative permanent encroachment described above within the right-of-way adjacent to the encroachment property address listed above, Permittee agrees as follows.		
	Permittee agrees to perform all work as specified in BCC Chapter 7 as amended, and in specifications, detail plans and the Building Codes of the City of Belmont, and in all special provisions made a part of this permit, whether written or oral, and to the satisfaction of the Director of Public Works. Permittee agrees to comply with all regulations and ordinances of the City of Belmont in constructing and maintaining the encroachment. Permittee agrees to promptly pay for any construction necessary for the encroachment and upon completion not allow any lien to be filed with respect thereto. Permittee agrees to maintain the encroachment in good repair at permittee's sole cost, and if requested, to remove the encroachment or portion thereof in accordance with Belmont City Code Sections 22-9 and 22-10 at permittee's cost and without compensation. Permittee acknowledges that the city has no obligation to accept or maintain the encroachment.		
	Permittee agrees to immediately indemnify and defend the City and its elected officials, officers, employees and agents from all claims of every kind, nature and description arising from, or out of work, connected with this permit. Permittee agrees to maintain insurance Permittee agrees to reimburse the City for all costs and reasonably attorney's fees incurred in enforcing the terms and conditions of this permit.		
	Permittee acknowledges and agrees that this agreement is binding upon the heirs, executors, administrators, successors, and assigns of Permittee and upon the successors in interest of the real property described above and that the City will cause this agreement to be recorded in the San Mateo County Recorder's Office against permittee's property benefitted by the encroachment.		
	By my signature below, I certify to each of the above and the following: I am the Lessee or authorized to act on the Lessee's behalf for a lease agreement with the City of Belmont for the installation of a digital billboard on the subject property. I have read the above application and state that the information given is correct. I agree to comply with all state laws and city and county ordinances relating to building construction and authorize representatives of the City of Belmont Community Development and Public Works Departments to enter upon the property for which I have applied for this permit for the purpose of making inspections.		
	(Applicant must print and sign in blue ink)		
	Signature: 	Print Name: <u>Bruce Qualls</u>	Date: <u>Sept. 27, 16</u>
	<u>Vice President of Real Estate and Government Affairs</u>		
	Signature: _____	Print Name: _____	Date: _____
	Please attach Notarial Acknowledgement on 8 1/2" x 11" paper for each signature		

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6/19/2015



Permanent Encroachment Permit

Permit	OFFICIAL USE ONLY		
	PW Fees	☐ (Administrative Permanent Encroachment)	☐ (Temporary Encroachment)
	Permit Payment(s) Received \$ _____	☐ Refundable Surety Deposit Amount \$ _____	
	Permanent Encroachment Permit No. _____	☐ Legal Description Provided	
	_____ m	☐ Insurance	
	This permit is not valid unless signed by the City's authorized representative		
Permit Approved By: _____ Date: _____ Director of Public Works			
The Permit is subject to the following additional conditions: A. In the event of a requested temporary removal of the Encroachment (or portion thereof), City shall endeavor to provide to Clear Channel Outdoor no less than 6 months' prior, written notice. B. In the event of a requested permanent removal of the Encroachment (or portion thereof), City shall endeavor to provide to Clear Channel Outdoor no less than 18 months' prior, written notice. C. Clear Channel Outdoor acknowledges that it must remove any right of way encroachments (including any portion of the Sign overhanging the right of way) within the timeframes required by the City's Encroachment Ordinance. Once the City has determined that an encroachment must be permanently or temporarily removed, the City will endeavor to give Clear Channel Outdoor as much advanced notice of the determination as reasonably possible. The failure of the City to give Clear Channel Outdoor greater notice than required by the Encroachment Ordinance, or as stated in Conditions "A" and "B" (above), does not relieve Clear Channel Outdoor of the obligation to timely remove the encroachment and is not a breach of the City's obligations to Clear Channel Outdoor.			

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

On September 24, 2016 before me, BENJAMIN S. MARCUS, Notary Public,

Date

(here insert name and title of the officer)

personally appeared Bruce Qualls

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature: B. S. Marcus (Seal)

OPTIONAL

Description of Attached Document

Title or Type of Document: Encroachment Permit Number of Pages: 3

Document Date: 9/29/16 Other: _____

2015 Apostille Service 707-992-5551 www.CaliforniaApostille.us California Mobile Notary Network www.CAMNN.com

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6/19/2015

EXHIBIT A

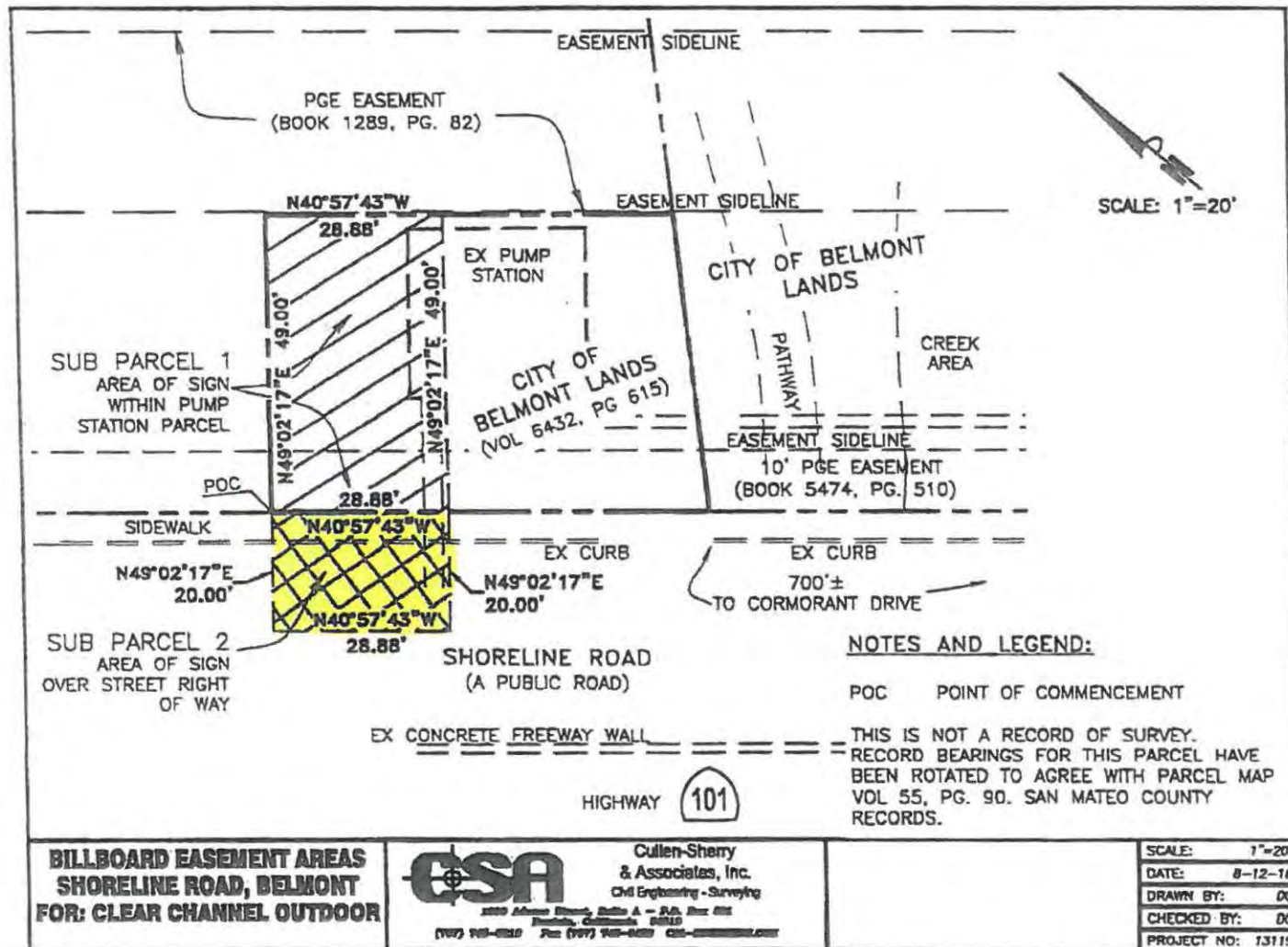


EXHIBIT A-2

VICINITY OF SHORELINE ROAD.,
BELMONT, CALIFORNIA

SUB PARCEL 2

DESCRIPTION OF SIGN AREA OVER STREET RIGHT OF WAY (FOR
BILLBOARD):

A PORTION OF THE LANDS PER DOCUMENT FILED IN VOLUME 6432, PAGE 615, FILED JULY 16, 1973, SAN MATEO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE 2 COURSES THAT BEAR N42°08'24"E 71.00' AND N47°51'36"E 49.00' PER SAID DOCUMENT (BEARINGS ROTATED TO N40°57'43"W AND N49°02'17"E, RESPECTIVELY, TO AGREE WITH PARCEL MAP VOLUME 55, PAGE 90 SAN MATEO COUNTY RECORDS); THENCE ALONG THE EASTERLY LINE OF SHORELINE ROAD S40°57'43"E 28.88'; THENCE S49°02'17"W 20.00'; THENCE N40°57'43"W 28.88'; THENCE N49°02'17"E 20.00' TO THE POINT OF COMMENCEMENT.

SEE EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.



D. W. Cullen

EXHIBIT "D"

INSURANCE

INSURANCE COVERAGE REQUIREMENTS

CCO must, throughout the duration of this Agreement, maintain insurance to cover CCO (including its agents, representatives, and employees) in connection with the Lease and operation of the Sign, including against claims for injuries to persons or damages to property which may arise from or in connection therewith. This Agreement identifies the minimum insurance levels with which CCO must comply; however, the minimum insurance levels do not relieve CCO of any other performance responsibilities under this Lease (including the indemnity requirements). City reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

- 1A. Coverage.** CCO must maintain insurance in the following minimum levels. The minimum amounts and extent of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be the greater of the following:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	Statutory minimum.
<i>As required by the State of California.</i>	
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability (CGL) <i>Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury</i>	\$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this NEW BILLBOARD or the general aggregate limit shall be twice the required occurrence limit. Policy shall be endorsed to include limited pollution coverage with respect to sudden and accidental release of pollutants arising from CCO's operations.
Automobile Liability <i>Insurance Services Form Number CA 0001 covering Code 1 (any auto).</i>	\$5,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to Contractors' vehicle usage in performing services hereunder).

Professional Liability \$1,000,000 per occurrence or claim, and \$2,000,000
(if Design/Build) policy aggregate.

Builder's Risk Equal to the completed value of the NEW BILLBOARD
and no coinsurance penalty provisions.
*Course of Construction
insurance utilizing an "All
Risk" (Special Perils)
coverage form.*

2A. Insurer Qualifications. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3A. Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either:

- i. CCO must reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or,
- ii. CCO must provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4A. Subrogation Waiver. CCO hereby grants to City a waiver of any right to subrogation which any insurer of CCO may acquire against the City by virtue of the payment of any loss under such insurance. CCO agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of City for all work performed by CCO, its employees, agents and subcontractors. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

5A. Evidence of Coverage. Concurrently with the execution of this Agreement, CCO must furnish City with original certificates and amendatory endorsements, or copies of information or declaration page listing all policy endorsements of the insurance required hereunder. However, failure to obtain the required documents before the work beginning shall not waive CCO's obligation to provide them. City reserves the right to require relevant policy forms of all required insurance policies, including endorsements, required by these specifications, at any time.

6A. Endorsements. The insurance policies must be endorsed as follows:

- i. For commercial general liability and automobile liability insurance, the City of Belmont (including its Council, officers, boards, commissions, employees, volunteers and agents) must be named as an additional "insureds" as respects: liability arising out of work or operations performed by or on behalf of CCO including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of CCO. For commercial general liability, the policy must be endorsed with a form at least as broad as ISO form CG 20 10, GC 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used.
- ii. Providing that CCO's insurance coverage shall be primary insurance with respect to City, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by the City for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of CCO's insurance and not contributory with it.
- iii. No policy shall be canceled, limited, or allowed to expire without renewal until after 30 days written notice has been given to the City by first class mail.
- iv. Claims Made Policies. If General or Professional Liability are written on a claims-made form:
 - a) The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work. *
 - b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, CCO must purchase "extended reporting" coverage for a minimum of 5 years after completion of contract work.
 - d) A copy of the claims reporting requirements must be submitted to City for review.
 - e) If the services involve lead-based paint or asbestos identification/remediation, CCO shall maintain Pollution Liability coverage which shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, CCO's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

7A. Subcontractors. CCO must require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CCO must ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage

subcontractors must provide coverage with a format least as broad as CG 20 38 04 13.

- 8A. Builder's Risk (Course of Construction Insurance).** CCO may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name City as a loss payee as their interest may appear.

If the NEW BILLBOARD does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation, and testing at the Entity's site.

- 9A. Reporting Damages.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, CCO must immediately notify the City Risk Manager's office by email at finance@belmont.gov, and CCO shall promptly submit to the City's Risk Manager and the City's Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.

- 10A. Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

- 11A. Indemnification.** CCO shall indemnify, hold harmless, and defend the City (including its elected officials, officers, agents and employees) from and against any and all claims (including all litigation, demands, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from the performance, or failure to perform by CCO under this Agreement.

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") dated September 13, 2016 (the "Effective Date"), is entered into by the CITY OF BELMONT, a California municipal corporation ("City"), and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation ("CCO"). The City and CCO may be referred to herein, collectively, as the "Parties" and, each individually, as a "Party."

RECITALS

WHEREAS, CCO is in the business of outdoor advertising;

WHEREAS, the City desires to enter into this Lease with CCO for certain real property owned by the City, located along the Bayshore Freeway, and described and/or depicted on Exhibit A attached hereto (the "Premises"). The Premises comprise portions of the real property identified by Assessor's Parcel Numbers 040-371-130 and 040-371-140 (the "Property") with an address of 1385 Shoreway Road and more particularly described on Exhibit B attached hereto;

WHEREAS, CCO desires to lease the Premises for the purposes of placing an outdoor advertising sign on the Premises consisting of a V-shaped advertising structure with an orientation showing to Highway 101 (the "Bayshore Freeway"), and having two 14' x 48' advertising faces (total maximum advertising space of 675 square feet per face, excluding cabinetry and trim) which may utilize Light Emitting Diode (i.e., LED) or similar technology ("Digital Operation") that will rotate advertising messages on each advertising face for a duration of no less than eight seconds per message (collectively, the "Advertising Faces" and, each individually, an "Advertising Face"), fixture connections, electrical supply and connections, support structures, illumination facilities, back up panels, service ladders, cameras, communications equipment, copy and any other equipment, appurtenances and accessories as CCO may place thereon (collectively, the "Sign");

WHEREAS, portions of the Sign will overhang Shoreway Road, a public right of way ("ROW"), and CCO will need to obtain an Encroachment Permit (herein so-called) from the City in the form attached hereto as Exhibit C;

WHEREAS, CCO intends to remove those advertising structures located in Belmont, California, described on Exhibit D attached hereto (the "Removal Billboards") concurrently with the construction of the Sign under a Relocation Agreement between the Parties (the "Relocation Agreement"); and

WHEREAS, the City believes that development of the Premises for the Sign's use is in furtherance of the City's desire to make community announcements and develop the City as an attractive location for customers and business owners.

AGREEMENTS:

NOW, THEREFORE, for and in consideration of the faithful performance by the City and CCO of the terms, covenants and conditions hereof, for the payment of amounts herein provided to

be made by CCO, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and CCO hereby agree as follows:

1. **Use.** The City, acting in its proprietary capacity, hereby leases the Premises to CCO for the purpose of constructing, maintaining, operating the Sign and conducting outdoor advertising thereon. This Lease includes all rights of ingress and egress over the Premises as well as rights of ingress and egress over the remaining portions of the Property necessary to install and maintain utilities in connection with the operation of the Sign and to legally access the Sign from the ROW, provided, however, CCO's rights of ingress and egress over the remaining portions of the Property may not unreasonably interfere with the City's use of the Property and CCO shall repair any damage caused by CCO to the City's Property or any improvements constructed thereon. CCO acknowledges that the City maintains a sewer pump station on the Property and that the City will at all times have access to the Property and the Premises in order to access and service the sewer pump station. CCO may license the use of the Sign, or any portion thereof, for any lawful purpose subject to the provisions of Section 7 of this Lease. The Sign and all permits related to the Sign or obtained by CCO in conjunction with this Lease shall be owned by CCO during the term of this Lease.

2. **Term.** The term of this Lease (the "Term") begins on the Effective Date and will continue until the date which is 30 years from the Commencement Date (as defined below).

"Commencement Date" means the first day of the month following the date when all of the following are true: (i) the Relocation Agreement has been fully executed; (ii) CCO has obtained all necessary Permits (as defined below) and third-party agreements necessary for the construction and operation of the Sign; (iii) CCO has obtained all permits and approvals for the removal of the Removal Billboards, has removed the Removal Billboards, and has provided the City with evidence that it has satisfied its lease obligations related to the property upon which the Removal Billboards are located; (iv) all appeal periods with respect to the Permits have expired and any appeals with respect thereto have been exhausted; and (v) construction of the Sign is complete.

If the conditions to the Commencement Date have not occurred within 1 year following the Effective Date, either Party may, thereafter and until the Commencement Date occurs, terminate this Lease by written notice thereof to the other Party, in which event the Parties shall have no further rights or obligations with regards to this Lease, provided that such 1 year period shall be tolled so long as any appeal to any Permit continues.

Each 12-month period during the Term beginning on Commencement Date or any anniversary thereof may be referred to herein as a "Lease Year."

3. **Failure to Commence Construction.** If CCO has not commenced construction of the Sign within 180 days following the receipt by CCO of all Permits and the later of the expiration of all appeal periods or resolution of any appeals with respect thereto, or fails to complete such construction with reasonable diligence once commenced, either CCO or City may terminate this Lease upon providing 30 days written notice to the other Party, provided

that, if CCO so terminates, CCO shall pay to the City, as the City's sole remedy in connection with such termination, a \$25,000 termination fee on the effective date of such termination unless CCO's termination is the result of: (i) CCO's failure to obtain any of the Permits despite CCO's commercially reasonable efforts; (ii) any lawsuit having being filed seeking to prohibit the erection or operation of the Sign; (iii) a breach of this Lease by City; or (iv) CCO's failure to obtain approval of off-site landscape installation. Any provision of this Section to the contrary notwithstanding, if the City delivers to CCO notice of termination in accordance with this Section, such termination shall not be effective if CCO lawfully commences construction of the Sign prior to the effective date of such termination.

4. Conversion to Static Displays.

4.1 Subject to Section 4.2, CCO may during the Term convert either Advertising Face or both Advertising Faces to non-digital, static operation ("Static Operation"), provided such conversion does not increase the size of or number of Advertising Faces and does not increase the illumination level of the sign from the original specifications for the Advertising Faces. If CCO converts either Advertising Face or both Advertising Faces to Static Operation, the Minimum Annual Guaranteed Payment (as defined below) for each Advertising Face so converted shall be fifty thousand dollars (\$50,000) as such amount is increased by three percent (3%) per year from the Commencement Date to the date Digital Operation ceases, applicable immediately upon the cessation of Digital Operation on such Advertising Face until the end of the first full Lease Year following such conversion. For so long as the Advertising Faces are in Static Operation, the Minimum Annual Guaranteed Payment will be increased annually by three percent (3%) per year.

4.2 CCO may convert either Advertising Face or both Advertising Faces to Static Operation under Section 4.1 only if one or more of the following is true:

4.2.1 CCO is not operating any Digital Operation billboard at any other location on the Highway 101 corridor in San Mateo County;

4.2.2 CCO loses any of the Permits for Digital Operation on the Premises or such operation is otherwise prohibited by law; or

4.2.3 there is a formal challenge to the City's ordinance permitting Digital Operating, provided that, any provision of this Section 4 to the contrary notwithstanding, if CCO converts one or both Advertising Faces to Static Operation solely due to such a challenge, the Minimum Annual Guaranteed Payment applicable to the converted Advertising Face or Advertising Faces shall not be adjusted in the manner contemplated by Section 4.1.

5. Permits.

5.1 CCO, at its sole cost and expense, shall use commercially reasonable efforts to obtain all permits, approvals and agreements necessary to remove the Removal Billboards and to allow CCO to construct and operate the Sign including any permits from the California Department of Transportation and any other governmental entities (collectively, the "Permits"), such Permits including, but not limited to:

5.1.1 the Encroachment Permit substantially in the form attached hereto as Exhibit C;

5.1.2 all necessary approvals from Silicon Valley Clean Water;

5.1.3 all necessary approvals and permits from the San Francisco Bay Conservation and Development Commission;

5.1.4 all necessary approvals and permits from CalTrans;

5.1.5 Environmental review required by the California Environmental Quality Act, including any mitigation requirements;

5.1.6 all necessary permits and approvals from the City, including building and electrical permits, as determined by the City, in its sole discretion; and

5.1.7 the Work Schedule in a form agreed to by the Parties.

5.2 The City shall cooperate with CCO's reasonable requests in connection with CCO's efforts to obtain the Permits, provided, the City shall not be obligated to incur any costs associated with such cooperation. In entering into this Lease, the City is acting in its proprietary capacity as the owner of the Premises. Nothing herein shall restrict or restrain the City's exercise of its discretion in the issuance of any Permits or waive, reduce or modify the City's legislative, administrative, land use, and police powers to require permits and approvals in accordance with the City's municipal code and Zoning Ordinance for the Sign or to require inspections of construction in connection with such efforts.

6. Sign Installation.

6.1 Construction by CCO of the Sign, including final design and height, plans and specifications, shall substantially conform to the Sign Conceptual Drawing in Exhibit E attached hereto and incorporated herein.

6.2 After receiving a building permit and before beginning construction of the Sign, CCO shall attend an on-site meeting between CCO representatives, the sign installer, City representatives and representatives of Silicon Valley Clean Water to agree to the process and work schedule of the installation (the "Work Schedule"). The Work Schedule shall include requirements for: heavy equipment access to the Premises; protection of existing underground utilities; the size and location of construction staging area; traffic management during construction impacting the ROW, management of mud and spoils; restoration of the Premises; and any temporary fencing of the construction area. CCO shall not start construction of the Sign until the City has signed off on the Work Schedule.

7. **Sign Operation.**

7.1 CCO shall conform operation of the Sign to this section, the operating requirements set forth in Exhibit F, all conditions of the Permits, and all applicable laws and regulations, including but not limited to laws and regulations pertaining to outdoor advertising.

7.2 Subject to CCO's obligation to display the City Messages (as defined below), CCO shall have the exclusive right to display outdoor advertising on the Sign. CCO agrees to preempt its messages at any time without cost to the City in order to display law enforcement and life threatening emergency messaging from the appropriate Federal, State or local agencies, which may include the City.

7.3 CCO, within a commercially reasonable time following written request therefor, shall remove from the Sign any advertising message that:

7.3.1 directly promotes the sale or use of tobacco products, illegal drugs or products, or marijuana;

7.3.2 contains "obscene matter," as that term is defined in California Penal Code section 311 on the Effective Date; or,

7.3.3 advertises an adult entertainment establishment but shall not restrict advertising for casinos, or bars.

7.3.4 Contains matter that is vulgar, profane, scatological, or presents a clear and present danger of causing an imminent threat to health or safety.

7.4 So long as the Sign is being operated as Digital Operation, CCO may illuminate the Advertising Faces from approximately 6 A.M. to 11:59 P.M. local time daily, and in a manner which is sufficient to render it visible at night to passing vehicles. If the Sign is being operated as Digital Operation, the Advertising Faces on the sign may not be illuminated during the hours of midnight to 6 am without prior written consent from the City.

7.5 CCO may utilize the advertising space on the Sign for regional emergency announcements and alerts, including Amber Alerts, and wanted criminal postings from law enforcement as reasonably necessary and in accordance with local and regional emergency messaging protocols.

7.6 Sign operation may not begin before the Commencement Date.

8. **City Messages.** During all periods when CCO has one or both Advertising Faces operating as Digital Operation, CCO agrees to provide, for the benefit of, and at no additional cost to, the City, without any effect on the Rent, and in accordance with this Section 8: (i) scheduled advertising spots (each, a "Scheduled Message" and, collectively, the "Scheduled Messages"); and (ii) pre-emptible advertising spots (each, a "Pre-emptible Message" and, collectively, the "Pre-emptible Messages"). Scheduled Messages and Pre-

emptible Messages may be referred to herein, collectively, as "City Messages" and, each individually, a "City Message."

8.1 Upon the request of the City, CCO will use for Scheduled Messages one spot in a standard rotation of eight on a single Advertising Face then being operated as Digital Operation for a period of two weeks during each quarter of each calendar year during the Term. The City shall provide the requested time periods for the Scheduled Messages for each calendar quarter no later than November 1 of the prior year. CCO shall use commercially reasonable efforts to accommodate such requested time periods. If the City fails to use any such Scheduled Messages during the quarter for which the respective spots were made available, such unused Scheduled Messages shall not roll over and shall be forfeited.

8.2 CCO will make the sign available, on a space-available basis, as reasonably determined by CCO, for display of Pre-emptible Messages. Display of Pre-emptible Messages may be terminated by CCO at any time in the event that the space is sold or offered by CCO to a third party or will otherwise be used by CCO in the ordinary course of business. Nothing herein shall be deemed to prevent or prohibit CCO from using such spots for promoting CCO's business or third-party charitable enterprises, or from seeking advertisers for unsold or unused spots.

8.3 The City Messages are to be used by the City only for the purpose of displaying the City's own non-commercial messages, which may include such matters as events sponsored or co-sponsored by the City. The right to post the City Messages may not be assigned or otherwise transferred by the City and the City shall not charge any third party, or exchange goods or services with any third party, for any City Message. If the sign technology changes, City's rights with respect to City Messages on the new sign technology shall be comparable to its rights set forth in this Section.

8.4 For any City Message, the City, at its own expense, shall supply proposed advertising to CCO in "camera ready" form that meets CCO's format and graphic-arts standards. The posting by CCO of advertising copy for the City Messages is subject to the following conditions and parameters: (i) all copy must be submitted to CCO at least 10 business days before the proposed display date; and (ii) all copy will be subject to CCO's standard advertising copy rejection and removal policies, which allow CCO, in its sole discretion, to approve or disapprove copy and to remove copy once posted or displayed.

8.5 The City shall and hereby does agree to indemnify, defend and hold harmless CCO and its parents for, from and against, any claims, costs (including, but not limited to, court costs and reasonable attorneys' fees), losses, actions or liabilities arising from or in connection with any allegation that any portion of any City Message that disparages, is defamatory, or infringes or violates the rights, including, but not limited to, copyright, trademark, trade secret, privacy, or any similar right, of any third party.

8.6 City Messages may be preempted by CCO at any time in the event that the display is needed for emergency messaging from federal, state, or local agencies.

9. **Rent.**

9.1 CCO shall pay an additional one-time rental advance to the City of \$75,000 (the "Rental Advance") within 30 days following the Commencement Date, if any.

9.2 Subject to adjustment as provided in Section 4, following the Commencement Date, CCO shall pay to the City annual rent for the Premises ("Rent") in an amount equal to the greater of: (i) \$87,500 per Advertising Face (the "Minimum Annual Guaranteed Payment"); or (ii) 30% of Net Revenue (as defined below) (the "Percentage Rent"). Commencing on the first anniversary of the Commencement Date and on each anniversary thereafter, the then applicable Minimum Annual Guaranteed Payment shall increase 3% per Lease Year.

9.3 The Minimum Annual Guaranteed Payment shall be paid in equal monthly installments with the first payment due on the Commencement Date and subsequent payments due on the first day of each month thereafter during the Term. If the Commencement Date is other than the first day of a month, the first monthly installment of the Minimum Annual Guaranteed Payment shall be prorated by the number of days remaining in the month in which the Commencement Date occurs.

9.4 If the Percentage Rent owing to the City in any Lease Year exceeds the Minimum Annual Guaranteed Payment during such Lease Year, CCO shall pay the difference to the City within 45 days following the end of such Lease Year. Concurrently with such payment of the Percentage Rent, CCO shall submit a written statement ("Reconciliation Statement") showing gross revenues for each Advertising Face, the advertising agency commission (if any) for each Advertising Face which shall not exceed 16.67% of the costs of each advertisement, the Net Revenue and the Percentage Rent. The Reconciliation Statement shall identify for each Advertising Face the advertiser, gross sales, Net Revenues, unsold space and any trade/barter.

CCO shall maintain or cause to be maintained adequate accounting systems and controls to insure that all gross revenue is recorded. CCO shall keep or cause to be kept true and accurate books and records for a period of seven years after each Lease Year showing all business transactions related to the Premises and City shall have the right, through its representatives and at all reasonable times, upon at least 7 days' prior written notice to CCO, to inspect such books and records. If such books and records are not kept and maintained within a radius of 50 miles from the main office of the City, upon request of City, CCO shall make such books and records available to City for inspection and audit at a location within that radius or CCO shall pay to City the reasonable and actual costs incurred by City in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. If the City's audit reveals that for any one Lease Year the Reconciliation Statement underreported the Percentage Rent for any Lease year by 3% or more, in addition to paying the City the unpaid Percentage Rent, CCO shall pay all of the City's costs, including without limitation, the prorated salary of the City's auditors, fringe benefits and overhead allocation or the costs of City's outside auditors incurred by the City in auditing such books and records, such amount not to exceed \$7,500, such limitation to be adjusted annually by the increase, if any, in the Consumer Price Index, San Francisco Area beginning from the Commencement Date.

9.5 For purposes of this Lease, "Net Revenue" means the gross revenue received from advertising on the Sign minus: (i) any commissions or fees paid to any outside, bona fide advertising agency that is not an affiliate of CCO for such advertising, provided such commissions shall not exceed 16.67% of each advertisement; and (ii) any tax imposed by the City on CCO's revenues or gross receipts, whether now or later adopted. No other deductions or offsets from gross receipts may be made.

10. **Exclusivity.** CCO shall have the exclusive right to display outdoor advertising on the Sign and the Premises.

11. **Removal.** CCO is the owner of the Sign and shall remove the Sign including any foundation within 3 feet below grade and any utility connections installed below ground within 120 days following the termination or expiration of this Lease. CCO may enter the Premises following the termination or expiration of the Lease for such purpose. CCO shall be responsible for obtaining any and all permits necessary for the removal of the Sign. If CCO fails to remove the Sign during such 120-day period, City may thereafter remove the Sign and store the Sign for CCO's benefit, and CCO shall reimburse the City for all costs associated with such removal and storage within 30 days of receipt of the City's invoice for such costs.

12. **Damage; Maintenance.** If for any reason, any portion of the Sign is removed from the Premises, materially damaged or destroyed such that the Sign cannot be used for its intended purpose prior to the termination or expiration of this Lease, Rent shall abate until the Sign is rebuilt or returned, as applicable. CCO shall at its sole cost, keep and maintain the Sign in good condition and repair and in accordance with the industry standards for similar display structures in the San Francisco Bay Area. CCO shall remove any graffiti on the Sign, sign structure and equipment within 48 hours of written notice from the City during the Term. The City shall not be required to repair or maintain any portion of the Sign.

13. **Insurance.** CCO shall acquire and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CCO, its agents, representatives, employees, or subcontractors in form subject to the approval of the City Attorney as set forth in this section.

13.1 **Coverage.** The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be at least as broad as:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	Statutory minimum
<i>As required by the State of California.</i>	
Employer's Liability	\$1,000,000 per accident for bodily injury or disease

Commercial General Liability*	\$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage. Policy shall be endorsed to include limited pollution coverage with respect to sudden and accidental release of pollutants arising from CCO's operations.
<i>Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury.</i>	
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to Consultant's vehicle usage in performing services hereunder)
<i>Insurance Services Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9).</i>	
Property Insurance	Shall protect against all risks of loss to the electronic billboard, including any tenant improvements and betterments, at full replacement cost with no coinsurance penalty provision.

13.2 Insurer Qualifications. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

13.3 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either:

- (1) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or,
- (2) CCO shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

13.4 Subrogation Waiver. CCO hereby grants to City a waiver of any right to subrogation which any insurer of CCO may acquire against the City by virtue of the payment of any loss under such insurance. CCO agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has requested or received a waiver of subrogation endorsement from the insurer.

13.5 Evidence of Coverage. Concurrently with the execution of this Lease, CCO shall furnish City with original certificates and amendatory endorsements, or copies of information or declaration pages listing all policy endorsements of the insurance required hereunder. However, failure to obtain the required documents prior to the work beginning shall not waive CCO's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time. With respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

- (1) Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after City shall have received written notification of cancellation or reduction in coverage by first class mail;
- (2) Naming the City of Belmont, its Council, officers, boards, commissions, employees, volunteers and agents, as additional insureds as respects: liability arising out of work or operations performed by or on behalf of CCO including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of CCO. General liability coverage can be provided in the form of an endorsement to the CCO's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
- (3) Providing that CCO's insurance coverage shall be primary insurance with respect to City, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by City for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of CCO's insurance and not contributory with it.
- (4) If General or Professional Liability are written on a claims-made form:
 - (a) The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.
 - (b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after expiration or termination of this Agreement.
 - (c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the Effective Date, CCO must purchase "extended

reporting" coverage for a minimum of five (5) years after completion of contract work.

- (d) A copy of the claims reporting requirements must be submitted to City for review.

13.6 Reporting Damages. If any third party damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, CCO shall immediately notify the City Risk Manager's office by email at finance@belmont.gov, and Consultant shall promptly submit to the City's Risk Manager and the City's Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.

13.7 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

13.8 Subcontractors. CCO shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CCO shall ensure that Entity is an additional insured on insurance required from subcontractors.

14. Warranties. CCO represents and warrants that:

14.1 CCO has full power and authority to enter into this Lease and the person signing the Lease on CCO's behalf has been duly authorized and empowered to enter into this Lease.

14.2 The content displayed on the Sign from any source other than the City, to CCO's actual knowledge, will not contain any materials which are unlawful, defamatory, libelous, threatening, abusive, racist, vulgar, harassing, pornographic, or obscene, which infringe or misappropriate the intellectual property rights of any third party, including without limitation any patent, copyright, trademark or trade secret rights, or which violate any right of privacy or right of publicity of any third party. Any failure of the representation and warranty set forth in this Section 14.2 shall not constitute a breach or default under this Lease, provided that CCO removes the content causing such failure within 3 business days following CCO's receipt of written notice of the failure. Removal of content causing a failure of this representation and warranty does not relieve CCO of its obligation to indemnify, defend, and hold harmless the City for any failure of this covenant or any claim arising from message content displayed on the Sign, other than content provided by, or on behalf of, the City.

14.3 The execution of, and performance under, this Lease and the Relocation Agreement by CCO will not constitute a breach or default under any other agreement to which CCO is a party.

14.4 CCO's fulfillment of the terms and conditions of this Lease will not violate and will not result in the violation of any federal, state or local laws, rules or regulation, including but not limited to the Highway Beautification Act, 23 USC 131.

14.5 The Sign will at all times be constructed, operated and maintained lawfully and in a manner that is in full compliance with federal, state and local laws, rules and regulations.

15. **Indemnity.**

15.1 CCO agrees that from and after the Effective Date it shall fully indemnify, defend and hold harmless the City, its elected officials, officers and employees (the "Indemnified Parties") from and against any and all claims (including losses, liabilities, damages and costs, including reasonable attorneys' fees and court costs) arising from or relating to the performance, or failure to perform, by CCO under this Lease or from the removal of the Removal Billboards by CCO, except to the extent any such claim is caused by the negligence or willful misconduct of the City or any of the City's elected officials, officers, employees, agents, or contractors. The foregoing indemnity obligation shall include, without limitation claims arising from: (i) CCO's breach of the warranties given in this Lease; (ii) the installation, operation, or maintenance by CCO of the Sign on the Premises; (iii) any claim, demand, threat, suit or proceeding by any third party arising from CCO's operations with respect to its use of the Premises, the Property or the encroachment on the ROW by CCO, its agents or contractors, including without limitation any claims by any third party of injury to persons or property caused by CCO, or of intellectual property infringement or misappropriation by CCO; or (iv) any claim of economic injury or property damage, including interference with contract or reasonable expectation of economic advantage, by any person with an alleged economic or property interest in or related to the Removal Billboards or the real property on which the Removal Billboards are located. Any provision herein to the contrary notwithstanding, nothing in this Section 15 shall be deemed to reduce or mitigate the City's indemnity obligations set forth in Section 8.

15.2 The City shall notify CCO promptly of any third party claim in connection with the foregoing, shall cooperate reasonably with CCO in connection therewith (at CCO's expense), in the defense or settlement of the foregoing.

16. **Hazardous Materials.** No goods, merchandise or material shall be kept, stored or sold in said Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on thereon, and nothing shall be done on said Premises which will suspend the insurance CCO is obligated to obtain hereunder, provided that nothing in this Section shall preclude CCO from bringing, keeping or using on or about said Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out its outdoor advertising so long CCO complies with applicable environmental laws in connection therewith.

17. **Obstruction.** City and City's agents, employees or other persons acting on City's behalf, shall not place or maintain, or permit the placement or maintenance of, any object, including any tree or other landscaping, on the Premises or the Property, or any other

real property owned in fee by City within 500' of any boundary of the Property that, in CCO's sole opinion, would alter or obstruct the view to either Advertising Face. If City fails to remove any such obstruction within 5 days after written notice from CCO, CCO may, in its sole discretion, either: (i) remove the obstruction at the City's cost; or (ii) immediately terminate this Lease, remove the Sign in accordance herewith, and receive a return from the City of any prepaid rent not yet earned. For purposes of maintaining visibility to the Advertising Faces, CCO may trim any trees and vegetation on the Premises, Property or other real property owned in fee by the City within 500' of any boundary of the Property, so long as performed in a professional manner. Notwithstanding anything set forth herein, the City shall not be responsible for any obstruction of the Sign caused by uses on the Property by third parties or from any landscaping on the Bayshore Freeway or other public rights of way.

18. **Interference.** If (a) the view of the Sign's advertising messages becomes entirely or partially obstructed; (b) electrical service to the Sign is or becomes unavailable; (c) the Premises cannot safely be used for the erection or maintenance of the Sign for any reason; (d) the Premises becomes unsightly; (e) the Sign's value for advertising purposes is diminished; (f) CCO is unable to obtain or maintain any necessary Permit for the erection, use and/or maintenance of the Sign; (g) the Sign's use is prevented or restricted by law, or CCO is required by any governmental entity, regulation or ordinance to reduce the number of billboards operated by it in the City, county or state in which the Sign is located (whether or not CCO is specifically required to remove the Sign); or (h) the Sign is materially damaged or destroyed without fault of CCO; then CCO may immediately terminate this Lease, remove the Sign, and receive a return from the City of any portion of any prepaid Rent not yet earned.

19. **City's Right to Terminate.** City's may, in its sole and absolute discretion, elect to terminate this Lease if: the Advertising Faces have remained blank for a period of 180 consecutive days except if such condition is due to acts or conditions beyond the control of CCO; or CCO has failed to pay any rental due under this Lease and such violation continues after written notice from the City and at least thirty (30) days opportunity to cure.

20. **Utilities.** CCO shall be responsible for providing all utilities to the Sign required for CCO's use, provided that CCO may place utility lines across the Property as reasonably necessary. CCO shall be responsible for all utility charges associated with the operation and maintenance of the Sign and supporting infrastructure, including any charges that accrue after termination of the this Lease. CCO shall obtain a separate meter for such electrical service. Upon termination of this Lease, CCO at its expense shall remove all utilities and associated components installed on City property by CCO for the exclusive use of the Sign and shall restore City property to its original condition.

21. **Relationship of Parties.** Under no circumstances shall this Lease be construed as one of agency, partnership, joint venture or employment between CCO and the City.. Each party acknowledges and agrees that it neither has, nor will it give, the appearance or impression of having any legal authority to bind or commit the other party in any way, notwithstanding that this Lease is binding on and between the Parties.

22. **Termination.** If CCO or the City fails to perform any of its material obligations under this Lease after written notice of same and 30 days' (or such longer period as may reasonably be required so long as the curing Party pursues the cure with reasonable diligence) opportunity to cure such failure, in addition to all other remedies provided by law or in equity, the non-breaching Party may terminate this Lease upon thirty days' written notice to the breaching Party.

23. **Reservation of Rights.** Nothing in this Lease waives or limits the City's rights to condemn CCO's leasehold interest, subject to payment of just compensation as authorized and required by Business and Professions Code Section 5412.

24. **Taxes and Assessments.** This Agreement may create a possessory interest subject to property taxation and CCO may be subject to payment of property taxes levied on such interest.

25. **Business License.** At all times during the Term, CCO shall maintain in good standing a business license in accordance with the Belmont City Code, provided that City shall not oppose CCO's application for, or withhold, condition, suspend or revoke, such license so long as CCO meets the customary requirements therefor.

26. **Severability.** The Parties agree that if any provision of this Lease is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then the provision shall be severed, and the remaining provisions shall remain in full force and effect. Notwithstanding any provision declared illegal, invalid, or unenforceable, this Lease has valid purposes, which include *inter alia* facilitating the net reduction of billboard signs in the City in order to preserve and improve urban aesthetics and traffic safety while also properly balancing private property and commercial speech rights.

27. **Notices.** All notices required or permitted to be given under this Lease shall be sufficiently given if personally delivered, or mailed by registered or certified United States mail, postage prepaid, addressed to the Party as specified below:

CCO:

Clear Channel Outdoor
Attention: President and General Manager
Northern California Division
555 City Center, Suite 950
Oakland, CA 94607
Telephone: (510) 835-5900
Facsimile: (510) 834-9410

With a copy to:

Clear Channel Outdoor
Attn: Legal Department

2325 E. Camelback, Ste. 400
Phoenix, Arizona 85016

CITY:

City of Belmont, Finance Department
Attn: Director of Finance
One Twin Pines Lane, Suite 320
Belmont, CA 94002
Tel: 650 595-7436

If mailed, the written notice shall be deemed received and shall be effective on the earlier of the date of actual receipt by the addressee or three (3) business days after deposit in the United States mail in the State of California. If either Party gives notice in writing to the other Party of any change in said address, then and in that event such notice shall be given at the changed address specified in such notice.

28. **Eminent Domain.** If the Sign or the Premises, or any part thereof, is condemned by any governmental entity (including the City); taken without the exercise of eminent domain, whether permanently or temporarily; or any right-of-way from which the Sign is visible is relocated, CCO shall have the right to terminate this Lease upon not less than thirty (30) days' notice and to receive from the City all prepaid Rent not then earned. CCO shall be entitled to all compensation and other remedies provided by law, including, without limitation, just compensation for the taking of the Sign and CCO's leasehold interest in this Lease and the Permits. However, the City will be entitled to the landlord's share of the taking, including but not limited to loss of rental income. If condemnation proceedings are initiated, City shall include CCO as a party thereto. No right of termination set forth anywhere in this Lease may be exercised before the sale to any entity with the power of eminent domain or by or for the benefit of any entity with the power of eminent domain. Nothing in this Lease waives, diminishes, limits or modifies any powers of eminent domain that the City possesses now or in the future.

29. **Authority.** City represents that it is the owner of the Premises, and has the right to enter into this Lease in its proprietary capacity; except that the City does not warrant that the that construction and operation of the Sign are consistent with state or federal statutory or constitutional law, including the public trust doctrine.

30. **Third Party Easement.** CCO acknowledges that Pacific Gas & Electric ("PG&E") has certain easement rights over the Property that may interfere with CCO's ability to construct and operate the Sign. The City makes no representation regarding the PG&E easement or whether the placement of the Sign interferes with PG&E's easement rights. To the extent that CCO needs consent of PG&E to construct the Sign, it shall be CCO's sole responsibility to obtain such consent.

31. **Successors.** This Lease is binding upon the heirs, assigns and successors of both City and CCO.

32. **Assignment.** CCO shall not directly or indirectly assign, encumber, or otherwise transfer this Agreement or sublease or license all or any portion of the Premises without the City's consent, which consent may be withheld or conditioned in the City's sole and absolute discretion, except that CCO may, with the City's consent, assign this Lease to any successor by merger or affiliate, or any entity acquiring substantially all of CCO's assets in the San Francisco Bay Area. City's consent to any assignment shall not be construed or deemed to be a waiver of the restriction contained herein or to be a consent to any subsequent assignment. It is understood and agreed that placement of advertisement on the Advertising Faces shall not be considered an assignment of sublease within this Section 30. No assignment or sublease shall release CCO of any liability or obligation under this Agreement. No permitted assignment shall be valid or effective until the new tenant and CCO execute and deliver to the City an agreement, in form and substance reasonably satisfactory to City, pursuant to which the assignee agrees to and assumes all of the obligations of CCO under this Agreement.

33. **Entire Agreement.** Neither City nor CCO shall be bound by any terms, conditions or oral representations that are not set forth in this Lease or the exhibits attached hereto. This Lease represents the entire agreement of CCO and City with respect to the subject hereof. This Lease may be modified only by a written instrument signed by the parties in interest at the time of the modification.

34. **Governing Law.** This Lease is to be interpreted and construed according to the laws of the State of California.

35. **Attorneys' Fees.** In the event any action or proceeding is brought between the Parties seeking interpretation or enforcement of any of the terms and provisions of this Lease, the prevailing Party, shall be entitled to have and to recover its reasonable attorneys' fees, as determined by the court, and other expenses in connection with such action or proceeding, in addition to its recoverable court costs, from the losing Party.

36. **Modifications.** This Lease may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

37. **Waivers.** Waiver of a breach or default under this Lease shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Lease.

38. **Captions.** The captions in the headings of the paragraphs of this Lease are for convenience only and are not part of the substantive terms of this Lease.

39. **Memorandum of Lease.** The Parties shall execute, acknowledge and record a Memorandum of Lease in the official records of the county in which the Premises is located evidencing this Lease and in substantially the form attached hereto as Exhibit G.

40. **Counterparts.** This Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

41. **Encroachment Permit.**

41.1 If, for any reason, the Encroachment Permit is terminated, CCO, in its sole discretion, may either: (i) at any time during the Term, terminate this Lease immediately upon written notice to City; or (ii) replace the Advertising Faces and otherwise modify the Sign so that the Sign no longer encroaches on the City's right-of-way.

41.2 If the City, pursuant to the Encroachment Permit, requires the removal of any portion of the Sign on a temporary basis (each, a "Temporary Removal"), CCO, in its sole discretion, may either: (i) suspend the operation of the Sign until CCO is permitted to resume its encroachment upon the City's right-of-way; or (ii) replace the Advertising Faces and otherwise modify the Sign so that the Sign no longer encroaches on the City's right-of-way. In the event CCO elects to suspend the operation of the Sign, all Rent due hereunder shall abate so long as such suspension continues. If any such Temporary Removal results in a suspension of operations of 6 months or longer, CCO may terminate this Lease immediately upon written notice to City.

41.3 If the City, pursuant to the Encroachment Permit, requires the permanent removal of any portion of the Sign, CCO, in its sole discretion, may either: (i) at any time during the Term, terminate this Lease immediately upon written notice to City; or (ii) replace the Advertising Faces and otherwise modify the Sign so that the Sign no longer encroaches on the City's right-of-way.

41.4 In the event of a requested temporary removal of the Encroachment (or portion thereof), City shall endeavor to provide to CCO no less than 6 months' prior, written notice.

41.5 In the event of a requested permanent removal of the Encroachment (or portion thereof), City shall endeavor to provide to CCO no less than 18 months' prior, written notice.

41.6 CCO acknowledges that that it must remove any right of way encroachments (including any portion of the Sign overhanging the right of way) within the timeframes required by the City's Encroachment Ordinance. Once the City has determined that an encroachment must be permanently or temporarily removed, the City will endeavor to give CCO as much advanced notice of the determination as reasonably possible. The failure of the City to give CCO greater notice than required by the Encroachment Ordinance, or as stated in Sections 41.4 and 41.5, does not relieve CCO of the obligation to timely remove the encroachment and is not a breach of the City's obligations to CCO.

[Remainder of Page Intentionally Blank – Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Lease to be effective as of the Effective Date.

CITY:

CITY OF BELMONT, a California Municipal Corporation

Dated: Sept. 13, 2016

By 
Name: Greg Scoles
Its: City Manager

CCO:

CLEAR CHANNEL OUTDOOR, INC., a Delaware Corporation

Dated: September 13, 2016

By 
Name: Bryan Parker
Its: Executive Vice President

EXHIBIT A

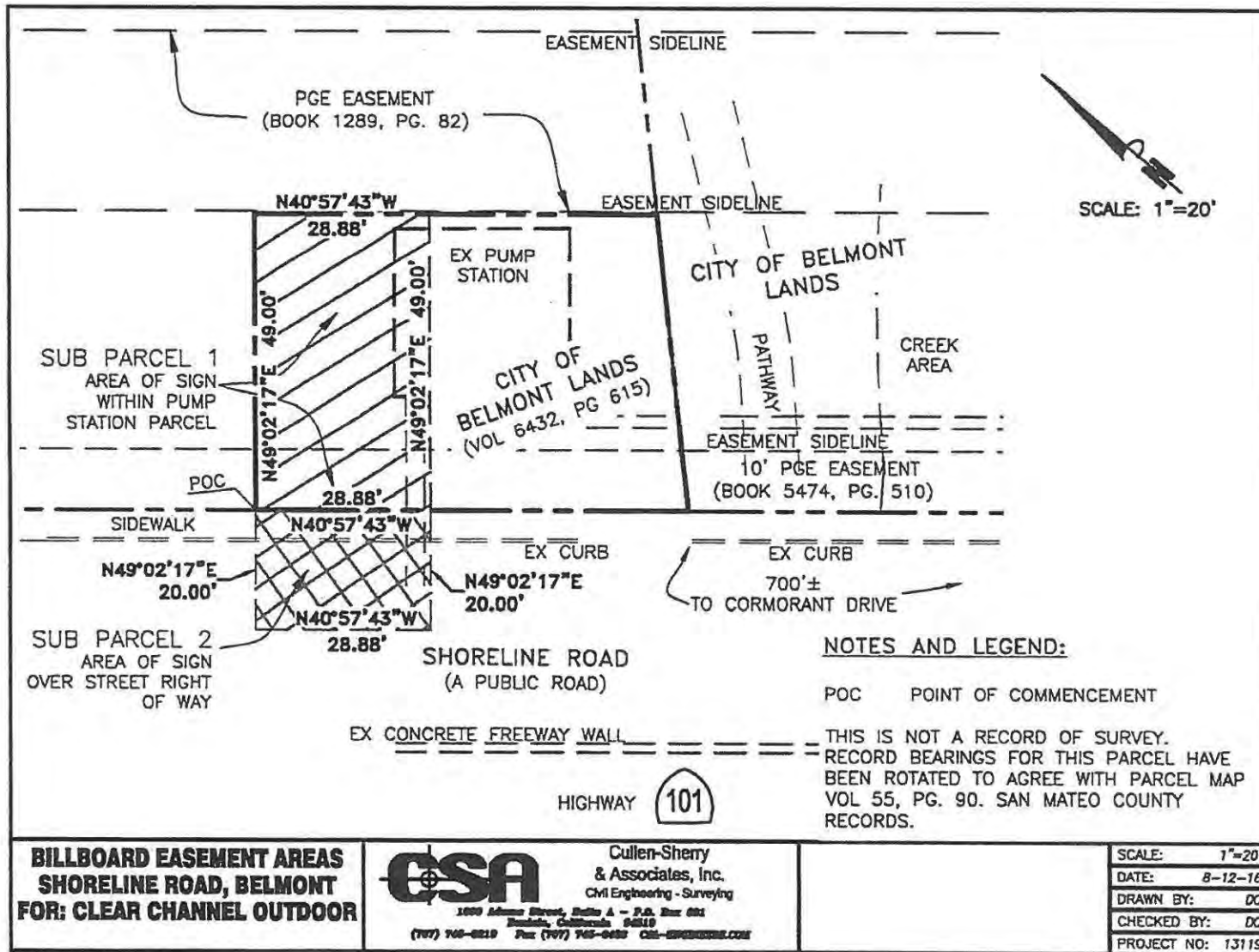


EXHIBIT A

VICINITY OF SHOREWAY ROAD.,
BELMONT, CALIFORNIA

SUB PARCEL 1

DESCRIPTION OF SIGN AREA WITHIN PUMP STATION PARCEL
(FOR BILLBOARD):

A PORTION OF THE LANDS PER DOCUMENT FILED IN VOLUME 6432, PAGE 615, FILED JULY 16, 1973, SAN MATEO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE 2 COURSES THAT BEAR N42°08'24"E 71.00' AND N47°51'36"E 49.00' PER SAID DOCUMENT (BEARINGS ROTATED TO N40°57'43"W AND N49°02'17"E, RESPECTIVELY, TO AGREE WITH PARCEL MAP VOLUME 55, PAGE 90 SAN MATEO COUNTY RECORDS); THENCE N49°02'17"E 49.00'; THENCE S40°57'43"E 28.88'; THENCE S49°02'17"W 49.00' TO A POINT ON THE GENERAL EASTERLY RIGHT OF WAY LINE OF SHOREWAY ROAD; THENCE N40°57'43"W 28.88' TO THE POINT OF COMMENCEMENT.

INCLUDING REASONABLE RIGHTS OF ACCESS THROUGH SAID PROPERTY FOR MAINTENANCE AND ACCESS TO SAID AERIAL EASEMENT.

SEE EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.



Dan Cullen

EXHIBIT A

EXHIBIT A

VICINITY OF SHOREWAY ROAD.,
BELMONT, CALIFORNIA

SUB PARCEL 2

DESCRIPTION OF SIGN AREA OVER STREET RIGHT OF WAY (FOR
BILLBOARD):

A PORTION OF THE LANDS PER DOCUMENT FILED IN VOLUME 6432, PAGE 615, FILED JULY 16, 1973, SAN MATEO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE 2 COURSES THAT BEAR N42°08'24"E 71.00' AND N47°51'36"E 49.00' PER SAID DOCUMENT (BEARINGS ROTATED TO N40°57'43"W AND N49°02'17"E, RESPECTIVELY, TO AGREE WITH PARCEL MAP VOLUME 55, PAGE 90 SAN MATEO COUNTY RECORDS); THENCE ALONG THE EASTERLY LINE OF SHOREWAY ROAD S40°57'43"E 28.88'; THENCE S49°02'17"W 20.00'; THENCE N40°57'43"W 28.88'; THENCE N49°02'17"E 20.00' TO THE POINT OF COMMENCEMENT.

SEE EXHIBIT B ATTACHED HERETO AND MADE A PART HEREOF.



Dan Cullen

EXHIBIT B
LEGAL DESCRIPTION OF PROPERTY

For APN/Parcel ID(s): 040-371-140 and 040-371-130

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BELMONT, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

TRACT 1:

A portion of the lands conveyed to Leslie Properties, Inc., a California corporation by Deed recorded October 9, 1964 in Book 4815 of Official Records at Page 141 (File No. 74890-X), Records of San Mateo County, California, said portion being more particularly described as follows:

BEGINNING at a point in the Southwesterly line of Parcel 1, as shown on that certain map entitled "PARCEL MAP NO. 81-8 LYING WITHIN THE CITY OF REDWOOD CITY, BEING RESUBDIVISION OF LOT 1 AS SHOWN ON MAP ENTITLED "SHORES CENTER UNIT NO. 1", RECORDED IN BOOK 106 OF MAPS AT PAGES 3, 4 & 5 AND PARCEL 1 OF PARCEL MAP NO. 78-13 RECORDED IN BOOK 47 OF PARCEL MAPS AT PAGES 73, 74 & 75, SAN MATEO COUNTY RECORDS, CITY OF REDWOOD CITY, SAN MATEO COUNTY, CALIFORNIA", filed in the Office of the County Recorder of San Mateo County, State of California, on December 3, 1981 in Volume 52 of Parcel Maps at Pages 15 and 16, said point being also the most Northerly corner of Parcel A, as shown on that certain map entitled, "PARCEL MAP, 1401 SHOREWAY ROAD, LYING WITHIN THE CITY OF BELMONT, BEING A RESUBDIVISION OF PARCEL OF LAND RECORDED IN BOOK 6282 OF OFFICIAL RECORDS AT PAGE 629 AND A PORTION OF THE LAND RECORDED IN BOOK 4815 OF OFFICIAL RECORDS AT PAGE 141, SAN MATEO COUNTY RECORDS, CITY OF BELMONT, SAN MATEO COUNTY, CALIFORNIA", filed in the Office of the County Recorder of San Mateo County, State of California, on July 28, 1981 in Volume 51 of Parcel Maps at Page 49; thence from said point of beginning and along the Southwesterly line of said Parcel 1, North 40 ° 57' 43" West 111.78 feet to the most Easterly corner of lands described in that certain Deed to Leslie Properties, Inc., a California corporation, recorded September 1, 1966 in Book 5211 of Official Records at Page 4 (File No. 93379-Z), Records of San Mateo County, California; thence leaving said Southwesterly line and along the Southeasterly line of the lands described in said last mentioned Deed to Leslie Properties, Inc., a California corporation, South 43 ° 19' 38" West 409.51 feet to the most Southerly corner of said last mentioned lands; thence leaving said Southeasterly line and along the Southeasterly prolongation of the Southwesterly line of the lands described in the last said Deed to Leslie Properties, Inc., a California corporation, South 40 ° 57' 43" East 111.78 feet to the most Westerly corner of Parcel A as shown on that certain map entitled, "PARCEL MAP, 1401 SHOREWAY ROAD, LYING WITHIN THE CITY OF BELMONT, BEING A RESUBDIVISION OF PARCEL OF LAND RECORDED IN BOOK 6282 OF OFFICIAL RECORDS AT PAGE 629 AND A PORTION OF THE LAND RECORDED IN BOOK 4815 OF OFFICIAL RECORDS AT PAGE 141, SAN MATEO COUNTY RECORDS, CITY OF BELMONT, SAN MATEO COUNTY, CALIFORNIA", filed in the Office of the County Recorder of San Mateo County, State of California, on July 28, 1981 in Volume 51 of Parcel Maps at Page 49; thence along the Northwesterly line of said Parcel A, North 43 ° 19' 38" East 409.51 feet to the point of beginning.

Assessor's Parcel No. 040-371-130 Joint Plant No: 095-001-010-19A

TRACT 2:

Beginning at the most Southerly corner of that certain parcel of land conveyed By Joseph R. Parker and Marjorie B. Parker to Leslie Properties, Inc, by Deed recorded September 1, 1966 in Book 5211 of Official Records at Page 4 (File No. 93379-8), Records of San Mateo County, California, said point of beginning being a point on the Northeasterly line of Shoreway Road; thence North 42 ° 08' 24" West along the Southwesterly line of said lands conveyed to Leslie Properties, Inc., (File No. 93379-Z) 71.00 feet; thence at right angles North 47 ° 51' 36" East 49.00 feet; thence South 42 ° 08' 24" East 66.09 feet to a point on the Southeasterly line of said lands conveyed to Leslie Properties, Inc.; thence South 42 ° 08' 26" West along said Southeasterly line of 49.25 feet to the point of beginning.

Excepting therefrom all oil, gas and minerals as reserved by Leslie Salt Co. in the Deed recorded August 15, 1952, in Book 2281, OR Page 382

Assessor's Parcel No. 040-371-140 Joint Plant No: 040-037-0372-05A

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
City of Belmont
One Twin Pines Lane
Belmont, California 94002-3893
Attention: City Clerk, Suite 375

Exempt from recording fee under
Government Code §27383.

EXHIBIT C FORM OF ENCROACHMENT PERMIT



AGREEMENT FOR Permanent Encroachment Permit

Application	Permittee Name	Property Address of Encroachment	Assessor's Parcel Number
	Permittee Mailing Address	City State Zip	Legal description of property
	City State Zip	Description of Encroachment	
	Phone No. (Day/Night)		
	Email Address		

Agreement	In consideration for permission to install the permanent encroachment described above within the right-of-way adjacent to the encroachment property address listed above, Permittee agrees as follows. Permittee agrees to perform all work as specified in BCC Chapter 7 as amended, and in specifications, detail plans and the Building Codes of the City of Belmont, and in all special provisions made a part of this permit, whether written or oral, and to the satisfaction of the Director of Public Works. Permittee agrees to comply with all regulations and ordinances of the City of Belmont in constructing and maintaining the encroachment. Permittee agrees to promptly pay for any construction necessary for the encroachment and upon completion not allow any lien to be filed with respect thereto. Permittee agrees to maintain the encroachment in good repair at permittee's sole cost, and if requested, to remove the encroachment or portion thereof in accordance with Belmont City Code Sections 22-9 and 22-10 at permittee's cost and without compensation. Permittee acknowledges that the city has no obligation to accept or maintain the encroachment. Permittee agrees to immediately indemnify and defend the City and its elected officials, officers, employees and agents from all claims of every kind, nature and description arising from, or out of work, connected with this permit. Permittee agrees to maintain Insurance Permittee agrees to reimburse the City for all costs and reasonably attorney's fees incurred in enforcing the terms and conditions of this permit. Permittee acknowledges and agrees that this agreement is binding upon the heirs, executors, administrators, successors, and assigns of Permittee and upon the successors in interest of the real property described above and that the City may cause this agreement to be recorded against permittee's property benefitted by the encroachment. By my signature below, I certify to each of the above and the following: I am the property owner or authorized to act on the property owner's behalf. I have read the above application and state that the information given is correct. I agree to comply with all state laws and city and county ordinances relating to building construction and authorize representatives of the City of Belmont Community Development and Public Works Departments to enter upon the property for which I have applied for this permit for the purpose of making inspections. (Each property owner must print and sign in blue ink)		
	Signature: _____ Print Name: _____ Date: _____		
	Signature: _____ Print Name: _____ Date: _____		
	Please attach Notarial Acknowledgement on 8½" x 11" paper for each signature		



Permanent Encroachment Permit

Permit	OFFICIAL USE ONLY		
	PW Fees ☐ (Permanent Encroachment) ☐ (Temporary Encroachment)		☐ Refundable Surety Deposit
	Permit Payment(s) Received \$ _____		Amount \$ _____
	Permanent Encroachment Permit No. _____	Temporary Encroachment Permit No. _____	Council Resolution _____
	☐ Landscape plan required	☐ Approved	☐ Legal Description Provided ☐ Insurance
	This permit is not valid unless signed by the City's authorized representative		
Permit Approved By: _____ Date: _____ Director of Public Works			
Permittee must comply with the following additional conditions:			

**EXHIBIT D
REMOVAL BILLBOARDS**

1. **Structure #1 / Sign Facings #1 & #2 (12'x25')**
 Bayshore Frwy. ES 650' s/o Ralston F/N & S (V-Shaped Poster Panels)
 APN 037-371-005
2. **Structure #2 / Sign Facing #3 (12'x25')**
 El Camino Real WS 60' s/o Belmont Ave. F/N (Single Facing Poster Panel)
 APN 044-172-200
3. **Structure #3 / Sign Facings #4 & #5 (12'x25')**
 Bayshore Frwy. ES 2640' n/o Ralston F/N & S (V-Shaped Poster Panels)
 APN 040-360-070
4. **Structure #4 / Sign Facings #6 & #7 (12' x 25')**
 El Camino Real ES 100' s/o Anita F/N & S (V-Shaped Poster Panel)
 APN 044-410-010
5. **Structure #5 / Sign Facing #8 (14'x48')**
 El Camino Real ES .5 miles n/o Ralston F/S (Single Facing Bulletin)
 APN 044-410-010

SIGN CONCEPTUAL DRAWING



EXHIBIT E

EXHIBIT F
OPERATING REQUIREMENTS FOR DIGITAL BILLBOARD FACES

- a. Operational Limitations. Such displays shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement during the static display period, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement. Each static message shall not include flashing, scintillating lighting or the varying of light intensity.
- b. Minimum display time. Each message on the sign must be displayed for a minimum of (8) eight seconds
- c. Digital billboards shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance.
- d. The Pre-set distance to measure the foot candles shall be two hundred and fifty feet (250').
- e. Each display must have a light sensing device that will adjust the brightness as ambient light conditions change.
- f. The Digital billboard shall be operated with systems and monitoring in place to either turn the display off or show a "full black" image on the display in the event of a malfunction.

EXHIBIT G
FORM OF MEMORANDUM OF LEASE

WHEN RECORDED MAIL TO:

CLEAR CHANNEL OUTDOOR, INC.
Attn: Legal Department
2325 East Camelback Road, Suite 400
Phoenix, Arizona 85016

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum") is made by CITY OF BELMONT, a California municipal corporation ("Landlord"), whose address is One Twin Pines Lane, Suite 320, Belmont, CA 94002, and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation ("Tenant"), whose address is 555 City Center, Suite 950, Oakland, CA 94607, upon the following terms:

1. Landlord is the owner of the following described Property:

[INSERT LEGAL DESCRIPTION]

2. Landlord and Tenant have entered into that certain Lease Agreement, dated _____, 20____ (the "Lease"), wherein Tenant has leased portion(s) of the Property for the construction, maintenance and operation of one or more outdoor advertising structures for a term beginning _____, 20____, and continuing for a maximum period of 30 years.
3. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed.
4. This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT G

IN WITNESS WHEREOF, Tenant and Landlord have executed this Memorandum as of
the ____ day of _____, 2016.

CITY OF BELMONT, a California
municipal corporation

By: _____
Name:
Title:

CLEAR CHANNEL OUTDOOR, INC., a
Delaware corporation

By: _____
Name:
Title

EXHIBIT G

STATE OF CALIFORNIA)
)
COUNTY OF)

WITNESS my hand and official seal.

Notary Public

559

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

Name:

EXHIBIT G

ATTACHMENT 4



CITY COUNCIL STAFF REPORT

MEETING DATE: August 27, 2018

ITEM TITLE: Consideration of Adopting a Resolution Approving a Relocation Agreement for the Removal of a Static Billboard at 171 Industrial Road (APN 046-020-430) and Approving a Lease and Sublease Agreement for a Digital Billboard at 815 American Street (APN 046-211-160).

RECOMMENDATION:

Staff recommends that the City Council adopt a Resolution approving a Relocation Agreement, Lease Agreement, and Sublease Agreement for a digital billboard on 815 American Street.

FISCAL IMPLICATIONS:

Upon completion of the billboard, the City will receive a one-time \$100,000 non-refundable payment, a one-time \$30,000 non-refundable payment for the production and installation of a new digital sign at the Adult Community Center of San Carlos, and an ongoing 30% share of gross advertising revenue annually from the proposed billboard with a minimum payment guarantee of \$200,000 annually. The minimum payment guarantee includes an escalation of 12.5% every fifth year. Thus, the minimum income to be received by the City under the Lease is about \$4,800,000 for the initial 20-year term, or about \$8,200,000 if the 10-year option is exercised (figures in 2018 dollars).

BACKGROUND:

In December 2013, the City entered into a Lease Agreement with Clear Channel Outdoor (“CCO”) to operate a digital billboard on City-owned land at Bransten Road near U.S. Route 101. The City of San Carlos and CCO have been involved in negotiations for the placement of a second digital billboard on property along U.S. Route 101 at 815 American Street.

In accordance with the San Carlos Municipal Code (§8.22 & §12.28), any new billboard must be located on City-controlled property and requires the removal of an existing billboard. The property at 815 American Street is owned by a private party, whom the City will enter into a Lease Agreement with and subsequently execute a Sublease Agreement with CCO.

The Lease Agreements would allow CCO to construct an outdoor advertising structure with two (2) 14’ x 48’ Light Emitting Diode (LED) displays, connections, electrical supply equipment and accessories at the leased property site. The 815 American Street billboard would be physically identical to existing one currently operating on Bransten Road.

After several months of negotiations and iterations of the Lease Agreement, Sublease Agreement, and the Relocation Agreement, the finalized documents were agreed upon by all parties and are included in this report as attachments and further described below.

ANALYSIS:

The documents under consideration would authorize the installation of a new digital billboard at 815 American Street as approved by the Planning Commission at its November 6, 2017 meeting. At this meeting, the Planning Commission approved a Design Review Certificate and Mitigated Negative Declaration for the proposed digital billboard at 815 American Street and the removal of the existing static billboard at 171 Industrial Road.

The Relocation Agreement

The Relocation Agreement requires the permanent removal of a static billboard located at 171 Industrial Road, San Carlos (APN 046-020-430) owned by CCO. A new digital billboard will then be installed at 815 American Street, San Carlos (APN 046-211-160) subject to the terms and conditions in the Lease Agreement and Sublease Agreement. Removal of the static billboard is required to occur within three (3) years from the date the new digital billboard becomes fully operational. As a result of the Relocation Agreement, and the ban on billboards on privately held property within the city, no other billboard can be installed at 815 American Street.

The Lease and Sublease Agreement

The Lease Agreement would be made and entered into by and between K & E Investments, the private property owner of 815 American Street (Lessor), and the City. In this arrangement the property owner leases the premises exclusively to the City for the purpose of entering into a Sublease with CCO. The City pays annual rent of \$100,000 to Lessor under the Lease and an amount equal to a percentage of amounts received over the annual minimum rent. The remaining terms of the Lease Agreement are concurrent with those of the Sublease Agreement, with the exception of the rent amount explained in further detail below.

The Sublease Agreement would be made and entered into by and between the City and CCO. The major terms of the Sublease Agreement include:

1. **Term.** 20-year initial term with an option to extend for an additional 10 years. At the end of the term, the Sublease Agreement terminates, but would continue on a month to month basis until notice is provided by either party.
2. **Rent.** The net result of the Lease and Sublease would be that the City receiving an amount equal to the greater of two hundred thousand dollars (\$200,000), or thirty percent (30%), of the gross advertising revenue actually received in a calendar year by CCO for advertising places on the billboard, prorated for partial years.

Under the Sublease, CCO will pay the City for all rent and revenue share amounts deriving from the billboard. As such, CCO must pay the City total rent for each year of the Sublease a sum equal to the greater of three hundred thousand dollars (\$300,000), or thirty five percent (35%), of the gross advertising revenue actually received in a calendar year by CCO for advertising placed on the billboard, prorated for partial years. Subsequently, the Lease provides the City will pay to the Lessor the greater of one hundred thousand dollars (\$100,000), or five percent (5%), of the gross advertising

revenue

received.

3. **Community Benefits.** The City shall receive \$100,000 as a one-time, non-refundable payment on the date the digital billboard is fully operational. Additionally, at the same time, the City shall receive \$30,000 as a one-time, non-refundable payment for the production and installation of a new digital sign at the Adult Community Center of San Carlos.
4. **City Advertising Spots.** CCO will provide to the City at no cost one guaranteed spot in a standard rotation on the billboard four times per calendar year during the Term; provided that only one spot may be used each quarter. Each spot will run no greater than eight seconds in the standard rotation of eight spots per digital display and continue for two weeks in duration (or a minimum of 14,000 spots during each two week period).
5. **Amber Alert Messages.** CCO shall make the billboard available at no cost to Caltrans for the purpose of displaying "Amber Alert" messages in accordance with the Amber Alert Guidelines set forth in Exhibit D to the Sublease Agreement.
6. **City Sign and Logo.** On each side of the Sign Structure, CCO shall upon request install, operate, maintain, and repair a City sign that faces the same direction as a display area on the billboard.
7. **Compliance with Laws.** CCO shall conform to all applicable laws and regulations, including but not limited to laws and regulations pertaining to outdoor advertising.
8. **Prohibited Advertising.** CCO, within a reasonable time following written request therefor, shall remove from the billboard any advertising message that in the reasonable judgment of the City:
 - (i) Is false, misleading, or deceptive;
 - (ii) Directly promotes the sale or use of tobacco products, illegal drugs or products, or marijuana;
 - (iii) Contains "obscene matter," as that term is defined in California Penal Code section 311 on the Effective Date;
 - (iv) Advertises an adult entertainment establishment;
 - (v) Promotes or opposes a candidate or individual for public office or who is running for office, or promotes or opposes a ballot measure; or
 - (vi) Contains language that is obscene, vulgar, profane, or scatological, or that presents a clear-and-present danger of causing riot, disorder, or other imminent threat to public safety, peace, or order.
9. **Payment in Excess of Minimum Guaranteed Rent.** If the Percentage Rent in any Sublease year exceeds the guaranteed minimum rent paid by CCO to City, the difference shall be paid to City within forty-five (45) days following the end of the Sublease year. On January 1st of the year after the fifth (5th) anniversary of the Commencement Date, and every fifth (5th) year thereafter, the minimum guaranteed rent shall be increased by 12.5%.

ALTERNATIVES:

The alternatives available to the City Council include:

1. Adopt a Resolution Approving a Relocation Agreement for the Removal of a Static Billboard at 171 Industrial Road and Approving a Lease and Sublease Agreement for a Digital Billboard at 815 American Street; or
2. Do not approve the Resolution; or
3. Provide staff with alternative direction.

Respectfully submitted by:



Al Savay, AICP
Community Development Director



Martin Romo, Economic Development &
Housing Manager

Approved for submission by:



Jeff Maltbie, City Manager

ATTACHMENT(S):

1. Resolution for Lease Agreements
2. Relocation Agreement_Clear Channel_815 American
3. Lease Agreement_KEInvestments_815 American
4. Sublease_Clear Channel_815 American

RESOLUTION NO. 2018 – _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CARLOS
APPROVING A RELOCATION AGREEMENT FOR THE REMOVAL OF A STATIC
BILLBOARD AT 171 INDUSTRIAL ROAD (APN 046-020-430) AND APPROVING A LEASE
AND SUBLEASE AGREEMENT FOR A DIGITAL BILLBOARD AT 815 AMERICAN STREET
(APN 046-211-160).**

WHEREAS, Clear Channel Outdoor, Inc. (“CCO”) has proposed a Relocation Agreement and 20-Year Sublease with the City of San Carlos for the installation of a new Digital Billboard at 815 American Street (APN 046-211-160), (the “Property”); and

WHEREAS, the City is entering into a Lease Agreement with K & E Investments, LLC, the owner of the real property at 815 American Street; and

WHEREAS, the Relocation Agreement provides that the existing static billboard located at 171 Industrial Road (APN 046-020-430) in San Carlos will be permanently removed; and

WHEREAS, the Sublease with CCO provides that the City of San Carlos will receive \$100,000 as a non-refundable upfront payment, an additional \$30,000 as a non-refundable upfront payment to be used for a digital sign at the San Carlos Adult Community Center, guaranteed payments of \$200,000 per year escalated by 12.5% every fifth year, and that City messages can be displayed on the Digital Billboard; and

WHEREAS, the Relocation Agreement and Sublease with CCO directly benefits the City through significant annual income to assist the City in providing vital services to its residents and elimination of the old static billboard on American Street; and

WHEREAS, the Relocation Agreement, Lease Agreement and Sublease Agreement, attached to the staff report accompanying this Resolution, set forth the terms of the agreements; and

WHEREAS, on November 6, 2017, the Planning Commission approved the Design Review Certificate and Mitigated Negative Declaration for the proposed digital billboard.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of San Carlos hereby approves as follows:

Section 1. The City hereby finds and determines that the above recitals are true and correct and are incorporated herein by this reference.

Section 2. The City hereby approves the Relocation Agreement, Lease Agreement and Sublease Agreement of the Property located at 815 American Street, San Carlos, California as described in this Resolution and approves the form of the Relocation Agreement, Lease Agreement and Sublease Agreement attached to the Staff Report accompanying this Resolution. The City Manager is hereby authorized to execute this Relocation Agreement, Lease Agreement, Sublease Agreement and any related documents and to take all actions necessary for the implementation of the Relocation Agreement, Lease Agreement, and Sublease Agreement.

* * * * *

I, Crystal Mui, hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Carlos at a scheduled meeting thereof held on the 27th of August, 2018 by the following vote:

AYES, COUNCILMEMBERS: _____
NOES, COUNCILMEMBERS: _____
ABSENT, COUNCILMEMBERS: _____

CITY CLERK of the City of San Carlos

APPROVED:

MAYOR of the City of San Carlos

Attachment: Resolution for Lease Agreements (Billboard Lease)

**BILLBOARD RELOCATION AGREEMENT
BETWEEN THE CITY OF SAN CARLOS AND
CLEAR CHANNEL OUTDOOR, INC.**

This **BILLBOARD RELOCATION AGREEMENT** ("**AGREEMENT**") is made and entered into as of this ____ day of _____, 2018, by and between the **CITY OF SAN CARLOS**, a California municipal corporation ("**CITY**") with its principal place of business located at 600 Elm Street, San Carlos, CA 94070 and **CLEAR CHANNEL OUTDOOR, INC.**, a Delaware corporation, registered in the State of California ("**CLEAR CHANNEL**"), with its principal place of business located at 555 12th Street, Oakland, CA 94607. **CITY** and **CLEAR CHANNEL** may be referred to individually as a "**PARTY**" or collectively as the "**PARTIES**" to this **AGREEMENT**.

RECITALS

- A. **CLEAR CHANNEL** shall agree to remove that certain billboard located within the City of San Carlos commonly described and shown by maps in **EXHIBIT "A,"** entitled "**REMOVED BILLBOARD**," attached hereto and incorporated herein by this reference (hereafter the "**REMOVED BILLBOARD**") on the terms and conditions provided herein; and
- B. This **AGREEMENT** will serve the public interests of the **CITY** by allowing it to continue its development in a planned manner; furthermore, the **CITY** certifies that the fulfillment of the terms and conditions of this **AGREEMENT** are consistent with the City's General Plan and City Code (hereinafter "**CODE**") including Section 12.28.085 and Sections 18.22.050 and 18.22.080 of the **CODE** which expressly permit billboards on **CITY** property pursuant to an agreement from the City Council, and will result in the removal of one (1) billboard structure, comprising one (1) bulletin face and one poster face, and no net increase in the number of billboards in the **CITY** and will preserve or further the public health, safety and welfare; and
- C. In consideration for the removal of the **REMOVED BILLBOARD** in accordance with the terms of this **AGREEMENT**, **CITY** is willing to allow **CLEAR CHANNEL** to erect a new, V-shaped LED outdoor advertising sign with 14' x 48' display faces as described in **EXHIBIT "B"** (hereafter "**NEW BILLBOARD**") all pursuant to and in accordance with the terms set forth below; and
- D. The **CITY** and **CLEAR CHANNEL** agree and acknowledge that the outdoor advertising sign relocation described and consented to herein complies with, and serves the purposes enumerated in, the California Outdoor Advertising Act, including, but not limited to, **Sections 5412 and 5443.5** thereof and that the **NEW BILLBOARD** complies with and is permitted under the **CODE**; and
- E. The **NEW BILLBOARD** will be erected on **CITY** property located at 815 American Street in the City of San Carlos, California (APN 046-211-160) (the "**PROPERTY**"), such property being **CITY** property pursuant to a Lease Agreement ("**LEASE**") by and between the

CITY and K&E Investments, LLC, a California limited liability company ("**OWNER**") in the form attached hereto as **EXHIBIT "C"**, and incorporated by this reference, and subleased by the **CITY** to **CLEAR CHANNEL** pursuant to the Sublease Agreement ("**SUBLEASE**") between the **PARTIES** in the form attached hereto as **EXHIBIT "D"**, and incorporated by this reference; and

- F. The **CITY** has prepared an Initial Study pursuant to the California Environmental Quality Act. Based on the Initial Study, the **CITY** has prepared, posted, circulated and, on November 6, 2017, adopted a Mitigated Negative Declaration, which confirms based on substantial evidence that **CLEAR CHANNEL'S** proposed removal of the **REMOVED BILLBOARD**, as more fully described in **EXHIBIT "A"** hereto, and construction of the **NEW BILLBOARD**, as more fully described in **EXHIBIT "B"** hereto, in accordance with this **AGREEMENT** would not have the potential for any significant environmental impacts and further that the **NEW BILLBOARD** would be compatible with the existing industrial character of the project site and the general project area; and
- G. **WHEREAS**, on November 6, 2017, the Planning Commission conducted a duly noticed public hearing on **CLEAR CHANNEL'S** proposal to remove the **REMOVED BILLBOARD** and to construct the **NEW BILLBOARD** as further set forth herein and the Planning Commission granted design review approval to **CLEAR CHANNEL** to construct the **NEW BILLBOARD** and made the requisite findings as set forth in Section 18.22.050(D) of the **CODE** based on substantial evidence all as more particularly described and for all the reasons set forth in that report from the Planning Department to the Planning Commission for the November 6, 2017 Planning Commission meeting; and
- H. **WHEREAS**, on August 20, 2018, after conducting a duly noticed public hearing, the City Council adopted a resolution approving this **AGREEMENT** with **CLEAR CHANNEL** and authorizing the City Manager to sign this **AGREEMENT** on behalf of the **CITY**; and
- I. **WHEREAS**, the **CITY** believes that the fulfillment of the terms and conditions of this **AGREEMENT** will preserve or further the public health, safety and welfare.

The **PARTIES** acknowledge that the foregoing recitals are true and correct and are incorporated herein as a part of this **AGREEMENT**.

SECTION 2. CLEAR CHANNEL AND CITY AUTHORITY AND STATUS.

- A. **CLEAR CHANNEL** hereby represents and warrants for the benefit of **CITY** all of the following:
1. That the information in this **AGREEMENT** is true and accurate to the best of **CLEAR CHANNEL'S** knowledge after a diligent inquiry; and
 2. That **CLEAR CHANNEL** is a duly organized, validly existing corporation in

good standing under the laws of its place of incorporation and of the State of California; and

3. That **CLEAR CHANNEL'S** execution of this **AGREEMENT** is authorized by resolution, bylaws, or constitution of **CLEAR CHANNEL**, which resolution, bylaw or constitution is currently in full force and effect, to execute this **AGREEMENT** on **CLEAR CHANNEL'S** behalf and bind **CLEAR CHANNEL** thereby; and
 4. That **CLEAR CHANNEL** is duly authorized to perform or to cause to be performed all of the obligations of **CLEAR CHANNEL**, or **CLEAR CHANNEL'S** contractors, subcontractors or other agents, under and in accordance with the terms and conditions of this **AGREEMENT**; and.
 5. That **CLEAR CHANNEL** is duly authorized to remove or cause to be removed the **REMOVED BILLBOARD** from the real property where it is located on the terms and conditions specified herein.
- B. **CITY** hereby represents and warrants for the benefit of **CLEAR CHANNEL** all of the following:
1. That the information in this **AGREEMENT** is true and accurate to the best of **CITY'S** knowledge after a diligent inquiry; and
 2. That **CITY'S** execution of this **AGREEMENT** is authorized by resolution, which resolution, is currently in full force and effect, to execute this **AGREEMENT** on the **CITY 'S** behalf and bind the **CITY** thereby; and
 3. That the **CITY** is duly authorized to perform or to cause to be performed all of the obligations of **CITY** under and in accordance with the terms and conditions of this **AGREEMENT**.

SECTION 3. EFFECTIVE DATE OF AGREEMENT.

- A. The **AGREEMENT** shall become effective upon (i) approval of the **AGREEMENT** by the City Council by resolution, (ii) The **CITY'S** authorization of the removal of the **REMOVED BILLBOARD** in accordance with the timeline and provisions herein, (iii) the issuance of building permits for the construction of the **NEW BILLBOARD**, (iv) the execution of the **LEASE** by **CITY** and **OWNER**, (v) the execution of the **SUBLEASE** by **CITY** and **CLEAR CHANNEL** and (vi) the execution of this **AGREEMENT** (the completion of the last to occur of such requirements shall be deemed the "**EFFECTIVE DATE**").
- B. The **AGREEMENT** shall commence upon the **EFFECTIVE DATE** and terminate when the last of the following terms and conditions are fully satisfied:

1. When the **REMOVED BILLBOARD** is removed as provided herein;
2. When the **NEW BILLBOARD** is fully constructed and advertising copy is posted;
3. When the **LEASE** commences; and
4. When the **SUBLEASE** commences.

SECTION 4. BILLBOARD STATUS.

The **PARTIES** hereto acknowledge that **CLEAR CHANNEL** will permanently remove the **REMOVED BILLBOARD** as provided herein in consideration of approval to construct the **NEW BILLBOARD**, on or before May 1, 2022. The **REMOVED BILLBOARD** and any right title and interest therein or right to place a billboard, whether by lease, license or other right, at the location of the **REMOVED BILLBOARD** shall be forever terminated and shall not be or have been assigned, transferred or given to any other entity, affiliate, subsidiary, person or party. **CLEAR CHANNEL** represents and warrants all of the following for the benefit of the **CITY**, and the **CITY** is specifically relying upon each and every one of **CLEAR CHANNEL'S** representations and warranties in its decision to enter into this **AGREEMENT**:

- A. The **NEW BILLBOARD** will at all times be maintained lawfully and in a manner that is in full compliance with federal, state and local laws, rules and regulations; and
- B. **CLEAR CHANNEL'S** fulfillment of the terms and conditions of this **AGREEMENT** will not violate and will not result in the violation of any federal, state or local laws, rules or regulations; and the **CITY** acknowledges that the following provisions of the **CODE** shall be interpreted as follows with respect to the **NEW BILLBOARD**:
 1. The **NEW BILLBOARD** shall be permitted and authorized by City Council under **Section 12.28.050** and **Sections 18.22.050** and **18.22.080(M)** of the **CODE**.
 2. The **NEW BILLBOARD** shall not be deemed to be prohibited under **Section 18.22.110** of the **CODE** including **subsections (D), (G), (K) or (L)**.
 3. Copy shall be permitted to be changed on the **NEW BILLBOARD** whether the **NEW BILLBOARD** faces are operated as digital billboard faces or non-digital traditional billboard faces without a permit notwithstanding the provisions of **Section 18.22.050(B)** of the **CODE**.
- C. Provided the **NEW BILLBOARD** is operated in accordance with the operating requirements set forth in **EXHIBIT "E"** hereof, it shall not be deemed to be an animated or flashing sign under the **CODE**.

SECTION 5. TIME FOR REMOVAL OF BILLBOARDS

CLEAR CHANNEL shall permanently remove the **REMOVED BILLBOARD** as provided below, on or before May 1, 2022 ("**REMOVAL DATE**"), provided that **CLEAR CHANNEL** (i) has received all required approvals and permits ("**PERMITS**") to construct the **NEW BILLBOARD** from the **CITY** and California Department of Transportation (CalTrans), (ii) the **LEASE** has been executed; and (iii) the **SUBLEASE** has been executed. Removal shall include the complete removal of the billboard face, support structures other than one I-beam upon which the landowner of the property on which the **REMOVED BILLBOARD** is located maintains and on-premise sign face, the above-ground portions of the sign structure and the below ground portions to 4 feet below ground level, to the extent required under the lease for the **REMOVED BILLBOARD**.

SECTION 6. THE PARTIES' RIGHTS AND OBLIGATIONS.

- A. **CLEAR CHANNEL** shall not be obligated to remove the **REMOVED BILLBOARD** or permitted to erect the **NEW BILLBOARD** pursuant to this **AGREEMENT** unless and until **CLEAR CHANNEL** has received all required **CITY** approvals and permits for the removal or erection, as applicable of such billboards within the jurisdictional boundaries of the City of San Carlos, and all State of California approvals and permits for billboards required by CalTrans.
- B. The **CITY** shall cooperate with **CLEAR CHANNEL**, if necessary, to obtain approvals from CalTrans and any other oversight agency for the construction of the **NEW BILLBOARD** and permanent removal of the **REMOVED BILLBOARD**.
- C. **CLEAR CHANNEL** may replace a digital billboard face on the **NEW BILLBOARD** with a static billboard face from time to time in **CLEAR CHANNEL'S** sole and absolute discretion.

SECTION 7. RELATIONSHIP OF PARTIES.

Under no circumstances shall this **AGREEMENT** be construed as one of agency, partnership, joint venture or employment between **CLEAR CHANNEL** and the **CITY**, notwithstanding that concurrently the **PARTIES** will be entering into the **LEASE**. Each **PARTY** acknowledges and agrees that it neither has, nor will it give, the appearance or impression of having any legal authority to bind or commit the other **PARTY** in any way, notwithstanding that this **AGREEMENT** is binding on and between the **PARTIES**.

SECTION 8. INSURANCE REQUIREMENTS.

CLEAR CHANNEL agrees to have and maintain the policies set forth in **EXHIBIT "F"** entitled "**INSURANCE**," attached hereto and incorporated herein by this reference.

SECTION 9. RELEASE.

Other than any claims related to a breach, enforcement, or interpretation of this **AGREEMENT** and the **SUBLEASE** which are expressly reserved by the **PARTIES**, upon receipt of the **PERMITS**, **CLEAR CHANNEL** releases and forever discharges the **CITY**, its past and present officers, officials, employees, partners, agents, predecessors, successors, consultants, attorneys, and assigns, from any and all claims, demands, damages, actions, or suits, relating to, arising out of, or in any way connected with the permanent removal of the **REMOVED BILLBOARD**, including but not limited to claims for condemnation, eminent domain, or just compensation.

SECTION 10. INDEMNIFICATION AND HOLD HARMLESS.

CLEAR CHANNEL agrees to protect, defend at its expense, indemnify and hold harmless the **CITY**, its officers, employees and agents (collectively, "**INDEMNIFIED PARTIES**") from any and all third party liabilities, losses, damages, suits, actions; or claims, including reasonable attorneys' fees, (collectively, "**CLAIMS**"), which **CLAIMS** are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:

- A. The performance of **CLEAR CHANNEL'S** obligations under this **AGREEMENT** (including any amendments hereto) by **CLEAR CHANNEL**, its employees, agents, representatives or subcontractors;
- B. The failure of **CLEAR CHANNEL**, its employees, agents, representatives or subcontractors to comply and conform with applicable laws in the performance of **CLEAR CHANNEL'S** obligations under this **AGREEMENT**;
- C. Any negligent act or omission of **CLEAR CHANNEL**, its employees, agents, representatives or subcontractors, in the performance of **CLEAR CHANNEL'S** obligations under this **AGREEMENT**, whether or not such negligence is claimed to be either solely that of **CLEAR CHANNEL**, its employees, agents, representatives or subcontractors, or to be in conjunction with the actual negligence of others;
- D. Any reckless or intentional wrongful act or omission of **CLEAR CHANNEL**, its employees, agents, representatives or subcontractors in the performance of **CLEAR CHANNEL'S** obligations under this **AGREEMENT**; or any injury, medical condition, illness, disease, or death caused, in whole or in part, or aggravated, by **CLEAR CHANNEL'S** construction, operation or maintenance of the **NEW BILLBOARD**;
- E. Any and all **CLAIMS** against the **CITY** from third **PARTIES** related to **CLEAR CHANNEL'S** obligations under this **AGREEMENT**, including those arising out of the approval of this **AGREEMENT**, approval of entitlements and the permanent removal of the **REMOVED BILLBOARD**, including **CLAIMS** by landlord of the **REMOVED BILLBOARD**, and construction, operation and installation of the **NEW BILLBOARD**. If such a claim is brought, the **PARTIES** shall promptly notify the other **PARTY** of such claim and each **PARTY** shall cooperate with the efforts of the **CLEAR CHANNEL** to defend such claim. The **CITY** will not voluntarily assist the opposing

PARTY in any such claim or take any position adverse to **CLEAR CHANNEL** in connection with such claim. In the event of a claim, **CLEAR CHANNEL** shall be entitled, in its sole discretion, to return the **NEW BILLBOARD** faces to traditional non-digital sign face or faces or remove the **NEW BILLBOARD**.

Notwithstanding any other provision of this **AGREEMENT**, **CLEAR CHANNEL** shall not have the obligation to protect, defend, indemnify or hold harmless any of the **INDEMNIFIED PARTIES** from **CLAIMS** to the extent they arise in whole or in part, directly or indirectly, or are alleged to have arisen out of the negligence or reckless or intentional wrongful act or omission of any of the **INDEMNIFIED PARTIES**.

SECTION 11. TERMINATION.

- A. If **CLEAR CHANNEL** or the **CITY** fails to perform any of its material obligations under this **AGREEMENT** after written notice of same and an opportunity to cure such failure, in addition to all other remedies provided by law or in equity, the other **PARTY** may terminate this **AGREEMENT** upon thirty days' written notice to the other **PARTY**.
- B. In the event of a dispute concerning a **PARTIES** right to terminate this **AGREEMENT** under this **SECTION**, the **PARTIES** agree to attempt resolution of this matter through mediation through an agreed neutral mediator with JAMS or ADR, Inc., in San Francisco, San Mateo or Santa Clara Counties. The **PARTIES** agree to be bound by the decision made by the arbitrator. If **CLEAR CHANNEL** is required to stop work due to termination of this **AGREEMENT**, all work shall stop immediately, except for all work necessary to prevent an immediate danger or hazard or to secure a building site.

SECTION 12. NOTICES.

Any communication or notice which either **PARTY** is required to send to the other or which either **PARTY** desires to send to the other, shall be in writing and shall be either personally delivered or mailed using the United States Postal Service, postage prepaid, to the respective **PARTY** addressed as follows:

TO THE CITY:

Jeff Maltbie, City Manager
City of San Carlos
600 Elm Street
San Carlos, CA 94070

Gregory J. Rubens, City Attorney
City of San Carlos
600 Elm Street,
San Carlos, CA 94070

TO CLEAR CHANNEL:

CLEAR CHANNEL OUTDOOR, INC.
555 – 12th St., Suite 950

Oakland, CA 94607
 Attention: President/General Manager, Northern
 California Division

WITH A COPY TO: CLEAR CHANNEL OUTDOOR, INC.
 2325 East Camelback Road,
 Suite 400 Phoenix, AZ 85016
 Attention: Senior Operations Counsel

Either **PARTY** may change its address by sending notice of the new address to the other **PARTY** pursuant to this SECTION.

SECTION 13. ENTIRE AGREEMENT.

This **AGREEMENT**, including its exhibits, represents the entire understanding of the **PARTIES** as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

SECTION 14. AUTHORITY; RIGHTS; SEVERABILITY.

The **PARTIES** agree and acknowledge:

- A. This **AGREEMENT** was negotiated and entered into by the **CITY** pursuant to the authority conferred upon it by law including the purposes enumerated in, the California Outdoor Advertising Act, including, but not limited to, **Sections 5412 and 5443.5** thereof, which provides in part that: Cities are specifically empowered to enter into relocation agreements on whatever terms are agreeable to the display owner and the city and to adopt ordinances or resolutions providing for the relocation of displays."
- B. That the rights conferred upon **CLEAR CHANNEL** under this **AGREEMENT** are vested as of the **EFFECTIVE DATE**, and as such, any future sign regulation that may otherwise alter the terms of this **AGREEMENT**, or diminish **CLEAR CHANNEL'S** rights with respect to maintaining and operating its **NEW BILLBOARD**, shall respect and preserve such vested rights;
- C. That, if any provision of this **AGREEMENT** is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then said provision shall be severed, and the remaining provisions shall remain in full force and effect. Notwithstanding any provision declared illegal, invalid, or unenforceable, this **AGREEMENT** has valid purposes, which include *inter alia* facilitating the net reduction of billboard signs in the **CITY** in order to preserve and improve urban aesthetics and traffic safety while also properly balancing private property and commercial speech rights;
- D. That nothing in this **AGREEMENT** shall be read to impermissibly interfere with the lawful exercise of the **CITY'S** police powers to protect the public from serious

threats to health or safety; and

- E. That this SECTION shall apply to all portions of this **AGREEMENT**; and to the extent any language in this **AGREEMENT** is deemed inconsistent or contrary to this SECTION, the language contained in this **SECTION** shall control.

SECTION 15 MISCELLANEOUS PROVISIONS.

- A. The **PARTIES** agree that this **AGREEMENT** shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either **PARTY** to this **AGREEMENT**, the **PARTIES** agree that venue shall be exclusively vested in the state courts of the County of San Mateo, or, where otherwise appropriate, exclusively in the United States District Court, Northern District of California.
- B. The headings of the sections and subsections of this **AGREEMENT** are inserted for convenience only. They do not constitute a part of this **AGREEMENT** and shall not be used in its construction.
- C. The **PARTIES** acknowledge that this **AGREEMENT** is the product of negotiation and compromise on the part of both **PARTIES**, and the **PARTIES** agree, that since both **PARTIES** have participated in the negotiation and drafting of this **AGREEMENT**, this **AGREEMENT** shall not be construed as if prepared by one of the **PARTIES**, but rather according to its fair meaning as a whole, as if both **PARTIES** had prepared it.
- D. The waiver by any **PARTY** to this **AGREEMENT** of a breach or violation of any provision of this **AGREEMENT** shall not be deemed a continuing waiver, a waiver of any other term or condition contained herein, or a waiver of any subsequent breach or violation of that or any other provision of this **AGREEMENT**.
- E. Any and all exhibits that are referred to in this **AGREEMENT** are incorporated herein by reference and are deemed a part of this **AGREEMENT**.
- F. This **AGREEMENT** may be amended only by written agreement executed by both **PARTIES**.
- G. Where this **AGREEMENT** refers to the **CITY** and no officer of the **CITY** is named, the City Manager of the **CITY** shall have the authority to act on behalf of the **CITY**.

(Signature page to follow)

WITNESS THE EXECUTION HEREOF as of the date first hereinabove written.

**CITY OF SAN CARLOS,
CALIFORNIA**
a California municipal corporation

Approved as to form:

Greg Rubens:
City Attorney

By: _____
Jeff Maltbie:
City Manager

Attest:

Crystal Mui, City Clerk

CLEAR CHANNEL OUTDOOR, INC.

A Delaware Corporation

By: _____
Bryan Parker
EVP, Real Estate & Public Affairs

Attachment: Relocation Agreement_Clear Channel_815 American (Billboard Lease)

EXHIBIT "A"
REMOVED BILLBOARD

CLEAR CHANNEL shall remove the following **REMOVED BILLBOARD** in accordance with the terms and conditions of this **AGREEMENT**:

Billboard to be Removed:

Located at: 171 Industrial Road, San Carlos

APN: 046-020-430

Number of Sides: 2

Removal shall not include single I-beam upon which landowner's on-premise sign face is located.

EXHIBIT "B"
NEW BILLBOARD

CLEAR CHANNEL shall construct a new billboard ("NEW BILLBOARD") in accordance with the terms and conditions of this **AGREEMENT** and **SUBLEASE** such that it has the following general appearance:



 **CLEARCHANNEL OUTDOOR**

815 AMERICAN ST. SAN CARLOS, CA

 **Encore**
I M A G E

© COPYRIGHT 2012

Original artwork, designs & layouts are the sole property of Encore Image and may not be reproduced, displayed, transmitted to anyone, in full or in part without the written consent of Encore Image.

Attachment: Relocation Agreement_Clear Channel_815 American (Billboard Lease)

EXHIBIT "C"
LEASE AGREEMENT

Attachment: Relocation Agreement_Clear Channel_815 American (Billboard Lease)

EXHIBIT "D"
SUBLEASE AGREEMENT

Attachment: Relocation Agreement_Clear Channel_815 American (Billboard Lease)

EXHIBIT "E"

OPERATING REQUIREMENTS FOR DIGITAL BILLBOARD FACES

DIGITAL BILLBOARD means an off-site sign utilizing digital message technology, capable of changing the static message or copy on the sign electronically. A **DIGITAL BILLBOARD** may be internally or externally illuminated. **DIGITAL BILLBOARDS** shall contain static messages only, and shall not have animation, movement, or the appearance or optical illusion of movement, of any part of the sign structure, design, or pictorial segment of the sign. Each static message shall not include flashing lighting or the varying of light intensity.

- a. Operational Limitations. Such displays shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement during the static display period, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement. Each static message shall not include flashing lighting or the varying of light intensity.
- b. Minimum display time. Each message on the sign must be displayed for a minimum of (8) eight seconds.
- c. **DIGITAL BILLBOARDS** shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance.
- d. The pre-set distance to measure the foot candles shall be two hundred and fifty feet (250').
- e. Each display must have a light sensing device that will adjust the brightness as ambient light conditions change.
- f. The technology currently being deployed for **DIGITAL BILLBOARDS** is **LED (light emitting diode)**, but there may be alternate, preferred and superior technology available in the future. Any other technology that operates under the maximum brightness stated in "c." of this Exhibit above shall not require an ordinance change for approval, unless the commission finds it in the best interest of the public to do so. The **CITY** shall expedite any required approvals for technology that is superior in energy efficiency over previous generations or types.
- g. The **DIGITAL BILLBOARD** shall be operated with systems and monitoring in place to either turn the display off or show a "full black" image on the display in the event of a malfunction.

EXHIBIT "F"

INSURANCE

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor's indemnification of the **CITY**, and prior to commencing any of the Services required under this **AGREEMENT**, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 each occurrence,
\$2,000,000 aggregate for bodily injury, personal injury and property damage

\$1,000,000 General aggregate
\$1,000,000 Products/Completed Operations aggregate
\$1,000,000 Personal Injury

These amounts shall be reasonably adjusted to the **CITY'S** then standard required coverages every five years, at the option of **CITY**.

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this **AGREEMENT**:

- a. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
- b. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million

dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor included in this **AGREEMENT** shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of San Carlos, its City Council, commissions, officers, employees, volunteers and agents.

D. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and **CITY** agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other **PARTY** involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees that upon request by **CITY**, all insurance compliance documents provided by such subcontractors and others engaged in the project will be submitted to **CITY** for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any **PARTY** involved in any way with the project and for which Contractor is directly responsible reserves the right to charge **CITY** or Contractor for the cost of additional insurance coverage required by this **AGREEMENT**. Any such provisions are to be deleted with reference to **CITY**. It is not the intent of **CITY** to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against **CITY** for payment of premiums or other amounts with respect thereto.

3. Except as to workers' compensation, all liability insurance required herein shall be evidenced by certificates and endorsements reasonably acceptable to the **CITY**. By endorsement, such insurance shall name the **CITY**, its officers, officials, agents and employees as additional insured and provide that the **CITY'S** insurance is excess and non-contributing with respect to operations of Contractor or Subcontractor or the liabilities assumed under written contract with **CITY**.

Lease Agreement
Lease No. _____

THIS LEASE AGREEMENT ("Lease") is dated _____, 2018 (the "Effective Date"), by and between K & E Investments, LLC, a California limited liability company (the "Lessor") and the City of San Carlos ("City"), a California municipal corporation.

RECITALS

WHEREAS, the Lessor owns 815 American Street, San Carlos, California, APN# 046-211-160, which property is along US Highway 101, described in Exhibit A attached hereto (the "Property"); and

WHEREAS, City intends to enter into a sublease ("Sublease") with Clear Channel Outdoor, Inc., a Delaware corporation ("CCO"), an entity that is in the business of outdoor advertising; and

WHEREAS, the Lessor and City desire to enter into this Lease that would allow CCO to construct an outdoor advertising structure, including, without limitation, two (2) 14' x 48' LED (i.e., Light Emitting Diode) displays (the "Digital Displays"), fixture connections, electrical supply, and connections, copy and any other equipment and accessories as CCO may place thereon (collectively, the "Sign") on a portion of the Property subject to the Sublease, as shown generally on Exhibit B attached hereto (the "Premises"), to the extent necessary for placement and operation of the Sign; and

WHEREAS, the Lessor and City have agreed that development of the Premises for the Sign's use is in furtherance of the City's desire to promote civic purposes and commerce, make community announcements and develop the City as an attractive location for customers and business owners; and

WHEREAS, the Lessor will receive Lease payments from the City for the Premises.

NOW, THEREFORE, for and in consideration of the faithful performance of the Lessor and City of the terms, covenants and conditions hereof and of the payments herein provided to be made by City, the Lessor and City hereby agree as follows:

AGREEMENTS:

1. Use. The Lessor hereby leases the Premises exclusively to City for the purpose of entering into the Sublease with CCO that would allow conducting outdoor advertising, erecting, maintaining, operating, improving, supplementing, posting, painting, illuminating, repairing, repositioning and/or removing the Sign, or any portion thereof. This Lease includes all rights of ingress and egress over the Property necessary to legally access the Sign from a public roadway. The Lessor hereby agrees to, and City will include, the following provision in the Sublease, that CCO may license the use of the Sign, or any portion thereof, for any lawful purpose, subject only to the provisions of this Lease. The Lessor makes no representations or warranties of any kind,

express or implied, written or oral, about any of the following: the physical condition of the Premises; the suitability of the Premises for City's or CCO's anticipated use; any limitations on City or CCO's use of the Premises, including limitations arising from zoning laws, environmental laws, or other laws, regulations, or governmental requirements; the costs of conducting CCO's business on the Premises; or the condition of the soils or ground waters of the Premises. By taking possession of the Premises, City accepts the Premises "as is" and acknowledges that the Premises is satisfactory for its purposes. City has ascertained the condition of the Premises through its own independent investigation and has relied solely on that independent investigation when entering into this Lease.

2. Term.

2.1 The term of this Lease shall commence on the Effective Date and continue to a date which is twenty (20) years following the Commencement Date (the "Term"), with one (1) ten (10) year option to extend (the "Option Period"). Upon the expiration of the Option Term, this Lease will continue on a month to month basis on the same terms and conditions that applied at such expiration unless either party provides written notice of non-renewal at least 30 days prior to the expiration of the Option Term or any subsequent 30-day period. Each 12-month period beginning on any January 1 during the Term may be referred to herein as a "Lease Year." Unless City gives the Lessor at least three months' notice prior to the end of the Term that it will not exercise its option to extend, this Lease will automatically renew for the 10 year option period.

2.2 The "Commencement Date" means the first day of the month following the date when all of the following are first true: (a) CCO has obtained of all private, local, municipal and state governmental permits and approvals necessary or required for the erection, maintenance, and operation of the Sign, including but not limited to a Relocation Agreement having been fully executed by City and CCO and approved by the City of San Carlos City Council, and CCO has received confirmation of its compliance with the California Environmental Quality Act and Caltrans requirements with respect to the Sign (collectively, the "Governmental Approvals"); (b) the construction of the Sign is complete; and (c) the Sign is fully operational.

2.3 If the Commencement Date has not occurred within two (2) years following the Effective Date, City or the Lessor may terminate this Lease by providing thirty (30) days' written notice to the other Party, provided that such termination right shall automatically expire upon the satisfaction of the conditions set forth in Section 2.2 and any previously-delivered termination notice shall be ineffective if the conditions set forth in Section 2.2 are satisfied prior to the effective date of the termination provided for therein. If this Lease is terminated prior to the Commencement Date, City will ensure that all materials put on the Property by City or CCO are removed within the time set forth for Sign removal in Section 10, and the Premises are returned to the condition that they were in prior to the Effective Date.

3. Permits. City will include a provision in the Sublease requiring CCO to use commercially reasonable efforts to obtain the Governmental Approvals necessary to construct the

Sign, and the Lessor shall reasonably cooperate with CCO to obtain the Governmental Approvals from other agencies having jurisdiction to approve such a Sign, all at no cost to the Lessor. City shall use reasonable efforts to review and issue all required Governmental Approvals as are necessary to allow CCO to construct, operate, and maintain the Sign within the City's authority to issue ("City Permits"), pursuant to the City's established processes and procedures. All Governmental Approvals shall remain the property of CCO. The City shall diligently process CCO's applications for all City Permits. This Lease does not commit the City in advance to approve the City Permits; and this Lease does not constrain the City's discretion to act in its governmental capacity.

4. **Sign.** City will include provisions in the Sublease requiring: (i) CCO to commence construction of the Sign within one hundred twenty (120) days after receipt of all necessary Governmental Approvals; (ii) the final design and height, final plans and specifications, and location on the Premises for the Sign shall be in substantial compliance with the Sign Conceptual Drawing in Exhibit C attached hereto and incorporated herein; (iii) CCO to limit operation of the Sign from approximately 6 A.M. to 11:59 P.M. local time daily except as may be authorized by the City in writing; and (iv) CCO to operate the Sign in a manner which is sufficient to render it visible at night to passing vehicles.

5. **Compliance with Laws.** City warrants that the Sublease will contain a provision requiring CCO's advertising content placed on the Sign to conform to all applicable laws and regulations in connection with CCO's operation of the Sign.

6. **Prohibited Uses.**

6.1 **Hazardous Substances.** City shall not use, handle, store, transport, generate, release or dispose of any hazardous substances, as that term is defined in the Code of Federal Regulations at 40 CFR 302.3 ("Hazardous Substances") on, under, or about the Property, except as follows: City may authorize CCO to use Hazardous Substances in *de minimis* amounts as may be necessary to install, operate, maintain, repair, improve, reposition, or remove the Sign in accordance with this Lease. The Sublease will include a provision that requires CCO to comply with all applicable environmental laws. Within ten (10) days of receiving the Lessor's written request, City shall request CCO disclose in writing all Hazardous Substances then being used on the Property, the purpose and duration of the use, and the manner of storage and disposal. "Hazardous Substances" means those elements or compounds which are contained in the list of Hazardous Substances adopted by the United States Environmental Protection Agency or in any list of toxic pollutants designated by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree.

6.2 **Unlawful Activities.** City shall not use, and will have a provision in the Sublease that CCO may not use or permit CCO's employees, contractors, or agents to use, the Premises in any way that violates any valid and applicable statute, ordinance, regulation, rule, or order of any federal, state, or local governmental entity (including City) in effect as of the Effective Date, and nothing shall be done on said Premises which will suspend or terminate insurance that CCO is required by the Sublease to obtain.

6.3 Encumbrances. City shall not encumber the Premises or any part of the Premises, for any purpose, without the Lessor's prior written consent, which consent shall not be unreasonably withheld. City shall keep the Premises free of all liens and other encumbrances other than those, if any, to which the Lessor consents.

7. City Sign and Logo. The Lessor agrees that on each side of the Sign structure a City sign containing the City logo that faces the same direction as a display area on the Sign can be installed by CCO under the Sublease. The size and design of the City sign and logo shall substantially comply with the criteria set forth in Exhibit D.

8. CCO Displays.

8.1 The Lessor acknowledges and agrees that City can enter into the Sublease with CCO who shall be entitled to sell advertising space on the remaining rotating messages displayed on the Sign. The Lessor shall have no right to display any message on the Sign except pursuant to a separate agreement with CCO.

8.2 The Lessor hereby agrees, and the Sublease will contain provisions that say, if, at any time during the Term or the option period, if any, CCO is unable to obtain or maintain any necessary permit for the operation of the Sign as a digital advertising structure ("Digital Operation"), or the Digital Operation of the Sign is otherwise prohibited by law, CCO shall have the right at any time thereafter to convert one or both Digital Faces to traditional, non-digital displays and to modify the Sign in any way deemed necessary by CCO in connection therewith, by providing to City and the Lessor prior notice thereof. In that event, the minimum annual guarantee amount to the City will be reduced to 50% of the then current minimum annual guarantee for the remaining term of the Lease.

9. Rent.

9.1 Provided the City receives the Rent to be paid under the Sublease, City shall pay the Lessor rent each Lease Year: (i) one hundred thousand dollars (\$100,000) ("Base Rent") as a minimum annual guarantee; and (ii) an amount equal to one-seventh (1/7) of any percentage rent paid to City under the Sublease (the "Lessor Share").

9.2 Base Rent for each Lease Year shall be paid in monthly increments, with each payment (1/12 of the Base Rent) made in advance of the month for which it is incurred. The first Base Rent payment shall be paid on the Commencement Date and will be prorated based on the number of days from the Commencement Date to the end of that first month. The Lessor Share will be paid annually in arrears, on or before March 31 of each Lease Year. The Sublease will have a provision under which CCO must provide an annual accounting of annual revenues to Lessor by March 31 of each Lease Year.

9.3 Base Rent will be increased by 12.5% at the end of every five (5) year period that starts with the Commencement Date.

9.3 If the property taxes on the Property increase due to the addition of the Sign, after notification from the Lessor, City will pay the amount so increased. If property taxes increase and it is due to the Sign as well as other factors, City will only pay a pro rata share of the taxes that are due to the Sign.

9.4 If the events described in Section 8.2 occur and the minimum annual guarantee that CCO pays to the City changes, the Lessor agrees that its Base Rent may be lowered proportionately.

10. Maintenance. Master Lessor acknowledges and agrees that CCO is the owner of the Sign and City shall ensure that CCO will remove the entirety of the Sign that is above grade within one hundred twenty (120) days following the expiration or termination of this Lease, provided that CCO shall not be required to remove the below-grade portions of the Sign. If for any reason, the Sign is removed, materially damaged or destroyed, all prospective Base Rent payments shall cease until the Sign is rebuilt. If CCO is prevented from illuminating the Sign by law, or other cause beyond CCO's control, provided that CCO makes commercially reasonable efforts to re-illuminate and repair the Sign, the payment of Base Rent and Percentage Rent may be suspended for such period of non-illumination. Notwithstanding the above, there will be no suspension of Base Rent if the non-illumination period is forty-eight (48) hours or less. Lessor shall not be required to repair or maintain any portion of the Sign.

11. Insurance. City is at present and will be during the Term and any option extension self-insured with minimum limits in excess of the following:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence
Automobile Liability	\$2,000,000 aggregate for bodily injury, personal injury and property damage
	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to CCO's vehicle usage in performing services hereunder) and
Advertising Risk	\$1,000,000 per occurrence

Such amounts may be reasonably adjusted every five years.

12. Obstruction and Off Premise Signs. The Lessor shall not, and shall not permit its agents, employees or other persons acting on the Lessor's behalf, to place or maintain any object on the Property, or any adjacent property owned or controlled by the Lessor, which, in City or CCO's opinion, would obstruct the view to the face of either advertising display on the Sign (an "Obstruction"). If the Lessor fails to remove any Obstruction within five (5) days after notice from City or CCO, either: (i) City or CCO may remove the obstruction at Lessor's expense; or (ii) City may reduce Base Rent to One Hundred Dollars (\$100.00) per Lease Year while the Obstruction remains. If the Lessor fails to remove the Obstruction and CCO terminates the Sublease due to that Obstruction, the Lessor shall pay to CCO the actual costs incurred by CCO for the purchase and installation of the Digital Displays, less depreciation based on a twenty year useful life. The Lessor agrees, and the Sublease will include a provision that, CCO, at CCO's sole cost, may trim any trees and vegetation currently on the Property and on any neighboring property owned or controlled by the Lessor as often as City or CCO in its sole discretion deems appropriate to prevent obstructions, provided, however, that CCO or City uses a licensed Tree Service Contractor (License classification D-49). The Lessor shall not permit the Property or any immediately adjacent parcel owned or controlled by Lessor to be used for off-premise advertising.

13. Termination of Sublease. If, for any reason, the Sublease is terminated, City may terminate this Lease immediately by written notice to the Lessor.

14. Utilities. The Lessor agrees, and the Sublease will contain a provision, that CCO shall be authorized to install utilities to the Sign and shall be responsible for providing and paying for all utilities to the Sign, and that CCO shall obtain a separate meter for such electrical service. In the event that CCO doesn't make timely payments for its utility services on the Premises, City will indemnify the Lessor and will make those payments on behalf of CCO, so that at no time will any utilities have any claim against the Property.

15. Notices. All notices required or permitted to be given under this Lease shall be sufficiently given if personally delivered, or mailed by registered or certified United States mail, postage prepaid, addressed to the party as specified below:

LESSOR:
K & E Investments
P.O. Box 280A
San Carlos, CA 94070

CITY :

City of San Carlos
Attention: City Manager,
600 Elm Street
San Carlos, CA 94070

If mailed, the written notice shall be deemed received and shall be effective on the earlier of the date of actual receipt by the addressee or three (3) business days after deposit in the United States mail in the State of California. If either party gives notice in writing to the other party of any change in said address, then and in that event such notice shall be given at the changed address specified in such notice.

16. Eminent Domain. If the Sign or the Premises, or any part thereof, is condemned by proper authorities; taken without the exercise of eminent domain, whether permanently or temporarily; or any right-of-way from which the Sign is visible is relocated, City shall have the option to relocate the Sign on the Premises or to terminate this Lease upon not less than thirty (30) days' notice. City and CCO shall be entitled to all compensation and other remedies provided by law, including, without limitation, just compensation for the taking of the Sign and City's leasehold interest in this Lease, and/or relocation assistance. The Lessor shall assert no rights in such interests held by City or CCO, but the Lessor shall not be prevented from asserting its rights against the condemning authority, including any rights to payment as allowed by law for the value of the Base Rent and Percentage Rent and other payments it was to receive during the unexpired term of the Lease. If condemnation proceedings are initiated, the Lessor shall use its reasonable best efforts to include City and CCO as parties thereto. No right of termination set forth anywhere in this Lease may be exercised prior to the sale to any entity with the power of eminent domain or by or for the benefit of any entity with the power of eminent domain.

17. Authority. The Lessor represents that it is the owner of the Property, and both City and the Lessor have the right to enter into this Lease to bind the Lessor or City, as the case may be. The Lessor and City each represent and warrant that it is duly authorized under all applicable laws and regulations currently in full force and effect to perform or cause to be performed all of the obligations of the Lessor or City, as the case may be under and in accordance with the terms and conditions of this Lease. City and the Lessor each warrant that they have the specific authority from their respective principals to execute this Lease on their behalf and agree to provide such resolutions or other documents reasonably necessary to satisfy the other party of such authority. This Lease is binding upon the heirs, assigns and successors of both the Lessor and City. Neither the Lessor nor City shall be bound by any terms, conditions or oral representations that are not set forth in this Lease and the respective exhibits. This Lease (including the attached Exhibits) represents the entire agreement of City and Lessor with respect to the terms stated herein. The Lessor and the Lessor's officers, employees, and agents may enter upon and inspect the Premises at any time to determine City's compliance with this Lease.

18. Indemnification. City agrees to indemnify, defend (with attorneys reasonably acceptable to the Lessor) and hold harmless the Lessor and the Lessor's officers, employees and agents from any penalties, damages and charges imposed or sought to be imposed on or involving the Sign for (1) any alleged violation of any laws, ordinances and regulations applicable to CCO's or City's use of the Premises, including any environmental laws, (2) allegedly caused by the wrongful acts or omissions by City or by City's licensees or invitees in relation to City's use of the Premises or (3) any action taken by any third party against the Lessor that involves the Sign. City's obligations under this Section 18 will survive this Lease. City's obligation to indemnify the Lessor will not be limited by the maximum limitations of any insurance policy of the City.

19. Assignment. City shall have the absolute right to sublease the Premises, but only under the terms of this Lease and only under the Sublease. This Lease shall not be assigned or encumbered by City without the prior written consent of the Lessor, which shall not be unreasonably withheld. The Lessor may freely assign this Lease. An assignment or transfer by City made contrary to this Section 19 is void. This Lease binds and inures to the benefit of the successors and assigns of the parties. Prior to transferring ownership of the Property, Lessor shall furnish the new owner with a true and correct copy of this Lease.

20. Default and Remedies.

- a. In the event of a default by City with respect to any of the provisions of this Lease or its obligations under it, including the payment of the Base Rent or Percentage Rent or any amounts due and payable to the Lessor under the terms and conditions of this Lease, City shall have 15 business days from its receipt of written notice of default from the Lessor in which to cure any monetary default and thirty (30) days from such notice to cure any non-monetary default, unless curative action cannot reasonably be accomplished within such 30-day period, in which event said period to cure such default shall be automatically extended as long as City promptly commences such cure and diligently pursues and completes such curative action within ninety (90) days. The failure of City to cure a default after written notice from the City and the applicable cure period shall be a breach of this Lease. In the event of City's breach of this Lease, and without waiving any other rights granted to it in law or equity the Lessor may, but is not obligated to, either: (a) perform such duty or obligation necessary to cure a non-monetary default on City's behalf, to be reimbursed by City for the reasonable costs and expenses of such curative action to be upon City's receipt of an invoice and supporting documentation of such costs and expenses; or (b) terminate this Lease.
- b. In the event of a default by the Lessor with respect to any of the provisions of this Lease or its obligations under it, the Lessor shall have thirty (30) days from its receipt of written notice of default from City to cure any default, unless curative action cannot be reasonably accomplished within such 30-day period, in which event said period to cure such default shall be automatically extended so long as the Lessor commences such cure and diligently pursues and completes such curative action within ninety (90) days. The failure of the Lessor to cure a default after written notice from City and the applicable cure period shall be a breach of this Lease. The failure of the Lessor to cure a default after written notice from the City and the applicable cure period shall be a breach of this Lease. In the event of Lessor's breach of this Lease, and without waiving any other rights granted to it in law or equity, City shall have the right, but not the obligation, to terminate this Lease.

21. Waiver of Breach. A party's failure to insist on strict performance of this Lease or to exercise any right or remedy upon the other party's breach of this Lease will not constitute a

waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any provision in this Lease will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving party.

22. Relationship of the Parties. This Lease does not create any relationship or association between the Lessor and City other than that of landlord and tenant. For example, and without limiting the previous sentence, This Lease does not create between the Lessor and City the relationship of principal and agent, nor does it create a partnership or joint venture.

23. Attorney's Fees. The party prevailing in any litigation concerning this Lease, the Premises, or any improvements to the Premises (including the Sign) will be entitled to an award by the court of reasonable attorneys' fees and litigation costs in addition to any other relief that may be granted in the litigation. If the City is the prevailing party, then this Section 23 will apply whether the City is represented in the litigation by the Office of the City Attorney or by outside counsel.

24. Severability. If a court with jurisdiction holds any nonmaterial provision of this Lease to be invalid, void, or unenforceable, then the remaining provisions will remain in full force.

25. Counterparts. The parties may execute this Lease in counterparts.

26. Memorandum of Lease. Either the Lessor or City may record with the San Mateo County Clerk/Recorder, using the form set forth as Exhibit E, a memorandum summarizing this Lease. The Lessor agrees that the Sublease will contain a provision that CCO may record with the San Mateo County Clerk/Recorder a memorandum of the Sublease in a reasonable form.

27. Further Assurances. Each party shall execute all additional documents or instruments and take all necessary action that either party reasonably considers necessary to carry out the proper purposes of this Lease.

28. Time of Essence. Time is of the essence of this Lease.

29. Interpretation. This Lease is to be interpreted and applied in accordance with California law, without regard to conflict-of-laws principles, except that the rule of interpretation in California Civil Code section 1654 will not apply.

30. Integration, and Modification. This Lease and its exhibits set forth the parties' entire understanding regarding the matters addressed. Together these documents supersede all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and each may be modified only by another written agreement signed by both parties.

31. Lessor's Warranty. The Lessor hereby warrants and represents to City as of the Effective Date that the Lessor holds fee simple title to the Property free and clear of any deed of

trust, mortgage, ground lease or other similar encumbrance, or any other liens or encumbrances that would in any way affect the right to install the proposed Sign.

32. Non-Disturbance. In the event Lessor exercises any right it may have to terminate this Lease or City's rights hereunder, subject to the observance and performance by CCO of all of the terms, covenants and conditions of the Sublease on the part of CCO to be observed and performed, and to the extent permitted by law, Lessor hereby covenants and warrants: (i) the quiet and peaceful possession of the Property by CCO under the Sublease; and (ii) that the Sublease shall continue in full force and effect in accordance with its terms and Lessor shall recognize the Sublease and CCO's rights thereunder and will thereby establish direct privity of estate and contract between Lessor and CCO with the same force and effect, and with the same relative privity in time and right, as though the Sublease were originally made directly from Lessor in favor of CCO.

33. CCO's Right to Rely. The parties acknowledge and agree that CCO may rely on the warranties and covenants made by Lessor hereunder concerning the Property and CCO's use thereof, and CCO is hereby made an express, third-party beneficiary of this Lease for the purpose of enforcing such warranties and covenants.

[Remainder of Page Intentionally Blank – Signature Pages and Exhibits Follow]

IN WITNESS WHEREOF, the parties, duly authorized, have executed this Lease the day and year first above written.

“CITY ”

City of San Carlos , a
California Municipal Corporation

Dated: _____, 2018

By _____

“ _____ ”

Dated: _____, 2018

"LESSOR"

K & E Investments, LLC
a California limited liability company

By _____
Robert Williamson, Managing Member

Attachment: Lease Agreement_KEIInvestments_815 American (Billboard Lease)

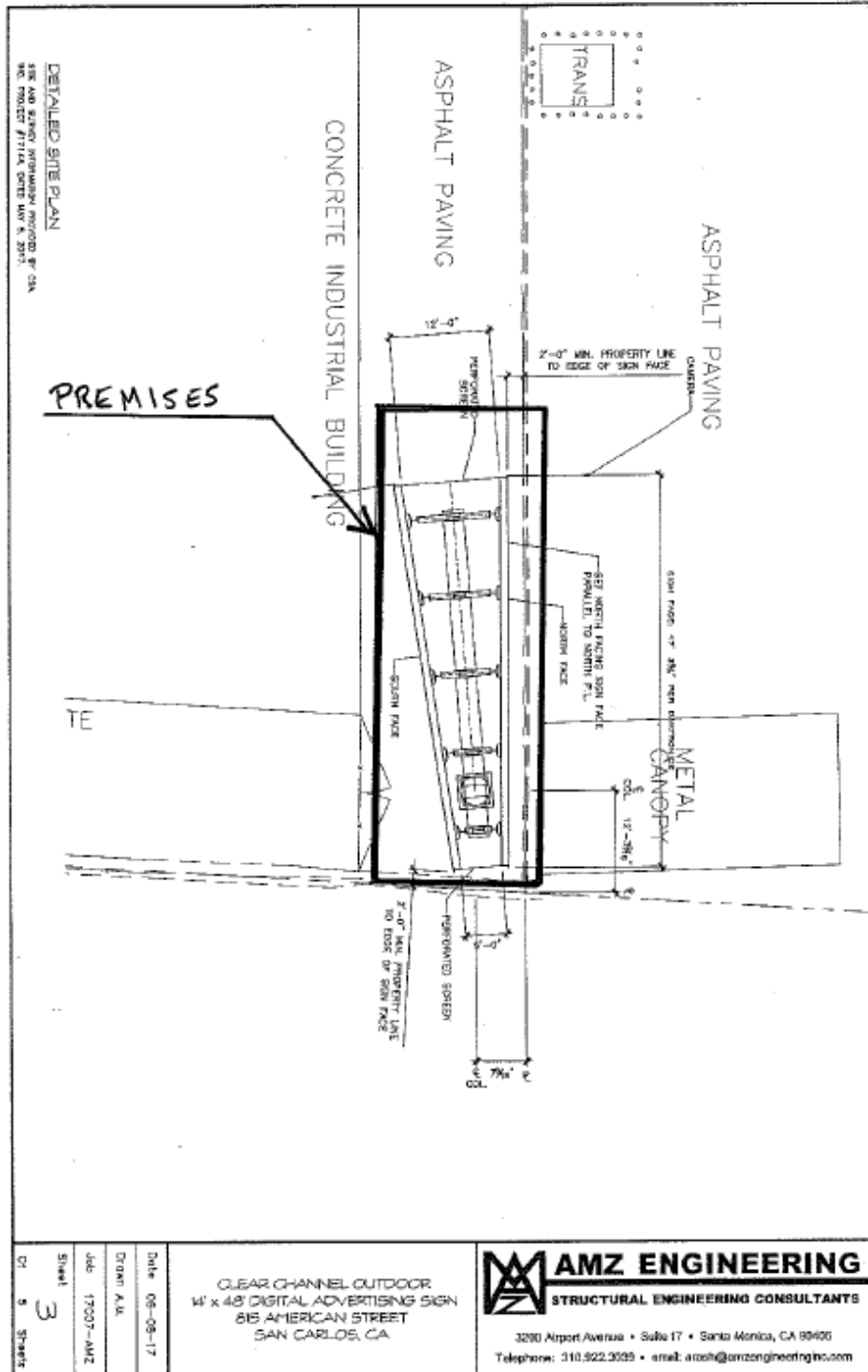
**EXHIBIT A
THE PROPERTY**

ADDRESS: 815 American Street
San Carlos, CA 94070

APN: 046-211-160

Attachment: Lease Agreement_KElInvestments_815 American (Billboard Lease)

EXHIBIT B THE PREMISES



Attachment: Lease Agreement_KElInvestments_815 American (Billboard Lease)

**EXHIBIT C
SIGN CONCEPTUAL DRAWING**



CLEARCHANNEL OUTDOOR

815 AMERICAN ST. SAN CARLOS, CA

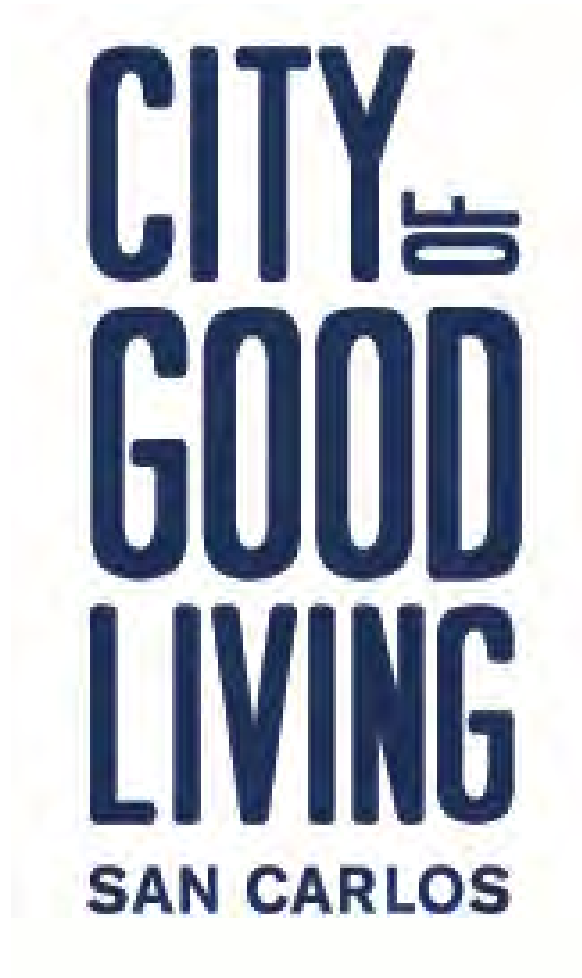
Encore
I M A G E

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Attachment: Lease Agreement_KElInvestments_815 American (Billboard Lease)

**EXHIBIT D
CITY SIGN LOGO**



Attachment: Lease Agreement_KElInvestments_815 American (Billboard Lease)

EXHIBIT E
MEMORANDUM OF LEASE

Attachment: Lease Agreement_KElInvestments_815 American (Billboard Lease)

Recording requested by:

K & E Investments
P.O. Box 280A
San Carlos, CA 94070

When recorded, mail to:

K & E Investments, LLC
P.O. Box 280A
San Carlos, CA 94070

Parcel Number: 046-211-160

MEMORANDUM OF LEASE

The City of San Carlos ("City"), a California municipal corporation, and K & E Investments, LLC, a California limited liability company (the "Lessor"), declare:

1. The Lessor is the owner of the property located at 815 American Street, San Carlos, California, APN No. 046-211-160 (the "Property").
2. City and the Lessor signed a Lease Agreement dated _____ ("Lease") under which the City was granted certain exclusive rights to use a portion of the Property (the "Premises") for digital signage.
3. City will sublease the Premises to Clear Channel Outdoor, a Delaware corporation.
4. The Lease remains in full force and effect as of the date of execution of this Memorandum of Lease.
5. The Lease is for a maximum of 30 years.
6. The purpose of this Memorandum of Lease is to give notice of the Lease and of the rights created thereby, and it is not intended to alter the terms of the Lease.
7. This Memorandum of Lease may be signed in counterparts.

City of San Carlos , a
California Municipal Corporation

K & E Investments, LLC
a California limited liability company

By: _____

Robert Williamson, Managing Member

Attachment: Lease Agreement_K&EInvestments_815 American (Billboard Lease)

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

State of California

County of _____

On _____, before me, _____, personally appeared Robert Williamson, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California

County of _____

On _____, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Attachment: Lease Agreement_KElInvestments_815 American (Billboard Lease)

SUBLEASE AGREEMENT

Lease No. _____

THIS SUBLEASE AGREEMENT (this “Sublease”) is dated _____, 2018 (the “Effective Date”), and made and entered into by and between the CITY OF SAN CARLOS, a California municipal corporation (“City”), and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation (“CCO”). City and CCO may be referred to herein, collectively, as the “Parties” and, each individually, as a “Party.”

RECITALS

WHEREAS, the City, as lessee, and K & E Investments, LLC, a California limited liability company (“Master Lessor”), as lessor, have entered into that certain Lease Agreement (the “Master Lease”) dated _____, 2018, pursuant to which the City is leasing from Master Lessor a portion of the real property and airspace along US Highway 101, located on 815 American Street, San Carlos, California (APN 046-211-160), described in Exhibit A attached hereto and incorporated herein (the “Property”); and

WHEREAS, CCO is in the business of outdoor advertising; and

WHEREAS, the City and CCO desire to enter into this Sublease to allow CCO to construct an outdoor advertising structure, including, without limitation, two (2) 14’ x 48’ LED (i.e., Light Emitting Diode) displays (the “Digital Displays”), fixture connections, electrical supply, and connections, copy and any other equipment and accessories as CCO may place thereon (collectively, the “Sign”) on a portion of the Property as shown generally on Exhibit B attached hereto and incorporated herein (the “Premises”), to the extent necessary for placement and operation of the Sign; and

WHEREAS, the City and CCO have agreed that development of the Premises for the Sign’s use is in furtherance of the City’s desire to promote civic purposes and commerce, make community announcements and develop the City as an attractive location for customers and business owners; and

WHEREAS, the City and CCO have entered into a separate Relocation Agreement (herein so-called) that provides for the conditional removal by CCO of a CCO-owned billboard within the city limits of the City of San Carlos along the US Highway 101 corridor.

NOW, THEREFORE, for and in consideration of the faithful performance of the City and CCO of the terms, covenants and conditions hereof and of the payments herein provided to be made by CCO, the City and CCO hereby agree as follows:

AGREEMENTS:

1. Use. The City hereby subleases the Premises exclusively to CCO for the purpose of conducting outdoor advertising, erecting, maintaining, operating, improving, supplementing,

posting, painting, illuminating, repairing, repositioning and/or removing the Sign, or any portion thereof. This Sublease includes all rights of ingress and egress over the Property contained in the Master Lease necessary to legally access the Sign from a public roadway. CCO may license the use of the Sign, or any portion thereof, for any lawful purpose. The City makes no representations or warranties of any kind; express or implied, written or oral, about any of the following: the physical condition of the Premises; the suitability of the Premises for CCO's anticipated use; any limitations on CCO's use of the Premises, including limitations arising from zoning laws, environmental laws, or other laws, regulations, or governmental requirements; the costs of conducting CCO's business on the Premises; or the condition of the soils or ground waters of the Premises. By taking possession of the Premises, CCO accepts the Premises "as is" and acknowledges that the Premises is satisfactory for CCO's purposes. CCO has ascertained the condition of the Premises through its own independent investigation and has relied solely on that independent investigation when entering into this Sublease.

2. Term.

2.1 The term of this Sublease shall commence on the Effective Date and continue to a date which is twenty (20) years following the Commencement Date (the "Term"), and CCO is hereby granted the option to extend the Term for an additional ten (10) years by providing written notice thereof to City at any time. Upon the expiration of the Term, this Sublease will continue on a month to month basis on the same terms and conditions that applied at expiration unless either party provides written notice of non-renewal at least 30 days prior to such expiration. Except as provided herein, this Sublease may not be construed as creating an expectation of renewal or a right to hold over after the Term has expired. City shall cause the effective term of the Master Lease to be extended as necessary to allow for the full operation of the Term of this Sublease.

2.2 The "Commencement Date" means the first day of the month following the date when all of the following are first true: (a) CCO has obtained of all private, local, municipal and state governmental permits and approvals necessary or required for the erection, maintenance, and operation of the Sign, including but not limited to the Relocation Agreement having been fully executed by the Parties and approved by the City of San Carlos City Council, and CCO has received confirmation of its compliance with the California Environmental Quality Act and Caltrans requirements with respect to the Sign (collectively, the "Approvals"); (b) the construction of the Sign is complete; and (c) the Sign is fully operational. Each 12-month period beginning on any January 1 during the Term may be referred to herein as a "Sublease Year."

2.3 If the Commencement Date has not occurred within two (2) years following the Effective Date, CCO or City may terminate this Sublease by providing thirty (30) days' written notice to the other Party, provided that such termination right shall automatically expire upon the satisfaction of the conditions set forth in Section 2.2 and any previously-delivered termination notice shall be ineffective if the conditions set forth in Section 2.2 are satisfied prior to the effective date of the termination provided for therein.

3. Permits. CCO agrees to use commercially reasonable efforts to obtain the Approvals at its sole cost and expense, and the City shall reasonably cooperate with CCO to obtain the Approvals from other agencies having jurisdiction to approve the Sign. City shall use reasonable efforts to issue, and shall diligently process the applications for, all Approvals and other required permits related to the Sign, including, but not limited to, removal permits, within the City's authority to issue (the "City Permits"), pursuant to the City's established processes and procedures. This Sublease does not commit the City in advance to approve the City Permits and this Sublease shall not be deemed to constrain the City's discretion to act in its governmental capacity. All Approvals shall remain the property of CCO.

4. Sign. Within one hundred twenty (120) days after receipt of all necessary Approvals, CCO shall commence construction of the Sign. The final design and height, final plans and specifications, and location on the Premises for the Sign shall be in substantial compliance with the Sign Conceptual Drawing in Exhibit C attached hereto and incorporated herein. CCO may operate the Sign from approximately 6 A.M. to 11:59 P.M. local time daily, and in a manner which is sufficient to render it visible at night to passing vehicles. The Digital Displays on the sign may not be illuminated during the hours from midnight to 6 A.M. without specific authorization from the City.

5. Content.

5.1 Content posted by CCO shall conform to all applicable laws and regulations, including but not limited to laws and regulations pertaining to outdoor advertising.

5.2 CCO, within a reasonable time following written request therefor, shall remove from the Sign any advertising message that in the reasonable judgment of the City:

- (i) Is false, misleading, or deceptive;
- (ii) Directly promotes the sale or use of tobacco products, illegal drugs or products, or marijuana;
- (iii) Contains "obscene matter," as that term is defined in California Penal Code section 311 on the Effective Date;
- (iv) Advertises an adult entertainment establishment;
- (v) Promotes or opposes a candidate or individual for public office or who is running for office, or promotes or opposes a ballot measure; or
- (vi) Contains language that is obscene, vulgar, profane, or scatological, or that presents a clear-and-present danger of causing riot, disorder, or other imminent threat to public safety, peace, or order.

5.3 CCO, from time to time, may, but shall not be required to, provide an image or representation of any proposed advertising message in advance of placement on the

Sign (each a "Proposed Ad"). Within 3 business days following receipt by City of a Proposed Ad, City shall notify CCO whether, in the City's reasonable judgment, the advertisement violates the restrictions set forth in Section 5.2 (each, a "Content Notice") and, if the City deems the Proposed Ad to violate such restrictions, CCO shall not place the Proposed Ad on the Sign without first obtaining the City's express or deemed approval to the Proposed Ad as it may thereafter be revised. If the City fails timely to provide any Content Notice, the respective Proposed Ad shall be deemed approved.

6. Prohibited Uses.

6.1 Hazardous Substances. CCO shall not use, handle, store, transport, generate, release or dispose of any Hazardous Substances on, under, or about the Premises, except as follows: CCO may use Hazardous Substances that CCO needs to install, operate, maintain, repair, improve, reposition, or remove the Sign in accordance with this Sublease, if the City has consented in writing before the Hazardous Substances are brought on the Premises and CCO will comply with all applicable environmental laws. Within ten (10) days of receiving the City's written request, CCO shall disclose in writing all Hazardous Substances then being used on the Premises, the purpose and duration of the use, and the manner of storage and disposal. "Hazardous Substances" means those elements or compounds which are contained in the list of Hazardous Substances adopted by the United States Environmental Protection Agency or in any list of toxic pollutants designated by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree.

6.2 Unlawful Activities. CCO shall not use, or permit its employees, contractors or agents to use, the Premises in any way that violates this Sublease or any valid and applicable statute, ordinance, regulation, rule, or order of any federal, state, or local governmental entity (including the City) in effect as of the Effective Date, and nothing shall be done on said Premises which will suspend the insurance CCO is required hereunder to obtain. CCO shall not maintain or commit, or permit the maintenance or commission of any public or private nuisance as defined by any law applicable to the Premises as of the Effective Date. CCO hereby waives any rights to compensation it may have against the City if a court finds that the Sign constitutes a public or private nuisance under any valid and applicable federal, state, or local law and for that reason orders CCO to remove or modify the Sign or to limit its operation, except that, in such event, all Rent (as defined below) amounts due hereunder shall be abated for the entirety of any period during which the Sign cannot be operated as a result of such court finding. This waiver will not apply if the court's finding of nuisance is in an action brought by the City or under a City ordinance enacted after the Effective Date.

6.3 Encumbrances. CCO shall not encumber the Premises or any part of the Premises, for any purpose, without the City's prior written consent, which the City may withhold for any reason. CCO shall keep the Premises free of all liens and other encumbrances other than those, if any, to which the City consents.

7. **Exclusivity.** CCO shall have the exclusive right to occupy, and to display outdoor advertising on, the Premises. Without limiting the foregoing, City shall not permit the Premises or any adjacent property owned or controlled by City to be used for off-premise advertising.

8. **City Messages.**

8.1 CCO, at no additional cost to the City, agrees to post messages (each, a “Guaranteed Ad”) on the Sign for the benefit of the City in accordance with the following:

(a) CCO shall provide (1) spot for each Guaranteed Ad four (4) times per calendar year during the Term, provided that only one (1) Guaranteed Ad may be used each calendar quarter;

(b) each Guaranteed Ad will run no less than eight (8) seconds in the standard rotation of eight (8) spots and continue for two (2) weeks in duration (or a minimum of 14,000 impressions during each two (2) week period);

(c) the City shall provide the requested Guaranteed Ad time periods for each year prior to November 1 of the year before the requested time periods occur. CCO shall use commercially reasonable efforts to accommodate such requested time periods.

8.2 In addition to the Guaranteed Ads, upon the written request of the City, CCO agrees to post messages (each, a “Space Available Ad”) on the Sign for the benefit of the City, on a space available basis, as reasonably determined by CCO. Display of any Space Available Ad may be terminated by CCO at any time in the event that the space is sold or will otherwise be used by CCO in the normal course of business.

8.3 Each of the Guaranteed Ads and Space Available Ads (each, a “City Message”) may be used by the City only for the purpose of displaying the City’s own non-commercial messages, which may include such matters as events sponsored by the City or located in the City and conducted by local non-profit organizations. Each City Message must meet CCO’s graphics-arts standards previously delivered to the City, and as may be updated by CCO, at no cost to CCO. CCO shall digitalize, install, and display each City Message at no additional cost to the City. The City shall supply proposed advertising copy five (5) days prior to the posting date. CCO, in its sole discretion, may approve, disapprove, or remove copy contained in any such City Message if such message does not comport with CCO’s standard advertising policies and CCO’s other reasonable standards. City Messages shall not be assignable to any third party.

8.4 To the extent permitted by law, the City shall and hereby does agree to indemnify, defend and hold harmless CCO for, from and against, any claims, costs (including, but not limited to, court costs and reasonable attorneys’ fees), losses, actions or liabilities arising from or in connection with any allegation that any portion of any City Message infringes or violates the rights, including, but not limited to, copyright, trademark, trade secret or any similar right, of any third party.

8.5 City hereby represents and warrants to CCO that no portion of any advertising copy provided to CCO by, or on behalf of, the City in connection with the City Messages does, or will, infringe or violate the rights, including, but not limited to, copyright, trademark, trade secret or any similar right, of any third party.

8.6 **Amber Alert Messages.** CCO shall make the Sign available at no cost to Caltrans for the purpose of displaying "Amber Alert" messages in accordance with the Amber Alert Guidelines set forth in Exhibit D to this Sublease.

8.7 **City Sign and Logo.** On each side of the Sign Structure, CCO shall upon request install, operate, maintain, and repair a City sign that faces the same direction as a display area on the Sign. The size and design of the City sign and logo shall substantially comply with the criteria set forth in Exhibit C.

9. **CCO Displays**

9.1 Except as provided in Section 8, the City acknowledges and agrees that CCO shall be entitled to sell advertising space on the rotating messages displayed on the Sign. City agrees that CCO, in CCO's sole discretion, may preempt messaging at any time in order to display emergency messages from federal, state, or local authorities or agencies, including the City of San Carlos or agencies with which the City may have contracts to provide police, fire or other emergency services.

9.2 If, at any time during the Term, CCO is unable to obtain or maintain any necessary permit for the operation of the Sign as a digital advertising structure ("Digital Operation"), or the Digital Operation of the Sign is otherwise prohibited by law, CCO shall have the right at any time thereafter to convert one or both Digital Faces to traditional, non-digital displays and to modify the Sign in any way deemed necessary by CCO in connection therewith, by providing to the City and Master Lessor prior notice thereof. Upon the cessation of digital operation of the Sign in connection with such conversion, MAG (as defined below) due from CCO hereunder shall be reduced by one-half, provided that Revenue Share (as defined below) shall remain unchanged.

10. **Rent**

10.1 No later than the 15th day following the Commencement Date, if any, CCO shall pay the City: (a) a one (1) time non-refundable payment in the amount of one hundred thousand dollars (\$100,000); and (b) thirty thousand dollars (\$30,000) for the production and installation, by the City and otherwise at the City's sole cost, of a digital sign for exclusive City use at a location designated by the City.

10.2 Beginning on the Commencement Date, if any, CCO shall pay the City rent each Sublease Year equal to the greater of:

- (a) three hundred thousand dollars (\$300,000.00); or

(b) thirty five percent (35%) of the gross advertising revenue actually received in such Sublease Year by CCO for advertising placed on the Sign, less agency commissions, if any, paid to an entity not owned or controlled, directly or indirectly, by CCO or any of its corporate affiliates, such commissions not to exceed 16 2/3% ("Percentage Rent").

10.3 MAG shall be increased by 12.5% on the January 1st following the fifth (5th) anniversary of the Commencement Date and every five (5) years thereafter. MAG for each Sublease Year shall be paid in twelve (12) monthly installments in advance. The first MAG payment shall be paid on the first day of the first full month following the Commencement Date and shall include any prorated MAG due for the preceding month.

10.4 If the Percentage Rent in any Sublease Year exceeds the MAG paid by CCO to City for such Sublease Year, the difference shall be paid to City within forty-five (45) days following the end of the Sublease Year and such payment shall be accompanied by an accounting of annual revenues.

10.5 Upon no less than 15 days' prior written notice, City, at City's sole cost, may conduct an audit at CCO's Bay Area offices of such accounting no more than once per Sublease Year. If such audit discloses an underpayment greater than 3% of the underlying amount owed, CCO shall reimburse City for the reasonable costs of the audit. To the extent permitted by law, the accounting of annual revenues and any audit shall be kept strictly confidential by the City. City shall inform CCO of any California Public Records Act requests requesting any documents related to such accounting or such audit within a reasonable time after receipt and before providing documents responsive to such request.

10.6 MAG and Percentage Rent may be referred to herein, collectively, as "Rent."

11. Maintenance. CCO is the owner of the Sign and may remove the Sign at any time during the Term and shall remove the portion of the Sign that is above grade within one hundred twenty (120) days following the expiration or termination of this Sublease. If for any reason, the Sign is removed, materially damaged or destroyed, all Rent payments shall cease until the Sign is rebuilt. CCO shall use commercially reasonable efforts to repair and rebuild the Sign and shall comply with the City's then-current building and electrical code standards in connection therewith. In addition, if CCO is prevented from illuminating the Sign by law, or other cause beyond CCO's control, provided that CCO makes commercially reasonable efforts to re-illuminate and repair the Sign, the payment of Rent may be suspended for such period of non-illumination. CCO shall at its sole cost, keep and maintain the Sign, all advertising thereon and appurtenances and every part thereof in good order, condition and repair and in accordance with the industry standards for similar display structures in the San Francisco Bay Area.

12. Insurance. CCO shall provide comprehensive general liability, which shall be primary insurance covering any liability to the City, its officers, officials, employees, and volunteers with respect to the liabilities assumed by CCO under this Agreement, in the amounts set forth below:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence
Automobile Liability	\$2,000,000 aggregate for bodily injury, personal injury and property damage
Advertising Risk	\$1,000,000 per occurrence

Such amounts shall be reasonably adjusted to the City's standard coverage requirements every five years.

Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the CCO's insurance and shall not contribute with it with respect to the liabilities assumed by CCO under this agreement. An originally executed certificate or endorsement evidencing such insurance coverage shall be filed with City prior to the Commencement Date and said document shall provide that such insurance coverage will not be canceled or materially changed without at least thirty (30) days' prior written notice to the City. Prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with City. If such coverage is canceled or reduced, CCO shall, within fifteen (15) days after receipt of written notice from the City of such cancellation or reduction of coverage, but in no event later than the date of such cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the City may without further written notice and at its option procure such insurance coverage at CCO's expense and CCO shall promptly reimburse the City for such expense.

13. Obstruction and Off Premise Signs. The City shall not, and shall not permit its agents, employees or other persons acting on City's behalf, to place or maintain any object on the Premises, or any adjacent property owned or controlled by the City, which, in CCO's sole

opinion, would obstruct the view to the face of either advertising display on the Sign. If City fails to remove the obstruction within five (5) days after notice from CCO, CCO may in its sole discretion: (a) remove the obstruction at City's expense; (b) cancel this Sublease and receive all pre-paid Rent for any unexpired term of this Sublease and the actual costs incurred by CCO for the purchase and installation of the Digital Displays prorated over a seven (7) year period; or (c) reduce the Rent to One Hundred Dollars (\$100.00) per year while the obstruction continues. CCO may trim any trees and vegetation currently on the Premises and on any neighboring property owned or controlled by the City as often as CCO in its sole discretion deems appropriate to prevent obstructions. The City shall not permit the Premises or any immediately adjacent parcel owned or controlled by City to be used for off-premise advertising. City hereby authorizes CCO, at CCO's sole cost, to trim trees on the Property in accordance with Section 12 of the Master Lease, provided CCO uses a licensed Tree Service Contractor (License Classification D-49).

14. Interference. If, in CCO's sole opinion: (a) the view of the Sign's advertising messages becomes entirely or partially obstructed by an object or vegetation; (b) electrical service becomes unavailable to the Premises; (c) the Premises cannot safely be used for the erection or maintenance of the Sign for any reason; (d) the Premises becomes unsightly; (e) there is a diversion, reduction or change in directional flow of traffic from the street or streets currently adjacent to or leading to or past the Premises; (f) the Sign's value for advertising purposes is diminished such that no Revenue Share payment is due from CCO in two (2) consecutive Sublease Years; (g) CCO is unable to obtain or maintain any necessary permit for the erection, use and/or maintenance of the Sign; or (h) the Sign's use is prevented or restricted by law, or CCO is required by any governmental entity, regulation or ordinance to reduce the number of billboards operated by it in the city, county or state in which the Sign is located (whether or not CCO is specifically required to remove the Sign); then CCO may after thirty (30) days' prior written notice terminate this Sublease.

15. Utilities. CCO shall be responsible for providing and paying for all utilities to the Sign required for CCO's use. CCO shall obtain a separate meter for such electrical service.

16. Sublease for Cell Service. CCO shall not be entitled to sublease space on the Premises for cellular data, telephone or other similar use without the prior written consent of City, which consent shall not be unreasonably withheld if the respective, proposed sublease provides that 50% of the respective sublessee's base rent is to be paid to the City.

17. Notices. All notices required or permitted to be given under this Sublease shall be sufficiently given if personally delivered, or mailed by registered or certified United States mail, postage prepaid, addressed to the Party as specified on below:

CCO:

Clear Channel Outdoor, Inc.
 Attention: President and General Manager, Northern California Division
 555 City Center, 9th Floor
 Oakland, CA 94607

With a copy to:

Clear Channel Outdoor
 Attn: Legal Department
 2325 E. Camelback Rd., Ste. 400
 Phoenix, AZ 85016

CITY :

City of San Carlos
 Attention: City Manager,
 600 Elm Street
 San Carlos, CA 94070

If mailed, the written notice shall be deemed received and shall be effective on the earlier of the date of actual receipt by the addressee or three (3) business days after deposit in the United States mail in the State of California. If either Party gives notice in writing to the other Party of any change in said address, then and in that event such notice shall be given at the changed address specified in such notice.

18. Eminent Domain. If the Sign or the Premises, or any part thereof, is condemned by proper authorities; taken without the exercise of eminent domain, whether permanently or temporarily; or any right-of-way from which the Sign is visible is relocated, CCO shall have the option to relocate the Sign on the City's remaining portion of the Property or to terminate this Sublease upon not less than thirty (30) days' notice and to receive all prepaid Rent for any unexpired term of this Sublease. CCO shall be entitled to all compensation and other remedies provided by law, including, without limitation, just compensation for the taking of the Sign and CCO's leasehold interest in this Sublease, and/or relocation assistance. City shall assert no rights in such interests held by CCO, but City shall not be prevented from asserting its rights against the condemning authority, including any rights to payment as allowed by law for the value of the MAG and other payments it was to receive during the unexpired term of the Sublease. If condemnation proceedings are initiated, the City shall use its best efforts to include CCO as a party thereto. No right of termination set forth anywhere in this Sublease may be exercised prior to the sale to any entity with the power of eminent domain or by or for the benefit of any entity with the power of eminent domain.

19. Authority. The City represents that it holds a leasehold interest in the Premises pursuant to the Master Lease, and that City has the right to enter into this Sublease to bind the City hereby. The City represents and warrants that it is duly authorized under all applicable laws and regulations currently in full force and effect to perform or cause to be performed all of the obligations of the City under and in accordance with the terms and conditions of this Sublease. The Parties each warrant that they have the specific authority from their respective principals to execute this Sublease on their behalf and agree to provide such resolutions or other documents reasonably necessary to satisfy the other Party of such authority. Neither the City nor CCO shall be bound by any terms, conditions or oral representations that are not set forth in this Sublease, the Relocation Agreement of which it is a part, and the respective exhibits. This Sublease represents the entire agreement of CCO and City with respect to the terms stated herein. The City and the City's elected officials, officers, employees, and agents may enter upon and inspect the Premises at any time to determine CCO's compliance with this Sublease.

20. Indemnification. CCO agrees to indemnify, defend (with attorneys reasonably acceptable to the City) and hold harmless the City and City's officers, employees and agents from any penalties, damages and charges arising from any violation by CCO of the California Environmental Quality Act or any other laws, ordinances and regulations in connection with CCO's use of the Premises, or caused by the wrongful acts or omissions by CCO or by CCO's licensees or invitees in connection with CCO's use of the Premises. CCO's obligations under this Section 20 will survive termination or expiration of this Sublease.

21. Assignment. This Sublease shall not be assigned, subleased or encumbered by CCO without the prior written consent of the City, which shall not be unreasonably withheld. An assignment of this Sublease in connection with the sale by CCO of substantially all of its assets in the San Francisco Bay Area or as a result of any dissolution, merger, consolidation, or other reorganization of CCO, or its successors, or other transaction which results in a change of control of CCO, or its successors, shall not require the prior written consent of the City. An assignment, transfer, or sublease made contrary to this Section 21 is void. This Sublease binds and inures to the benefit of the, successors and assigns of the Parties. Except as provided herein, this Section 21 does not constitute the City's consent to any assignment of this Sublease or any interest in the Sublease, or to any sublease of the Premises or any part of the Premises, or to any sublease of the Sign or any part of the Sign.

22. Default and Remedies.

22.1 In the event of a default by CCO with respect to any of the provisions of this Sublease or its obligations under it, including the payment of the Rent or any amounts due and payable to the City under the terms and conditions of this Sublease, CCO shall have 15 business days from its receipt of written notice of default from the City in which to cure any monetary default and thirty (30) days from such notice to cure any non-monetary default, unless curative action cannot reasonably be accomplished within such 30-day period, in which event said period to cure such default shall be automatically extended as long as CCO promptly commences such cure and diligently pursues and completes such curative action within ninety (90) days. The failure of CCO to cure a default after written notice from the City and the

applicable cure period shall be a breach of this Sublease. In the event of CCO's breach of this Sublease, the City may, but is not obligated to, either: (a) perform such duty or obligation necessary to cure a non-monetary default on CCO's behalf, to be reimbursed by CCO for the reasonable costs and expenses of such curative action to be upon CCO's receipt of an invoice and supporting documentation of such costs and expenses; or (b) terminate this Sublease.

22.2 In the event of a default by the City with respect to any of the provisions of this Sublease or its obligations under it, the City shall have thirty (30) days from its receipt of written notice of default from CCO to cure any default, unless curative action cannot be reasonably accomplished within such 30-day period, in which event said period to cure such default shall be automatically extended so long as the City commences such cure and diligently pursues and completes such curative action within ninety (90) days. The failure of the City to cure a default after written notice from CCO and the applicable cure period shall be a breach of this Sublease. The failure of the City to cure a default after written notice from the CCO and the applicable cure period shall be a breach of this Sublease. In the event of City's breach of this Sublease, and without waiving any other rights granted to it in law or equity, CCO shall have the right, but not the obligation, to terminate this Sublease.

23. **Waiver of Breach.** A Party's failure to insist on strict performance of this Sublease or to exercise any right or remedy upon the other Party's breach of this Sublease will not constitute a waiver of the performance, right, or remedy. A Party's waiver of the other Party's breach of any provision in this Sublease will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving Party.

24. **Relationship of the Parties.** This Sublease does not create any relationship or association between the City and CCO other than that of sublessor and sublessee: For example, and without limiting the previous sentence, this Sublease does not create between the City and CCO the relationship of principal and agent, nor does it create a partnership or joint venture.

25. **Attorney's Fees.** The Party prevailing in any litigation concerning this Sublease, the Premises, or any improvements to the Premises (including the Sign) will be entitled to an award by the court of reasonable attorneys' fees and litigation costs through final resolution on appeal in addition to any other relief that may be granted in the litigation. If the City is the prevailing Party, then this Section 25 will apply whether the City is represented in the litigation by the Office of the City Attorney or by outside counsel.

26. **Severability.** If a court with jurisdiction holds any nonmaterial provision of this Sublease to be invalid, void, or unenforceable, then the remaining provisions will remain in full force.

27. **Counterparts.** The Parties may execute this Sublease in counterparts.

28. **Memorandum of Sublease.** Each of City and CCO agrees to execute, and to cooperate with the recording of, of a Memorandum of this Sublease using the form set forth as Exhibit E.

29. **Further Assurances.** Each Party shall execute all additional documents or instruments and take all necessary action that either Party reasonably considers necessary to carry out the proper purposes of this Sublease.

30. **Time of Essence.** Time is of the essence of this Sublease.

31. **Interpretation.** This Sublease is to be interpreted and applied in accordance with California law, without regard to conflict-of-laws principles, except that the rule of interpretation in California Civil Code section 1654 will not apply.

32. **Integration, and Modification.** This Sublease and the separately executed Relocation Agreement set forth the Parties' entire understanding regarding the matters addressed. Together these documents supersede all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and each may be modified only by another written agreement signed by both Parties.

33. **City Taxes.** If the City enacts, imposes or levies any tax or other imposition relating to CCO's use of the Premises or operation of the Sign (a "City Tax"), CCO shall be entitled to a credit against any amounts of Rent to be paid hereunder in the amount of such City Tax paid by CCO, except to the extent it is commercially reasonable for CCO to pass such City Tax on to its advertisers and CCO is reimbursed for such amounts by such advertisers.

34. **Master Lease.** City shall diligently enforce against Master Lessor the provisions of the Master Lease if Master Lessor's failure to comply therewith does, or threatens to, impair the operation of the Sign by CCO. City shall not agree to any amendment to the Master Lease if the effect thereof would be to impair the operation of the Sign by CCO during any portion of the Term, including as it may be extended.

[Remainder of Page Intentionally Blank – Signature Pages and Exhibits Follow]

IN WITNESS WHEREOF, the Parties, duly authorized, have executed this Sublease the day and year set forth below.

CITY

City of San Carlos , a
California municipal corporation

Dated: _____, 2018

By _____
Name:
Title:

CCO

Clear Channel Outdoor, Inc., a
Delaware corporation

Dated: _____, 2018

By _____
Name: Robert Schmitt
Title: President and General Manager, Northern
California Division

Attachment: Sublease_Clear Channel_815 American (Billboard Lease)

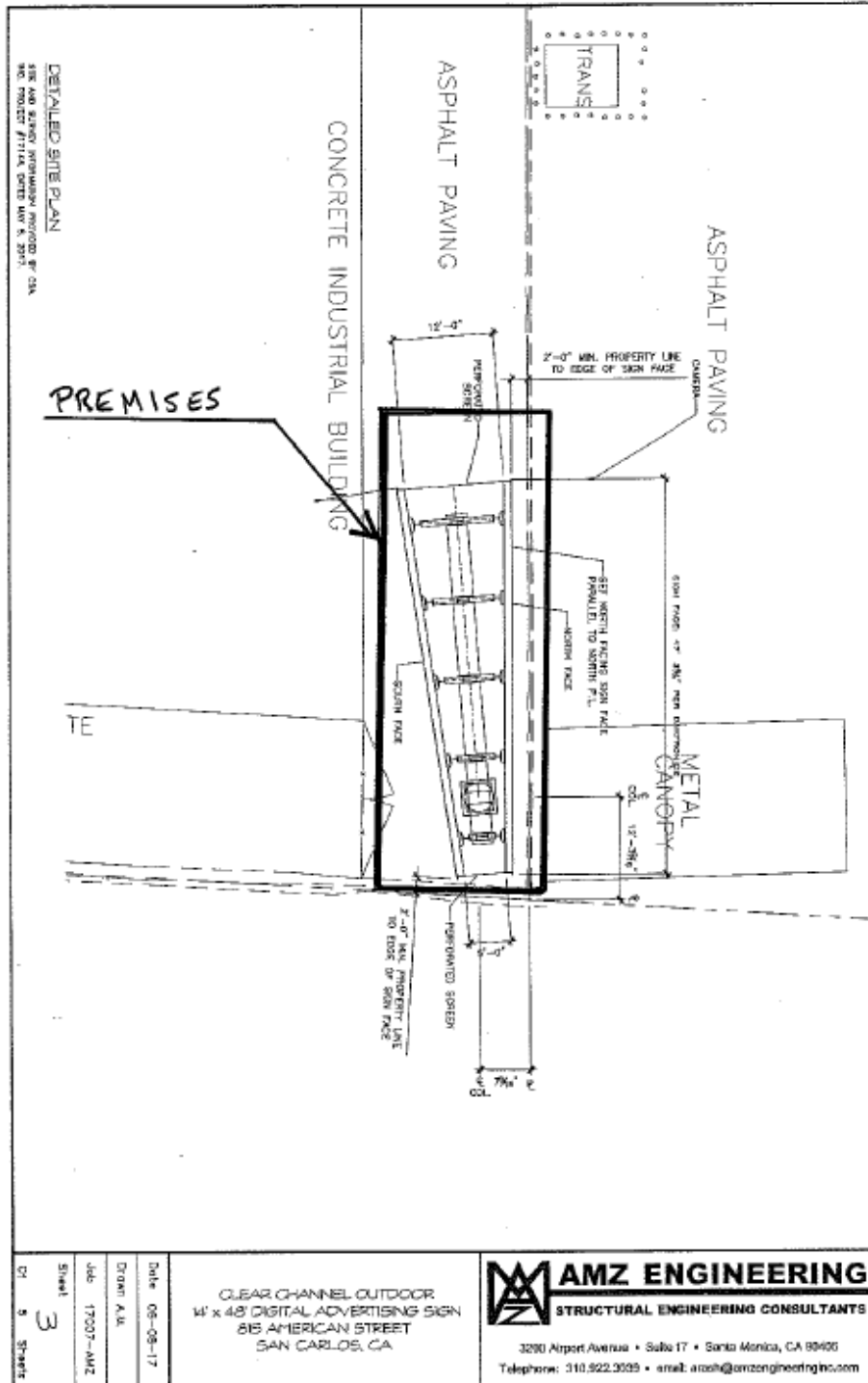
**EXHIBIT A
DESCRIPTION OF THE PROPERTY**

ADDRESS: 815 American Street
San Carlos, CA 94070

APN: 046-211-160

Attachment: Sublease_Clear Channel_815 American (Billboard Lease)

EXHIBIT B
DESCRIPTION OR DEPICTION OF THE PREMISES



Attachment: Sublease_Clear Channel_815 American (Billboard Lease)

EXHIBIT C SIGN CONCEPTUAL DRAWING



CLEARCHANNEL OUTDOOR

815 AMERICAN ST. SAN CARLOS, CA

Encore
I M A G E

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Attachment: Sublease_Clear Channel_ 815 American (Billboard Lease)

EXHIBIT D AMBER ALERT GUIDELINES

- In coordination with the Federal Bureau of Investigation, the National Center for Missing & Exploited Children and the OAAA, Clear Channel Outdoor utilizes its digital networks around the country to display real-time AMBER Alert information on missing children. The AMBER Alert system has been activated over 800 times since the beginning of the digital billboard program.
- This market is part of a nationwide effort to provide AMBER Alert information on digital billboards in the event of an alert.
- When an AMBER Alert occurs, the Alert will be displayed on the digital billboard for at least an hour exclusively, followed by the Alert going into regular rotation on the board for a period of 24-48 hours, or until the Alert is cancelled.
- This service is being provided at no charge.
- The system is automated. This market is receiving information from a central server operated by the Outdoor Advertising Association of America which receives its information from the National Center for Missing & Exploited Children.
- The system provides a standardized national template which bears the trademarked AMBER Alert logo. This way, drivers from Oregon to Florida and all points in between will see the same type of AMBER Alert, making it instantly recognizable.

Attachment: Sublease_Clear Channel_815 American (Billboard Lease)

EXHIBIT E
FORM OF MEMORANDUM OF SUBLEASE

WHEN RECORDED MAIL TO:

CLEAR CHANNEL OUTDOOR, INC.
Attn: Legal Department
2325 East Camelback Road, Suite 400
Phoenix, Arizona 85016

MEMORANDUM OF SUBLEASE

THIS MEMORANDUM OF SUBLEASE (this “Memorandum”) is made by CITY OF SAN CARLOS, a California municipal corporation (“Sublessor”), whose address is 600 Elm Street, San Carlos, CA 94070, and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation (“Sublessee”), whose address is 555 City Center, 9th Floor, Oakland, CA 94607, upon the following terms:

1. Sublessor holds a leasehold interest in a portion of the following described Property:

[INSERT LEGAL DESCRIPTION]

2. Sublessor and Sublessee have entered into that certain Sublease Agreement dated _____, 2018 (the “Sublease”), wherein Sublessee has leased portion(s) of the Property for the construction, maintenance and operation of one or more outdoor advertising structures owned by Sublessee for a term beginning _____, 20__, and continuing for a maximum period of _____, including extensions and renewals, if any.
3. The purpose of this Memorandum is to give record notice of the Sublease and of the rights created thereby, all of which are hereby confirmed.
4. This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

Attachment: Sublease_Clear Channel_815 American (Billboard Lease)

IN WITNESS WHEREOF, Sublessor and Sublessee have executed this Memorandum as of the ____ day of _____, 20____.

SUBLESSOR:

CITY OF SAN CARLOS, a California municipal corporation

By: _____

Name:

Title:

SUBLESSEE:

CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation

By: _____

Name:

Title:

Attachment: Sublease_Clear Channel_ 815 American (Billboard Lease)

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

STATE OF CALIFORNIA)

)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name:

Notary Public

Attachment: Sublease_Clear Channel_ 815 American (Billboard Lease)

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name:
Notary Public

Attachment: Sublease_Clear Channel_815 American (Billboard Lease)

Backup material for agenda item:

Adopt a Resolution to Support Regional Housing Needs Allocation (RHNA) Subregion (Staff Contact: Sharon Goei, 408-586-3260)

Recommendation: Adopt a Resolution of Intent to support formation of a Housing Subregion of Santa Clara County local and county governments to facilitate and implement Countywide housing production consistent with the Regional Housing Needs Allocation (RHNA) formula currently assigned by the Association of Bay Area Governments (ABAG).



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Resolution to Support Regional Housing Needs Allocation (RHNA) Subregion
Category:	Community Development
Meeting Date:	2/5/2019
Staff Contact:	Sharon Goei, 408-586-3260
Recommendation:	Adopt a Resolution of Intent to Support Formation of a Housing Subregion of Santa Clara County Local and County Governments to Facilitate and Implement Countywide Housing Production Consistent with the Regional Housing Needs Allocation (RHNA) Formula Currently Assigned by the Association of Bay Area Governments (ABAG)

Background:

The process of determining each jurisdiction's projected housing need is called the Regional Housing Needs Allocation (RHNA). The process begins with the State – the California Department of Housing and Community Development (HCD) – which estimates the existing housing need and determines the projected statewide growth in households. Through the RHNA process, HCD allocates the housing demand by region to regional council of governments (COG). In turn, each regional council of government allocates the projected regional growth to local jurisdictions within the region. Each jurisdiction produces a Housing Element that demonstrates the jurisdiction's ability to accommodate the housing need identified in its RHNA during each eight-year planning cycle. The nine-county Bay Area's COG is the Association of Bay Area Governments (ABAG), which works closely with the Metropolitan Transportation Commission (MTC) to assign housing allocations and distribute RHNA objectives to each local jurisdiction in the Bay Area. The MTC is the transportation planning, financing, and coordinating agency for the nine-county Bay Area, and has the goal to stimulate housing production in areas well-served by transportation, particularly public transit.

Most jurisdictions throughout the state have challenges meeting their RHNA objectives, including those in the Bay Area. As a result, agencies have sought better, more flexible methods to accomplish RHNA objectives. To improve the implementation of regional affordable housing production, the creation of a Subregion would provide the flexibility to trade allocations and allow redistribution within a Subregion. A Subregion would empower cities to have a role in regional planning, providing opportunities for cities to collaborate on better planned development to address regional issues such as transit. A Subregion would also create a forum to share resources and data development.

The Cities Association of Santa Clara County ("Cities Association") has initiated a process to explore the formation of a RHNA Subregion with Santa Clara County as the geographic area. The Cities Association, of which Milpitas is an active member, is an association of the 15 cities of Santa Clara County where city representatives gather to discuss and seek solutions to regional problems and advocate on issues of mutual interest. A RHNA Subregion allows the County and participating cities to work collectively to determine their RHNA allocation among jurisdictions. Under the California Government Code, formation of a RHNA Subregion is allowed for the purpose of determining a methodology for allocating housing needs per state law and allocating the RHNA distribution to participating jurisdictions. In other words, a RHNA Subregion would allow participating jurisdictions to conduct an allocation process that parallels, but is separate from, the process conducted by ABAG. Currently, there are three other RHNA Subregions in the Bay Area with the Counties of San Mateo, Napa, and Solano.

In March 2016, the Cities Association formed a Subcommittee to develop a framework and processes needed to form and implement a Subregion in Santa Clara County for the next RHNA cycle (2023-2031), and review potential options for further regional solutions. Through the work of the Subcommittee, the Cities Association has formulated a proposal

RHNA Subregion. These documents are in Attachment (b) and include RHNA Subregion Overview; Pros and Cons of RHNA Subregion Formation; Guiding Principles for RHNA Subregion; Draft Resolution of Intent to Support Formation of a Housing Subregion; and Bylaws of the Santa Clara County Subregional RHNA Process.

In October 2018, the Cities Association voted affirmatively to pursue creation of a RHNA Subregion. In order for local jurisdictions to participate, a city must adopt a resolution indicating interest and commitment to the RHNA Subregion.

Analysis:

Most jurisdictions in the Bay Area are not meeting their RHNA objectives. While many are meeting their targets for market-rate housing, cities are collectively falling far short of meeting their RHNA objectives in the affordable housing categories. No one city can solve the housing challenge on its own; a regional response is necessary. The formation of a Subregion could be more effective in meeting local and regional housing needs as a Subregion would have a deeper understanding of the local issues and provide more flexibility to ensure that the housing allocations are sensibly distributed in the region.

As included in Attachment (b), the Cities Association has prepared a “Pros and Cons of RHNA Subregion Formation,” describing potential positive and negative factors associated with the Subregion process. Positive factors include the creation of a forum for collaboration; increased local control and better alignment between local and regional needs; and the potential for innovative solutions and more housing production as a region. Negative factors include more time, effort, and resources associated with the process; unequal allocations as a result of negotiating of units between jurisdictions; and the lack of a similar regional model that mirrors the large population variances among jurisdictions in Santa Clara County.

As housing production is a regional challenge that transcends city boundaries and barriers, a regional approach to meeting this challenge would benefit all communities in the area. A RHNA Subregion provides an alternative to the ABAG process by allowing Santa Clara County and its participating cities to take responsibility to distribute RHNA among the participants after receiving the initial collective RHNA allocation assigned to the Subregion from ABAG.

In addition to allocating RHNA objectives, a RHNA Subregion would provide a more cohesive, geographic approach to allocating housing development around strategic locations, fostering collaboration among cities to plan for housing near transportation corridors, jobs, and services; share resources and establish partnerships in affordable and workforce housing development; prioritize infrastructure resource allocation; implement housing programs and services; and work together on regional and statewide legislative advocacy.

An adoption of the resolution in Attachment (a) is the step in the process for the City of Milpitas to proceed with joining and participating in the RHNA Subregion. In the current environment of housing accountability at the state legislature, achieving RHNA objectives will necessitate collective action and collaborative efforts among cities. Adopting the proposed resolution would allow the City of Milpitas to actively participate in discussions regarding the RHNA Subregion formation.

Policy Alternatives:

Alternative 1: Do not adopt the resolution supporting the Cities Association to form a RHNA Subregion.

Pros: The City continues to receive its RHNA directly from ABAG.

Cons: The City does not participate in regional discussions on projected housing needs.

Reason not recommended: It is beneficial for cities to work collaboratively to respond to the region’s housing needs.

Fiscal Impact:

There is no fiscal impact with the adoption of a resolution.

With the establishment of a RHNA Subregion, participation would likely require City staff resources as well as the City to contribute to shared costs associated with the RHNA Subregion process, including administration, outreach, ABAG communication, and legal review. The Cities Association anticipates that a cost estimate will be developed when cities are presented with the decision to join the Subregion. Overall, fiscal impact would likely include a combination of City staff resources and financial resources.

California Environmental Quality Act:

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

Recommendation:

Adopt a Resolution of intent to support formation of a housing subregion of Santa Clara County local and county governments to facilitate and implement countywide housing production consistent with the Regional Housing Needs Allocation (RHNA) formula currently assigned by the Association of Bay Area Governments (ABAG).

Attachments:

- a) RHNA Subregion Support Resolution
- b) RHNA Subregion Information Packet from Cities Association of Santa Clara County

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS OF INTENT TO
SUPPORT FORMATION OF A HOUSING SUBREGION OF SANTA CLARA COUNTY
LOCAL AND COUNTY GOVERNMENTS TO FACILITATE AND IMPLEMENT
COUNTYWIDE HOUSING PRODUCTION CONSISTENT WITH THE REGIONAL HOUSING
NEEDS ALLOCATION FORMULA CURRENTLY ASSIGNED BY THE ASSOCIATION OF
BAY AREA GOVERNMENTS**

WHEREAS, Housing Element Law (California Government Code Sections 65580 – 65589.8) provides for a Regional Housing Needs Allocation (RHNA) process; and

WHEREAS, to implement such RHNA process in the San Francisco Bay Area, the State of California has delegated to the Association of Bay Area Governments (ABAG) responsibility to adopt an allocation methodology, then use the adopted methodology to assign to each jurisdiction in the Bay Area the obligation to zone enough housing development capacity to accommodate production of a specific number of housing units during the period from 2023 through 2031; and

WHEREAS, Government Code Section 65584.03 provides that certain combinations of local governments may form a subregion to perform RHNA for themselves in order to allocate among themselves the total number of housing units assigned to them collectively by ABAG; and

WHEREAS, the City of Milpitas is interested in exploring the formation of a RHNA subregion consistent with California Government Code Section 65584 *et seq* and acceptable to the Association of Bay Area Governments (ABAG) and the California Department of Housing and Community Development (HCD) to facilitate collaboration with the county and all cities in the County of Santa Clara, to efficiently and effectively deliver housing production goals; and

WHEREAS, the Board of the Cities Association of Santa Clara County has directed the review of the benefits of such a subregion and subsequently representatives of the Cities Association of Santa Clara County (CASCC) have formed a committee to evaluate and make recommendations regarding the importance of and opportunities for success through shared housing strategies which could be facilitated by a subregional effort; and

WHEREAS, housing is a countywide challenge, and housing production types, numbers, density, appropriateness, and affordability levels can vary in different communities, and the cities recognize all production types are important to the housing supply of the County and its related economic and social health; and

WHEREAS, cities are individually accountable for, and retain full local authority for, identifying sites for housing development and for adopting and implementing housing policies intended to facilitate production of housing to meet local, regional and state policy objectives embodied in the numbers prescribed by ABAG the Sustainable Communities Strategy that will be adopted by ABAG and the Metropolitan Transportation Commission (MTC) in 2021; and

WHEREAS, through mutual cooperation and planning, the production of these housing units may be enhanced through collective efforts and resources, therefore creating a forum for developing countywide policy consensus on matters related to the Sustainable Communities Strategy.

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

1. That it is in the best interest of the City to join with other cities in Santa Clara County to explore creation of the RHNA subregion and that by working together to plan for housing growth, the stage is set for implementing housing and more housing will ultimately be built to meet the needs of the entire County and its residents.

2. That the City Manager is hereby authorized and directed to enter into discussions regarding the formation of a RHNA subregion and the development of a workplan and budget, and schedule of actions leading to the countywide, self-administration of the housing needs allocation process, allocating the countywide total housing needs allocation among all the Cities and unincorporated County by consensus; and to bring back a recommendation and resolution for action to join a RHNA subregion, or in the alternative, an explanation detailing the decision not to participate in the RHNA subregion.

PASSED AND ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

Santa Clara County Regional Housing Needs Allocation (RHNA) Subregion Overview

What is a RHNA subregion? (Government Code Section 65584.03)

In recognition of the common interests and mutual challenges and opportunities associated with providing housing, **two or more contiguous cities and a county** may form a **subregional entity** for the purpose of **allocation** of the subregion's existing and projected need for **housing among its members** in accordance with the allocation methodology established pursuant to Government Code Section 65584.04.

All decisions of the subregion shall be approved by vote as provided for in the rules adopted by the local governments comprising the subregion, or shall be approved by vote of the county and the majority of the cities with the majority of population within the county.

What are the steps to create a subregion, following the prescribed timelines in State law?

1. Each participating jurisdiction adopts a resolution indicating its commitment to participating in the subregional entity.
2. For Santa Clara County, the subregional entity could be a committee of the Cities Association with participating cities and the County.
3. The Cities Association (or other entity) would enter into an agreement with the Council of Governments (COG, in our case ABAG/MTC) that sets forth the process, timing, and other terms and conditions of the delegation of responsibility by the COG to the subregion.

What does the subregion do, following the prescribe timelines in State law?

1. The subregion determines the methodology for allocating housing need to its participating jurisdictions according to State law (or accepts the methodology factors from the COG as a starting point for further distribution), providing opportunity for public comment and modification prior to adoption of the methodology.
2. The COG allocates a share to the subregion based on a proportion consistent with the distribution of households assumed for the comparable time period of the applicable regional transportation plan.
3. The subregion allocates the distribution of the RHNA to the participating jurisdictions according to the adopted methodology, providing an opportunity for public comment and modification prior to finalizing the distribution.

What is the estimated cost of a subregion versus typical participation in the RHNA process?

Assuming that the subregion does not hire a consultant to create a separate methodology, the costs would be:

1. Administrating and documenting the subregion meetings and decisions;
2. Conducting the required outreach prior to the subregion making its decisions;
3. Communicating with ABAG/MTC as needed; and
4. Publishing the required notices.

The Planning Departments of the participating jurisdictions typically absorb the RHNA evaluation without additional staffing or consultant assistance.

Santa Clara County Regional Housing Needs Allocation (RHNA) Subregion Overview

What are other activities that the subregion could assume outside of the RHNA process and State law?

- Foster collaboration between cities within Santa Clara County
 - Focus on Measure A implementation
 - Facilitate an open dialogue between the jurisdictions, public, and interested organizations on housing issues and opportunities
 - Share best practices regarding rehabilitating existing housing stock, addressing gentrification/displacement, etc.
- Work together to obtain and commit more financial resources to affordable housing production
 - Support for 2018 ballot measure for affordable housing funding
 - Consider potential legislative efforts to seek meaningful tax credits and other mechanisms

SANTA CLARA COUNTY RHNA SUBREGION TASK FORCE

PROS & CONS OF RHNA SUBREGION FORMATION

Pros	Cons	Example
Creates flexibility & allows cities to trade		Distribute the subregion's numbers or can use ABAG's distribution
Empowers cities to have a say in the regional planning process		Self-determination: a city is able to accept or not accept allocation from another city.
Allows better alignment between local and regional needs		Ability to plan along on transit corridors and near employment.
Can find innovative solutions		Collective problem-solving which may include negotiating credits and creative financing
May facilitate the production of more housing		Utilizes economies of scale and eliminates duplication. Siting housing near supportive services.
Creates a forum for collaboration that leads to innovative solutions		San Mateo County Trade Woodside/Redwood City & Daly City/Colma/County
Creates awareness (and healthy competition)		Creates a forum to share knowledge and success. When one city is doing the heavy lifting, may encourage other jurisdictions to step up to the plate.
If success, may create additional opportunities for collaborative work		Success may be housing or spill over to other technical areas (transportation). May use collaboration for legislative advocacy.
Better development		Cities can work together to build near transit and not

SANTA CLARA COUNTY RHNA SUBREGION TASK FORCE

PROS & CONS OF RHNA SUBREGION FORMATION

		necessarily confined by a city boundary.
Creates a forum to discuss sharing of planning resources		Share resources - - may share in cost to pay consultants for housing element preparation or program ideas (for those who want to share).
	Time, effort & resources which may end in same result.	What if subregion fails to produce a different allocation?
	Lack of trust for fair and equitable process.	Some cities may shirk their responsibility to step up and accept housing.
Increases local control		Ability to control own numbers and improve county-wide performance.
	Loss of political distance from MTC and ABAG	Pressure on community to produce additional housing.
	Lack of clarity of the benefits to accept someone's numbers/housing	City worried about allocation dumping
Still need to plan for housing for all income levels		Can't go to zero. Every jurisdiction still has an allocation in every income level.
	No role model	No other subregion has such large population variances.
Increased use of ADUs		ADUs more feasible with cities with large residential lots.

SANTA CLARA COUNTY RHNA SUBREGION TASK FORCE

GUIDING PRINCIPLES - May 2018

Vision

For Santa Clara County and its cities to work collaboratively to produce more housing in the Region. have a unified voice in responding to the area's housing needs-- a problem that transcends jurisdictional barriers.

Benefits

1. By working together to plan for housing growth, the stage is set for implementing housing, and more housing will ultimately be built.
2. Housing will be planned in the right places, near transportation, jobs, and services.
3. Santa Clara County jurisdictions can work together to share resources.
4. Collaboration enables collective advocacy on regional and Statewide issues.
5. Partnership sets the stage for other cooperation, including sharing Housing Element consultants, sharing expertise, analyses, and policies, and potentially enabling a shared review by the California Housing and Community Development (HCD) Department.
6. Collective agreement is reached on strategies and tools to meet the region's housing need, including the potential for trading RHNA numbers.
7. Greater flexibility.

Guiding Principles

1. Conform with all State objectives included in Section 66584(d), including ensuring that the allocation of affordable homes is allocated to all jurisdictions in the region in an equitable manner.
2. Allocate housing growth strategically around major transportation corridors and near employment and services, while respecting infrastructure constraints and the unique natural resources of Santa Clara County.
3. Foster collaboration between jurisdictions and develop collective strategies that provide a framework for addressing housing need, including the potential for resource / housing allocation trade-offs.
4. Facilitate an open dialogue between jurisdictions, the general public, and interested organizations, including transportation agencies and land use bodies.
5. Utilize existing forums for discussion (e.g., Cities Association, City Managers' Association, SCCAPO, etc.).

Keys to Success

1. Taking responsibility for the process and the resulting housing shares.
2. Taking into consideration other communities' interests as well as your own.
3. Being willing to accept a reasonable housing share, not just the lowest.
4. Being willing to consider negotiating trades.
5. Recognizing that working together locally is better than abdicating the responsibility to the region and the state.
6. Elected leaders in all jurisdictions willing to compromise for regional benefit.

RESOLUTION NO.

RESOLUTION OF INTENT TO SUPPORT FORMATION OF A HOUSING SUBREGION OF SANTA CLARA COUNTY LOCAL AND COUNTY GOVERNMENTS TO FACILITATE AND IMPLEMENT COUNTYWIDE HOUSING PRODUCTION CONSISTENT WITH THE REGIONAL HOUSING NEEDS ALLOCATION (RHNA) FORMULA CURRENTLY ASSIGNED BY THE ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG)

WHEREAS, Housing Element Law (Gov. Code Sections 65580 – 65589.8) provides for a Regional Housing Need Allocation process (RHNA); and

WHEREAS, to implement such RHNA process in the San Francisco Bay Area, the State of California has delegated to the Association of Bay Area Governments (ABAG) responsibility to adopt an allocation methodology, then use the adopted methodology to assign to each jurisdiction in the Bay Area the obligation to zone enough housing development capacity to accommodate production of a specific number of housing units during the period from 2021 through 2029; and

WHEREAS, Government Code Section 65584.03 provides that certain combinations of local governments may form a subregion to perform RHNA for themselves in order to allocate among themselves the total number of housing units assigned to them collectively by ABAG; and

WHEREAS, the City/County of _____ is interested in exploring the formation of a Regional Housing Needs Allocation (RHNA) subregion consistent with the California Government Code Section 65584 *et seq* and acceptable to the Association of Bay Area Governments (ABAG) and the California Department of Housing and Community Development (HCD) to facilitate collaboration with the county and all cities in the County of Santa Clara, to efficiently and effectively deliver housing production goals; and

WHEREAS, the Board of the Cities Association of Santa Clara County has directed the review of the benefits of such a subregion and subsequently representatives of the Cities Association of Santa Clara County (CASCC) have formed a committee to evaluate and make recommendations regarding the importance of and opportunities for success through shared housing strategies which could be facilitated by a subregional effort; and

WHEREAS, housing is a countywide challenge, and housing production types, numbers, density, appropriateness and affordability levels can vary in different communities, and the Cities' recognize all production types are important to the housing supply of the County and its related economic and social health; and

WHEREAS, Cities are individually accountable for, and retain full local authority for, identifying sites for housing development and for adopting and implementing housing policies intended to facilitate production of housing to meet local, regional and state policy objectives embodied in the numbers prescribed by ABAG the Sustainable Community Strategy that will be adopted by ABAG and the Metropolitan Transportation Commission (MTC) in 2021; and

WHEREAS; through mutual cooperation and planning, the production of these housing units may be enhanced through collective efforts and resources, therefore creating a forum for developing countywide policy consensus on matters related to the Sustainable Community Strategy;

NOW, THEREFORE the City of _____ does hereby find, determine, resolve and order as follows:

Section 1: That it is in the best interest of the City to join with other cities in Santa Clara County to explore creation of the RHNA subregion and that by working together to plan for housing growth, the stage is set for implementing housing and more housing will ultimately be built to meet the needs of the entire County and its residents.

Section 2: That the City Manager is hereby authorized and directed to enter into discussions regarding the formation of a RHNA subregion and the development of a workplan and budget, and schedule of actions leading to the countywide, self-administration of the housing needs allocation process, allocating the countywide total housing needs allocation among all the Cities and unincorporated County by consensus; and to bring back a recommendation and resolution for action to join a RHNA subregion, or in the alternative, an explanation detailing the decision not to participate in the RHNA subregion.

By-laws of the Santa Clara County Subregional RHNA Process

PURPOSE & BYLAWS

The cities within the County of Santa Clara, and the County of Santa Clara, have adopted resolutions to participate as a Subregion (hereinafter referred to as “Subregion”) in the Regional Housing Needs Allocation (RHNA) Process. The Cities Association of Santa Clara County (hereinafter referred to as “CASCC”) will act as the representative for the Subregion. The Subregion hereby adopts the following bylaws for the purpose of providing for the orderly conduct of its affairs.

ARTICLE I NAME

The name of the separate entity established by the resolutions is the “Santa Clara County Sub-Regional RHNA Process” and may be referred to as “Subregion”.

ARTICLE II PURPOSES

Section 1. Subregion shall have the following purposes:

- (a) Plan, organize, and maintain the work of the Subregion and be responsible for its overall operation;
- (b) Advise City Managers, City Councils and the Board of Supervisors of all significant activities of the Subregion;
- (c) Prepare, review, monitor, present to the cities and the County, and facilitate a consensus on the Regional Housing Needs Allocation housing shares for all the cities and the County for the 2021 Housing Element;
- (d) Submit to the Association of Bay Area Governments (ABAG) for approval the housing shares for Santa Clara County (cities and County).
- (e) Provide a forum for developing a countywide policy consensus, to the greatest extent possible, on matters related the Sustainable Communities Strategy process of which the Regional Housing Needs Allocation is a part; and a channel for communicating such consensus to the Joint Policy Committee of the Metropolitan Transportation Commission and the Association of Bay Area Governments overseeing the Sustainable Communities Strategy process from time to time when such a consensus is requested or required by the Joint Policy Committee.

Section 2. Subregion shall not participate in or endorse any political activity involving any individual candidate for public office. The selection of officers within Article IV herein shall not be considered a political activity subject to this section.

ARTICLE III MEMBERS

Section 1. The County of Santa Clara and each city which has adopted a resolution of participation shall be members of the Subregion.

Section 2. The RHNA Policy Committee (PC) of the Subregion shall consist of a member of the City Council of each participating city to be selected by that city, and one member of the Board of Supervisors to be selected by the Board of Supervisors.

Section 3. Each member City Council and the Board of Supervisors may select one alternate member from its body who shall participate when the regular member is absent.

Section 4. If both the member and the alternate will be absent, the City or County, respectively, may designate a substitute for that meeting and notify CASC, in writing, of the designation.

Section 5. Any member may withdraw from the Subregion by adopting a resolution and providing a written notice of intention to do so to the chairperson of the PC. The rights and obligations of any such member shall terminate 30 days after acceptance by the PC.

Section 6. If any member, or designated representative, fails to attend two consecutive meetings, without notification of the Chairperson or the Executive Director, the Chairperson will notify the City Council or Board of Supervisors to encourage future participation.

ARTICLE IV- OFFICERS

Section 1. The officers of the PC shall consist of a chairperson and vice chairperson.

Section 2. The chairperson and vice chairperson shall be elected by the PC and shall serve at the will of the PC.

Section 3. Nomination for officers of the PC shall be made from the floor. Nominations shall be made by voting members of the PC only.

Section 4. The chairperson and vice chairperson must be voting members of the PC.

Section 5. Nominations and election of the chairperson shall precede nominations and election of the vice chairperson. Voting shall be public.

Section 6. The chairperson shall preside at all meetings and may call special meetings when necessary.

Section 7. The vice chairperson shall perform the duties of the chairperson in the absence of the chairperson.

Section 8. A special election shall be called by the Board of Directors if the chairperson and/or vice chairperson is unable to serve.

Section 9. All officers shall serve without compensation.

Section 10. The chairperson or vice chairperson may be removed from office at any time by a majority vote of those members present.

ARTICLE V STAFF SUPPORT

Section 1. The CASC Executive Director, CASC staff and contractors shall provide support to the Subregion and all the established committees.

Section 2. The PC shall have dealings with staff and contractors through the CASC Executive Director.

Section 3. All participating jurisdictions will share in the cost.

ARTICLE VI COMMITTEES/ STAKEHOLDER REVIEW

Section 1. The following standing committees shall assist in accomplishing the goals of the SANTA CLARA COUNTY SUB REGIONAL RHNA PROCESS:

- RHNA Policy Committee
- RHNA Technical Advisory Committee
- City Managers Association
- City Councils and Board of Supervisors
- Association of Bay Area Governments

Section 2. RHNA Policy Committee (PC) - 16 Members, one member from each city and the county, composed of elected officials. The primary role is to provide initial policy input to the process, review the RHNA TAC recommendations and adopt a policy consensus for transmittal to the cities and the County for ratification.

Section 3. RHNA Technical Advisory Committee (RHNA TAC) - 16 Members - One member from each city and the county. Composed of senior staff technical experts in the field of housing and land use. Member agencies may flexibly assign different technical experts as a function of the

subject being discussed. However, it is important that there be good communications between the different representatives such that issues do not need to be repeated or there are no conflicting positions from the representatives. Primary role is technical development of the issues and solutions.

Section 4. City Managers Association - Monthly reports will be provided to the City Managers through the City Managers Association. This will allow ongoing input by the City Managers in the process. The final product will be presented to the City Managers for their recommendation to the RHNA PAC for approval of the final product. Primary role of the City Managers is practical assessment of the issues and solutions.

Section 5. City Councils/ Board of Supervisors - Primary role is ratification of the RHNA Final Allocation prior to submittal to Association of Bay Area Governments (ABAG).

Section 6. Association of Bay Area Governments (ABAG) - Final approval of RHNA Final Allocation.

Section 7. An appeals process will be established by the PC in conjunction with ABAG to hear appeals by any cities or the County that disagree with their housing share as allocated by the Subregion.

ARTICLE VII MEETINGS

Section 1. The PC shall establish by resolution the date, time, and place for regular PC meetings.

Section 2. The PC may hold special meetings called in accordance with Article IV, Section 6.

Section 3. All meetings of the PC shall be held in accordance with the Brown Act, Government Code section 54950 Ct seq.

ARTICLE VIII CONDUCT OF BUSINESS

Section 1. A quorum shall consist of at least a majority of the members and shall be required for all meetings of the PC.

Section 2. Except as state otherwise in these by-laws, all decisions of the PC shall be by majority vote of those present.

Section 3. Adoption of the Final Regional Housing Needs Allocation shall require:

1. consent of a majority of all cities and the County participating in the Subregion, **and**
2. consent of each jurisdiction that has been allocated a greater share of housing than the ABAG default allocation.

Section 4. Upon adoption of the final regional housing numbers, the subregion will share support for outcome and support each other, for example the subregion releasing a resolution, annual report, and press event.

Section 5. Except as provided in these bylaws, or by a majority vote of those present, Roberts Rule of Order Revised shall constitute the parliamentary authority for the PC.

Section 6. These by-laws may be amended by a two-thirds majority vote of members present and who represent a majority of all cities and the County.

ARTICLE IX OTHER MATTERS

Section 1. No member shall receive compensation or reimbursement from PC or CASC for expenses incurred in attending any meeting or other function.



CITY OF MILPITAS

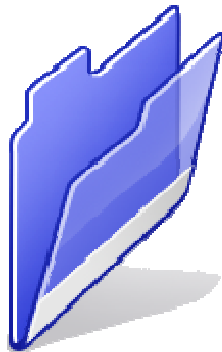
455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

2/05/2019

Agenda Item No. 18



ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



City Clerk's Office

FEB 05 2019

RECEIVED

Board of Directors

Ron Gonzales, Chair
*Hispanic Foundation
of Silicon Valley*

Janice Jensen, Vice Chair
*Habitat for Humanity
East Bay/Silicon Valley*

Kevin Zwick, Treasurer
Housing Trust Silicon Valley

Kathy Thibodeaux, Secretary
KM Thibodeaux Consulting LLC

Shiloh Ballard
Silicon Valley Bicycle Coalition

Bob Brownstein
Working Partnerships USA

Gina Dalma
*Silicon Valley Community
Foundation*

Katie Ferrick
LinkedIn

Amie Fishman
*Non-Profit Housing Association of
Northern California*

Javier Gonzalez
Google

Poncho Guevara
Sacred Heart Community Service

Nathan Ho
Silicon Valley Leadership Group

Janikke Klem
Technology Credit Union

Jan Lindenthal
MidPen Housing

Jennifer Loving
Destination: Home

Mary Murtagh
EAH Housing

Chris Neale
The Core Companies

Andrea Osgood
Eden Housing

Kelly Snider
Kelly Snider Consulting

Jennifer Van Every
The Van Every Group

Staff

Leslye Corsiglia
Executive Director

TRANSMITTED VIA EMAIL

February 4, 2019

Honorable Mayor Tran and Members of the City Council

City of Milpitas

455 E. Calaveras Blvd.

Milpitas, CA 95035

Dear Mayor Tran, Vice Mayor Dominguez, and Councilmembers Phan, Montano, and Nunez,

**Re: Item #18-Resolution to Support Regional Housing Needs Allocation (RHNA)
Subregion**

We write today on behalf of our members to register strong support for the Santa Clara County RHNA Subregion, and urge the City Council to agree to participate alongside the other 15 jurisdictions in the County.

No one is in disagreement that the region is experiencing a housing crisis, and most would agree that no one city can solve the crisis on its own and that a regional response is needed.

A RHNA Subregion provides a unified voice in responding to the area's housing needs, allowing all cities in the County to work together to plan for housing, develop strategies and tools, and collaborate on regional and Statewide advocacy. Additionally, a Subregion would offer other opportunities for cooperation, including sharing Housing Element consultants, sharing expertise, analyses, and policies, as well as potentially enabling a shared review by the California Department of Housing and Community Development (HCD) Department. Three of the Bay Area's nine counties already have RHNA

Subregions, including San Mateo County.

We see only positives in taking positive action. We anticipate full cooperation from all 15 cities in the region. Nothing about this proposal would require Milpitas to take on additional housing need that it does not want to accept. Yet the proposal would facilitate added coordination and cooperation between nearby cities, something that is vital if we are going to meet the housing needs of our region.

Thank you for your consideration, and for the work you have done to meet your RHNA obligations over the years.

Sincerely,



Leslye Corsiglia
Executive Director

Backup material for agenda item:

Receive a Staff Presentation and Approve New FY 2018-19 Capital Improvement Program Project No. 3451, The Pines Pilot Parking Permit Program (Staff Contact: Steve Erickson, 408-586-3301)

Recommendation: Receive a staff presentation and approve New FY 2018-19 Capital Improvement Program Project No. 3451, The Pines Pilot Parking Permit Program.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive a Staff Presentation and Approve New FY2018-19 Capital Improvement Program Project No. 3451, The Pines Pilot Parking Permit Program
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	2/5/2019
Staff Contact:	Steve Chan, 408-586-3324 Steve Erickson 408-586-3301
Recommendation:	Receive a staff presentation and approve New FY2018-19 Capital Improvement Program Project No. 3451, The Pines Pilot Parking Permit Program.

Background:

The Pines is a single-family neighborhood of 976 homes, generally bounded by Great Mall Parkway to the north, South Abel and South Main Streets to the east, Montague Expressway to the south, and I-880 to the west. The entire Pines neighborhood is estimated to accommodate up to 2,000 on-street parking spaces. Similar to many residential neighborhoods in Milpitas, the streets are public without restriction of whom may park along the street; however, the City's municipal code prohibits vehicles from parking in the same location for longer than 72 hours.

The eastern half of The Pines neighborhood between Fallen Leaf Drive and Able Street includes 407 homes. Fallen Leaf Drive and the adjacent streets within this area of The Pines neighborhood have historically experienced on-street parking problems prior to the completion of the apartment buildings in 2015. More recently, Residents have expressed concern that the problem with limited on-street parking is a result of the spaces being used by apartment residents from the Apex and Ilara developments located along Abel and South Main Streets.

Staff contracted with Nelson-Nygaard, a transportation planning firm to conduct parking surveys, and to assess community support for implementation of a parking permit program to determine if improvement to first-come-first served access to on-street parking could be achieved. Two comprehensive surveys were completed, and a Pines community meeting was held last November 2017. Only 244 households (25 percent) responded to the initial survey which included the entire neighborhood. Of the 244 responses received, only 146 supported a parking permit program. The survey results also indicate that Pines residents own an average of 3.3 vehicles per household and a majority of households park on streets rather than their driveways or garage, which is contributing to the limited on-street parking space availability.

Due to the low response rate to the initial parking survey, a second in-person survey was completed by Nelson-Nygaard in Spring 2018. This second survey focused on the 407 Pines households along Capitol Avenue, Fallen Leaf Drive and adjacent streets, where many of the concerns regarding parking impacts were received. Response to the second survey was improved at 269 (66%) responses received. Approximately 132 (49%) of responding households supported a form of a parking permit program; however, support lessen if there was a fee associated with the parking permit program.

On August 21, 2018, staff recommended implementation of a short term Pilot Parking Permit Program to the City Council. The Pilot Parking Permit Program would be focused to the 407-home area, and would not exceed a duration of 6 months as a trial to determine if on-street parking conditions improved. The Pilot program

provide free parking permits to the 407 residents of The Pines residing within the pilot area, and the program would apply to the following streets:

- Capitol Avenue from Abel Street to Venus Street;
- Moon Court;
- Evening Star Court;
- Sun Court;
- Polaris Court;
- Woodland Court;
- Sunrise Way;
- Stellar Way;
- Moonbeam Way;
- Fallen Leaf Drive from Capitol Avenue to Greenwood Way;
- Evergreen Way;
- Greentree Way;
- Greentree Circle;
- Lonetree Court;
- Cedar Way; and
- Cedar Court.

Pilot program specifics include:

- Permit program managed and administered by a contractor;
- 6-month trial duration within the focus-area;
- Permit would be required to park on street from mid-night to 6 AM, 7-days/week;
- 3 no-cost parking permits designated per household;
- Proof of vehicle registration and proof of residency on specified streets;
- Permit enforcement would be complaint based and one random night per week by Milpitas Police; and
- Citations would be issued for lack of display of permit and for all violations of the State Vehicle Code and City Municipal Codes, including illegal head-in parking within cul-de-sacs.

Desired goals of the pilot program:

- Verification if parking problem is caused by residents outside The Pines;
- Determine if program improves the availability of on-street parking;
- Determine community support to continue parking permit upon completion of pilot program;
- Identify cost/benefit of administration and enforcement of parking permit program; and
- Determine if parking permit program could be replicated in other areas of the city.

At the August 21, 2018 meeting, City Council directed staff to further engage The Pines residents and to bring back additional information for consideration. The additional information requested by Council included:

- Investigate feasibility of relinquishment of streets within The Pines to the HOA for enforce of on-street parking;
- Verify if Apex Apartment and Ilara Apartment projects are conforming to requirements of the projects Conditions Of Approval, and to provide information on the apartment's on-site parking management practices;
- Determine if there is Muni Code requirement that residents have to park their vehicle in their garage or driveway;
- Analyze the feasibility and support of shared use parking agreements with adjacent properties such as the Milpitas School District to provide additional parking opportunities;

- Provide additional outreach to The Pines with specifics on the proposed Pilot program; and
- Identify a funding source for a pilot parking program and identify measures for cost recovery.

Analysis:

Street Relinquishment:

Planning, Engineering, and Police Department staff attended a Pines Home Owners Association (HOA) meeting on September 10th, 2018 to open a dialog regarding public street relinquishment to Pines HOA. The Pines HOA board members stated their by-laws do not grant HOA authority to assume public street relinquishments. Therefore, relinquishing City ownership of the neighborhood streets to the HOA for parking enforcement is not feasible.

Apex/Ilara Conditions of Approval:

Planning staff reviewed Apex Apartment and Ilara Apartments conditions of approval for compliance with on-site parking requirements. Both apartments provide the required number of on-site parking spaces in conformance with their conditions of approval. In August 2018, Police Department conducted night surveys of available parking within both apartment garage structures and noted ample available parking spaces were available during the overnight periods. Planning and Police Department staff met in January 2019 with Apex Apartment and Ilara Apartment management staff to discuss best parking management practices to more effectively utilize their on-site parking for the benefit of their tenants and as well as Pines community. Both apartment building management staff indicated they have an on-site permit parking program, and all vehicles with permits have an available garage parking spaces. Additionally, there are still on-site parking space surplus available for rental in both apartment complexes.

Code Enforcement Requirement for use of garage/driveway:

The Planning Department reviewed the Municipal Code and determined there is no requirement that residents utilize their driveways or garages for parking their vehicles.

Shared Parking Agreements:

Staff discussed the concept of shared parking agreements with the Milpitas Unified School District and the owner of the Liberty Plaza property on Abel Street to explore the use of their parking lots as a means to supplement parking supply. The Milpitas United School District is open to an after-hours shared use parking agreement concept at the Zanker elementary school site. Liberty Plaza property management was non-responsive. Furthermore, residents in the northeast area of The Pines closest to Apex and Ilara Apartments expressed low support of shared use parking agreements based on the most recent survey result described below.

Additional Outreach:

Mailers with details of the Pilot Parking Permit Program were sent to 407 households in the northeast area of Pines. The mailer information was also posted on The Pines neighborhood forum on the Nextdoor website. An additional online survey was conducted in Fall 2018 to gather additional input on the Pilot Parking Permit Program from the 407 households within the pilot program area. 64 (16%) households responded to this additional survey. 36 households supported a pilot parking permit program, and 28 households did not support it. Additionally, 48 households were not interested in the idea of shared use parking agreements with property owners such as the school district; however, 16 households were in favor. The results of this last survey are consistent with responses to previous surveys.

Estimated Pilot Program Cost:

A 6-month pilot parking permit program is estimated to cost \$300,000 which includes initial one-time set-up improvements, administration, management, police enforcement costs, public noticing, and a final after study report to be completed by the City's consultant. The initial program set-up costs would be one-time costs estimated at \$230,000 including installation of regulatory street signage, public noticing, and the final study report of the findings at the conclusion of the pilot program. The creation of a new Capital Improvement Program (CIP), Project No. 3451, funded from FY 2017-18 General Fund Surplus is recommended to fund the implementation of this 6-month Pilot Parking Permit program. \$230,000 in funding is requested for this n

It is estimated that \$70,000 from the General Fund will be required for administration of the permit system and enforcement by the Police Department. There would be some minor offset of program enforcement cost through revenue the City receives from parking citations. The amount of offset through citation revenue would be dependent on the number of citations issued. The current fine or bail amount for a routine parking citation is \$50, and the City receives approximately \$34.08 in revenue for each citation. In addition, while providing enforcement of the pilot parking permit program, officers will also be looking for and issuing citations for all violations of the Vehicle Code. The Police Department also has a desire to raise the bail amount for parking violations, and this will be explored further through the upcoming budget process.

Costs related to program administration of the permit system could be partially off-set by requiring a nominal fee for each permit requested by a household as part of the pilot program. The pilot program, as described above included 3 no-cost parking permits to each of the 407 households within study area. Staff does not recommend the addition of a fee at this time as it may dissuade participation. However, the Council may wish to consider and direct the implementation of a fee for each permit not to exceed \$10 or \$15 to off-set General Fund expenditures for program administration for the 6-month pilot project.

The following is an itemization of the estimated cost for the 6-month pilot program:

Item	Est. One-Time Setup Cost	Estimated 6 Month Implementation Cost
Permit Administration	-	\$25,000.00
Parking Enforcement	-	\$45,000.00
Public Noticing	\$10,000.00	-
New Regulatory Signage	\$195,000.00	-
After Study	\$25,000.00	-
Total		\$300,000.00

After completion of the 6-month Pilot Program, a program study report would be completed to assess the effectiveness of the program. The report would provide feedback from residents/users, provide itemized programs total costs, recommend changes and additions, and would recommend the implementation of cost recovery methods such as a fee based permit system if the permit parking program within The Pines were to continue indefinitely. The report and findings will be presented to the City Council along with a recommendation.

Policy Alternatives:

Alternative No. 1: Do not proceed with Pilot Parking Permit Program and continue to allow on-street parking without restrictions.

Pros: The existing conditions would continue in that limited on-street parking availability will be accessible to all, and there would not be a \$300,000 city expenditure for a pilot program.

Cons: Not proceeding with the pilot parking permit program would continue the limited availability of on-street parking space within The Pines neighborhood, and it would remain unknown if the nearby apartment developments were causing the Pines parking problem.

Reason not recommended: Staff recommends proceeding with the pilot program to determine if the availability of on-street space can be improved.

Alternative No. 2: Consider implementation of a fee for each parking permit not to exceed \$10 or \$15 to off-set General Fund expenditure for program administration for the 6-month pilot project.

Pros: Addition of a fee would offset General Fund expenditures related to pilot program administration costs.
Cons: The implementation of a fee based permit at this time for the pilot program may dissuade residents from participating in the program.

Reason not recommended: It is recommended to attract as many participants in the pilot permit parking program as possible to help determine if the program is viable for The Pines neighborhood as well as the programs transferability to other parts of the City. The inclusion of a fee based permit at this time may limit program participation.

Fiscal Impact: The creation and funding of a new FY 2018-19 Capital Improvement Program Program Project No. 3451 with \$230,000 from FY 2017-18 General Fund Surplus in addition to a General Fund expenditure of \$70,000 will be required to implement this pilot program. The balance of FY 2017-18 General Fund Surplus is currently \$3,165,912.

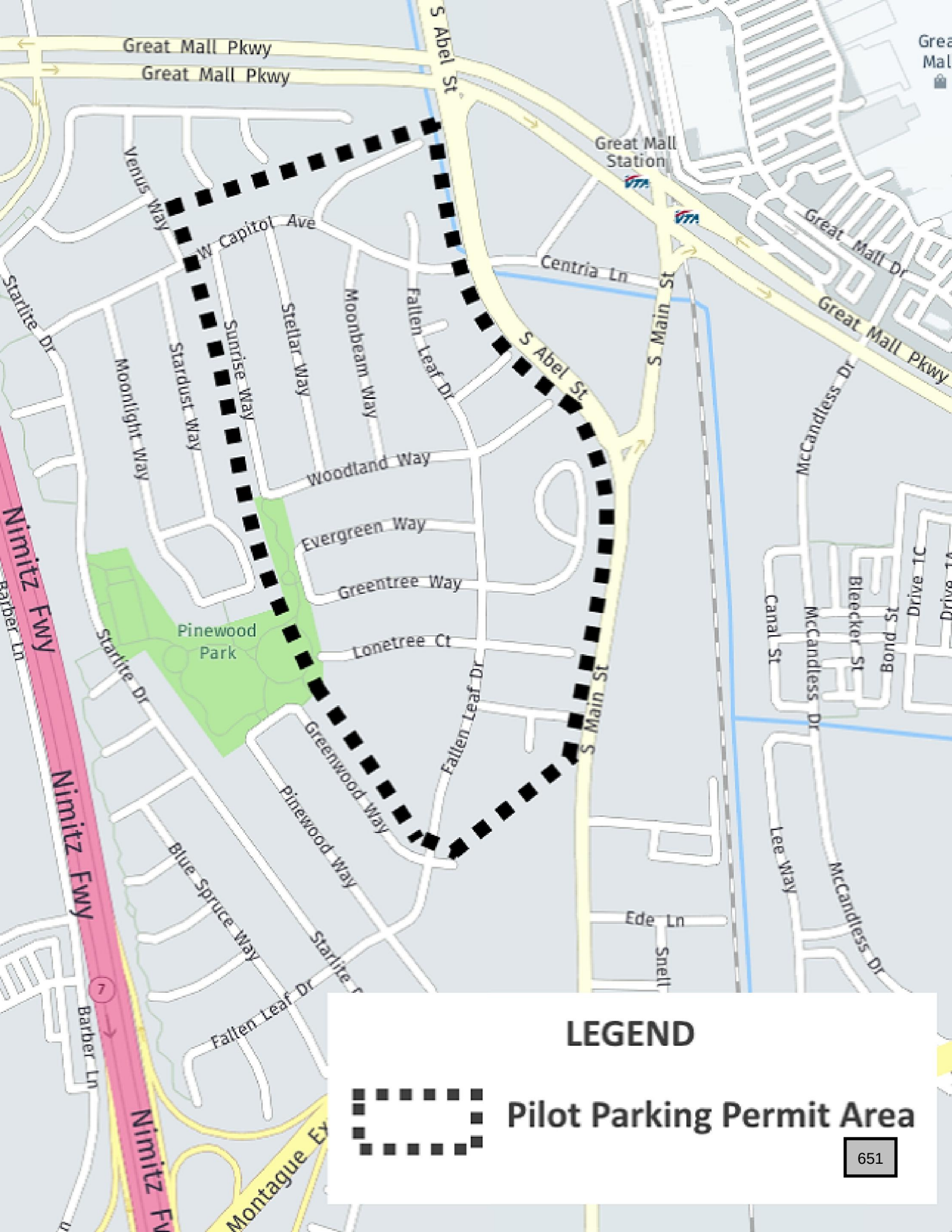
California Environmental Quality Act: The project is exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines.

Recommendations:

- 1) Receive a staff presentation.
- 2) Approve a new FY 2018-19 Capital Improvement Program Project No. 3451, The Pines Pilot Parking Permit Program.

Attachments:

- a) Pines Pilot Parking Permit Program Area Map
- b) Pines Pilot Parking Permit Program CIP Sheet



LEGEND



Pilot Parking Permit Area

City of Milpitas
2019-24 CAPITAL IMPROVEMENT PROGRAM

Category	Project	Estimate Level
Street Improvement	3451 The Pines Pilot Parking Permit Program	1

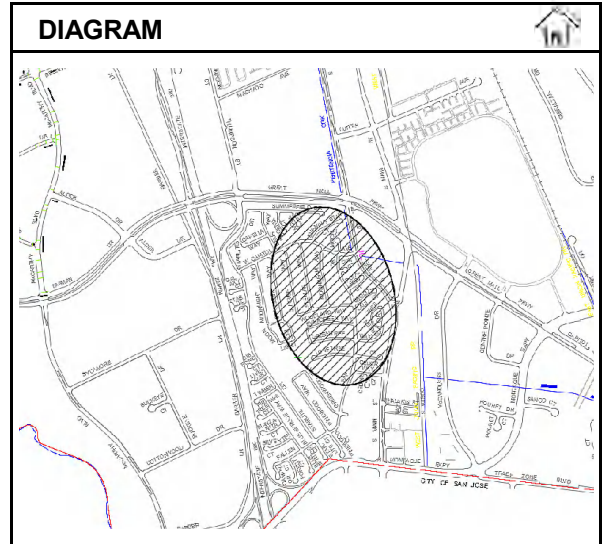
CONTACT: Steve Chan [3324]

PRIORITY: Transportation and Transit

DESCRIPTION

This is a six-month pilot parking permit program for the northeast area of The Pines neighborhood. The trial program is designed to provide residents with a better opportunity for on-street parking.

NOTES:



Uncommitted Balance as of 11/30/2018: \$0

ESTIMATED COST	Prior Year	2019-20	2020-21	2021-22	2022-23	2023-24	Total
Administration	10,000	0	0	0	0	0	10,000
Improvements	220,000	0	0	0	0	0	220,000
Totals	230,000	0	0	0	0	0	230,000

FINANCING	Prior Year	2019-20	2020-21	2021-22	2022-23	2023-24	Total
General Government CIP Fund	230,000	0	0	0	0	0	230,000
Totals	230,000	0	0	0	0	0	230,000

FINANCE NOTES

City of Milpitas
2019-24 CAPITAL IMPROVEMENT PROGRAM

Justification Notes

(No Data)

Project Notes

(No Data)

Backup material for agenda item:

Consider Mayor's List of City Council Subcommittees and Subcommittee Appointments of City Councilmembers and Make One City Council Appointment to Bay Area Water Conservation & Supply Agency (Staff Contact: Mayor Rich Tran, 408-586-3029)

Recommendations: 1) Consider Mayor's list of City Council Subcommittees and Subcommittee Appointments of City Councilmembers, and move to confirm the list and those appointments. 2) Consider Mayor's recommendation of Councilmember Carmen Montano to serve on the Board of Bay Area Water Conservation & Supply Agency and its Regional Financing Authority, to fill the unexpired 4-year term recently vacated that will expire on June 30, 2021. This action includes rescinding the appointment of Councilmember Anthony Phan made at the January 15, 2019 City Council meeting.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Mayor's List of City Council Subcommittees and Subcommittee Appointments of City Councilmembers and Make One City Council Appointment to Bay Area Water Conservation & Supply Agency
Category:	Reports of Mayor and Councilmembers
Meeting Date:	2/5/2019
Staff Contact:	Mayor Rich Tran, 408-586-3029
Recommendation:	1. Consider Mayor's list of City Council Subcommittees and Subcommittee Appointments of City Councilmembers, and move to confirm the list and those appointments. 2. Consider Mayor's recommendation of Councilmember Carmen Montano to serve on the Board of Bay Area Water Conservation & Supply Agency and its Regional Financing Authority, to fill the unexpired 4-year term recently vacated that will expire on June 30, 2021. This action includes rescinding the appointment of Councilmember Anthony Phan made at the January 15, 2019 City Council meeting.

Background:

The Milpitas City Council has established City Council Subcommittees who review and make recommendation on important policy topics, to the full City Council.

There are currently eight (8) established subcommittees:

- Cannabis Subcommittee
- City/School Communication Subcommittee
- Commission Subcommittee
- Communications Subcommittee
- Facilities & Streets Naming Subcommittee
- Finance Subcommittee
- Land Use & Transportation
- Non-Profit Subcommittee

Traditionally, after a local election, the Mayor will assign City Councilmembers to the City Council subcommittees. With recent City Council key decisions and project completions, a review of full City Council subcommittees' roster is timely.

A scheduling conflict for the City Council liaison assignment to the Bay Area Water Supply & Conservation Agency (BAWSCA) was discovered after the January 15, 2019 City Council action on liaison appointments to City Commissions and outside agency boards. Mayor Tran is recommending the appointment of Councilmember Carmen Montano as the City Council Liaison to BAWSCA and its RFA, in place of previously appointed Councilmember Anthony Phan.

Recommendations:

- 1) Consider Mayor's list of City Council Subcommittees and Subcommittee Appointments of City Councilmembers, and move to confirm the list and those appointments.

- 2) Consider Mayor's recommendation of Councilmember Carmen Montano to serve on the Board of Bay Area Water Conservation & Supply Agency and its Regional Financing Authority, to fill the unexpired 4-year term recently vacated that will expire on June 30, 2021. This action includes rescinding the appointment of Councilmember Anthony Phan made at the January 15, 2019 City Council meeting.

Attachment: Mayor's list of City Council Subcommittee recommendations

City of Milpita City Council Subcommittee Roster and Liaison Assignments

Subcommittee	Prior Meeting Frequency	Prior Council Liaisons	Proposed Meeting Frequency	Proposed Council Liaisons/ Action	Liaison Department(s)	Notes/ Other Information
Cannabis Subcommittee	As Needed	CM Nunez & Phan	NA	Sunset	CMO	
City/School Communication Subcommittee	Every other month	Mayor Tran & VM Grilli	4th Wednesday of every Month at 4PM	Mayor Tran & CM Montano	CMO, Recreation and Community Services	New MUSD Board members assigned: Norwood and Lien; potential name change to "City School Collaborative Subcommittee"
Commission Subcommittee	As Needed	CM Phan & Nunez	NA	Sunset	Recreation and Community Services	
Communications Subcommittee	Inactive since 2016	NONE	NA	Sunset	NONE	
Facilities & Streets Naming Subcommittee	As Needed/Project Driven	CM Barbadillo & Phan	NA	Sunset	Recreation and Community Services	Naming considerations forwarded to the appropriate Commission i.e.: Parks & Facilities - PRCRC Street Names - Planning Comm
Finance Subcommittee	Monthly	Mayor Tran & VM Grilli	2nd Wednesday of every month at 4PM	Mayor Tran & CM Montano	Finance	
Transportation Subcommittee	Inactive since 2016	NONE	TBD	Mayor Tran & CM Montano	TBD	Update to previous inactive "Land Use & Transportation Subcommittee"
Non-Profit Subcommittee	As Needed	CM Phan & Nunez	NA	Sunset	CMO, Recreation and Community Services	