



**JOINT MEETING OF THE
MILPITAS CITY COUNCIL AND THE
ECONOMIC DEVELOPMENT CORPORATION
MEETING AGENDA**

TUESDAY, OCTOBER 6, 2015

**455 EAST CALAVERAS BOULEVARD, MILPITAS, CA
7:00 P.M.**

SUMMARY OF CONTENTS

- I. CALL TO ORDER by the Mayor (7:00 p.m.)**
- II. PLEDGE OF ALLEGIANCE**
- III. INVOCATION (Councilmember Barbadillo)**
- IV. APPROVAL OF COUNCIL MEETING MINUTES – September 15, 16 and 22, 2015**
- V. SCHEDULE OF MEETINGS – COUNCIL CALENDARS - October 2015**
- VI. PRESENTATIONS**
 - Proclaim Fire Prevention Week for October 4 – 10, 2015
 - Commend Friends of the Milpitas Library
 - Commend Rob Devincenzi, Editor and Publisher of The Milpitas Post newspaper
 - Commend Tyler Nguyen, USA National Team Member representing the nation at International Taekwondo events in 2016
- VII. PUBLIC FORUM**

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

- VIII. ANNOUNCEMENTS**
- IX. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**
- X. APPROVAL OF AGENDA**
- XI. CONSENT CALENDAR (Items with asterisks*)**

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

XII. PUBLIC HEARINGS

- 1. Conduct a Public Hearing on Water Rates and Introduce Water Ordinance No. 120.47 to Establish Water Rates for the Remainder of Fiscal Year 2015-16 and for Fiscal Year 2016-17, to Authorize Mailing of Proposition 218 Hearing Notice and Set December 15, 2015 as the Public Hearing Date (Staff Contact: Steven Machida, 408-586-3355)**
- 2. Conduct a Public Hearing and Introduce Ordinance No. 240.4 Removing Supplemental Water Penalties per State Law (Staff Contact: Nina Hawk, 408-586-2603)**

XIII. UNFINISHED BUSINESS

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

XIV. REPORTS OF MAYOR AND COMMISSION

- * 4. Consider Mayor's Recommendations for Appointments to City Commissions (Contact: Mayor Esteves, 408-586-3029)**
- * 5. Consider Mayor's Request to Establish Four City Council Subcommittees and to Appoint Councilmembers to those Subcommittees (Contact: Mayor Esteves, 408-586-3029)**
- * 6. Consider Mayor's Request for Report on Gender and Ethnicity Pay Equity Policy (Contact: Mayor Esteves, 408-586-3029)**
- * 7. Per Recommendation of the Library Advisory Commission, Accept \$2,500 Donation from Republic of South Korea to the Milpitas Public Library and Approve the Spending Plan from Commissioners (Staff Contact: Bill Ekern, 408-586-3273)**

XV. NEW BUSINESS

- * 8. Establish a Capital Improvement Project and Related Budget Appropriation for Update of the City of Milpitas General Plan (Staff Contact: Sarah Fleming, 408-586-3278)**

XVI. RESOLUTIONS

- * 9. Adopt a Resolution Approving the Sole Source Purchase of Ammunition for the Police Department from Three Different Suppliers for a Combined Annual Not-To-Exceed Amount of \$57,000 (Staff Contact: Chris Schroeder, 408-586-3161)**
- *10. Adopt a Resolution Authorizing Purchase of Seven City Vehicles from the National Auto Fleet Group for a Not-To-Exceed Amount of \$265,617.53 through a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 408-586-3161)**

XVII. AGREEMENTS

- * 11. Approve Amendment No. 3 to the Consultant Services Agreement with RMC Water and Environment, Inc. for Utility Engineering Support for \$40,000 and Extend the Term through June 30, 2016 (Staff Contact: Steven Machida, 408-586-3355)**
- * 12. Approve Amendment No. 6 to the Consultant Services Agreement with RMC Water and Environment to Extend the Term to October 31, 2016 for Support on the Silicon Valley Rapid Transit (BART) Program Berryessa Extension, Project No. 4265 and Various City Capital Projects (Staff Contact: Steven Machida, 408-586-3355)**

- * 13. **Approve Amendment No. 6 to the Consultant Agreement with Schaaf & Wheeler to Extend the Term to October 31, 2016 for Storm Drain/Stormwater Program Documentation Review for the Silicon Valley Rapid Transit (BART) Program Berryessa Extension, Project No. 4265 (Staff Contact: Steven Machida, 408-586-3355)**
- * 14. **Approve Amendment No. 3 to the Consultant Services Agreement with CalRecovery, Inc. to Increase the Compensation by \$105,000 for Technical Odor Support Services and Approve a Budget Appropriation of \$130,000 (Staff Contact: Steven Machida, 408-586-3355)**
- * 15. **Approve and Execute a Storm Management Operation and Maintenance Agreement for the Pace Development Project at 324 Montague Expressway, Project No. 2762 (Staff Contact: Steven Machida, 408-586-3355)**
- * 16. **Award the Bid to ACCO Engineered Systems, Inc. and Authorize the City Manager to Execute the Agreement for Citywide HVAC Maintenance and Repair Service for \$300,000 and Thereafter Annually Not to Exceed \$187,527 (Staff Contact: Chris Schroeder, 408-586-3161)**
- * 17. **Approve the First Amendment to the Purchase and Sale Agreement between the City of Milpitas and Milpitas Unified School District to Extend the Escrow Closing Date (Staff Contact: Emma Karlen, 408-586-3145)**
- * 18. **Approve an Agreement between City of Milpitas and Singer Associates, Inc., in the amount of \$180,000, to Implement a Communications Plan and Provide Public Information Services (Staff Contact: Tom Williams, 408-586-3050)**

XVIII. JOINT MEETING of CITY COUNCIL/ECONOMIC DEVELOPMENT CORPORATION

CALL TO ORDER by Mayor/Chair

APPROVE CONSENT CALENDAR

- * 19. **Authorize City Manager and the Milpitas Economic Development Corporation President to Execute Five Memorandums of Termination of Option to Purchase Certain Properties (Staff Contact: Christopher Diaz , 408-586-3040)**

XIX. ADJOURN CITY COUNCIL AND ECONOMIC DEVELOPMENT CORPORATION

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, OCTOBER 20, 2015**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website. Phone 408-586-3040

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

Seeking Applications for:

Economic Development Commission (alternate)
Veterans Commission (2 vacancies)

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, 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 in that facility.

AGENDA REPORTS

XII. PUBLIC HEARINGS

- 1. Conduct a Public Hearing on Water Rates and Introduce Water Ordinance No. 120.47 to Establish Water Rates for the Remainder of Fiscal Year 2015-16 and for Fiscal Year 2016-17, to Authorize Mailing of Proposition 218 Hearing Notice and Set December 15, 2015 as the Public Hearing Date (Staff Contact: Steven Machida, 408-586-3355)**

Background: The City of Milpitas sells potable water and recycled water services to residential and business customers in the City. On May 19, 2015, the City Council introduced Ordinance 120.47, authorized mailing Proposition 218 hearing notices, and set the date of August 4 for the protest hearing. On July 22, 2015, a final legal decision was rendered by a court of appeals regarding interpretation of Proposition 218 requirements and tiered water rates. On August 4, 2015, staff briefed the Council on the ramifications of the legal decision and recommended a new rate study be performed. The primary concern is that encouraging conservation is an insufficient justification for tiered rates; instead a detailed cost analysis is required.

Bartle Wells Associates was retained to perform the new water rate study. The study examined the City's water fixed and variable costs for operations and capital improvements in order to prescribe a uniform water rate. While there are several acceptable methods for recovering water service costs, the rate study provides for various increases and decreases to our overall rate structure as part of the recommended update. The study recommends the following:

- Adopt American Water Works Association capacity standards to scale fixed charges with all meters 6-inches and larger paying the same rate.
- Implement a uniform rate instead of a tiered rate.
- Implement long-term financing to fund capital projects with long-term benefit.
- Recover capital costs through a capital program surcharge.

As presented to the City Council's Finance Subcommittee on September 14, the proposed rate includes a 10% increase in operational costs to cover the drought program, consultant support to maintain utility services and capital management tasks, additional permanent engineering and operations staff to cover scheduled valve exercising and replacements, pipeline repairs, water system maintenance and flushing, inspection, and capital management. In addition, the City is faced with significant cost of service increases from its water wholesalers. San Francisco Public Utilities Commission (SFPUC) wholesale rate increased by 28% and Santa Clara Valley Water District (SCVWD) wholesale rate increased by 20%. An additional \$22 million of important capital projects will also be included as part of the proposed rate increases that will address pipeline relocation for the Lower Berryessa Flood Control Project, valve and system replacements to address the City's aging infrastructure, increase seismic reliability, and expand the recycled water distribution system that will reduce high demands on the City's limited potable supplies and protect them for health and safety purposes. These capital projects will be added to the City's \$20 million approved Capital Improvement Plan that now totals \$42 million.

As a result of the rate study, it is recommended these long term beneficial projects be financed to take advantage of intergenerational benefit. The City will also prepare applications to various grant opportunities to help finance these capital costs. In addition, the water rate study recommends that all capital improvements be included in a capital surcharge shown in the new rate structure.

California State Constitution Article XIII D, also known as "Proposition 218," gives property owners receiving water services the right to protest water rate increases. The process is specifically for property owners and is not a ballot open to the general public. The City is required to notify property owners of its intent to adopt utility rate increases and give property

owners the opportunity to protest the increases. The City must mail notification to each parcel owner receiving water services, allow a 45-day protest period, and then conduct a public hearing to receive public comment. The City may adopt the proposed rates if less than a majority of property owners protest against the increase. The proposed notice, included in the Council packet, includes all requirements of Proposition 218 which are: that it states the date, time and place of the public hearing and the reason for the proposed increases and basis for the proposed rates. A copy of the Proposition 218 Notice is included in the Council packet along with the proposed ordinance.

Results of this study are shown in the following tables:

Fixed Meter Bi-Monthly Charges

Meter Size	Current bimonthly rate	Rate Effective 01-15-2016	Rate Effective 04-01-2016
5/8 inch	\$27.36	\$18.00	\$19.44
3/4 inch	\$29.07	\$27.00	\$29.16
1 inch	\$41.28	\$45.00	\$48.60
1-1/2 inch	\$52.07	\$90.00	\$97.20
2 inch	\$67.96	\$144.00	\$155.52
3 inch	\$181.95	\$270.00	\$291.60
4 inch	\$230.57	\$450.00	\$486.00
6 inch & above	\$351.86 - 667.31	\$900.00	\$972.00

Fire Meter Bi-Monthly Charges

Fire Service Line Size	Current bimonthly rate	Rate Effective 01-15-2016	Rate Effective 04-01-2016
2 inch	\$43.72	\$28.80	\$31.10
3 inch	\$65.68	\$54.00	\$58.32
4 inch	\$72.99	\$90.00	\$97.20
6 inch & above	\$94.92 – 138.69	\$180.00	\$194.40

Quantity Charges (Charge per Hundred Cubic Feet)

Category	Current per HCF	Volumetric charge effective 01-15-2016	Volumetric charge effective 04-01-2016	Capital surcharge effective 04-01-16
Residential:				
0-10 hcf	\$2.62	\$4.75	\$5.13	\$1.30
11-20 hcf	\$3.48	\$4.75	\$5.13	\$1.30
21-30 hcf	\$4.69	\$4.75	\$5.13	\$1.30
> 30 hcf	\$5.29	\$4.75	\$5.13	\$1.30
Commercial, Industrial, Institutional and Construction	\$5.29	\$4.75	\$5.13	\$1.30
Potable Irrigation	\$5.29	\$4.75	\$5.13	\$1.30
Ed Levin Park**	\$3.08	\$3.75	\$3.79	NA
City of Milpitas	\$5.29	\$4.75	\$5.13	\$1.30
Recycled Irrigation	\$4.08	\$2.42	\$2.78	NA
Recycled Industrial, Dual-plumbed, Construction	\$2.65	\$2.42	\$2.78	NA
Recycled City of Milpitas	\$2.51	\$2.42	\$2.78	NA

* 1 Hundred Cubic Feet (hcf) = 748 gallons

**County of Santa Clara rate is established by contract to be equivalent to the SFPUC wholesale rate. The FY 2016-17 SFPUC rate is estimated to be \$3.79/HCF and staff will revise to actual rate once SFPUC adopts the FY 2016-17 wholesale rate.

Staff recommends implementing the rate increase over a two year period through FY 2016-17. The proposed water rate schedule is tabulated in Ordinance No. 120.47, which is included in the Council packet. The typical residential customer in Milpitas uses 8.5 units of water per month. The average cost per single family residence for effective January 15, 2016 would increase by \$10.42 per month (from \$38.96 to \$49.38). The average cost per single family residence for FY 2016-17 would increase by \$15.00 per month (from \$49.38 to \$64.38).

Schedule: the recommended schedule for adoption of the ordinance and adjusting rates includes these milestones:

October 6, 2015

Council holds public hearing of first reading of ordinance setting water rates effective January 1 and April 1, 2016.

October 30, 2015

Proposition 218 notices must be mailed no later than this date to provide 45-day protest period before December 15 Council meeting.

December 15, 2015

Council meeting holds a public hearing. If there is not a majority protest, Council may approve the new rates through a second reading and adoption of the new water ordinance.

January 15, 2016

Effective date of the water ordinance.

April 1, 2016

Effective date for FY 2016-17 rates.

California Environmental Quality Act: The ordinance is exempt from CEQA as there will be no physical change to the environment.

Alternative: Consequences of not raising rates sufficient to cover costs are that the City would be forced to take funding from the General Fund, the only source of discretionary funds, to replace lost revenues from rates insufficient to recover costs. This transfer from the General Fund would reduce the City's ability to provide other desired community services such as enhancing public safety, parks and recreation, library, street landscaping, and street maintenance. It would also conflict with City policy and standard government practice that the water fund be operated as a self-supporting enterprise fund. By not adopting the proposed rate structure, the City would forfeit approximately \$40 million in important operating and capital projects over the next decade and it is estimated the City would lose more than \$2.5 million per year from reserves and other services funded through the General Fund to offset lost revenue. In addition, this would violate the City's operating reserve policy and increase our vulnerability of recovering from a major catastrophe. Furthermore, consequences of failure to adopt the proposed rate structure will be perceived as noncompliance with Proposition 218.

Fiscal Impact: The water rate adjustments would pay for escalating costs of wholesale purchases, City and wholesaler capital improvement programs, and system operation and maintenance for the utilities. In addition, water bonds are needed to provide capital for the proposed water supply and reliability projects.

Recommendations:

1. Open the public hearing on water rates to accept comments.
2. Close the public hearing, following all speakers.
3. Move to waive the first reading beyond the title of Ordinance No. 120.47, following a reading of the title by the City Attorney.
4. Introduce Water Ordinance No. 120.47 to amend Title VIII of the Milpitas Municipal Code to establish water rates.
5. Authorize mailing of the Proposition 218 notice of public hearing on rate increase proposed.
6. Set the date of December 15, 2015 for the public hearing.

2. Conduct a Public Hearing and Introduce Ordinance No. 240.4 Removing Supplemental Water Penalties per State Law (Staff Contact: Nina Hawk, 408-586-2603)

Background: On June 16, 2015, the City Council of the City of Milpitas declared the continuation of a water shortage for the year 2015 (Stage 2 of the Milpitas Water Shortage Contingency Plan) and added additional conservation measures as required by State law; and require the community to implement water conservation measures with a goal of reducing consumption by thirty percent (30%). Included in the urgency ordinance adopted by the City Council were penalties for failing to limit use and penalties for violating water use restrictions.

Penalties for Failing to Limit Water Use

Urgency Ordinance No. 240.3, adopted on June 16, 2015, included penalties for failing to limit water use. Residential Section VIII-6-7.00 – Drought Penalties included a 10% penalty for residential, commercial, industrial and institutional, and irrigation customers who exceed water use levels.

Recent court rulings have determined that municipal water retailers cannot engage in above-the-cost-of-service pricing. As such, the City is evaluating a new water rate structure. The urgency ordinance includes a penalty for failing to limit water use which is based on the existing tiered water rate structure. Additionally, the City is currently meeting state, regional and city water reduction requirements and targets, therefore the proposed ordinance removes all the ten-percent penalties for failing to limit water use. Concurrently, it is being proposed that the penalties for violating water use restrictions are being clarified as discussed below. The City never implemented the penalty rate structure, so repeal at this time is a formality, but required nonetheless.

Penalties for Violating Water Use Restrictions

Since adoption of the water conservation program, education and outreach efforts have proved effective at reducing water consumption. However, with the loss of penalties for excessive water use, the remaining penalties for violation of water use prohibitions were reviewed. The proposed ordinance strengthens these provisions by updating the references to the correct section of the Administrative Code and by referencing the health and safety provisions of the Municipal Code related to water service.

Fiscal Impact: None.

Recommendations:

1. Open the public hearing for comments, and move to close the hearing.
2. Following a reading of the title of Ordinance No. 240.4 by the City Attorney, move to waive the first reading beyond the title of the ordinance.
3. Introduce Ordinance No. 240.4 removing supplemental water penalties, per state law.

XIII. UNFINISHED BUSINESS

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

Background: From August 10 through September 13, 2015, the Bay Area Air Quality Management District (BAAQMD) forwarded 197 complaints originating in Milpitas. 102 complaints identified a garbage odor, 10 complaints identified a sewage odor, 84 complaints did not identify an odor source, and 1 identifying multiple odor sources. As of the last Council update, the City's odor reporting website has received 76 reported complaints.

Recommendation: Receive the update of the odor control report.

XIV. REPORTS OF MAYOR AND COMMISSION

- * 4. Consider Mayor's Recommendations for Appointments to City Commissions (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the following appointments:

Arts Commission:

Appoint current Alternate No. 1 Doris Roth as voting member to a term that will expire in October 2017.

Appoint current Alternate No. 2 Marsha Tran as Alternate No. 1 to a term that will expire in October 2016.

Appoint current Alternate No. 3 Christina Driggers as Alternate No. 2 to a term that will expire in October 2017.

Newly appoint Luqiang Shu as Alternate No. 3 to a term that will expire in October 2016.

Community Advisory Commission:

Newly appoint Vishal Gandhi as Alternate No. 4 to a term that will expire in January 2016.

Economic Development Commission:

Newly appoint Anna Wang as the real estate voting representative to a term that will expire in April of 2018.

Youth Advisory Commission: All terms expire in September of 2016.

Move current Alternate No. 1 Christie Maly to a seat as a regular voting member.

Move current Alternate No. 2 Emerald Gilana to the seat as Alternate No. 1.

Newly appoint Jenna Zarbis as Alternate No. 2.

Newly appoint Madeline Cacao as Alternate No. 3.

Newly appoint Amanda Jimenez as Alternate No. 4.

Recommendation: Receive Mayor's recommendations and move to approve appointments to four City of Milpitas Commissions.

- * 5. Consider Mayor's Request to Establish Four City Council Subcommittees and to Appoint Councilmembers to those Subcommittees (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the formation of the following three Ad Hoc City Council Subcommittees: Land Use and Transportation, Joint Use, and Facilities Naming Subcommittees; and to change City Council Finance Subcommittee Councilmember assignment. Mayor Esteves provided a written memo with his recommendations for appointment of specific Councilmembers to the four Subcommittees and his memo is included in the agenda packet.

Recommendation: Approve the Mayor's recommendation, effective immediately, to form three City Council Subcommittees, and to appoint two Councilmembers to each of those three and the Finance Subcommittee.

*** 6. Consider Mayor's Request for Report on Gender and Ethnicity Pay Equity Policy (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves requested City staff to research the need for a Gender and Ethnicity Pay Equity policy or ordinance. This study would include both the City as an employer (permanent, contract, temporary, interns etc.) and the agencies, firms and businesses the City contracts with to ensure fairness and equity in all contracts. It should be noted that this has not been an issue internally with the City of Milpitas due to current wage and hiring practices but is unknown regarding those entities with which the City may contract. This study will ensure policies are in place for fair and equitable pay. In addition, Senate Bill (SB) 358 seeks to ensure gender wage equity. This study would also include any necessary actions by the City of Milpitas to ensure compliance with SB 358 should it be signed by the Governor. The purpose of this item, and pursuant to City Council adopted policy, is to seek a majority direction of the City Council to prepare the study since this effort will take more than four hours of staff time.

Fiscal Impact: None.

Recommendation: Direct staff to conduct a study and bring back to City Council a gender and ethnicity pay equity policy or ordinance that would include both the City of Milpitas as an employer and the agencies with which the City contracts; as well as City compliance with Senate Bill 358, if signed into law.

*** 7. Per Recommendation of the Library Advisory Commission, Accept \$2,500 Donation from Republic of South Korea to the Milpitas Public Library and Approve the Spending Plan from Commissioners (Staff Contact: Bill Ekern, 408-586-3273)**

Background: In September 2015, Community Librarian Stephen Fitzgerald received a donation from Consulate General of the Republic of Korea in the amount of \$2,500 to the Milpitas Public Library. Librarian Fitzgerald has accepted the donation on behalf of the Library Advisory Commission (LAC) and forwarded the matter for acceptance of the donation and a proposed spending plan to the entire LAC. The donor specified that the donation be used for Korean language classics and popular titles.

At its meeting on September 21 2015, the LAC accepted the donation, approved the spending plan and directed staff to forward its recommendation to the City Council. Included in the Council's agenda packet is the proposed spending plan for Korean language classic and popular title books. Upon acceptance by the Council, the Consulate General of the Republic of Korea will be recognized by the LAC on the donor board at the Milpitas Public Library.

Recommendation: Accept the donation gift of \$2,500 to the Milpitas Public Library and the proposed spending plan, as recommended by the Library Advisory Commission.

XV. NEW BUSINESS

*** 8. Establish a Capital Improvement Project and Related Budget Appropriation for Update of the City of Milpitas General Plan (Staff Contact: Sarah Fleming, 408-586-3278)**

Background: California state law requires that each city adopt and regularly update its general plan. While it has been amended multiple times through 2010, the City of Milpitas General Plan has not been comprehensively updated since it was prepared and adopted in 1994 (Housing Element updated in 2015).

Council action will permit the establishment of a multi-year Capital Improvement Project (CIP) for a comprehensive general plan update and required CEQA analysis, and appropriate funding for the project in FY 2015-16.

Fiscal Impact: The project and related CEQA analysis is estimated to cost \$2,100,000 which is expected to be spent over three fiscal years.

FY 2015-16: The City currently collects a Community Planning Fee of 5% on all building-related permits to provide funds that enable the General Plan Update Project. \$200,000 is currently available from this source for FY 2015-16. Additionally, Developer Fee contributions for FY 2015-16 are provided through the Trumark/Lennar Waterstone Residential Development Project in the amount of \$1,000,000.

Future Funding: Future funding for this project is expected from a combination of Community Planning Fee Collections and Developer Contributions.

Recommendation: Establish a Capital Improvement Project for the City of Milpitas General Plan Update Project in the amount of \$2,100,000 and appropriate \$1,200,000 to this project in FY 2015-16.

XVI. RESOLUTIONS

- * 9. Adopt a Resolution Approving the Sole Source Purchase of Ammunition for the Police Department from Three Different Suppliers for a Combined Annual Not-To-Exceed Amount of \$57,000 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: Based on documented testing of duty weapons and ammunition, the Milpitas Police Department determined the performance features of particular products/brands of ammunition are compatible with the department's issued duty weapons and have reliable performance data. The Police Department uses three specific brands and various calibers of ammunition: the Federal brand, Winchester Brand and Hornady brand. Purchasing staff determined that San Diego Police Equipment Company, Inc. is the authorized sole source distributor for Federal brand ammunition in California, Adamson Police Products, Inc. is the authorized sole source distributor for Winchester brand ammunition in Northern California, and Miwall Corporation is the authorized sole source distributor for Hornady brand ammunition in California.

To ensure that these companies are sole source providers, Purchasing staff issued a competitive bid for Federal brand in March 2015 and advertised through the normal channels such as local newspaper, City website and nationally through Public Purchase website. Thirteen companies downloaded the bid but only San Diego Police Equipment Company submitted a bid. Staff further determined that changing to other brands of ammunition would require significant retraining and testing by the Police Department, resulting in substantial cost to the City that is not offset by lower price of different brands' ammunition. Therefore, staff recommends that these ammunition purchases be sole source procurements per Municipal Code Section I-2-3.09 "Sole Source Procurement."

Fiscal Impact: None. Funds for the purchase are available in the FY 2015-16 Police Department Operating Budget.

Recommendation: Adopt a resolution approving the sole source purchase of ammunition for the police department from San Diego Police Equipment Company, Inc., Adamson Police Products, Inc. and Miwall Corporation for a combined annual not-to-exceed amount of \$57,000.00.

- *10. Adopt a Resolution Authorizing Purchase of Seven City Vehicles from the National Auto Fleet Group for a Not-To-Exceed Amount of \$265,617.53 through a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The Police Department's Fiscal Year 2015-16 budget includes the purchase of three 2016 Ford Sedan Police Interceptors and two Ford Utility Police Interceptor, including fitting them with standard push bars, and one Toyota Utility vehicle for undercover operations, to replace equipment that has reached the end of its useful life. The Finance Department's Fiscal Year 2015-16 budget includes the purchase of one Ford F150 regular cab truck for its Meter Reading function, to replace equipment that has reached the end of its useful life. Staff recommends cooperative purchases through the National Joint Powers Alliance (NJPA). Cooperative purchasing through NJPA is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement." The Purchasing Agent reviewed all of the documentation from the National Joint Powers Alliance Request for Proposal entitled "Passenger Cars, Light Duty, Medium Duty, and Heavy Duty Trucks with Related Accessories" and determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as the City of Milpitas. The price for the vehicles is the same as that offered in the original agreement.

Fiscal Impact: None. Sufficient funding is in the FY 2015-16 Equipment Replacement Fund for these purchases.

Recommendation: Adopt a resolution authorizing the purchase of seven city vehicles from the National Auto Fleet Group for the not-to-exceed amount of \$265,617.53 through a cooperative procurement contract, per Milpitas Municipal Code Section I-2-3.08, Cooperative Purchasing.

XVII. AGREEMENTS

- * 11. **Approve Amendment No. 3 to the Consultant Services Agreement with RMC Water and Environment, Inc. for Utility Engineering Support for \$40,000 and Extend the Term through June 30, 2016 (Staff Contact: Steven Machida, 408-586-3355)**

Background: On October 7, 2014, the City entered into an Agreement with RMC Water and Environment, Inc. for support to backfill City staff vacancy in the Utility Engineering Section for water/recycled water distribution and wastewater collection systems through June 30, 2015. The City Council approved Amendment No. 2 for \$58,000 for additional services on April 7, 2015 through December 31, 2015. On June 16, 2015, the City Council approved Amendment No. 2 for \$42,000. Staff recommends City Council approve Amendment No. 3 to increase the agreement amount by \$40,000 and extending the term through June 30, 2016. This will bring the total value of the agreement to \$167,734. The proposed Amendment No. 3 is included in the Council packet.

Alternative: Denial of this request will result in delayed completion of some Utility Engineering tasks. Tasks include but are not limited to: regulatory compliance reporting for water, sewer, and urban runoff programs, developer project plan checking, implementing new water conservation requirements, and participating in and reviewing documentation for regional water, sewer, urban runoff, and solid waste programs.

California Environmental Quality Act: This action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None. There are sufficient funds available in the Utility Engineering operations budget.

Recommendation: Approve Amendment No. 3 to the consultant services agreement with RMC Water and Environment, Inc. for Utility Engineering Support for \$40,000 and extend the term through June 30, 2016.

- * 12. **Approve Amendment No. 6 to the Consultant Services Agreement with RMC Water and Environment to Extend the Term to October 31, 2016 for Support on the Silicon Valley**

Rapid Transit (BART) Program Berryessa Extension, Project No. 4265 and Various City Capital Projects (Staff Contact: Steven Machida, 408-586-3355)

Background: The following amendment is for a time extension only and no additional funds are requested at this time. Santa Clara Valley Transportation Authority (VTA) continues to move forward on the design and construction of the Bay Area Rapid Transit (BART) extension project. As such, engineering staff continue to require technical support on BART and routine CIP projects. On August 3, 2010, the City entered into a Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for reimbursement of City work on the Silicon Valley Berryessa Extension project. The Master Agreement allows reimbursement of consultant costs for design review services. On March 1, 2011, Council approved a Consultant Services Agreement with RMC Water and Environment (RMC) for professional engineering services on either the BART project directly or work on other capital improvement projects, thereby freeing staff to work on the BART project. Over the past five years, the City Council has approved five amendments to the Consultant Agreement and extended the term through October 31, 2015. The following amendment would extend the term of the contract by 12 months to October 31, 2016.

California Environmental Quality Act: The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Alternative: If the amendment is not approved, staff will not be available to provide support to the project which will impact construction and inspection of City infrastructure.

Fiscal Impact: None. Consultant expenses and City staff labor are reimbursable under the VTA Master Agreement. There are sufficient funds in the project budget for the continuation of this work.

Recommendation: Approve Amendment No. 6 to the consultant services agreement with RMC Water and Environment to extend the term to October 31, 2016 for support on the Silicon Valley Rapid Transit (BART) Program Berryessa Extension, Project No. 4265 and various city capital projects.

- * 13. **Approve Amendment No. 6 to the Consultant Agreement with Schaaf & Wheeler to Extend the Term to October 31, 2016 for Storm Drain/Stormwater Program Documentation Review for the Silicon Valley Rapid Transit (BART) Program Berryessa Extension, Project No. 4265 (Staff Contact: Steven Machida, 408-586-3355)**

Background: The following amendment is for a time extension only and no additional funds are requested at this time. Santa Clara Valley Transportation Authority (VTA) continues to move forward on the design and construction of the Bay Area Rapid Transit (BART) extension project. Engineering support is necessary as the Milpitas BART station and parts of the BART alignment are within a floodplain requiring relocation of existing and/or installation of new City storm drain pipes, and compliance verification with mandatory storm water program requirements. On August 3, 2010, the City entered into a Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for reimbursement of City work on the Silicon Valley Berryessa Extension project. On January 26, 2012, the City entered into a Consultant Services Agreement with Schaaf & Wheeler for professional engineering services for the BART extension project. Over the past three years, the City Council has approved five amendments to the Consultant Agreement and extended the term through October 31, 2015. The following amendment would extend the term of the contract by 12 months to October 31, 2016.

California Environmental Quality Act: The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Alternative: If the amendment is not approved, staff will not be available to provide support to the project which will impact construction and inspection of City infrastructure.

Fiscal Impact: None. There are sufficient funds in the project budget. Consultant expenses and City staff labor are reimbursable under the VTA Master Agreement.

Recommendation: Approve Amendment No. 6 to the consultant agreement with Schaaf & Wheeler to extend the term to October 31, 2016 for Storm Drain/Stormwater Program Documentation Review for the Silicon Valley Rapid Transit (BART) Program Berryessa Extension, Project No. 4265.

- * 14. **Approve Amendment No. 3 to the Consultant Services Agreement with CalRecovery, Inc. to Increase the Compensation by \$105,000 for Technical Odor Support Services and Approve a Budget Appropriation of \$130,000 (Staff Contact: Steven Machida, 408-586-3355)**

Background: On October 16, 2014, the City entered into an agreement for \$15,000 with CalRecovery, Inc. to provide technical on-call consulting support services for odor issues and other technical solid waste management related matters. The agreement was amended on January 20, 2015 and July 1, 2015 for \$35,000 and \$50,000 respectively, for continued services, for a total not to exceed \$100,000. The work has included field visits to odor-generating sites, review of Newby Island permit application documents, preparing written documents, attending regulatory hearings, providing expert witness testimony, and other odor-related technical support services. Additional services will be required to support review of the regional odor study, review of the Newby Island landfill expansion and City of San Jose's Planned Development Permit, and the City's appeal of San Jose's Hearing Officer's decision to CalRecycle.

The Bay Area Air Quality Management District (BAAQMD) staff is requesting the City to submit an application for an Air Permit for the City's sewer lift station located on McCarthy Boulevard. The City will perform air quality sampling and submit the results with the permit application. BAAQMD will then determine if a permit and/or odor treatment facilities are required. CalRecovery will coordinate the sampling, review the results, prepare the application, and assist the City through the permit process. It is now necessary to increase the agreement amount by \$105,000, for a total not to exceed \$205,000, for continued technical odor support services. The permit application is estimated to cost up to \$25,000. A budget appropriation of \$130,000 is necessary to perform this work. Staff will request additional funding in the future, if odor treatment facilities are required.

California Environmental Quality Act: This item is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change to the environment.

Alternative: If the amendment is not approved, engineering staff will not receive technical odor consulting services to address ongoing odor problems in the City, will need to accept BAAQMD's decisions on the City's lift station without the ability to review and/or discuss and challenge complex odor emissions chemistry, and will use operating funds, allocated for other activities for the permit application fees.

Fiscal Impact: An operating budget appropriation of \$50,000 from Solid Waste Fund and \$80,000 from Sewer Fund is necessary to perform this work, with \$25,000 from the Sewer Fund going to the Utility Maintenance operating budget and the remaining funds going to the Utility Engineering operating budget.

Recommendation: Approve Amendment No. 3 to the consultant services agreement with CalRecovery, Inc. to increase the compensation by \$105,000 for technical odor support services and approve a budget appropriation of \$130,000.

- * 15. **Approve and Execute a Storm Management Operation and Maintenance Agreement for the Pace Development Project at 324 Montague Expressway, Project No. 2762 (Staff Contact: Steven Machida, 408-586-3355)**

Background: On November 15, 2011, the City Council approved a Vesting Tentative Map, Conditional Use Permit and Site Development Permit for Trumark Communities' Contour Project (since renamed the "Pace Project") for construction of 43 single family homes and 91 condominium units. The project is located at 330 Montague Expressway (on northeast corner of Montague Expressway and Trade Zone Blvd.). At the time of final map, approval of this agreement was not included in the package sent to council; staff is now requesting approval and authorization of this Agreement.

California Environmental Quality Act: The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Alternative: If the Storm Management Operation and Maintenance agreement is not approved, the Developer will not be able to complete the development conditions for final project acceptance.

Fiscal Impact: None.

Recommendation: Approve and authorize the execution of a Storm Management Operation and Maintenance agreement for Pace Development at 324 Montague Expressway, Project No. 2762.

- * 16. **Award the Bid to ACCO Engineered Systems, Inc. and Authorize the City Manager to Execute the Agreement for Citywide HVAC Maintenance and Repair Service for \$300,000 and Thereafter Annually Not to Exceed \$187,527 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: On July 24, 2015, the City of Milpitas issued a Request for Proposal (RFP) for Citywide Heating, Ventilation and Air Conditioning (HVAC) Maintenance and Repair Service. Purchasing staff worked closely with Public Works and Engineering departments to develop the specification and bid package for the RFP. The RFP was advertised in the local newspaper, on the City website and through Public Purchase. Four proposals were received and evaluated by a committee of three: the Utility Maintenance Manager, an Equipment Maintenance Worker II and the Buyer.

The committee scored the proposals based on six criteria including price, proposers' company background, technical abilities, and references. The recommendation for award to ACCO Engineered Systems Inc. is based on the offering that is considered the most advantageous to the City. The new contract for HVAC Maintenance and Repair service is for one year from October 7, 2015 to October 6, 2016 with four one-year options for renewal. Renewal years contain a compensation adjustment clause based on the Producer Price Index for Commercial Machinery Repair and Maintenance or 5% whichever is less. The base price for the maintenance portion of the contract is \$87,527.00. After posting the Notice of Intent to Award (Pending Bid Results), no protest was filed.

HVAC equipment throughout different City buildings is in various states of operational condition. ACCO is required to perform a "Baseline Inventory and Equipment Evaluation Survey" in the first month of the agreement to determine the repair types to various pieces of equipment to bring all City HVAC systems up to peak operational condition. The cost of these repairs is estimated to be \$212,473.00. Consequently, the contract price for the first year will be set at \$300,000 to accommodate both known maintenance and unknown repairs needed for the HVAC systems. Due to age and wear-and-tear of various equipment, an annual contingency repair of \$100,000 is added to the base maintenance contract in each remaining four years, therefore, the contract price is set at \$187,527 annually for subsequent years.

Fiscal Impact: None. Funds are available in Facilities Maintenance Operating Budget for this service.

Recommendations:

1. Award the bid to ACCO Engineered Systems, Inc. and authorize the City Manager to execute an agreement with ACCO for citywide HVAC Maintenance and Repair Service with for the not-to-exceed amount of \$300,000 for the first year and the annual not-to-exceed amount of \$187,527 for the remaining four years of the contract, for a total amount of \$1,050,108 during the five year term.
2. Authorize the Purchasing Agent to extend the term of the agreement annually for the next four years with an annual price increase per the terms of the agreement and without further City Council action, except for appropriation of funds.

*** 17. Approve the First Amendment to the Purchase and Sale Agreement between the City of Milpitas and Milpitas Unified School District to Extend the Escrow Closing Date (Staff Contact: Emma Karlen, 408-586-3145)**

Background: On October 21, 2014, the City of Milpitas and the Milpitas Unified School District (“District”) entered into a Purchase and Sale Agreement for the District to purchase 6.7 acres of City owned property on McCandless Drive for construction of a new elementary school. Due to delay in completing the Environmental Impact Report, the District requires more time in order to obtain the state’s approval of the site to be used for an elementary school. The District requests a one year extension of the close of escrow date to not later than October 21, 2016.

Fiscal Impact: None.

Recommendation: Approve the first amendment to the Purchase and Sale Agreement between the City of Milpitas and Milpitas Unified School District to extend the escrow closing date.

*** 18. Approve an Agreement between City of Milpitas and Singer Associates, Inc., in the amount of \$180,000, to Implement a Communications Plan and Provide Public Information Services (Staff Contact: Tom Williams, 408-586-3050)**

Background: For over a decade, the City of Milpitas has operated without a general public information officer. The City is need of a person or firm with experience in media relations, preparation of press releases, quarterly newsletters, annual reports, positive City promotions and communications to the public.

Over the last several years, it has become evident there is need for the City to inform the public, employees and the media with reliable and accurate information communicated on behalf of the City. As the City grows, faces additional complex issues and seeks to create additional business attraction and jobs through positive imaging and economic development efforts, ensuring accurate reliable information to the public is essential.

In consideration of the need to fill the information/communications void, the cost versus benefit of hiring an in-house Public Information Officer or retaining an experienced firm was analyzed. This led to the conclusion that hiring a professional firm is better suited both in terms of cost savings and experience to meet the City’s needs at this time. After a professional services search and outreach to firms, City staff recommends Singer Associates. There are five primary areas that Singer Associates will fulfill as part of this proposed annual agreement. In summary, these service areas include:

- 1) Developing a communications plan;
- 2) News and media relations;
- 3) Community relations and communications;

- 4) Web/Social Media; and
- 5) Internal communications.

A copy of the agreement proposed with Singer Associates is included in the agenda packet.

Fiscal Impact: \$120,000 for remainder of FY 2015-16 and \$60,000 in FY 2016-17. The annualized contract is for a not to exceed \$180,000.

Recommendation: Authorize the City Manager to enter into a agreement with Singer Associates, Inc. in the not to exceed amount of \$180,000.

XVIII. JOINT MEETING of CITY COUNCIL/ECONOMIC DEVELOPMENT CORPORATION

CALL TO ORDER by Mayor/Chair

APPROVE CONSENT CALENDAR

- * 19. Authorize City Manager and the Milpitas Economic Development Corporation President to Execute Five Memorandums of Termination of Option to Purchase Certain Properties (Staff Contact: Christopher Diaz , 408-586-3040)**

Background: On March 28, 2011, in a Special Joint meeting of the City Council, the Redevelopment Agency, and the Economic Development Corporation (“EDC”), the City Council and EDC authorized the execution of Option Agreements providing the EDC the option to purchase certain real property from the City. This was done in connection with possible future use and reuse of those parcels and possible marketing of those parcels to developers and entities for economic development and community improvement opportunities. At that time six properties were the subject of the Option Agreements. One of the Option Agreements was for the Alder Drive/Barber Lane property, which was subsequently terminated by Memorandum of Termination of Option on November 28, 2012. This leaves five properties currently encumbered with an Option Agreement, as set out below:

APN	ADDRESS	DESCRIPTION
022-02-012	1265 N. Milpitas Blvd.	Corporation Yard
029-17-004 through -013 and -015	1325 E. Calaveras Blvd.	Sports Center and Open Space
028-24-025	86 N. Main Street	Vacant land
028-34-001 through 028-34-094	230 N. Main Street	Vacant land
086-10-025	540 S. Abel Street	Cracolice Building

On June 17, 2014 the City, and on June 19, 2014 the Successor Agency, each approved the Settlement Agreement in the two redevelopment agency litigation cases. Effectively, the Settlement Agreement, ended any future claims that the EDC would have under these options. In order to fully effectuate the Settlement Agreement the City is required to formally terminate all of the Option Agreements. This will allow other steps necessary under the Settlement to occur. In addition, in order to effectuate clear title for the all the properties, the Option Agreements must be terminated.

Additionally, the EDC anticipates dissolving in the near future and therefore all of the Option Agreements encumbering the above properties should be terminated, prior to that occurring.

Therefore, it is recommended that all remaining Option Agreements be terminated by Memorandum of Termination of Option for each Agreement, which will then be recorded with the County of Santa Clara Recorder’s Office, to clear the title of the above properties. At the

request of the County, the Memorandum of Termination of Option for the Sports Center property is dated to be effective September 14, 2015, so that it is effective prior to the execution and recordation of associated grant deeds.

Fiscal Impact: None. Although the EDC was required to pay the City \$150,000 as consideration for the options, the payment was never made.

Recommendation: Authorize the City Manager and the Milpitas Economic Development Corporation President to execute five Memorandums of Termination of Option to purchase the five properties (listed in report above), which will then be recorded with the County of Santa Clara Recorder's Office.

XIX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, OCTOBER 20, 2015**

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

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

MILPITAS CITY COUNCIL CALENDAR

October 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 September 30 to October 2 –League of California Cities Annual Conference (JE/CM/MG) 5:30 PM -Santa Clara VTA Board of Directors (JE)	2 September 30 to October 2 – League of California Cities Annual Conference (JE / CM)	3
4	5 10:00 AM -SVRT Program Working Committee (JE) 7:00 PM -Parks, Recreation & Cultural Resources Commission (GB)	6 5:30 PM -Joint Meeting City Council +Planning Commission 7:00 PM -City Council	7 5:30 PM -Veterans Commission (DG) 7:00 PM -Community Advisory Commission (CM) 7:00 PM -Youth Advisory Commission (DG)	8 4:00 PM -Santa Clara VTA Policy Advisory Committee (CM) 4:30 PM -Treatment Plant Advisory Committee (JE) (San Jose) 6:00 PM - Youth Advisory Commission – “YAC Attack” Conference – Campbell Community Center (DG) 7:00 PM -Cities Assoc of SCC (JE)	9	10
11	12 4:00 PM -Economic Development Commission (CM)	13	14 7:00 PM -Planning Commission	15 12:00 PM -Santa Clara VTA Congestion Management Program & Planning Committee (JE)	16	17 10:00 AM to 4:00 PM Milpitas Veterans Commission - 3 rd Annual Car Show
18	19 7:00 PM - Telecommunications Commission (GB)	20 6:00 PM -Closed Session 7:00 PM -City Council	21	22 5:30 PM -Milpitas Chamber of Commerce Board (DG)	23 11:00 AM - Milpitas Oversight Board	24
25	26	27 1:30 PM -Senior Advisory Commission (JE) 6:00 PM -Recycling & Source Reduction Advisory Commission (GB)	28 7:00 PM -Planning Commission	29 12:00 PM -Terrace Gardens Board of Directors (DG) 1:30 PM -Santa Clara County Library District Joint Powers Authority (CM) 6:00 PM -Sister Cities Commission (MG)	30	31 

***Draft* MEETING MINUTES
CITY OF MILPITAS**

Minutes of:	Regular Meeting of Milpitas City Council
Date:	Tuesday, September 15, 2015
Time:	6:00 PM Study Session / 7:00 PM Open
Location:	Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Mayor Esteves called the meeting to order at 6:02 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo, Giordano and Grilli

ABSENT: None

STUDY SESSION

Development Proposal for the Serra Center: Planning & Neighborhood Services Director Bill Ekern addressed the City Council explaining that the Serra Center property owners were here to address the City Council with some information about a potential zone change request at Serra Center, while there was no actual project proposal at this time.

Mr. Jeff Rhoads of the Argonaut Co. presented for the property owners.

Mayor Esteves asked about the desire to change zoning: was it to purely residential or to mixed use? Mr. Ekern responded the primary focus has been on residential development rather than the current land use and zoning for industrial/commercial use.

Councilmember Grilli wanted to know why the number was from 500 – 1000 dwellings for residential. Mr. Rhoads said they needed a sizable residential component to make it viable economically, with a mixed use stacked structure most likely.

Councilmember Barbadillo asked if the 10.6 acres (out of the larger total) was only to be redeveloped, would owners leave the remainder as is. Mr. Rhoads replied there were long term lease commitments for currently successful businesses (restaurant and hotels).

Councilmember Giordano described mixed use residential as a new phenomenon in Milpitas and it could be successful.

Councilmember Grilli asked what would be the percentage of residential development to commercial. Mr. Rhoads suggested it might be about 20% retail and 80% residential while there was not actual project proposed at this time yet. Mrs. Grilli remarked that the City Council recently did not allow mixed use in the Town Center and there were concerns for schools, and adding more residential concerned about.

Councilmember Barbadillo commented on remarks previously made at a meeting by the Economic Development Manager about the business needs of the City, referring to bringing in more businesses and working population. Mr. Ekern responded on that point.

Councilmember Giordano noted that Planning Commissioners were positive and favorable to a zoning change when this was brought for discussion. It was always a give-and-take for any development proposal. This could be a beautiful project, as a gateway to the City. She could be in favor of it, adding high quality density residential and was open to a zoning change.

Mayor Esteves thanked the group for coming forward and for being a pioneer, driving development in a “dead” area of Milpitas. Possibly the only way to change that area would be to allow residential in that space.

Vice Mayor Montano asked how this change would benefit surrounding neighborhoods. Mr. Rhoads said amenities added for shopping with a new upscale “downtown” area of Milpitas.

Councilmember Barbadillo agreed a gateway was needed, but how it was presented meant he did not have enough facts. The Council would need input from the school district for example and input from the people.

Councilmember Grilli felt if a project was proposed with an 80/20 mix, she did not understand how it would revitalize the area. She had seen success in neighboring cities of Fremont and San Jose, so lots of commercial was going in around Milpitas. She was not sure it should be residential on this Serra site.

Mayor Esteves invited comments from the audience.

Bob Nunez, Milpitas Unified School District board member, read aloud a letter from the Superintendent and submitted it to the City Clerk. He asked that no change in zoning occur on the Serra site and that the Board continue to work cooperatively with the City on any land use that had an impact on the district.

The Mayor spoke about past actions of City Council to control residential growth into specific areas. The majority of Council here appeared to want to bring this Serra Center concept forward to consider a specific project and zone change, in the future.

The Study Session was ended at 7:20 PM.

City Council then convened in Open Session at 7:20 PM.

PLEDGE

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

INVOCATION

Councilmember Giordano quoted Abraham Lincoln.

MEETING MINUTES

Motion: to approve minutes of September 1, 2015 City Council meeting

Motion/Second: Councilmember Grilli/Councilmember Barbadillo

Motion carried by a vote of: AYES: 4
NOES: 0
ABSTAIN: 1 (Giordano)

SCHEDULE OF MEETINGS

Motion: to approve the Council Calendars/Schedules of Meetings for September and October 2015, as amended

City Manager Williams announced the following meeting changes:

- 1) Special City Council meeting the following day at 4:30 pm, September 16
- 2) Economic Development Commission scheduled yesterday was canceled
- 3) League of California Cities annual conference would take place from September 30 through October 2, in San Jose. The Mayor, Vice Mayor and some city staff will attend

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

PRESENTATIONS

Mayor Esteves proclaimed Ovarian Cancer Awareness Month for September and the proclamation was accepted by Vicky Michelis.

Mayor Esteves commended Generation Taekwondo of Milpitas members for success at the recent national championships, where more than 10 student participants won medals. He thanked Grand Master Mr. Cruz and presented certificates to the youth members in attendance.

PUBLIC FORUM

Rob Means, 1421 Yellowstone Ave resident, discussed Personal Rapid Transit and provided overhead slides with graphics and layout design with information.

Robert Marini, Milpitas resident, referred to a Finance Subcommittee meeting, and costs for sewerage were not discussed then. He displayed his own chart of costs for bimonthly water and sewage service for single family residences.

Sixteen speakers came to the podium and addressed the City Council with comments on odor problems, opposition to Newby Island, against Republic Services as Milpitas garbage company, rates paid to Republic, and the landfill generally as a public nuisance.

Mayor Esteves responded on two actions by the City: one) a resolution was already adopted by Council declaring the public nuisance; and, 2) a consultant was preparing the RFP to go out for trash collection service. Mayor Esteves remarked on the many speakers about the odor issue and thanked them for attending this meeting and speaking out.

ANNOUNCEMENTS

City Manager Tom Williams announced four employees who were honored the previous week at the City Employees Barbecue at Higuera Adobe Park. Mayor Esteves and City Council thanked and recognized recent winners at the City of Milpitas Employee Recognition: Rising Star Award to Jean Andona from the Police Department; Rookies of the Year Gaby Manzo (Building) and David Sanchez (Recreation), and Employee of the Year Roberto Herrera (Public Works).

Councilmember Giordano asked to adjourn the meeting in memory of Ernie Wolf, a pioneering member of the community who'd recently passed away.

Vice Mayor Montano spoke regarding the Policy Advisory Committee of Santa Clara VTA. That agency planned to launch a new transit pilot program with buses called "VTA Flex" starting in October. She displayed what the vehicles would look like.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

CONSENT CALENDAR

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

City Manager Williams requested to move item no. 5 (regulations for the Community Gardens) to consent.

Councilmember Giordano asked to remove item no. 12 (plastic bag ban ordinance) from consent.

Mayor Esteves requested to place item no. 6 (RSRAC workplan) onto consent.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

- * 2. RFP Ethics Hotline Directed the City Manager to issue a Request for Proposals for a City Ethics Hotline.

- * 4. Commission Appointments Approved the Mayor's recommendation for appointments, as follows:
 - Youth Advisory Commission:**
Re-appointed Commissioners Sabina King, Sahil Sandhu and Crystal Tran to one year terms that will expire in September 2016.

 - Moved Alternate No. 1 Jashandeep Chahal, Alternate No. 2 Claudia Wang, and Alternate No. 3 Ravit Sharma to voting member seats to terms that expire in September of 2016.

 - Moved Alternate No. 4 Christie Maly to Alternate No. 1 to a term that will expire in September of 2016.

 - Newly appointed Emerald Gilana as Alternate No. 2 to a term that will expire in September of 2016.

 - Sister Cities Commission:**
Re-appointed Massoud Arefi to a new 3-year term that will expire in September of 2018.

- *5. PRCRC – Community Garden Rules & Regulations Approved the revised Rules and Regulations for the Cesar E. Chavez Community Garden, per recommendation of the Parks, Recreation and Cultural Resources Commission.

- *6. RSRAC Workplan Approved Recycling and Source Reduction Advisory Commission's 2015-16 Work Plan.

- *11. Restoration of 7% PERS Approved restoration of employer PERS 7% contribution for the City of Milpitas unrepresented employees.

- *13. Resolution Adopted Resolution No. 8501 granting initial acceptance of public improvements for SORA Milpitas (Shea Residential), Tract 10139, Project No. 2718 and approving a reduction in the performance bond, subject to a one-year warranty period and reduction of the faithful performance security to \$240,000.

- *14. Resolution
 1. Adopted Resolution No. 8502 adding one Administrative Analyst II position and reclassify an existing Maintenance Custodian Position in the Public Works Department.
 2. Approved appropriation of funds from the General Fund in the amount of \$182,000 to fill a vacant unfunded Public Works Manager position in the Public Works Department.

- *15. Resolution Adopted Resolution No. 8503 and directed staff to send appropriate letters expressing the City of Milpitas' opposition to the project and trains carrying crude oil from travelling through the City.

- *16. Amendment to agreement with Santa Clara VTA
 1. Approved Amendment No. 8 to the Master Agreement with the Santa Clara Valley Transportation Authority related to the Silicon Valley Rapid Transit Program Berryessa BART Extension Project extending the term to February 28, 2017 and increasing the agreement amount by \$646,100.
 2. Approved a budget appropriation of \$300,000 to Project No. 4265 – BART Extension coordination and planning in the CIP.

- *17. Amendment to agreement with Vali Cooper & Associates Approved Amendment No. 4 to the Agreement with Vali Cooper & Associates, Inc. extending the term to October 31, 2016 and increasing compensation in the additional amount of \$310,000 to continue support on the Silicon Valley Rapid Transit Program-Berryessa BART Extension and on the Montague Expressway Widening, Projects No. 4265 and No. 4179.

- *18. Agreement with CSG for Engineering staff Approved a consultant agreement with CSG Consultants, Inc. for Engineering Department staff augmentation services for Capital Improvement Program projects for an annual amount not-to-exceed \$150,000.

PUBLIC HEARING

1. Annual CAPER for FY 2014-15 CDBG Funds

Housing Manager Tim Wong gave a brief overview of the success of the distribution of federal Community Development Block Grant (CDBG) funds in FY 2014-15, as reported in the federally mandated annual Consolidated Annual Performance Evaluation Report (CAPER). He quoted many figures in the major accomplishments in Milpitas with services provided with those funds.

Mayor Esteves asked him for information on how to confirm the success rates reported by the non-profit groups and from staff, in order to maximize the impact of the funds. Mr. Wong described the quarterly reports due and site visits by staff to the agencies.

Vice Mayor Montano asked about the list of service providers for the organizers of Make a Difference Day and if it was given to that group, which staff confirmed.

Next, Mayor Esteves opened the public hearing for comments.

Robert Marini, Milpitas resident, asked why 65% would go to non-public services and what that actually funded. Staff replied that was terminology. "Public" services referred to administrative costs for the grants while the "non-public" services went to agencies and to non-capital services – as mandated by the federal agency.

Voltaire Montemayor, Milpitas resident, felt the agencies all helped everybody in the community and their presence was important.

(1) Motion: to close the public hearing, after hearing two speakers

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

(2) Motion: to adopt the FY 2014-15 Consolidated Annual Performance Evaluation Report (CAPER) regarding distribution of Community Development Block Grant funds to non-profit organizations

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

UNFINISHED BUSINESS

3. Wage Rates and Janitorial Service Contract

City Manager Tom Williams provided a slide overhead with Janitorial Wage Rate Analysis 2015, as directed by the City Council back in August. The wage range displayed was from \$9.50 per hour by UBS (previous janitorial contractor for the City) to current \$9.00 per hour for Varsity (current provider). He mentioned the study that most Mayors in Santa Clara County agreed to recently, for a study on the minimum wage county-wide and that Mayor Esteves supported. He urged consideration of the status of current city employees, not all of whom have yet had wages restored from the time of cuts.

Vice Mayor Montano gave her opinion that janitors working at \$9.00 per hour could not afford to live here. There are a lot of working poor in the South Bay and there was an income inequality gap. She was surprised by the memo received from city unions. This was a crisis. Seeking a new bid for contracted janitors was a good idea and she did support the staff recommendation. Decent living wage was needed.

Councilmember Grilli was really glad that the Mayor supported the regional effort and study as proposed. She agreed with the Vice Mayor that this was an issue for families all across the South Bay.

Mayor Esteves felt the current rate of pay was not a livable rate for those workers. Large cities had already adjusted the minimum wage, like San Jose, San Francisco and Los Angeles. He supported staff Option 1 (as noted below).

Councilmember Grilli asked if the Mayor had a timeframe on the study to be completed. Mayor Esteves said no but as soon as possible for the conclusion on the study.

Mayor Esteves invited speakers from audience.

Robert Marini, Milpitas resident, asked if these were full time or part time employees that were being discussed. He urged to make a distinction if going out to bid.

Liz Ainsworth, President of the Chamber of Commerce, reported her organization was also looking at this issue. She was glad there would be a study. There was a difference between minimum wage and a “living wage.” Members wanted to safeguard their businesses. She requested to meet with the Mayor on this topic to give input.

Tom Valore, Milpitas resident, said people fool themselves when not paying a living wage. The question was, out of whose pocket the funds come from. Taxpayers ultimately paid for benefits that poor people may get from the government, when they did not earn enough to survive. It was best if those who can work to do that on a fair wage.

Voltaire Montemayor, Milpitas resident, was looking into the eyes of the workers who need more money, and they had pride. He was in favor.

Motion: to direct the City Manager to move forward on recommended Option 1 (continue current contract with Varsity, participate in county-wide wage study, and rebid contract) and direct staff to report back on the minimum wage study with recommendation to consider for all outside contracts

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

Mayor Esteves announced a break at 9:08 PM and returned at 9:21 PM.

NEW BUSINESS

7. Rep. for South Bay Odor Group

City Engineer Steven Machida explained the need for the appointment process for a City representative to serve on the South Bay Odor Stakeholder Group.

Mayor Esteves asked the qualifications to serve. Mr. Machida said the person would need to be a resident and have some awareness of the issues being discussed regarding odor. Mayor Esteves announced this opportunity to the public and encouraged anyone interested to complete a City Commission application and submit it to the City Clerk.

Motion: to authorize the selection process to appoint a public Representative and Alternate to the South Bay Odor Stakeholder Group, and to report back to the City Council with the recommendation for appointments on October 20, 2015

Motion/Second: Vice Mayor Montano/Councilmember Grilli

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

**8. Super Community
Committee Marketing**

Economic Development Manager Edesa Bitbadal reported that Levi Stadium in Santa Clara would host Super Bowl 50 on February 7, 2016. Milpitas and surrounding communities wanted to take advantage of the many visitors coming to the South Bay for the Super Bowl event and to encourage hotel patrons here to dine and shop here too. She listed ideas that would be pursued and a budget of \$35,000 recommended, after several meetings with the Economic Development Commission and local businesses. Funds would cover printing material, website, shuttle service, CBS video, welcome signs, billboard ads and "Milpitas Business Passport" to implement in January, after holidays.

Vice Mayor Montano asked if there would be promotion of the Century movie cinemas at the Great Mall. Staff replied yes and that General Manager of the mall was part of the committee. All entertainment venues would be advertised. The Vice Mayor also suggested ads on the light rail trains. Ms. Bitbadal responded that perhaps large banner ad across the street may be possible.

Mayor Esteves suggested a visitor's hotline to call since there is no visitor's bureau in the City. He also requested a marquee sign at City Hall, as a welcoming sign. He wanted to sign a Welcome letter from the Mayor himself to all visitors during the Super Bowl time.

Motion: to receive the oral report from the Economic Development Manager and direct staff to implement the Milpitas Super Community Committee Citywide Marketing Plan including approval of \$35,000 budget

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**9. Update on Sports Center
Fields Project**

City Engineer Steven Machida provided details of the work to accomplish for the major update to the Milpitas Sports Center playing fields, including new synthetic turf for the fields. He brought a sample of the "Field Turf" to display. Staff and the contractor had recognition of the time-critical schedule to have all work done by next year's July 4th celebration. To expedite design and project delivery for the Sports Fields update, a "design/bid/build" approach would be used to move it along rapidly.

Councilmember Grilli asked lifespan of the turf and he replied 15–20 years maximum.

Councilmember Barbadillo asked questions on costs, and the preliminary cost estimate versus amount in the award of bid. Staff may forego some of the improvements, do it as value engineering as needed, to stay within budget. Additional questions were answered about the budget, projected costs and potential changes.

Vice Mayor Montano asked if "purple pipes" for use recycled water would be used at this project. Mr. Machida replied that staff was working to bring more available use of that water all throughout the city. Ms. Montano recommended decorative signs at the site.

Mayor Esteves further suggested perhaps the use of new public art funds could be used for the signs the Vice Mayor had suggested.

The Mayor also asked questions about protecting the surface during annual Relay for Life walk-a-thon event, as it would be different than how it was handled in the past on dirt field. He urged consideration for maintenance costs too.

Speaker: Voltaire Montemayor, Milpitas resident, said this project was worth it.

Motion: to receive a presentation from the City Engineer and approve the conceptual plan and proceed using Design-Build method for the Milpitas Sports Center Sports Fields Project No. 5104

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

**10. Preliminary FY 2014-15
Year End Financial Report**

Finance Director Emma Karlen gave a summary preliminary financial report, starting with the General Fund Revenues and Expenditures, for the end of the FY 2014-15. Revenues were up by \$6.0 million more than budgeted, especially due to an increase in property tax receipts and the former Redevelopment Agency area tax proceeds distribution (RPTTF). Hotel tax revenue (TOT) was significantly higher as well.

On the expenditures side, approximately \$5.4 million in savings was experienced. In particular, salary savings occurred with turnover in staff positions, with vacancies.

Further discussion was held on sales tax revenue, which was very slightly down from the amount projected, and ways to consider increasing it in future budget years.

Ms. Karlen reviewed amounts for the General Fund Undesignated Reserve (aka "Rainy Day" funds of \$13.million (18% reserve) and noted funds available for the CIP.

Speaker: Voltaire Montemayor, Milpitas resident, responded on the actual figures versus the project budgeted revenue. He said that could not always be controlled.

Motion: to receive the preliminary year end financial report for the Fiscal Year ended June 30, 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

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

ORDINANCE

12. Ordinance No. 287

Councilmember Giordano removed this from consent and referred to an e-mail she had received from a group that was opposed to the plastic bag ban. She wanted to be consistent with her past vote in opposition to the proposed ban. She agreed with the idea to wait until the statewide ballot initiative was voted upon in 2016.

Speakers:

Voltaire Montemayor, Milpitas resident, talked about going to the store without bags and there had been detrimental side efforts of a ban but now he saw benefits.

Rob Means, 1421 Yellowstone resident, mentioned the persons who signed the petitions for the statewide ballot measure. He felt some of those may have been duped or mislead on what the measure was about. He also talked about corporate money in elections.

(1) Motion: to waive the second reading of Ordinance No. 287

Motion/Second: Councilmember Grilli/Vice Mayor Montano

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

(2) Motion: to adopt Ordinance No. 287 restricting the use of single-use carry-out bags

Motion/Second: Councilmember Grilli/Vice Mayor Montano

Motion carried by a vote of:

AYES: 4

NOES: 1 (Giordano)

RESOLUTIONS

Three resolutions were adopted on consent calendar.

AGREEMENTS

Three items were approved on the consent calendar.

ADJOURNMENT

Mayor/Chair Esteves adjourned the City Council meeting at 11:00 PM in memory of Ernie Wolf.

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

***Draft* MEETING MINUTES
CITY OF MILPITAS**

Minutes of:	Special Meeting of the Milpitas City Council
Date:	Monday, September 16, 2015
Time:	4:30 PM
Location:	Milpitas City Hall, 2nd Floor 455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 4:31 PM.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo, Giordano and Grilli

ABSENT: None

Assistant City Manager Emma Karlen and Interim City Attorney Gary Baum were also present in Council Chambers.

APPROVAL of AGENDA

On a motion by Vice Mayor Montano, seconded by Councilmember Grilli, the meeting agenda was approved by unanimous vote.

AGREEMENT

On a motion by Councilmember Giordano, seconded by Councilmember Grilli, the amendment to the agreement for City Attorney Services with interim City Attorney Gary Baum was approved by unanimous vote.

Councilmember Barbadillo, Mayor Esteves and Councilmember Grilli asked several questions of Mr. Baum about his monthly invoice, his hourly rate for service rendered, work performed by attorneys with his firm, savings versus prior in-house attorney and the length of his contract with the City.

CLOSED SESSION

City Council convened then to Closed Session to discuss the following:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Pursuant to California Government Code Section 54957

Position: City Attorney - interview of two law firms

No announcement out of Closed Session and no reportable action taken.

ADJOURNMENT

Mayor Esteves adjourned the special meeting at 7:31 PM.

*Minutes submitted by
Mary Lavelle, City Clerk*

***Draft* MEETING MINUTES**
CITY OF MILPITAS

Minutes of:	Special Meeting of Milpitas City Council
Date:	Tuesday, September 22, 2015
Time:	4:30 PM
Location:	Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Mayor Esteves called the meeting to order at 4:30 PM. The Deputy City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Montano, Councilmembers Barbardillo, Giordano and Grilli

ABSENT: None

**PUBLIC EMPLOYEE
APPOINTMENT / HIRING**

Pursuant to California Government Code Section 54957
Position: City Attorney

Approve Agreement with Best Best & Krieger LLP to Provide City Attorney Services

Interim City Attorney Baum briefed the Mayor and the City Council regarding the proposed agreement between the City and Best Best & Krieger LLP.

Vice Mayor Montano asked for clarification regarding the secretarial or administrative portion of agreement, specifically as to whether the City will be billed for such services. Interim City Attorney Baum and Attorney Christopher J. Diaz from Best Best & Krieger LLP replied that the City will not be billed for secretarial or administrative services.

Brief discussions were made regarding the current in-house legal secretary at the City Attorney's office. Mayor Esteves asked Interim City Attorney Baum for clarification regarding certain terms of the proposed agreement such as penalty clauses, rules of professional conduct of the State Bar of California, and termination clause.

Councilmember Giordano said that the proposed agreement with Best Best & Krieger LLP would cost less than the previous in-house City Attorney's office.

Councilmember Barbardillo asked if there were any items to the agreement that had been subject to negotiation or modifications. Interim City Attorney Baum and Attorney Diaz replied the addition of a Section 5 which pertains to developer applications and City Attorney hours incurred by the City on such matters. Attorney Diaz further clarified that his firm's "loyalty" is with the City and not with the developer regarding such issues.

It was discussed and confirmed that Best Best & Krieger LLP will become the City's agreement-based City Attorney starting September 23, 2015. The annual compensation for the legal firm is as follows: first-year compensation will not exceed \$458,300 and the second-year compensation will not exceed \$550,000.

City Manager Williams, Mayor Esteves, and Vice Mayor Montano compliment Interim Attorney Baum for providing good service to the City and welcomed Attorney Diaz and his firm.

Motion: For Council to approve the legal services agreement with Best Best & Krieger LLP for City Attorney services.

Motion/Second: Councilmember Giordano / Councilmember Grilli

Motion carried by a vote of:

AYES: 5

NOES: 0

PUBLIC COMMENT

None

ADJOURNMENT

Mayor Esteves adjourned the meeting at **4:54** PM.

*Minutes respectfully submitted by
Pam Caronongan, Deputy City Clerk*

PLEASE NOTE:

This copy of Ordinance No. 120.47 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 120.47

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 1 OF 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

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the provision of potable and recycled 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 two 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; and (b) a Volumetric Charge, which is a uniform rate 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
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
3. Beginning April 1, 2016, the rate structure will also include a Capital Surcharge, which will be 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

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 December 15, 2015, (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

Section VIII-1-6.13 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below 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 shall be as set forth below and are limited to the actual cost of providing water service. The rates and effective dates for the quantity charges for Fiscal Year 2011/12 shall be those set forth below, in the first column, unless modified by inflation or unanticipated wholesale supplier cost increases, as provided herein. Rates for all years subsequent to Fiscal Year 2011/12 shall be at or below the proposed maximum rate as determined administratively by City staff after calculating total personnel, overhead, and capital costs incurred to provide the service and shall be based upon an annual review of utility finances. In no event shall rates exceed the cost of providing the service.

The maximum water rates listed below account for a possible inflation rate of 2%. Inflationary costs in excess of 2% caused by labor or commodity cost increases recorded in such indices as the Construction Cost Index, published in the Engineering News Record for the San Francisco Bay Area, and utility section financial reviews shall be passed through administratively to the ratepayer. The City shall also administratively calculate and pass through unanticipated changes in the wholesale water cost that were not projected in the calculation of the maximum rates. This wholesale water cost pass-through provision applies to wholesale rates, water management charges, and other regulatory or environmental charges that the City is required to pay its wholesale water suppliers. These rate pass-throughs shall only be implemented with at least 30 days notice to ratepayers.

<u>RATES AND EFFECTIVE DATES FOR QUANTITY CHARGES (\$/HCF)</u>			
<u>Customer Class</u>	<u>Volumetric Charge 1/15/2016</u>	<u>Volumetric Charge 4/1/2016</u>	<u>Capital Surcharge 4/1/2016 Rate Per HCF FY12/13 to FY14/15 Maximum Rate</u>
Residential:	<u>\$4.75</u>	<u>\$5.13</u>	<u>\$1.30</u>
<u>0-10 hcf</u>	<u>\$1.77</u>		<u>\$2.62</u>
<u>>10-20 hcf</u>	<u>\$2.76</u>		<u>\$3.48</u>

≥210 30 hcf	 \$3.72		 \$4.69
≥301+ hcf	 \$4.17		 \$5.29
Commercial / Industrial / Institutional / Construction Meter	\$4.75 \$4.32	\$5.13	\$1.30 \$5.29
Irrigation (potable)	\$4.75 \$4.79	\$5.13	\$1.30 \$5.29
City Accounts (potable)	\$4.75 2.35	\$5.13	\$1.30 \$5.29
Ed Levin Park	\$2.68 3.75	\$3.79*	NA \$3.32
Recycled - Irrigation	\$3.79 2.42	\$2.78	NA \$4.08
Recycled - Industrial / Dual Plumbed/ Construction Water	\$2.16 2.42	\$2.78	NA \$2.65
City Accounts (recycled)	\$1.29 2.42	\$2.78	NA \$2.51

The County of Santa Clara rate is established by contract to be equivalent to the San Francisco Public Utilities Commission ("SFPUC") wholesale rate. The FY 2016-17 SFPUC rate is estimated to be \$3.79/HCF and staff will revise to actual rate once SFPUC adopts the FY 2016-17 wholesale rate.

FY = Fiscal Year

1 ~~hcf~~ HCF = One Hundred Cubic Feet = 748 Gallons

~~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.~~

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.14

Section VIII-1-6.14 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

VIII-1-6.14 Bimonthly Water Meter Charges

(a) Water Meter Charges: The rates and the effective dates for the bimonthly water meter charges ~~for water meters~~, determined on the basis of the size of the water meter, shall be as follows:

<u>RATES AND EFFECTIVE DATES FOR WATER METER CHARGES</u>		
<u>(\$/METER SIZE)</u>		
Water Meter Size	<u>FY11/12</u> <u>Charge 1/15/2016</u>	<u>Charge 4/1/2016</u>
5/8"	\$18.00 25.77	\$19.44
3/4"	\$27.00 27.39	\$29.16
1"	\$45.00 38.90	\$48.60
1-1/2"	\$90.00 49.07	\$97.20
2"	\$144.00 64.04	\$155.52
3"	\$270.00 171.45	\$291.60
4"	\$450.00 217.27	\$486.00
6" and above	\$900.00 331.57	\$972.00
8"	 \$434.40	
10"	 \$628.82	

(b) For Temporary Construction Meter Customers, the bimonthly water meter charges shall be equal to the bimonthly water meter charges for 3" water meters set forth in Section 6.14(a).

~~— \$1503.00 bimonthly~~

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.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.15

Section VIII-1-6.15 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

VIII-1-6.15 Fire Service Charges

The rates and effective dates for the bimonthly fire service charges, for “ready to serve” detector checks, reduced pressure detector assemblies, and double check detector assemblies valve fire suppression systems determined on shall be made on the basis of the size of the detector check valve fire service, and shall be as follows:

<u>RATES AND EFFECTIVE DATES FOR FIRE SERVICE CHARGE</u> <u>(\$/SIZE OF FIRE SERVICE LINE)</u>		
<u>Detector Check Valve Fire Service Line Size</u>	<u>FY11/125/16</u> <u>Charge 1/15/2016</u>	<u>Charge 4/1/2016</u>
2"	\$28.80 41.20	<u>\$31.10</u>
3"	\$54.00 61.89	<u>\$58.32</u>
4"	\$90.00 68.78	<u>\$97.20</u>
6"and above	\$180.00 89.45	<u>\$194.40</u>
8"	 <u>\$110.04</u>	
10"	 <u>\$130.69</u>	

Water flowing through ~~detector check valves~~ 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 ~~detector check valve~~ fire suppression systems is used for purposes other than for fire protection or the testing of such fire protection systems, ~~at the quantity charges equal to the quantity charge rates (per hcfHCF) for Commercial/ Industrial/ Institutional customers of \$14.75 per hundred cubic feet shall be imposed for water use that exceeds one hundred cubic feet per billing period.~~

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.16

Section VIII-1-6.16 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

VIII-1-6.16 Billing and Effective Dates of Water Rates and Charges

(a) 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), in effect as of the beginning date of the bimonthly billing period or deposit period for which a customer is charged for services provided bills issued on or after January 185, 2016, and April 1, 2016, respectively. Customers shall be subject to the FY16/17 water charges for bills issued on or after July 5, 2016. 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, and set forth herein shall remain in effect for billing periods and service years subsequent to Fiscal Year 2015 16Fiscal Year 2016 2017-until amended or repealed.

(b) Rate Program. ~~The water service charges for the annual periods of Year 1 (June 2, 2011 to April 18, 2012), Year 2 (April 19, 2012 to April 18, 2013), Year 3 (April 19, 2013 to April 18,~~

~~2014) and Year 4 (April 19, 2014 to June 30, 2015) shall be calculated administratively, subject to adjustments to reflect the previous year's actual budget balances and annual revenue and expenditures, but the annual rate shall not exceed the maximum allowed in this Section. In the absence of amendment of the rates set forth herein or adoption of a new rate ordinance, the maximum rate shall remain in effect for billing periods and service years subsequent to Fiscal Year 2014-15.~~

SECTION 6. 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 7. 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 8. 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.



455 E Calaveras Blvd,
Milpitas, CA 95035

**Proposition 218 Notification
NOTICE OF PUBLIC HEARING
ON WATER RATES**

Para recibir esta información en español, por favor
deje un mensaje al (408) 586-2605 incluyendo su
nombre completo y domicilio postal.

若要取得此資料的中文譯本，請致電
(408) 586-2605，並留下您的全名和郵寄地址。

Để nhận thông tin này bằng tiếng Việt, xin để
lại tin nhắn tại số (408) 586-2605 cùng với tên
họ và địa chỉ gửi thư của quý vị.

यह जानकारी हिंदी में प्राप्त करने के लिए,
कृपया अपने पूरे नाम और डाक पते के साथ
(408) 586-2605 पर एक संदेश छोड़ दें।

Milpitas Property Owner

Public Hearing Date & Time: December 15, 2015, at 7:00 PM or as soon thereafter as possible

Hearing Location: Milpitas City Hall, City Council Chambers, 455 E Calaveras Blvd, Milpitas, CA 95035

Questions or More Information: (408) 586-3354



Reasons For The Proposed Rate Increases The City of Milpitas (City) is committed to providing high quality, reliable water service at the lowest possible rates for our customers. It is critically important that the City continually invest in the assets it holds and keep pace with inflation and other cost increases. Each year the City evaluates its infrastructure needs, programs, and operations and maintenance costs for the ensuing fiscal year. This year the City hired an independent rate consultant to determine how best to recover these projected costs over a two-year period. Based on this evaluation, the City has determined that rate increases are necessary to: recover current and projected costs of operations and maintenance, construct capital infrastructure improvements to repair and replace aging infrastructure and provide safe and reliable drinking water; maintain the operational and financial stability of the water utility; and avoid operational deficits and depletion of reserves. The City is also faced with cost of service increases from its water wholesalers—San Francisco Public Utilities Commission (SFPUC) wholesale water rate increased by 28% and Santa Clara Valley Water District (SCVWD) wholesale rate increased by 20%. Finally, the City anticipates a 30% reduction in water use and commensurate revenues losses due to conservation measures to address the ongoing drought. The City has also determined to move to a uniform water rate. The rate consultant also recommended operating costs be recovered by approximately 30% from fixed charges and 70% from volumetric charges, and to establish a per unit capital surcharge to recover costs for the capital improvement program, which is planned to be financed.

Basis of Proposed Rates

Article XIII D of the California Constitution (also known as Proposition 218) requires that providers of public utility services levy service charges that are clearly linked to the cost of providing the service to each parcel. The cost of service calculation includes expenses such as debt service, labor, energy, regulatory compliance and reporting, chemicals and other supplies, and the cost of providing required maintenance of the system. The rates proposed herein are designed to meet all legal requirements and fairly and equitably recover the required revenue from all customers. The rates were developed by an independent consultant retained by the City and the report, which include the detailed calculations showing the basis for these fees, is available for viewing at the City Information Desk and can be found on the City website:

www.ci.milpitas.ca.gov

Basis Upon Which The Proposed Rates Are Calculated

The rate structure for the water service charges has two 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; and (b) a Volumetric Charge, which is a uniform rate imposed on 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. The rate structure also has a Fire Meter Charge which is: (a) imposed on certain properties requiring a large private fire suppression system; 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. Beginning April 1, 2016, the rate structure will also include a Capital Surcharge, which will be 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.

Proposed Rates

The City is proposing modify its rate structure and increase the rates for its water service charges over a two-year period. The typical single family residential customer in the City uses 8.5 units of water per month (one unit is equal to one HCF or 748 gallons of water). The average cost per single family residence starting in January 2016 would increase by \$10.42 per month (from \$38.96 to \$49.38). The average cost per single family residence starting in April 2016) would increase by \$15.00 per month (from \$49.38 to \$64.38). Current and proposed water service charges (bi-monthly) are set forth in the tables below:

Fixed Meter Charges

Meter Size	Current rate	FY 15-16 rate	FY 16-17 rate
5/8 inch	\$27.36	\$18.00	\$19.44
3/4 inch	\$29.07	\$27.00	\$29.16
1 inch	\$41.28	\$45.00	\$48.60
1-1/2 inch	\$52.07	\$90.00	\$97.20
2 inch	\$67.96	\$144.00	\$155.52
3 inch	\$181.95	\$270.00	\$291.60
4 inch	\$230.57	\$450.00	\$486.00
6 inch and above	\$351.86 - \$667.31	\$900.00	\$972.00

Fire Meter Charges

Detector Check/ RPDa/DCDA	Current rate	FY 15-16 rate	FY 16-17 rate
2 inch	\$43.72	\$28.80	\$31.10
3 inch	\$65.68	\$54.00	\$58.32
4 inch	\$72.99	\$90.00	\$97.20
6 inch and above	\$94.92 - \$138.69	\$180.00	\$194.40

Volumetric Charges (Total Volumetric Charge = base rate + capital surcharge rate)

Category	Current per HCF*	FY 15-16 base rate per HCF	FY 15-16 capital surcharge rate per HCF	FY 16-17 base rate per HCF	FY 16-17 capital surcharge rate per HCF
Residential: 0-10 HCF	\$2.62	\$4.75	\$0.00	\$5.13	\$1.30
Residential: 11-20 HCF	\$3.48	\$4.75	\$0.00	\$5.13	\$1.30
Residential: 21-30 HCF	\$4.69	\$4.75	\$0.00	\$5.13	\$1.30
Residential: >30 HCF	\$5.29	\$4.75	\$0.00	\$5.13	\$1.30
Commercial, Industrial, Institutional, Construction	\$5.29	\$4.75	\$0.00	\$5.13	\$1.30
Potable Irrigation	\$5.29	\$4.75	\$0.00	\$5.13	\$1.30
Ed Levin Park	\$3.08	\$3.75	NA	\$3.79	NA
City of Milpitas	\$5.29	\$4.75	\$0.00	\$5.13	\$1.30
Recycled Irrigation	\$4.08	\$2.42	NA	\$2.78	NA
Recycled Industrial, Dual-plumbed, Construction	\$2.65	\$2.42	NA	\$2.78	NA
Recycled City of Milpitas	\$2.51	\$2.42	NA	\$2.78	NA

* 1 HCF = 748 gallons

To Protest This Change

Any record owner of a parcel upon which the water service charges are proposed for imposition, and any utility customer directly responsible for the payment of water service who is not a property owner, may submit a written protest to the proposed water service charges; however, only one written protest will be counted per identified parcel. Any protest must: (1) be in writing; (2) state that the identified property owner or utility customer is opposed to the proposed water service charges; (3) provide the location of the identified parcel (by street address, assessor's parcel number, or customer account number); and (4) include the name and signature of the property owner or utility customer submitting the written protest.

Written protests may be submitted by U.S. mail or in person to City Clerk's Office located at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035, or at the public hearing to be held on December 15, 2015 at 7:00 p.m. To be counted, all written protests must be received prior to the conclusion of the public comment portion of the public hearing. Any protest submitted via e-mail or other electronic means will not be accepted as a qualified formal written protest. Please identify on the front of the envelope, whether mailed or submitted in person, Attn: Water Rates.

The City Council will hear public comments and consider the written protests regarding the proposed water service charges at the public hearing. Oral comments at the public hearing will not qualify as formal protests unless accompanied by a proper, written protest. Upon the conclusion of the public hearing, the City Council will consider adoption of the proposed water service charges as described in this notice. If a majority of the affected property owners and utility customers timely file written protests, the proposed charges may not be imposed.



City of Milpitas

Water Rate Study

September 25th, 2015

DRAFT



BARTLE WELLS ASSOCIATES
Independent Public Finance Consultants
1889 Alcatraz Avenue
Berkeley, California 94703
www.bartlewells.com
Tel: 510/653-3399

Contents

Section 1: Executive Summary.....	3
Current & Proposed Water Rates	4
Summary of Water Rate Study Recommendations	5
Section 2: Proposition 218	6
Constitutional Rate Requirements.....	6
Article 10, Section 2	6
Article 13D, Section 6.....	6
Use of Generally Accepted Rate-Making Principles	7
Section 3: Cost Attributions	8
Operating Costs.....	8
Volumetric Charges.....	9
Meter Charges	12
Capital Costs.....	15
Capital Surcharges	16
Section 4: Additional Rate Increases	18
Drought Penalty	18
Proposed Rate Schedule	20
Appendix A – Residential Bill Impacts.....	21
Appendix B – Regional Rate Survey	23
Appendix C – Financial Detail.....	26

SECTION 1: EXECUTIVE SUMMARY

The City of Milpitas provides water service to residential, commercial, industrial, and institutional customers located within City 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 on the existing rate structure and to recommend alterations based on the changing legal landscape, in particular the outcome of the court case *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano*.

This update to the City's water rates is based on the following main factors:

1. BWA's proposed rates would come into effect beginning January 15th, 2016, providing a partial year of increased revenue in fiscal year (FY) 2015/16.
2. The City purchases all of its water from 3rd party wholesalers and is facing substantial cost increases including San Francisco Public Utilities Commission (SFPUC) wholesale rate increases of 28% and Santa Clara Valley Water District (SCVWD) wholesale rate increases of 20%.
3. The City's water enterprise is in good financial standing with an estimated \$7.2 million in operating reserves as of July 1st, 2015, however until a rate increase is adopted, the water enterprise is losing funds estimated at \$400,000 per month.
4. The City has identified approximately \$42 million of high priority capital improvement projects needed over the next 5 years. The rate study utilizes a combination of cash and debt funding for these projects.
5. The City anticipates substantial reductions in water consumption due to the ongoing drought. In FY 2014/15 total water use fell 5% from the prior year. Use in FY 2015/16 is estimated to decrease by an additional 20%.

This report provides a cost basis for proposed water service rates for the City of Milpitas in compliance with the California Constitution (Proposition 218). Rate increases for FY 2015/16 and FY 2016/17 are recommended in the analysis. The full schedule of current and proposed rates is shown on **Table 1**.

Current & Proposed Water Rates

Table 1
City of Milpitas - Water Rate Study
Current & Proposed Water Rate Schedule

Fixed Meter Charges

Meter Size	Current bimonthly rate	FY 15-16 bimonthly rate	FY 16-17 bimonthly rate
5/8 inch	\$27.36	\$18.00	\$19.44
3/4 inch	\$29.07	\$27.00	\$29.16
1 inch	\$41.28	\$45.00	\$48.60
1-1/2 inch	\$52.07	\$90.00	\$97.20
2 inch	\$67.96	\$144.00	\$155.52
3 inch	\$181.95	\$270.00	\$291.60
4 inch	\$230.57	\$450.00	\$486.00
6 inch and above	\$351.86 - \$667.31	\$900.00	\$972.00

Fire Meter Charges

Detector Check/ RPDd/DCDA	Current bimonthly rate	FY 15-16 bimonthly rate	FY 16-17 bimonthly rate
2 inch	\$43.72	\$28.80	\$31.10
3 inch	\$65.68	\$54.00	\$58.32
4 inch	\$72.99	\$90.00	\$97.20
6 inch and above	\$94.92 - \$138.69	\$180.00	\$194.40

Volumetric Rate Table

Category	Current per HCF*	FY 15-16 base rate per HCF	FY 15-16 capital surcharge rate per HCF	FY 16-17 base rate per HCF	FY 16-17 capital surcharge rate per HCF
Residential					
0-10	\$2.62	\$4.75	\$0.00	\$5.13	\$1.30
11-20	\$3.48	\$4.75	\$0.00	\$5.13	\$1.30
21-30	\$4.69	\$4.75	\$0.00	\$5.13	\$1.30
>30	\$5.29	\$4.75	\$0.00	\$5.13	\$1.30
Commercial	\$5.29	\$4.75	\$0.00	\$5.13	\$1.30
Industrial, Institutional, Construction	\$5.29	\$4.75	\$0.00	\$5.13	\$1.30
Potable Irrigation	\$5.29	\$4.75	\$0.00	\$5.13	\$1.30
Ed Levin Park**	\$3.08	\$3.75	NA	\$3.79	NA
City of Milpitas	\$5.29	\$4.75	\$0.00	\$5.13	\$1.30
Recycled Irrigation	\$4.08	\$2.42	NA	\$2.78	NA
Recycled Industrial, Dual- plumbed, Constru ction	\$2.65	\$2.42	NA	\$2.78	NA
Recycled City of Milpitas	\$2.51	\$2.42	NA	\$2.78	NA

* 1 HCF = 748 gallons

**County of Santa Clara rate is established by contract to be equivalent to the SFPUC wholesale rate.

FY 16-17 SFPUC rate is estimated to be \$3.79/HCF and staff will revise to actual rate once SFPUC adopts the FY 16-17 wholesale rate.

Summary of Water Rate Study Recommendations

- 1. Implement a uniform rate instead of a tiered rate for all customers:** The outcome of the court case *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* established precedent for how courts determine the constitutionality of tiered rates. Tiered rates must be based on the cost of service, with higher tiers based on higher costs (encouraging conservation is insufficient reason). To comply with the new ruling, BWA recommends all customers pay a uniform rate for water use.
- 2. Adopt American Water Works Association (AWWA) capacity standards to scale fixed 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 unique confluence of factors including reduced water consumption from the drought and State-mandated cutbacks and a \$42 million capital improvement program planned over the next five years. The drought results in increased capital and operating expenses. Due to these factors, BWA recommends the City implement a \$25.5 million financing to smooth out the impact on rate payers and ensure intergenerational equity, which includes costs for all projects shown in Fiscal Years 2015/16, 2016/17, and 2017/18.
- 4. Recover capital costs through a capital program surcharge:** Since the City will be making substantial improvements to the water system, BWA recommends that the City 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. Recycled users are recommended to be charged a single rate due to the diminutive nature of the recycled capital surcharge.

SECTION 2: PROPOSITION 218

Constitutional Rate Requirements

The California Constitution includes two key articles that directly govern or impact the City's water rates: Article 10 and Article 13D (Proposition 218). The water rates developed in this update are designed to comply with both of these constitutional mandates 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 service, b) recover revenues in proportion to the cost for serving each customer, and c) promote conservation and discourage waste.

Article 10, Section 2

Article 10, Section 2 of the California Constitution was established by voter-approval in 1976 and requires public agencies to maximize the beneficial use of water, prevent waste, and encourage conservation. Section 2 states that:

It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

Article 13D, Section 6

Proposition 218 was adopted by California voters in 1996 and added Articles 13C and 13D to the California Constitution. Article 13D, Section 6 governs property-related charges, which the California Supreme Court subsequently ruled includes ongoing utility service charges such as water rates. Article 13D, Section 6 establishes a) procedural requirements for imposing or increasing property-related charges, and b) substantive requirements for those charges. Article 13D 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 13D, 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.

A subsequent appellate court decision in 2011 further clarified that agencies must demonstrate, satisfactory to a court's independent judgment, that property-related fees and charges meet the proportionality requirement of Section 6.(3). This rate study provides that justification. The water rates derived in this report are based on a cost-of-service methodology that fairly apportions 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." ¹

¹ AWWA Manual M1 Manual, Principles of Water Rates, Fees, and Charges, Sixth Edition, 2012, page 5.

SECTION 3: COST ATTRIBUTIONS

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 2015/16 are estimated to be \$21.7 million, with approximately 30% of operating costs (not including capital costs) attributed to fixed costs and 70% attributed to variable costs.

Non-rate revenues including subventions and grants, interest income, and miscellaneous revenue were subtracted from the operating expenses to determine the total water rate revenue requirement in FY 2015/16 (about \$21.45 million.)

Table 2
City of Milpitas - Water Rate Study
Fixed vs. Variable Cost Attribution

	2015/16	Fixed Costs		Variable Costs	
Operating Expenses					
SFPUC Wholesale Water	\$10,083,024	0%	\$0	100%	\$10,083,024
SCVWD Wholesale Water	2,291,200	0%	0	100%	2,291,200
Recycled Water Expenses	810,590	0%	0	100%	810,590
Personnel Services	2,702,000	75%	2,026,500	25%	675,500
Transfers Out (General Fund Admin Cost Reimb.)	2,461,000	75%	1,845,750	25%	615,250
Services and Supplies	1,994,000	75%	1,495,500	25%	498,500
Estimated Additional Operating Expenses	1,422,275	75%	1,066,706	25%	355,569
Total Operating Expenses	21,764,089	30%	6,434,456	70%	15,329,632
Less: Miscellaneous Revenue Offsets					
Subventions and Grants	45,000	50%	22,500	50%	22,500
Interest Income	98,000	50%	49,000	50%	49,000
Misc Revenue ¹	<u>172,391</u>	50%	<u>86,196</u>	50%	<u>86,196</u>
	315,391		157,696		157,696
Operating Revenue Requirement	21,448,698	29%	6,276,761	71%	15,171,937

1 Non-rate revenues excluded from revenue offsets of \$2,609 for Ed Levin Park

Volumetric Charges

The City of Milpitas obtains substantially 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). **Table 3** shows a summary of FY 2015/16 wholesale water purchases by source. Total annual water purchases amount to 3.7 million hundred cubic foot (hcf), with total expected sales of about 3.4 million hcf (lower due to losses).

Table 3
City of Milpitas - Water Rate Study
FY 2015/16 Wholesale Water Purchases & Estimated Sales¹

	Water Purchased	Water Loss %	Water Lost	Water Sold	%
SFPUC	2,352,053	11%	258,726	2,093,327	61%
SCVWD	984,192	11%	108,261	875,931	26%
Recycled Water	<u>440,000</u>	0%	<u>0</u>	<u>440,000</u>	<u>13%</u>
	3,776,246		366,987	3,409,259	100%

1 Water units in hundred cubic foot (hcf)

Table 4 shows an attribution of variable operating costs (\$15,171,937 from **Table 2**) to each unit of water expected to be sold in FY 2015/16.

Non-water purchase variable costs (includes a portion of personnel services, administrative costs, services and supplies, and estimated additional administration costs) amount to \$1,987,123 and are attributed to each unit of water expected to be sold in FY 2015/16 (~3.4 million hcf). The calculation amounts to \$0.58 per hcf and is referred to as the “base variable cost”.

Water purchase costs for each of the three water sources are divided by the estimated amount of water sold from each source in FY 2015/16 to determine the cost per hcf for each source. The base variable cost is added to the cost per unit for each source of water to determine the total cost per hcf for each source.

The cost of the potable water sources (SCVWD and SFPUC) are weighted based on the percentage of total potable use to determine the blended potable rate of \$4.75 per hcf.

Table 4
City of Milpitas - Water Rate Study
Variable Rate Cost Attribution

Total Variable Costs:	\$15,171,937		
	Non-Water Purchase		
	Variable Costs	Est. Water Sold	Base Variable Cost per HCF
Base Cost per HCF	\$1,987,123	3,409,259	\$0.58
	Water Purchased	Water Purchase Costs	Water Sold
SFPUC	2,352,053	\$10,083,024	2,093,327
SCVWD	984,192	2,291,200	875,931
Recycled Water	<u>440,000</u>	<u>810,590</u>	<u>440,000</u>
	3,776,246	13,184,814	3,409,259
	Cost Per HCF Sold	Plus: Base Cost Per HCF	Total Cost Per HCF
SFPUC	\$4.82	\$0.58	\$5.40
SCVWD	\$2.62	\$0.58	\$3.20
Recycled Water	\$1.84	\$0.58	\$2.42
	% of Potable Water Sold	Total Cost Per HCF	Potable Blended Rate per HCF
SFPUC	70.5%	\$5.40	\$4.75
SCVWD	<u>29.5%</u>	\$3.20	
	100.0%		

Table 5 shows estimated water use by customer class in FY 2015/16. Residential customers are the largest potable users with an estimated 54% of potable use, while non-City irrigation customers are the largest recycled users with an estimated 92% of the recycled use.

Table 5
City of Milpitas - Water Rate Study
FY 2015/16 Est. Water Use by Customer Class¹

User Breakdown of Water Sales	Est. Potable Sold	% of Potable	Est. Recycled Water Sold	% of Recycled	Totals
Residential	1,591,000	54%	-	-	1,591,000
Commercial	434,000	15%	-	-	434,000
Industrial	476,649	16%	4,331	1%	480,980
Institutional	90,000	3%	-	-	90,000
Irrigation	285,000	10%	403,793	92%	688,793
Ed Levin Park	2,610	0%	-	-	2,610
CITY Domestic	10,000	0%	-	-	10,000
CITY Irrigation	<u>80,000</u>	<u>3%</u>	<u>31,875</u>	<u>7%</u>	<u>111,875</u>
	2,969,259	100%	440,000	100%	3,409,259

1 Units in hundred cubic foot (hcf)

Table 6 shows a comparison of the current rates and proposed rates. Under proposed rates, potable customers pay the blended cost of potable water, while recycled customers pay the cost of recycled water established in **Table 4**.

Table 6
City of Milpitas - Water Rate Study
Customer Volumetric Charges

	Curent Rate	Proposed Rate	\$ Increase	Est. FY 2015/16 Use	Est. FY 2015/16 Revenue
Residential (Current Bimonthly Tiers)					
0-10 HCF	\$2.62	\$4.75	<i>\$2.13</i>	1,081,000	\$5,134,750
11-20	3.48	4.75	<i>1.27</i>	400,000	1,900,000
21-30	4.69	4.75	<i>0.06</i>	110,000	522,500
>31	5.29	4.75	<i>-0.54</i>	<u>0</u>	<u>0</u>
				1,591,000	7,557,250
Commercial/Industrial/Institutional and Construction	5.29	4.75	<i>-0.54</i>	1,010,649	4,800,583
Potable Irrigation	5.29	4.75	<i>-0.54</i>	365,000	1,733,750
Santa Clara County (Ed Levin Park) ¹	3.08	3.75	<i>0.67</i>	2,610	9,789
Recycled Irrigation	4.08	2.42	<i>-1.66</i>	403,793	977,180
Recycled Water Industrial / Dual Plumbed	2.65	2.42	<i>-0.23</i>	4,331	10,482
Recycled Water: City of Milpitas	2.51	2.42	<i>-0.09</i>	<u>31,875</u>	<u>77,138</u>
				1,696,257	7,608,921
Total Volumetric Revenue					15,166,171

1 Rate determined by contract and offset through non-rate revenues (see Table 7)

Ed Levin Park is contracted to be charged the SFPUC wholesale rate of \$3.75. The difference in cost will be funded from non-rate revenues, such as miscellaneous revenues, amounting to approximately \$2,609 in FY 2015/16 and estimated to be \$6,948 in FY 2016/17.

Table 7
City of Milpitas - Water Rate Study
FY 2015/16 Non-Rate Revenue

Available Non-rate Revenues

Misc Revenue \$2,609

Mic. User Discount

	<u>Cost of Potable Water</u>	<u>SFPUC Rate¹</u>	<u>Rate Difference</u>	<u>Est. Annual Water Use</u>	<u>Total Difference</u>
Santa Clara County (Ed Levin Park)	\$4.75	\$3.75	\$1.00	2,610	\$2,609

1 Ed Levin Park is contracted to be charged the SFPUC rate

Meter Charges

Bimonthly 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. BWA recommends allocating these costs based on each user’s proportional capacity in the system as determined by their water meter flow capacity.

According to the California Urban Water Conservation Council (CUWCC) Best Management Practices (BMP) 1.4, the fixed component should be used to recover 30% or less of rate revenues to provide cost incentive to encourage conservation

Table 8 shows a comparison of existing and proposed meter charges and the calculation of proposed meter charges. Current meter charges cost ratios are not proportional to the capacity of the meter: for example the 6” meter is charged about 12.9x the 5/8” meter charge, while the American Water Works Association (AWWA) attributes 50x more capacity to the 6” meter.

Figure A shows AWWA 5/8” 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

* Maximum Flow Rate (GPM) from AWWA Manual M22, 2nd Edition, 2004

BWA recommends that the City align meter charges with the AWWA standard 5/8" meter equivalents. Meter equivalents denote the maximum flow capacity of the meter. Total City water system 5/8" meter equivalents amount to 58,106, as shown in Appendix C, pg. 30.

In **Table 8**, proposed meter charges were developed by taking the fixed operating revenue requirement of \$6,276,761 from **Table 2** and dividing by total system meter equivalents of 58,106 to arrive at a bimonthly meter charge of \$18.00 for the base 5/8" meter. This charge is then increased based on AWWA capacity ratios for larger meters.

BWA recommends the City cap the AWWA 5/8" meter equivalents at 50 for meters 6" and above.

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.

BWA proposed meter charges are designed to recover 30% of operating costs (about 25% of total system costs including capital costs.)

Table 8
City of Milpitas - Water Rate Study
Fixed Operating Cost Attribution

Fixed Operating Costs

\$6,276,761

5/8" AWWA Meter Equivalents

58,106

\$/per 5/8" Meter Equivalent

\$108.02

Bimonthly \$/per 5/8" Meter Equivalent

\$18.00

Meter Size	Current Cost Ratio	AWWA Meter Equivalents	Current	Proposed	\$ Increase / Decrease
5/8 inch	1.0	1.0	\$27.36	\$18.00	-\$9.36
3/4 inch	1.1	1.5	29.07	27.00	-2.07
1 inch	1.5	2.5	41.28	45.00	3.72
1-1/2 inch	1.9	5.0	52.07	90.00	37.93
2 inch	2.5	8.0	67.96	144.00	76.04
3 inch	6.7	15.0	181.95	270.00	88.05
4 inch	8.4	25.0	230.57	450.00	219.43
6 inch & above ¹	12.9 - 24.4	50.0	351.86 - 667.31	900.00	232.69 - 548.14

Detector Valve (Fire Meter)	Proposed Meter Equivalents ²	Current	Proposed	\$ Increase / Decrease
2 inch	1.6	43.72	28.80	-\$14.92
3 inch	3.0	65.68	54.00	-11.68
4 inch	5.0	72.99	90.00	17.01
6 inch & above ¹	10.0	94.92 - 138.69	180.00	41.31 - 85.08

1 Meter equivalents capped at 6".

2 Fire meter equivalents established at 20% of regular meter equivalents

Capital Costs

Table 9 shows the City of Milpitas water enterprise 5-year capital improvement program. The projects are broken down between existing projects identified in the City budget, and additional “unfunded projects.” All \$42 million of capital project costs are assumed to be funded in the 5-year period. The proposed rates include costs for all projects shown in Fiscal Years 2015/16, 2016/17, and 2017/18.

Table 9
City of Milpitas - Water Rate Study
CIP Schedule - Total Capital Projects

Project Expenses	2015/16	2016/17	2017/18	2018/19	2019/20	Total
Existing Identified Projects						
RMC Contract RW (30% Design, CEQA, Grant)	\$482,000					
Water Solutions Contract Potable (30% Design, CEQA, Grant)	430,000					
Dempsey Road Water Line Replacement	1,000,000					
Automated Water Meter Replacement		1,295,000	1,295,000	1,295,000	1,295,000	
Well Upgrade Project						
Los Coches Backbone		850,000	3,350,000			
Water System Replacement Study			100,000			
Hillside Pump Station Equipment Replacement			150,000			
Water System Seismic Improvements	1,000,000	1,000,000		1,000,000		
Misc Minor Water Projects 2017		100,000	100,000			
Supervisory Control and Data Acquisition (SCADA)			175,000	500,000	2,325,000	
Hydrant Replacement						
BART Project-Water Improvements	2,000,000					
Water Supply Augmentation Phase 1 (Funded Prior Year)						
Pinewood Well - \$1,300,000						
Curtis Well - \$1,400,000						
<i>Subtotal</i>	4,912,000	3,245,000	5,170,000	2,795,000	3,620,000	19,742,000
Project Expenses	2015/16	2016/17	2017/18	2018/19	2019/20	Total
Additional Unfunded Projects						
Lower Berryessa Bore and Jack	\$250,000	\$775,000				
VTA BART Utilities Reimbursement	200,000					
Seismic Reliability		2,000,000				
Water System Replacement 18-19				1,000,000		
Water Valve Replacement			600,000			
Water Supply Augmentation Phase 2	10,000,000					
Seg. 1 Dempsey RW - \$4.5M						
Seg. 4 Yosemite RW - \$3.3M						
Seg. 5 Landess RW - \$2.2M						
Water Supply Augmentation Phase 3		3,300,000				
Curtis Well - \$3,300,000						
Water Supply Augmentation Phase 4					4,000,000	
Future Additional Wells (\$12,000,000 @ \$4M/Yr.)						
<i>Subtotal</i>	10,450,000	6,075,000	600,000	1,000,000	4,000,000	22,125,000
Total	15,362,000	9,320,000	5,770,000	3,795,000	7,620,000	41,867,000
Potable System	5,362,000	6,020,000	5,770,000	3,795,000	3,620,000	24,567,000
Water Augmentation	10,000,000	3,300,000	0	0	4,000,000	17,300,000
Funding Sources:						
Financed	10,450,000	9,320,000	5,770,000			25,540,000
Cash Funded	4,912,000			3,795,000	7,620,000	16,327,000
Total Funding Sources	15,362,000	9,320,000	5,770,000	3,795,000	7,620,000	41,867,000

Capital Surcharges

BWA recommends that the City recover capital costs through a “capital surcharge” levied on water use to recover all system capital costs beginning FY 2016/17.

Potable users are recommended to pay for both potable and recycled capital costs. The recycled water capital projects included in **Table 9** “Water Supply Augmentation Phase 2” are planned for the benefit of potable users and would not be constructed except for the benefit to potable customers. Benefits to potable users include: additional water supply reliability, an offset of demand for potable water, and an easing of the burden of reducing consumption on potable customers to meet State mandated cutback requirements.

Recycled water users will also benefit from recycled water capital projects, and therefore should share some of the burden of paying for the projects. The identified recycled water capital projects will help transition the Milpitas recycled water system from an immature to a mature system that will have better reliability from additional system looping and will increase the availability of recycled water.

Potable users are recommended to have the capital surcharge broken out as a separate charge on their bills to allow users to see how much of their bill is going to fund capital improvements. Recycled users are recommended to be charged a single rate because the recycled component of capital costs is too small to merit special surcharge consideration.

Table 10 shows the capital surcharge calculations. BWA recommends the City finance \$25.54 million of capital in FY 2015/16.

The potable capital surcharge consists of three components charged per potable hcf:

- 1. Debt Funded Capital:** BWA estimates debt service on a \$15.54 million borrowing for potable capital to be about \$926,000 per year beginning in FY 2016/17. The debt service is recommended to be fully funded through a \$0.31 charge on potable use. Additionally, BWA estimates debt service for a \$10 million borrowing for recycled capital to be about \$596,000 per year beginning in FY 2016/17. The debt service is recommended to be partially funded through a \$0.17 charge on potable use, with the remainder recovered from recycled use. The total debt service charge component of the potable capital surcharge amounts to \$0.48 per hcf.
- 2. Cash Funded Capital:** Beginning in FY 2018/19, the capital surcharge is recommended to fund all new potable capital through a \$1.26 charge component.

- 3. FY 2015/16 Cash Funded Capital:** \$4.9 million of cash funded capital in FY 2015/16 is recommended to be recovered through an \$0.82 charge component on potable use between FY 2016/17 and FY 2017/18.

The recycled capital surcharge consists of one component charged per recycled hcf:

- 1. Debt Funded Capital:** BWA estimates debt service on the \$10 million borrowing for the recycled portion of capital projects to be about \$596,000 per year beginning in FY 2016/17. The debt service is recommended to be partially funded through a \$0.17 charge on recycled use, with the remainder recovered from potable use.

Table 10
City of Milpitas - Water Rate Study
Fixed Capital Cost Allocation (Capital Surcharge Effective 7/1/2016)

	<u>2015/16</u>	<u>2016/17</u>	<u>Projected</u>		<u>Totals</u>
			<u>2017/18</u>	<u>2018/19</u>	
Financed Potable Capital	\$450,000	\$9,320,000	\$5,770,000	\$0	\$15,540,000
Cash Funded Potable Capital	4,912,000	0	0	3,795,000	8,707,000
Financed Recycled Capital	10,000,000				10,000,000
Potable Debt Service (\$15.54 million borrowing)		926,157	926,157	926,157	
Projected Potable Use (HCF)		3,011,610	3,011,610	3,011,610	
Potable Debt Service Charge		\$0.31	\$0.31	\$0.31	
Recycled Debt Service (\$10 million borrowing)		595,982	595,982	595,982	
Projected Recycled Use (HCF)		416,218	423,855	431,644	
Projected Recycled & Potable Use (HCF)		3,427,828	3,435,465	3,443,254	
Recycled Debt Service Charge		\$0.17	\$0.17	\$0.17	
Potable Customer Surcharge					
Debt Service (Recycled & Potable Capital)		\$0.48	\$0.48	\$0.48	
Cash Funded Capital		\$0.00	\$0.00	\$1.26	
FY 2016 Cash Funded Capital ¹		<u>\$0.82</u>	<u>\$0.82</u>	<u>\$0.00</u>	
Total Potable Capital Surcharge		\$1.30	\$1.30	\$1.74	
Expected Potable Surcharge Revenue		3,915,093	3,915,093	5,240,201	13,070,387
Recycled Customer Surcharge					
Debt Service (Recycled Capital)		<u>\$0.17</u>	<u>\$0.17</u>	<u>\$0.17</u>	
Total Recycled Capital Surcharge		\$0.17	\$0.17	\$0.17	
Expected Recycled Surcharge Revenue		70,757	72,055	73,379	216,192
Total Surcharge Revenue		3,985,850	3,987,148	5,313,581	13,286,579

1 Recovered from 2016/17 to 2017/18

SECTION 4: ADDITIONAL RATE INCREASES

Table 11 shows a cash flow schedule for the Operating Fund². Additional rate increases are need to meet key financial goals of the water enterprise including:

- Prevent further operating losses (estimated at \$400,000 per month)
- Meet debt service coverage requirements on any new debt issuances
- Maintain at least 30% of operating expenses in reserves
- Fund 5-year capital program
- Smooth out impact on rate payers

In addition to the rate structure adjustments recommended on January 1st 2016, BWA estimates the water enterprise requires overall rate increases to potable and recycled consumption and meter charges of **8%** in FY 2016/17, **8%** in FY 2017/18 and **5%** in FY 2018/19. The overall rate increases do not apply to the capital surcharges, which a calculated solely to recover all projected capital expenses.

Detailed projections of water use, rate increases, and revenues are shown in Appendix C.

Drought Penalty

There are typically two kinds of water use penalties levied by Cities:

- 1. Penalties for violations of the City's water use restrictions:** (e.g., watering landscaping more than two times per week or washing down driveways with water). Milpitas already has such penalties in place.
- 2. Penalties for excess water use:** For example, use at levels that could cause the City to run out of water.

Penalties for excess use are imposed to encourage high water users to adjust their behavior and, as such, are not considered water rates. Under Prop 26, fines and penalties are one of the seven exceptions to the definition of a tax and are not subject to Proposition 218. Administrative fines and penalties are authorized pursuant to government code section 53069.4 for the violation of an ordinance. Water agencies often adopt a water shortage contingency plan by ordinance and include in it fines and penalties for violations.

² The 30% Operating Expense Target was met in FY 2015/16 because reserves were replenished from the Bank/Interfund Loan. Funds were depleted as a result of being unable to recover enough revenue to cover costs due to late rate adoption.

Table 11
City of Milpitas - Water Rate Study
Detailed Cash Flow Projection - Operating Fund

	Estimated		Projected			
	2014/15	Escalation %	Budget 2015/16	2016/17	2017/18	2018/19
Beginning Fund Balance (Operating Fund)						
Cash and Cash Equivalents			\$7,276,000	\$15,103,000	\$8,454,000	\$7,187,000
REVENUES						
			1/1/2016	7/1/2016	7/1/2017	7/1/2018
Overall Rate Increases (Excluding Capital Surcharge)		Rate Restructure	8.0%	8.0%	8.0%	5.0%
Operating Revenue¹						
Potable Meter Charges	4,478,476	Appendix C	4,829,223	6,351,981	6,860,502	7,203,510
Recycled Meter Charges	206,657	Appendix C	253,489	425,503	459,543	482,518
Potable Volumetric Charges	15,966,897	Appendix C	12,444,524	15,446,056	16,679,746	17,523,651
Recycled Volumetric Charges	1,937,743	Appendix C	1,570,465	1,086,329	1,195,270	1,277,666
Potable Capital Surcharges	-	Appendix C	-	3,911,700	3,911,700	5,235,660
Recycled Capital Surcharges	-	Appendix C	-	70,757	72,055	73,379
Other Operating Revenue	175,000	0%	175,000	175,000	175,000	175,000
Subtotal Operating Revenue	22,764,773		19,272,701	27,467,327	29,353,817	31,971,383
Non-Operating Revenue						
Bank / Interfund Loan (4.25% 30-Years)			25,540,000			
Subventions and Grants	45,000	0%	45,000	45,000	45,000	45,000
Transfers In	0	0%	0	0	0	0
Interest Income	98,000	0%	98,000	98,000	98,000	98,000
Developer Contributions	0	0%	0	0	0	0
Subtotal Non-Operating Revenue	143,000		25,683,000	143,000	143,000	143,000
TOTAL REVENUES	22,907,773		44,955,701	27,610,327	29,496,817	32,114,383
EXPENSES						
Operating Expenses						
SFPUC Wholesale Water (Est.)	8,576,105	Appendix C	10,083,024	10,193,107	10,215,417	11,485,483
SCVWD Wholesale Water (Est.)	3,004,819	Appendix C	2,291,200	2,634,880	3,030,112	3,484,629
Recycled Water Expenses (Est.)	603,531	Appendix C	810,590	1,013,238	1,291,878	1,647,144
Personnel Services ³	2,597,769	4%	2,702,000	2,810,000	2,922,000	3,039,000
Transfers Out (General Fund Admin Cost Reimb.) ³	2,366,459	4%	2,461,000	2,559,000	2,661,000	2,767,000
Services and Supplies ³	1,917,115	4%	1,994,000	2,074,000	2,157,000	2,243,000
Additional Operating Expenses	-	Appendix C	1,422,275	1,125,600	1,186,024	1,233,265
Subtotal Operating Expenses	19,065,799		21,764,089	23,409,825	23,463,431	25,899,521
Non-Operating Expenses						
Ed Levin Rate Reduction			2,609	6,896	7,966	8,461
Capital Expenditures (Transfer Out)	3,225,000	Table 9	15,362,000	9,320,000	5,770,000	3,795,000
Bank / Interfund Loan Debt Service	-			1,522,139	1,522,139	1,522,139
Subtotal Non-Operating Expenses	3,225,000		15,364,609	10,849,035	7,300,105	5,325,600
TOTAL EXPENSES	22,290,799		37,128,698	34,258,860	30,763,536	31,225,121
Net Revenues	616,974		7,827,003	(6,648,533)	(1,266,719)	889,263
Ending Fund Balance (Operating Fund)						
	7,275,776		15,103,003	8,454,467	7,187,281	8,076,263
Debt Service Coverage (Currently No Debt)						
Net Operating Revenues	3,698,974		(2,491,388)	4,057,502	5,890,386	6,071,863
Total Debt Service	0		0	1,522,139	1,522,139	1,522,139
Coverage	-		-	2.7	3.9	4.0
Unrestricted Fund Reserve Target						
30% Operating Expenses	5,719,740		6,529,227	7,022,947	7,039,029	7,769,856
Target Met	Yes		Yes	Yes	Yes	Yes

1 Charges prorated to take into account 2015/16 proposed rates effective January 1st, 2016 rather than July 1st, 2015

2 Equal to three years of capital expenses

3 2014/15 Actuals from Finance Department.

Proposed Rate Schedule

Table 12 shows BWA's proposed rate schedule for FY 2015/16 and FY 2016/17.

Table 12
City of Milpitas - Water Rate Study
Water Rate Schedule

BIMONTHLY WATER RATES

Meter Charges

Meter Size	Current Rates	Proposed 2015/16 ¹	\$ Increase	Proposed 2016/17 ¹	\$ Increase
5/8"	\$27.36	\$18.00	-\$9.36	\$19.44	\$1.44
3/4"	29.07	27.00	-2.07	29.16	2.16
1"	41.28	45.00	3.72	48.60	3.60
1-1/2"	52.07	90.00	37.93	97.20	7.20
2"	67.96	144.00	76.04	155.52	11.52
3"	181.95	270.00	88.05	291.60	21.60
4"	230.57	450.00	219.43	486.00	36.00
6" & above	351.86 - 667.31	900.00	232.69 - 548.14	972.00	72.00

Quantity Charges (per hcf)

Residential (bimonthly tiers)					
1 - 10 hcf bimonthly	2.62	4.75	2.13	5.13	0.38
10 - 20 hcf bimonthly	3.48	4.75	1.27	5.13	0.38
20 - 30 hcf bimonthly	4.69	4.75	0.06	5.13	0.38
>30 hcf bimonthly	5.29	4.75	-0.54	5.13	0.38
Commercial/Industrial/Institutional and Construction	5.29	4.75	-0.54	5.13	0.38
Potable Irrigation	5.29	4.75	-0.54	5.13	0.38
Santa Clara County (Ed Levin Park) ²	3.08	3.75	0.67	3.79	0.04
Recycled Irrigation	4.08	2.42	-1.66	2.78	0.36
Recycled Water Industrial / Dual Plumbed	2.65	2.42	-0.23	2.78	0.36
Recycled Water: City of Milpitas	2.51	2.42	-0.09	2.78	0.36

Potable Capital Surcharge (per hcf, FY 2016/17)	-			1.30	
--	---	--	--	------	--

1 BWA proposes the City charge residential a uniform rate
2 Contracted to be charged the SFPUC wholesale rate

APPENDIX A – RESIDENTIAL BILL IMPACTS

Appendix A
City of Milpitas - Water Rate Study
FY 2015/16 Residential Bimonthly Bill Impacts - Uniform Tier

Bimonthly Use (HCF)	Current Residential, 5/8" Meter			Bimonthly Use (HCF)	FY 2015/16 Proposed Residential, 5/8" Meter			
	Use Charge	Meter Charge	Bimonthly Bill		Use Charge	Meter Charge	Bimonthly Bill	\$ Increase
5	\$13.10	\$27.36	\$40.46	5	\$23.75	\$18.00	\$41.75	\$1.29
10	26.20	27.36	53.56	10	47.50	18.00	65.50	11.94
17	50.56	27.36	77.92	17	80.75	18.00	98.75	20.83
20	61.00	27.36	88.36	20	95.00	18.00	113.00	24.64
30	107.90	27.36	135.26	30	142.50	18.00	160.50	25.24
40	160.80	27.36	188.16	40	190.00	18.00	208.00	19.84
60	266.60	27.36	293.96	60	285.00	18.00	303.00	9.04

Residential FY 2013/14 Avg. Bi-monthly Use: 17.3 HCF

RESIDENTIAL BIMONTHLY WATER RATES - UNIFORM TIER

Meter Charges

Meter Size	Current Rates	Proposed 2015/16	% Increase
5/8"	\$27.36	\$18.00	-34%

Quantity Charges (per hcf)

Residential (bimonthly tiers)			
1 - 10 hcf bimonthly	2.62	4.75	81%
10 - 20 hcf bimonthly	3.48	4.75	36%
20 - 30	4.69	4.75	1%
31+	5.29	4.75	-10%

Appendix A (Continued)
City of Milpitas - Water Rate Study
FY 2016/17 Residential Bimonthly Bill Impacts - Uniform Tier

Bimonthly Use (HCF)	FY 2015/16 Proposed Residential, 5/8" Meter			FY 2016/17 Proposed Residential, 5/8" Meter				
	Use Charge	Meter Charge	Bimonthly Bill	Use Charge	Capital Surcharge	Meter Charge	Bimonthly Bill	\$ Increase
5	\$23.75	\$18.00	\$41.75	\$25.65	\$6.50	\$19.44	\$51.59	\$9.84
10	47.50	18.00	65.50	51.30	13.00	19.44	83.74	18.24
17	80.75	18.00	98.75	87.21	22.10	19.44	128.75	30.00
20	95.00	18.00	113.00	102.60	26.00	19.44	148.04	35.04
30	142.50	18.00	160.50	153.90	39.00	19.44	212.34	51.84
40	190.00	18.00	208.00	205.20	52.00	19.44	276.64	68.64
60	285.00	18.00	303.00	307.80	78.00	19.44	405.24	102.24

Residential FY 2013/14 Avg. Bi-monthly Use: 17.3 HCF

RESIDENTIAL BIMONTHLY WATER RATES - UNIFORM TIER

Meter Charges

Meter Size	Proposed 2015/16	Proposed 2016/17	% Increase
5/8"	\$18.00	\$19.44	8%

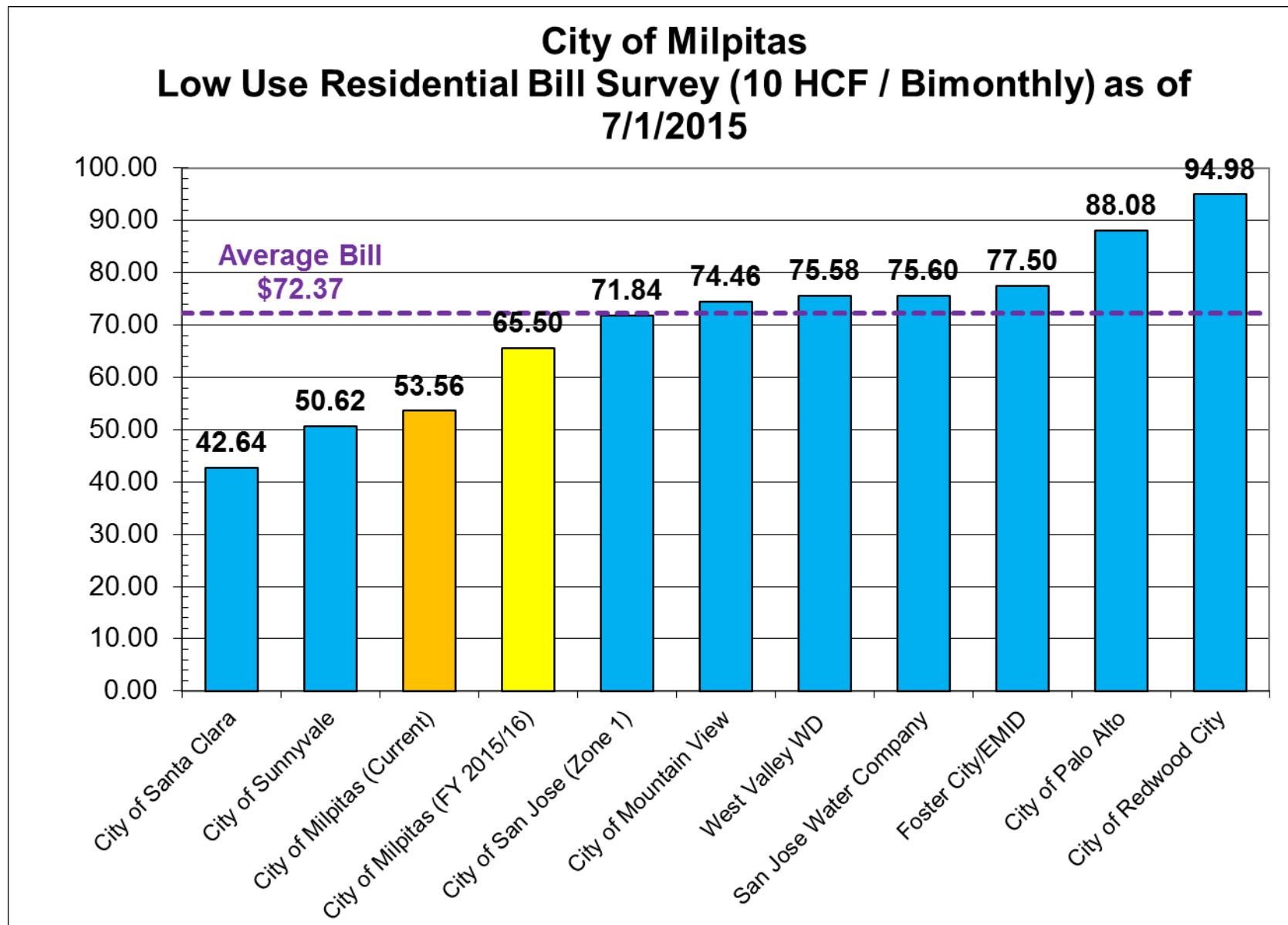
Quantity Charges (per hcf)

Residential (bimonthly tiers)

1 - 10 hcf bim	4.75	5.13	8%
10 - 20 hcf bir	4.75	5.13	8%
20 - 30	4.75	5.13	8%
31+	4.75	5.13	8%

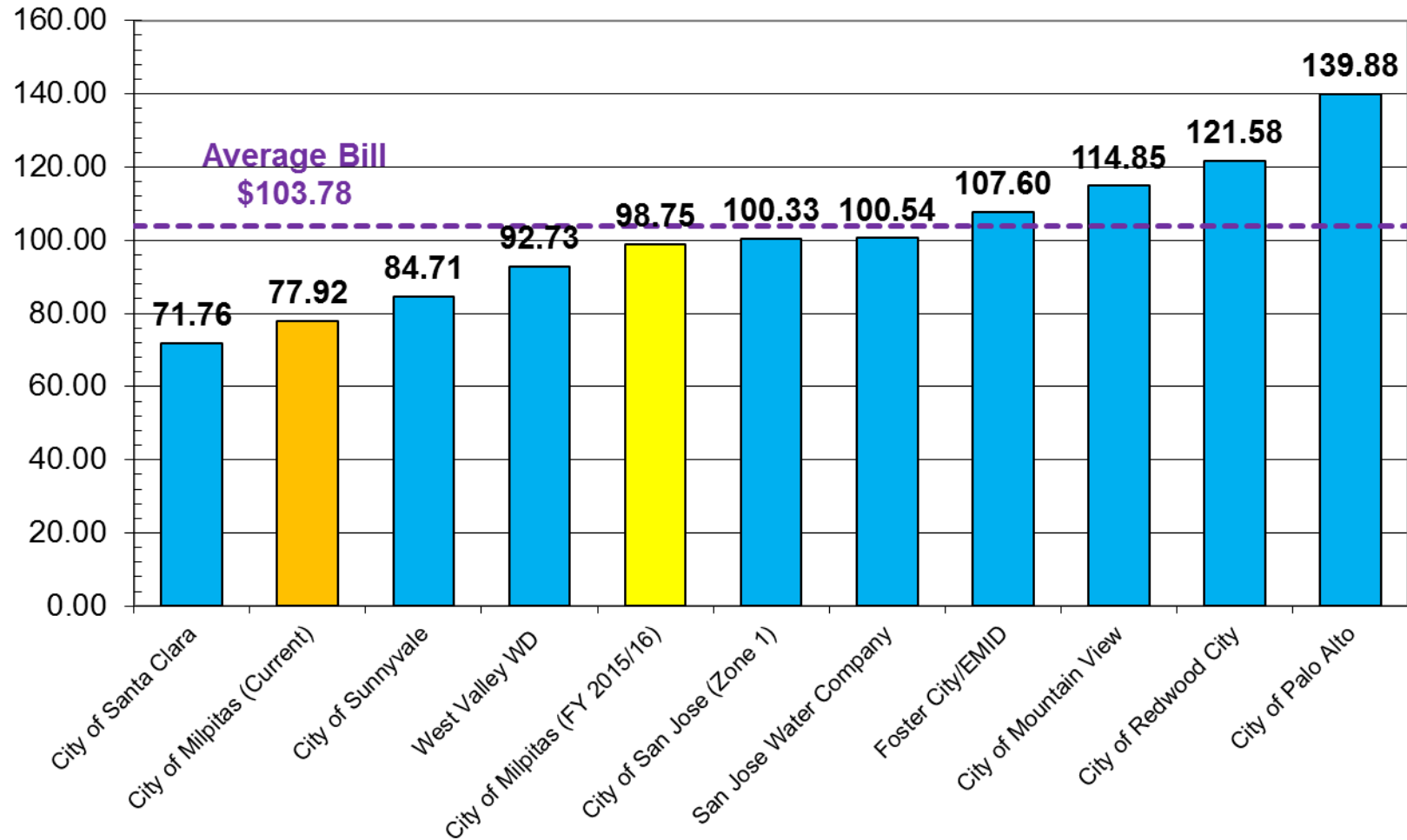
Potable Capital Surcharge (per hcf, FY 2016/17) 1.30

APPENDIX B – REGIONAL RATE SURVEY



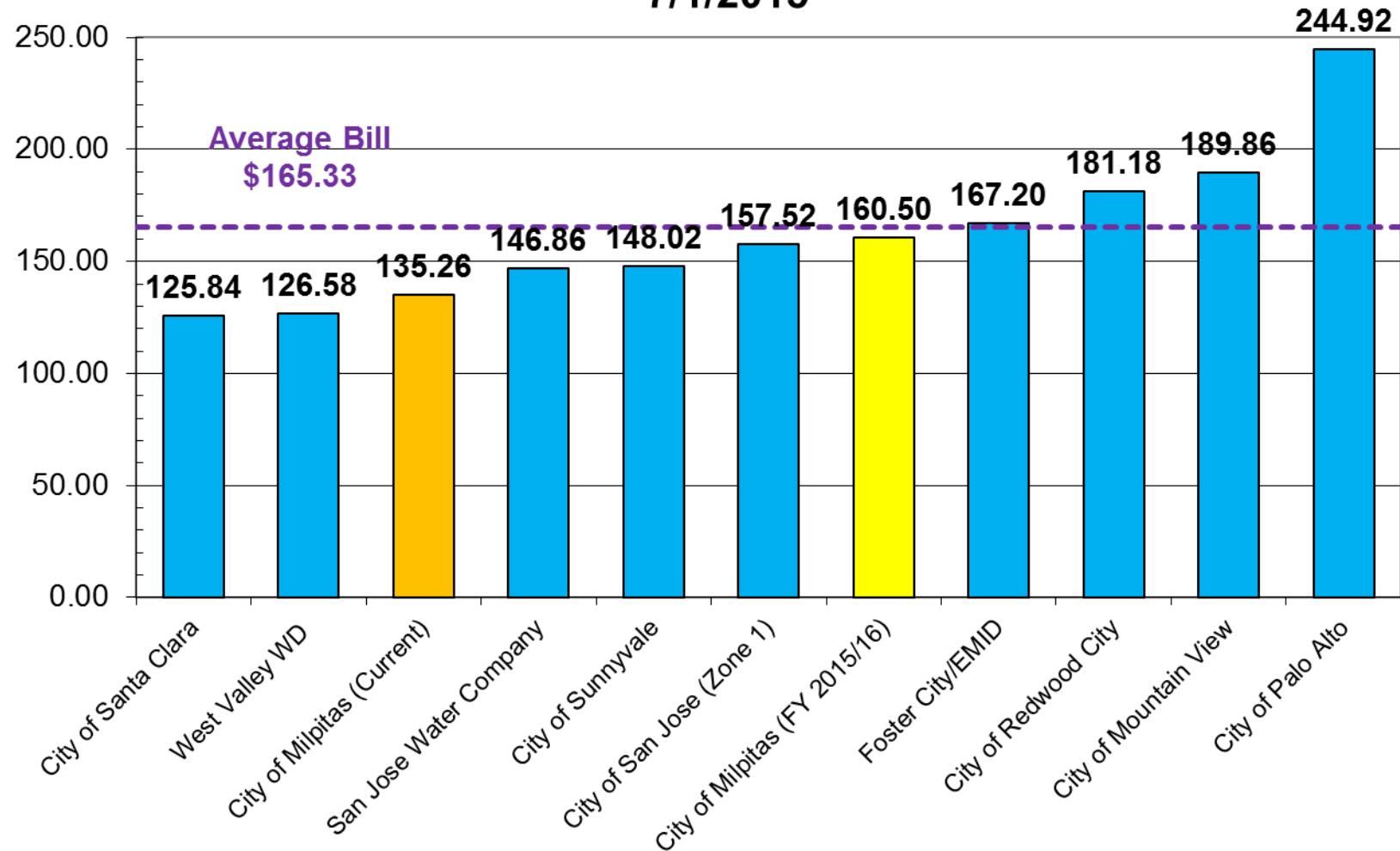
*Rates shown for a 5/8" meter with 10 hcf bimonthly water use
Based on proposed uniform tier*

City of Milpitas **Avg. Use Residential Bill Survey (17 HCF / Bimonthly) as of** **7/1/2015**



*Rates shown for a 5/8" meter with 17 hcf bimonthly water use
Based on proposed uniform tier*

City of Milpitas High Use Residential Bill Survey (30 HCF / Bimonthly) as of 7/1/2015



*Rates shown for a 5/8" meter with 30 hcf bimonthly water use
Based on proposed uniform tier*

APPENDIX C – FINANCIAL DETAIL

Appendix C
City of Milpitas - Water Rate Study
Wholesale Water Purchases

Potable Water	Actual 13/14	Actual 14/15	15/16 Proposed	16/17 Projected	17/18 Projected	18/19 Projected
SFPUC Quantity Charge, \$/HCF	\$2.45	\$2.93	\$3.75	\$3.79	\$3.79	\$4.32
% Increase		20%	28%	1%	0%	14%
SFPUC Purchased, HCF	3,194,523	2,503,640	2,352,053	2,352,053	2,352,053	2,352,053
% Increase		-22%	-6%	0%	0%	0%
Subtotal: SFPUC Expenditures	\$7,826,581	\$7,335,665	\$8,821,140	\$8,909,352	\$8,909,352	\$10,156,661
% Increase		-6%	20%	1%	0%	14%
SFPUC Monthly Meter Charge	\$14,022	\$14,022	\$14,022	\$14,022	\$14,022	\$14,022
Monthly Debt Service	\$88,127	\$89,348	\$91,135	\$92,958	\$94,817	\$96,713
Subtotal: Annual Fixed Costs	\$1,225,788	\$1,240,440	\$1,261,884	\$1,283,756	\$1,306,066	\$1,328,822
% Increase		1%	2%	2%	2%	2%
Total \$Exp: SFPUC Purchased	\$9,052,369	\$8,576,105	\$10,083,024	\$10,193,107	\$10,215,417	\$11,485,483
% Increase		-5%	18%	1%	0%	12%
SCVWD Quantity Charge, \$/HCF	\$1.79	\$1.94	\$2.33	\$2.68	\$3.08	\$3.54
% Increase		8%	20%	15%	15%	15%
SCVWD Purchased, HCF	1,335,767	1,548,876	984,192	984,192	984,192	984,192
% Increase		16%	-36%	0%	0%	0%
Total \$Exp: SCVWD Purchased	\$2,391,824	\$3,004,819	\$2,291,200	\$2,634,880	\$3,030,112	\$3,484,629
% Increase		26%	-24%	15%	15%	15%
Total: Potable Purchases, HCF	4,530,290	4,052,516	3,336,246	3,336,246	3,336,246	3,336,246
% Increase		-11%	-18%	0%	0%	0%
Total: Potable \$Exp:	\$11,444,194	\$11,580,925	\$12,374,224	\$12,827,987	\$13,245,529	\$14,970,111
% Increase		1%	7%	4%	3%	13%

Recycled Water

WPCP Quantity Charge, \$/HCF	\$1.32	\$1.47	\$1.84	\$2.30	\$2.88	\$3.60
% Increase		12%	25%	25%	25%	25%
WPCP Purchased, HCF	378,528	409,507	440,000	440,000	448,800	457,776
% Increase		8%	7%	0%	2%	2%
Total: Recycled \$Exp:	\$499,657	\$603,531	\$810,590	\$1,013,238	\$1,291,878	\$1,647,144
% Increase		21%	34%	25%	28%	28%

TOTAL: ALL PURCHASES, HCF	4,908,818	4,462,023	3,776,246	3,776,246	3,785,046	3,794,022
% Increase		-9%	-15%	0%	0%	0%
TOTAL: ALL PURCHASES \$EXP	\$11,943,851	\$12,184,456	\$13,184,814	\$13,841,225	\$14,537,407	\$16,617,256
% Increase		2%	8%	5%	5%	14%

Appendix C (Continued)
City of Milpitas - Water Rate Study
Water Use

Potable Water	Actual 13/14	Estimated 14-15	15/16 Proposed	16/17 Projected	17/18 Projected	18/19 Projected
Residential (Bimonthly Tiers):						
0-10 usage, HCF	1,105,362	1,115,541	1,081,000	1,150,000	1,150,000	1,150,000
% Increase	0%	1%	-3%	6%	0%	0%
>10 usage, HCF	596,463	556,130	510,000	510,000	510,000	510,000
% Increase	0%	-7%	-8%	0%	0%	0%
21-30 usage, HCF	234,854	192,524	-	-	-	-
% Increase	33%	-18%				
31+ usage, HCF	200,451	140,661	-	-	-	-
% Increase	53%	-30%				
TOTAL Usage, HCF	2,137,130	2,004,855	1,591,000	1,660,000	1,660,000	1,660,000
% Increase	6%	-6%	-21%	4%	0%	0%
Commercial:						
Usage, HCF	579,485	573,064	434,000	434,000	434,000	434,000
% Increase	12%	-1%	-24%	0%	0%	0%
Industrial:						
Usage, HCF	589,369	602,726	476,649	450,000	450,000	450,000
% Increase	4%	2%	-21%	-6%	0%	0%
Institutional:						
Usage, HCF	120,318	117,728	90,000	90,000	90,000	90,000
% Increase	4%	-2%	-24%	0%	0%	0%
Irrigation:						
Irrigation Usage, HCF	481,371	376,440	285,000	285,000	285,000	285,000
% Increase	7%	-22%	-24%	0%	0%	0%
Ed Levin Park:						
Ed Levin Usage, HCF	4,599	3,593	2,610	2,610	2,610	2,610
% Increase	-25%	-22%	-27%	0%	0%	0%
CITY Domestic Accounts:						
CITY Domestic Usage, HCF	16,014	13,297	10,000	10,000	10,000	10,000
% Increase	-11%	-17%	-25%	0%	0%	0%
CITY Irrigation Accounts:						
CITY Irrigation Usage, HCF	142,193	103,277	80,000	80,000	80,000	80,000
% Increase	5%	-27%	-23%	0%	0%	0%
Subtotal Potable Use	4,070,479	3,794,979	2,969,259	3,011,610	3,011,610	3,011,610
% Increase	7%	-7%	-22%	1%	0%	0%

Recycled Water

Irrigation (Piped)						
Recycled Irrigation Usage, HCF	406,575	452,273	403,793	381,824	389,460	397,249
% Increase	25%	11%	-11%	-5%	2%	2%
Industrial Process Use						
Recycled Industrial Usage, HCF	3,933	4,375	4,331	4,115	4,115	4,115
% Increase	5%	11%	-1%	-5%	0%	0%
City of Milpitas - Irrigation Recycled						
Recycled Irrigation Usage, HCF	28,944	32,197	31,875	30,280	30,280	30,280
% Increase	2%	11%	-1%	-5%	0%	0%
Subtotal Recycled Use	439,452	488,846	440,000	416,218	423,855	431,644
% Increase	23%	11%	-10%	-5%	2%	2%

TOTAL: ALL USE, HCF	4,509,931	4,283,825	3,409,259	3,427,828	3,435,465	3,443,254
% Total Use Increase	8%	-5%	-20%	1%	0%	0%

Appendix C (Continued)
City of Milpitas - Water Rate Study
Water Rates

Potable Water	Actual 13/14	Actual 14/15	15/16 Proposed	16/17 Projected	17/18 Projected	18/19 Projected
Residential:						
0-10 Rate, \$/HCF	\$2.30	\$2.62	\$4.75	\$5.13	\$5.54	\$5.82
% Increase	14%	14%	81%	8.0%	8.0%	5.0%
>10 Rate, \$/HCF	\$3.22	\$3.48	\$4.75	\$5.13	\$5.54	\$5.82
% Increase	8%	8%	36%	8.0%	8.0%	5.0%
21-30 Rate, \$/HCF	\$4.34	\$4.69	-	-	-	-
% Increase	8%	8%				
31+ Rate, \$/HCF	\$4.86	\$5.29	-	-	-	-
% Increase	8%	9%				
Commercial:						
Rate, \$/HCF	\$4.94	\$5.29	\$4.75	\$5.13	\$5.54	\$5.82
% Increase	7%	7%	-10%	8.0%	8.0%	5.0%
Industrial:						
Rate, \$/HCF	\$4.94	\$5.29	\$4.75	\$5.13	\$5.54	\$5.82
% Increase	7%	7%	-10%	8.0%	8.0%	5.0%
Institutional:						
Rate, \$/HCF	\$4.94	\$5.29	\$4.75	\$5.13	\$5.54	\$5.82
% Increase	7%	7%	-10%	8.0%	8.0%	5.0%
Irrigation:						
Irrigation rate, \$/HCF	\$5.16	\$5.29	\$4.75	\$5.13	\$5.54	\$5.82
% Increase	4%	3%	-10%	8.0%	8.0%	5.0%
Ed Levin Park:						
Ed Levin rate, \$/HCF	\$2.45	\$3.08	\$3.75	\$3.79	\$3.79	\$4.32
% Increase	-15%	26%	22%	1.0%	0.0%	14.0%
CITY Domestic Accounts:						
CITY Domestic Rate, \$/HCF	\$3.98	\$5.29	\$4.75	\$5.13	\$5.54	\$5.82
% Increase	30%	33%	-10%	8.0%	8.0%	5.0%
CITY Irrigation Accounts:						
CITY Irrigation rate, \$/HCF	\$3.98	\$5.29	\$4.75	\$5.13	\$5.54	\$5.82
% Increase	30%	33%	-10%	8.0%	8.0%	5.0%

Recycled Water

Irrigation (Piped):						
Recycled Irrigation rate, \$/HCF	\$3.98	\$4.08	\$2.42	\$2.61	\$2.82	\$2.96
% Increase	2%	3%	-41%	8.0%	8.0%	5.0%
Industrial Process Use						
Recycled Industrial rate, \$/HCF	\$2.47	\$2.65	\$2.42	\$2.61	\$2.82	\$2.96
% Increase	7%	7%	-9%	8.0%	8.0%	5.0%
City of Milpitas - Irrigation Recycled						
Recycled Irrigation rate, \$/HCF	\$2.01	\$2.51	\$2.42	\$2.61	\$2.82	\$2.96
% Increase	25%	25%	-4%	8.0%	8.0%	5.0%

Capital Surcharges

Potable Capital Surcharge	-	-	-	\$1.30	\$1.30	\$1.74
					0.0%	33.8%
Recycled Capital Surcharge	-	-	-	\$0.17	\$0.17	\$0.17
					0.0%	0.0%

Appendix C (Continued)
City of Milpitas - Water Rate Study
Actual and Projected Water Sales Revenue

Potable Water	Actual 13/14	Estimated 14-15	15/16 Proposed	16/17 Projected	17/18 Projected	18/19 Projected
Residential						
0-10 Rate	\$2,542,333	\$2,922,716	\$5,134,750	\$5,899,500	\$6,371,000	\$6,693,000
% Increase	14%	15%	76%	15%	8%	5%
>10 Rate	1,920,611	1,935,333	2,422,500	2,616,300	2,825,400	2,968,200
% Increase	8%	1%	25%	8%	8%	5%
21-30	1,019,266	902,939	-	-	-	-
% Increase	44%	-11%				
31+	974,192	744,095	-	-	-	-
% Increase	65%	-24%				
Total Residential Revenue	6,456,402	6,505,082	7,557,250	8,515,800	9,196,400	9,661,200
% Increase	22%	1%	16%	13%	8%	5%
Commercial:						
	2,862,656	3,031,509	2,061,500	2,226,420	2,404,360	2,525,880
% Increase	20%	6%	-32%	8%	8%	5%
Industrial:						
	2,911,483	3,188,418	2,264,083	2,308,500	2,493,000	2,619,000
% Increase	11%	10%	-29%	2%	8%	5%
Institutional:						
	594,371	622,781	427,500	461,700	498,600	523,800
% Increase	11%	5%	-31%	8%	8%	5%
Irrigation:						
	2,483,874	1,991,366	1,353,750	1,462,050	1,578,900	1,658,700
% Increase	11%	-20%	-32%	8%	8%	5%
Ed Levin Park:						
	11,268	11,067	9,789	9,886	9,886	11,271
% Increase	-36%	-2%	-12%	1%	0%	14%
CITY Domestic Accounts:						
	63,736	70,339	47,500	51,300	55,400	58,200
% Increase	16%	10%	-32%	8%	8%	5%
CITY Irrigation Accounts:						
	565,928	546,333	380,000	410,400	443,200	465,600
% Increase	36%	-3%	-30%	8%	8%	5%
Subtotal: Potable Revenue	15,949,717	15,966,897	14,101,371	15,446,056	16,679,746	17,523,651
% Increase	18%	0%	-12%	10%	8%	5%

Recycled Water

Irrigation (Piped):						
	1,618,169	1,845,276	977,180	996,560	1,098,277	1,175,858
% Increase	27%	14%	-47%	2%	10%	7%
Industrial Process Use						
	9,715	11,572	10,482	10,739	11,603	12,179
% Increase	12%	19%	-9%	2%	8%	5%
City of Milpitas - Irrigation Recycled						
	58,177	80,896	77,138	79,031	85,390	89,629
% Increase	27%	39%	-5%	2%	8%	5%
Subtotal: Recycled Revenue	1,686,060	1,937,743	1,064,800	1,086,329	1,195,270	1,277,666
% Increase	27%	15%	-45%	2%	10%	7%

Total Use Revenue	17,635,778	17,904,640	15,166,171	16,532,386	17,875,016	18,801,316
% Increase	19%	2%	-15%	9%	8%	5%

Capital Surcharges

Potable Capital Surcharge	-	-	-	3,911,700	3,911,700	5,235,660
					0%	34%
Recycled Capital Surcharge	-	-	-	70,757	72,055	73,379
					2%	2%

Appendix C (Continued)
City of Milpitas - Water Rate Study
Water Meters

Potable Water Customers

Water Meter Size (inches)	Quantities					5/8" Meter Equivalents	
	FY 14/15	FY 15/16	FY 16/17	FY 17/18	FY 18/19		
Resid. Accts.(Includes Res. Irr)							
5/8	12,469	12,469	12,469	12,469	12,469	1.0	12,469
3/4	461	461	461	461	461	1.5	692
1	747	747	747	747	747	2.5	1,868
1-1/2	128	128	128	128	128	5.0	640
2	30	30	30	30	30	8.0	240
3	25	25	25	25	25	15.0	375
4	80	80	80	80	80	25.0	2,000
6	150	150	150	150	150	50.0	7,500
8	<u>110</u>	<u>110</u>	<u>110</u>	<u>110</u>	<u>110</u>	50.0	<u>5,500</u>
<i>Subtotal</i>	<i>14,200</i>	<i>14,200</i>	<i>14,200</i>	<i>14,200</i>	<i>14,200</i>		<i>31,283</i>
C/I/I and Irrig. Accts. (includes City Accounts)							
5/8	24	24	24	24	24	1.0	24
3/4	20	20	20	20	20	1.5	30
1	40	40	40	40	40	2.5	100
1-1/2	410	410	410	410	410	5.0	2,050
2	722	722	722	722	722	8.0	5,776
3	88	88	88	88	88	15.0	1,320
4	281	281	281	281	281	25.0	7,025
6	25	25	25	25	25	50.0	1,250
8	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>	<u>20</u>	50.0	<u>1,000</u>
<i>Subtotal</i>	<i>1,630</i>	<i>1,630</i>	<i>1,630</i>	<i>1,630</i>	<i>1,630</i>		<i>18,575</i>
Fire Accounts							
2	0	0	0	0	0	1.6	0
3	0	0	0	0	0	3.0	0
4	0	0	0	0	0	5.0	0
6	0	0	0	0	0	10.0	0
8	<u>460</u>	<u>460</u>	<u>460</u>	<u>460</u>	<u>460</u>	10.0	<u>4,600</u>
<i>Subtotal</i>	<i>460</i>	<i>460</i>	<i>460</i>	<i>460</i>	<i>460</i>		<i>4,600</i>
Potable Totals	16,290	16,290	16,290	16,290	16,290		54,458

Recycled Water Customers

Recycled							
5/8	3	3	3	3	3	1.0	3
3/4	0	0	0	0	0	1.5	0
1	8	8	8	8	8	2.5	20
1-1/2	15	15	15	15	15	5.0	75
2	25	25	25	25	25	8.0	200
3	15	15	15	15	15	15.0	225
4	125	125	125	125	125	25.0	3,125
6	0	0	0	0	0	50.0	0
8	0	0	0	0	0	50.0	0
Recycled Totals	191	191	191	191	191		3,648

Total Meter Equivalents

58,106

Appendix C (Continued)
City of Milpitas - Water Rate Study
Water Meter Rates

	Current 14/15	Proposed 15/16	Projected 16/17	Projected 17/18	Projected 18/19
Bimonthly Meter Charge					
Rate Increases		Rate Restructure	8.0%	8.0%	5.0%
Resid. Accts.(Includes Res. Irr)					
5/8	\$27.36	\$18.00	\$19.44	\$21.00	\$22.05
3/4	29.07	27.00	29.16	31.49	33.06
1	41.28	45.00	48.60	52.49	55.11
1-1/2	52.07	90.00	97.20	104.98	110.23
2	67.96	144.00	155.52	167.96	176.36
3	181.95	270.00	291.60	314.93	330.68
4	230.57	450.00	486.00	524.88	551.12
6	351.86	900.00	972.00	1,049.76	1,102.25
8	460.99	900.00	972.00	1,049.76	1,102.25
C/I/I and Irrig. Accts. (includes City Accounts)			8.0%	8.0%	5.0%
5/8	27.36	18.00	19.44	21.00	22.05
3/4	29.07	27.00	29.16	31.49	33.06
1	41.28	45.00	48.60	52.49	55.11
1-1/2	52.07	90.00	97.20	104.98	110.23
2	67.96	144.00	155.52	167.96	176.36
3	181.95	270.00	291.60	314.93	330.68
4	230.57	450.00	486.00	524.88	551.12
6	351.86	900.00	972.00	1,049.76	1,102.25
8	460.99	900.00	972.00	1,049.76	1,102.25
Fire Accounts			8.0%	8.0%	5.0%
2	43.72	28.80	31.10	33.59	35.27
3	65.68	54.00	58.32	62.99	66.14
4	72.99	90.00	97.20	104.98	110.23
6	94.92	180.00	194.40	209.95	220.45
8	116.77	180.00	194.40	209.95	220.45
Recycled			8.0%	8.0%	5.0%
5/8	27.36	18.00	19.44	21.00	22.05
3/4	29.07	27.00	29.16	31.49	33.06
1	41.28	45.00	48.60	52.49	55.11
1-1/2	52.07	90.00	97.20	104.98	110.23
2	67.96	144.00	155.52	167.96	176.36
3	181.95	270.00	291.60	314.93	330.68
4	230.57	450.00	486.00	524.88	551.12
6	351.86	900.00	972.00	1,049.76	1,102.25
8	460.99	900.00	972.00	1,049.76	1,102.25

Appendix C (Continued)
City of Milpitas - Water Rate Study
Water Meter Revenue

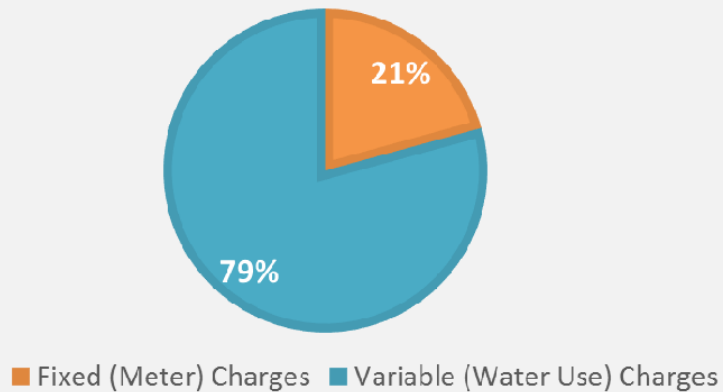
Potable & Recycled Water Meters	Current 14/15	Proposed 15/16	Projected 16/17	Projected 17/18	Projected 18/19
Annual Meter Revenue					
Resid. Accts.(Includes Res. Irr)					
5/8	\$2,046,911	\$1,346,652	\$1,454,384	\$1,571,094	\$1,649,649
3/4	80,408	74,682	80,657	87,101	91,444
1	185,017	201,690	217,825	235,260	247,003
1-1/2	39,990	69,120	74,650	80,625	84,657
2	12,233	25,920	27,994	30,233	31,745
3	27,293	40,500	43,740	47,240	49,602
4	110,674	216,000	233,280	251,942	264,538
6	316,674	810,000	874,800	944,784	992,025
8	<u>304,253</u>	<u>594,000</u>	<u>641,520</u>	<u>692,842</u>	<u>727,485</u>
	3,123,452	3,378,564	3,648,849	3,941,120	4,138,147
C/I/I and Irrig. Accts. (includes City Accounts)					
5/8	3,940	2,592	2,799	3,024	3,175
3/4	3,488	3,240	3,499	3,779	3,967
1	9,907	10,800	11,664	12,598	13,226
1-1/2	128,092	221,400	239,112	258,251	271,166
2	294,403	623,808	673,713	727,603	763,992
3	96,070	142,560	153,965	166,283	174,599
4	388,741	758,700	819,396	884,948	929,188
6	52,779	135,000	145,800	157,464	165,338
8	<u>55,319</u>	<u>108,000</u>	<u>116,640</u>	<u>125,971</u>	<u>132,270</u>
	1,032,739	2,006,100	2,166,588	2,339,920	2,456,921
Fire Accounts					
2	0	0	0	0	0
3	0	0	0	0	0
4	0	0	0	0	0
6	0	0	0	0	0
8	<u>322,285</u>	<u>496,800</u>	<u>536,544</u>	<u>579,462</u>	<u>608,442</u>
	322,285	496,800	536,544	579,462	608,442
Recycled					
5/8	492	324	350	378	397
3/4	0	0	0	0	0
1	1,981	2,160	2,333	2,520	2,645
1-1/2	4,686	8,100	8,748	9,448	9,921
2	10,194	21,600	23,328	25,194	26,454
3	16,376	24,300	26,244	28,344	29,761
4	172,928	337,500	364,500	393,660	413,340
6	0	0	0	0	0
8	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	206,657	393,984	425,503	459,543	482,518
Potable Total	4,478,476	5,881,464	6,351,981	6,860,502	7,203,510
Total	4,685,133	6,275,448	6,777,484	7,320,046	7,686,028
% Increase		34%	8%	8%	5%

Appendix C (Continued)
City of Milpitas - Water Rate Study
Projected Water Service Revenues

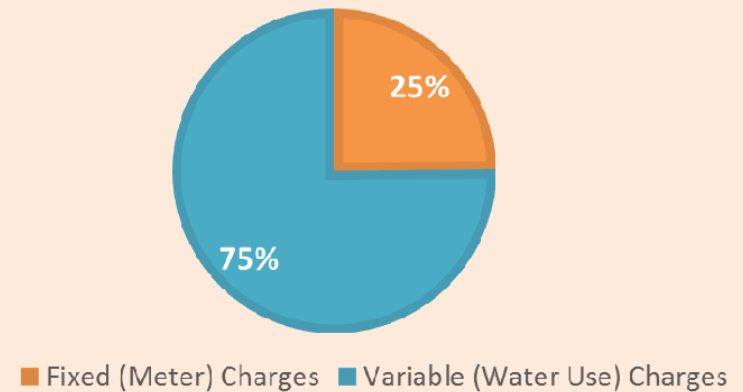
Project Revenues	2014/15	Current Rates, 2015/16 Consumption	Prorated 2015/16 ¹ Revenue	Proposed Rates, 2015/16 Consumption	Projected		
					2016/17	2017/18	2018/19
Potable Capital Surcharge	\$0	\$0 -	-	-	\$3,911,700	\$3,911,700	\$5,235,660
Recycled Capital Surcharge	0	0 -	-	-	70,757	72,055	73,379
Potable Water Meter Charges	4,478,476	4,478,476	4,829,223	5,881,464	6,351,981	6,860,502	7,203,510
Recycled Water Meter Charges	206,657	206,657	253,489	393,984	425,503	459,543	482,518
Potable Water Volumetric Charges	15,966,897	11,892,242	12,444,524	14,101,371	15,446,056	16,679,746	17,523,651
Recycled Water Volumetric Charges	<u>1,937,743</u>	<u>1,739,020</u>	<u>1,570,465</u>	<u>1,064,800</u>	<u>1,086,329</u>	<u>1,195,270</u>	<u>1,277,666</u>
	22,589,773	18,316,395	19,097,701	21,441,619	27,292,327	29,178,817	31,796,383
% Increase from Prior Fiscal Year		-19%	-15%	-5%	27%	7%	9%

1 Includes 9 months of current rates and 3 months of proposed rates

CURRENT COST RECOVERY (FY 2014/15)



PROPOSED COST RECOVERY (FY 2016/17)



Appendix C (Continued)
City of Milpitas - Water Rate Study
Additional Water Operating Expenses

Additional Operational Costs	FY 2015/16	FY 2016/17	<u>Projected For Planning Purposes</u>		
			FY 2017/18	FY 2018/19	FY 2019/20
Drought Program (Education and Enforcement)	\$600,000	\$600,000			
Bartle Wells Rate Study	60,000	60,000			
Harris Staff Support	60,000	0			
Utility Maintenance Staffing	82,500	290,000	301,600	313,664	326,211
UM Equipment (vehicles)	5,000	25,000			
Utility Engineering Staffing	49,875	172,800	179,712	186,900	194,376
RMC Staffing Support	170,000	300,000			
40% Funding of Inspector	14,400	57,600	59,904	62,300	64,792
80% Funding of Design Associate	50,500	115,200	119,808	124,600	129,584
Water Model Software Annual Cost	5,000	5,000	5,000	5,000	5,000
Emergency Pipeline Repairs	<u>325,000</u>	<u>500,000</u>	<u>520,000</u>	<u>540,800</u>	<u>562,432</u>
Total	1,422,275	2,125,600	1,186,024	1,233,265	1,282,396

PLEASE NOTE:

This copy of Ordinance No. 240.4 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 240.4

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AMENDING CHAPTER 6 OF TITLE VIII OF THE MILPITAS MUNICIPAL
CODE RELATING TO SUPPLEMENTAL WATER USE**

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on April 1, 2015, the Governor of California issued an Executive Order requiring a Statewide mandatory reduction of potable water usage by twenty-five percent (25%) with enforcement regulations due to severe drought conditions; and

WHEREAS, on May 5, 2015, the State Water Resources Control Board adopted additional emergency regulations for Statewide urban water conservation requiring water retailers to implement additional conservation measures as part of its Water Shortage Contingency Plan; and

WHEREAS, on June 16, 2015, the City Council of the City of Milpitas declared the continuation of a water shortage for the year 2015 (Stage 2 of the Milpitas Water Shortage Contingency Plan) and added additional conservation measures as required by State law; and required the community to implement water conservation measures with a goal of reducing consumption by thirty percent (30%); and

WHEREAS, on June 16, 2015, the City Council of the City of Milpitas adopted Urgency Ordinance No. 240.3, amending Chapter 6 of Title VIII of the Milpitas Municipal Code to include penalties for customers who fail to limit their water use;

WHEREAS, the City never implemented the penalty water rates repealed by this Ordinance; and

WHEREAS, in the case of *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* the Court ruled that penalty rates for excessive water usage above-the-cost-of-service for the water may violate the requirements of Proposition 218 so that the City's penalty rates are likely to be unacceptable and they will be repealed prior to implementation by adoption of this Ordinance.

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

Sections 7, 8 and 9 of Chapter 6 of Title VIII of the Milpitas Municipal Code are hereby amended to read as follows:

~~VIII-6 7.00—Drought Penalties~~

~~7.01 Residential Properties~~

~~a.—The following penalties will be imposed to residential customers who fail to limit their use:~~

Residential Water Tiers	FY15/16 Rate	Penalties
1.0—10 hcf	\$3.62	No Penalty

2. >10 — 20 hcf	\$4.80	No Penalty
3. >20 — 30 hcf	\$6.47	No Penalty
4. >30 hcf	\$7.30	+10 %

FY = Fiscal Year

1 hcf = One hundred cubic feet = 748 gallons

7.02 Commercial, Industrial and Institutional Properties

- a. ~~Commercial, industrial, and institutional accounts shall be assigned water allotments equal to 90 percent of their usage during the same billing period in calendar year 2013. The following penalties will be imposed to commercial, industrial and institutional customers who fail to limit their use within the assigned allotment:~~

	FY15/16 Rate	Penalty
Commercial/Industrial/Institutional/Construction Meter	\$7.30	+10%

-

FY = Fiscal Year

1 hcf = One hundred cubic feet = 748 gallons

7.03 Irrigation Accounts

- a. ~~Irrigation accounts shall be assigned water allotments equal to 50 percent of their usage during the same billing period in calendar year 2013. The following penalties will be imposed to irrigation customers who fail to limit their use within the assigned allotment:~~

	FY 15/16 Rate	Penalty
Irrigation (potable)	\$7.30	+10%

-

FY = Fiscal Year

1 hcf = One hundred cubic feet = 748 gallons

~~7.04 The Drought Penalties set forth in this Section will be imposed in addition to the customer's normal rates charged pursuant to Section VIII 1 6.13 of the Municipal Code, as may be amended.~~

~~7.05 The Director of Engineering is authorized to assign allotments for water accounts that did not exist in 2013 or had a change in land use based on review of similar types of properties and uses.~~

~~7.06 The FY 15/16 water rates are shown here for convenience only and the real values shall be as set forth in Section VIII 1 6.13 of the Municipal Code, as may be amended.~~

VIII-6-~~87~~.00 - Non-Compliance

Any violation of this Chapter shall be subject to the penalties provision set forth in Section I-1-4.09 (Penalty Provision), Section ~~VI-50021-8.00~~ (Administrative Citation), Section VIII-1-6.10 (Discontinuance of Service), Section VIII-1-6.11 (Restoration of Service), or any other penalty provisions in the Municipal Code or State law.

VIII-6-~~98~~.00 - Applicability

The prohibitions and rationing requirements identified in this Chapter are not applicable to fountains, irrigation systems, cooling towers, and dual-plumb sites that use non-potable water such as recycled water.

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. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

SEP 08 2015

*4

CITY OF MILPITAS
COMMISSION/COMMITTEE APPLICATION

RECEIVED

Arts Commission

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR ☐☒ Mr. ☐ Mrs. ☐ Miss

Lu Qiang Shu
 Name: First Middle Last
 200 residence in Milpitas Serra Way, #47B Milpitas, 95035
 Address: Number Street (apt. # if needed) City & Zip Code
 415-205-0429 petershu1975@gmail.com
 Telephone Number(s) e-mail address
 Yi lan Shuen Gallery 415-205-0429
 Present Employer Business Telephone
 200 Serra Way, #47B, Milpitas, CA 95035 President
 Business Address Occupation

Education: If Youth Advisory Commission applicant, indicate your grade/school:

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
Shanghai University	Chinese Bush Painting	06/30/1992	Bachelor

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member
07/01/2012	California Cultural and Arts Institute USA	Executive Board of Director

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

Renowned Artist in San Francisco Bay Area and China

Well respected leader in Chinese American Community

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Lu Qiang Shu
 Signature

07/26/2015

Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mail, email or drop off your completed application to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

SEP 29 2015

CITY OF MILPITAS COMMISSION/COMMITTEE APPLICATION

RECEIVED

Community Advisory Commission

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR ☐
☒ Mr. ☐ Mrs. ☐ Miss

Name: Vishal N Gandhi
First Middle Last

Address: 859 Pheland Ct Milpitas, 95035
Number Street (apt. # if needed) City & Zip Code

408-420-8238 vgandhi.us@gmail.com
Telephone Number(s) e-mail address

Wells Fargo 1-877-479-3557
Present Employer Business Telephone

333 Market St, San Francisco, CA Software
Business Address Occupation

Education: If Youth Advisory Commission applicant, indicate your grade/school: _____

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
Certified Scrum Master	Scrum Alliance	01/11/2012	Certification Course
Roosevelt University	Computer Science	12/31/1999	Bachelor of Science

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member
2007 - 2009	Tennisball Cricket Association	Member
On-going	Bay Area Vaishnav Parivar - Milpitas	Member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

Volunteering on a need basis with various Non-Profit Organizations focusing on community outreach across San Francisco Bay Area

Resident of San Francisco Bay Area since last 15+ years

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Vishal Gandhi

Digitally signed by Vishal Gandhi
DN: cn=Vishal Gandhi, o, ou, email=vgandhi.us@gmail.com,
c=US
Date: 2015.09.28 16:18:05 -0700

Signature

09/28/2015

Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.**

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mail, email or drop off your completed application to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

RECEIVED

COMMISSION APPLYING FOR

☐ Mr. ☐ Mrs ☒ Miss

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

Veterans Commission
Youth Advisory Commission
POLYMER

COMMISSION APPLYING FOR **City Clerk's Office**

RECEIVED

Jenna			Zarbis
Name:	First	Middle	Last

			Milpitas 95035
Address:	Number	Street (apt. # if needed)	City & Zip Code

Business Address	Occupation
-------------------------	-------------------

Please see attached. Thank you.

Jim Zander

Date _____

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

Attachment to City of Milpitas, Commission/Committee Application
for Youth Advisory Commission
for Jenna Zarbis

I am a hard worker who cares passionately about my community. I have volunteered as a math tutor at Milpitas High (both last year and this year), and I would like to continue to make a positive difference in my community. When the students that I tutor gain a sense of triumph over the material they are studying, it gives me such a sense of satisfaction to know that I have made a positive impact. I am an organized, logical, and compassionate person seeking to learn, grow, and be a participating member of society. I have a great interest in how our community is managed and governed, and I would like to be of service in helping our community be the best that it can be.

**CITY OF MILPITAS
COMMISSION/COMMITTEE APPLICATION**

City Clerk's Office

SEP 18 2015

Veterans Commission
Youth Advisory Commission
Others

COMMISSION APPLYING FOR

RECEIVED

PROVIDE COMPLETE INFORMATION (in black ink)

☐ Mr. ☐ Mrs. ☒ Miss

Name: Madeline R. Cacao
First Middle Last

Address: Number Street (apt. # if needed) Milpitas, CA
City & Zip Code

Telephone Number(s) e-mail address

Student
Present Employer Business Telephone

Business Address Occupation

Education: If Youth Advisory Commission applicant, indicate your grade/school: 10th grade/Milpitas High School

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):
I've been a Milpitas Resident my entire life and would like to provide ideas on activities and programs that youth my age

would like to participate in.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.


Signature

9/17/15
Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.**

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mail, email or drop off your completed application to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

Youth Advisory Commission Supplemental Questionnaire



The City of Milpitas Youth Advisory Commission was founded in April 1996 to advise the City Council on matters pertaining to the youth and teens in Milpitas. All commissioners must be in grades 7 through 12 and live in Milpitas. There are a total of nine (9) members and four (4) alternate members that serve one-year terms (October-September). The Youth Advisory Commission meets the 2nd Thursday of every month at 7:00pm at the Milpitas Sports Center. Please submit the Supplemental Questionnaire with the Commission Application.

1. What type of difference do you want to make for the youth in our community? (Please list two of your ideas. Please use the reverse side if you need more room.)

For the youth in my community, I would like to see more involvement through volunteering. Two of my ideas would be volunteering at the senior center or the food bank and peer mentoring, like helping out at the elementary schools or middle schools.

2. How did you hear about the Youth Advisory Commission?

A couple classmates are in the Youth Advisory Commission and that is how I heard about it.

3. What have you heard or know about the Youth Advisory Commission?

I know that it's an Advisory Board to the City Council and that they host special events for the youth like spelling bees and math competitions.

4. Have you ever attended a Youth Advisory Commission meeting? If so, explain your experience.

No, I have never attended a Youth Advisory Commission meeting.

City Clerk's Office

Veterans Commission
Youth Advisory Commission
Citizens

RECEIVED

COMMISSION APPLYING FOR

☒ **MISS**

Last

City & Zip Code

e-mail address

Business Telephone

Occupation

10th, Milpitas High School

Degree

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Officer / Member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I am highly motivated in working on things that ~~are~~ I believe will benefit and pursue the task that is given to me.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Signature

Date _____

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.**

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: mlavelle@ci.milpitas.ca.gov

Youth Advisory Commission Supplemental Questionnaire



The City of Milpitas Youth Advisory Commission was founded in April 1996 to advise the City Council on matters pertaining to the youth and teens in Milpitas. All commissioners must be in grades 7 through 12 and live in Milpitas. There are a total of nine (9) members and four (4) alternate members that serve one-year terms (October-September). The Youth Advisory Commission meets the 2nd Thursday of every month at 7:00pm at the Milpitas Sports Center. Please submit the Supplemental Questionnaire with the Commission Application.

1. What type of difference do you want to make for the youth in our community? (Please list two of your ideas. Please use the reverse side if you need more room.)

I would like to get the youth of the city to be more involved and
active in the community through activities and programs. I hope that the
youth will gain new experiences, learn skills that they can use in life,
and most importantly, have lots of fun.

2. How did you hear about the Youth Advisory Commission?

I heard about the Youth Advisory Commission from a family
friend.

3. What have you heard or know about the Youth Advisory Commission?

I heard that the Youth Advisory Commission is involved in planning
events for the youth, like spelling bees.

4. Have you ever attended a Youth Advisory Commission meeting? If so, explain your experience.

No, I never attended a Youth Advisory Commission meeting
before.

MEMORANDUM

Office of the Mayor



To: Honorable City Council
Copy: City Manager Tom Williams
From: Mayor Jose S. Esteves
Subject: City Council Ad Hoc Subcommittees
Date: September 29, 2015

I am asking the City Council to form City Council Ad Hoc Subcommittees effective immediately. The three Subcommittees are:

Land Use and Transportation

- To review land use and transportation issues/matters affecting City of Milpitas locally and regionally

Joint Use

- To review joint use agreements between City of Milpitas and Milpitas Unified School District

Facilities Naming

- To review requests of naming of City streets, buildings, and facilities in honor or memory of Milpitas residents and/or past elected officials, heroes.

I am recommending the following Council liaisons for the new subcommittees and recommending a change to Council liaison for the Finance Subcommittee. The Council assignments are as follow:

Land Use Transportation Subcommittee

Mayor Esteves, Chair & Councilmember Barbadillo, Member

Joint Use Subcommittee

Mayor Esteves, Chair & Vice Mayor Montano, Member

Facilities Naming Subcommittee

Vice Mayor Montano, Chair & Councilmember Grilli, Member

Finance Subcommittee

Vice Mayor Montano, Chair and REPLACE Mayor Esteves with Councilmember Indihar-Giordano, Member

Senate Bill No. 358

Passed the Senate August 31, 2015

Secretary of the Senate

Passed the Assembly August 27, 2015

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1197.5 of the Labor Code, relating to private employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 358, Jackson. Conditions of employment: gender wage differential.

Existing law regulates the payment of compensation to employees by employers and prohibits an employer from conditioning employment on requiring an employee to refrain from disclosing the amount of his or her wages, signing a waiver of the right to disclose the amount of those wages, or discriminating against an employee for making such a disclosure.

Existing law generally prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. Existing law establishes exceptions to that prohibition where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex. Existing law makes it a misdemeanor for an employer or other person acting either individually or as an officer, agent, or employee of another person to pay or cause to be paid to any employee a wage less than the rate paid to an employee of the opposite sex as required by these provisions, or who reduces the wages of any employee in order to comply with these provisions.

This bill would revise that prohibition to eliminate the requirement that the wage differential be within the same establishment, and instead would prohibit an employer from paying any of its employees at wage rates less than those paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, as specified. The bill would revise and recast the exceptions to require the employer to affirmatively demonstrate that a wage differential is based upon one or more specified factors, including a seniority

system, a merit system, a system that measures earnings by quantity or quality of production, or a bona fide factor other than sex, as specified. The bill would also require the employer to demonstrate that each factor relied upon is applied reasonably, and that the one or more factors relied upon account for the entire differential. The bill would prohibit an employer from discharging, or in any manner discriminating or retaliating against, any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of these provisions. The bill would authorize an employee who has been discharged or discriminated or retaliated against, in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in these provisions, to recover in a civil action reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, including interest thereon, as well as appropriate equitable relief. The bill would prohibit an employer from prohibiting an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her rights under these provisions. The bill would also increase the duration of employer recordkeeping requirements from 2 years to 3 years. By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) In 2014, the gender wage gap in California stood at 16 cents on the dollar. A woman working full time year round earned an average of 84 cents to every dollar a man earned. This wage gap extends across almost all occupations reporting in California. This gap is far worse for women of color; Latina women in California make only 44 cents for every dollar a white male makes, the biggest gap for Latina women in the nation.

CURRENT BILL STATUS

MEASURE : S.B. No. 358

AUTHOR(S) : Jackson (Coauthors: Senators Glazer, Hall, Hancock, Hernandez, Leno, Mitchell, and Pavley) (Coauthors: Assembly Members Chávez, Chu, Dodd, Cristina Garcia, Eduardo Garcia, Gonzalez, Roger Hernández, Rodriguez, and Weber).

TOPIC : Conditions of employment: gender wage differential.

+LAST AMENDED DATE : 07/09/2015

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

LAST HIST. ACT. DATE: 09/01/2015

LAST HIST. ACTION : Enrolled and presented to the Governor at 4:30 p.m.

COMM. LOCATION : ASM APPROPRIATIONS

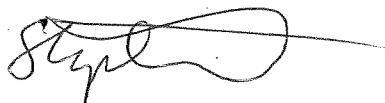
TITLE : An act to amend Section 1197.5 of the Labor Code,
relating to private employment.

Donation Spending Plan

In September 2015, The Consulate General of the Republic of Korea (in San Francisco), donated an additional \$2,500 to the Milpitas Public Library under the auspices of the **Financial Donations Policy & Procedures for the Milpitas Public Library** which was adopted by the Milpitas City Council on September 16, 2008. The financial donation form designated that the gift be used for Korean language books.

In accordance with the guidelines, the Milpitas Public Library is hereby submitting the following proposed spending plan to the Milpitas Library Advisory Commission for consideration for recommendation to the Milpitas City Council.

Korean Language - Classics	\$750
Korean Language – Popular Titles	<u>\$1,750</u>
Grand total	\$2,500



Stephen Fitzgerald
Community Librarian

September 21, 2015

City of Milpitas

Financial Donations Policy & Procedures for the Milpitas Public Library

Adopted by the Milpitas City Council: September 16, 2008

The Milpitas Public Library welcomes financial contributions. Community support of this kind is essential to the library's future development, growth and strength. Financial contributions may be made to the City of Milpitas, a non-profit municipal corporation.

This policy is established in order to make certain that the decisions on acceptance of a financial gift are made in a timely and consistent manner, and are appropriate in terms of both the nature of the facilities and purposes of the library.

The Milpitas Public Library structure is owned by the City of Milpitas. The Milpitas City Council governs the facility's overall uses and its infrastructure needs. The Santa Clara County Library, Joint Powers Authority (County Library JPA) operates the library. The County Library JPA's Donations of Funds and Materials for the Collection is a separate policy administered by the County Librarian.

All financial donations to the Milpitas Public Library shall be in compliance with both the County Library JPA's Donations of Funds and Materials for the Collection policy and the City of Milpitas Financial Donations Policy & Procedures for the Milpitas Public Library. This policy does not include programs and activities operated and maintained by Friends of the Milpitas Library.

The Milpitas City Council reserves the right to accept or decline acceptance of any financial donation. Once a donation is accepted, it becomes the sole property of the Milpitas Public Library. The Milpitas City Council reserves the right to decide upon the disposition of all financial donations received, however suggestions for designations of donated funds shall be considered.

The City of Milpitas Library Advisory Commission (LAC) shall actively seek financial donations and promote this financial donations policy. Per its marketing and outreach plan, the LAC shall manage and implement the Library Donations Recognition Program. In addition, the LAC shall determine that all financial donations comply with both County Library JPA and City of Milpitas donations policies. All solicitations of donations by elected officials shall comply with the Open Government Ordinance, Chapter 310-3.190 of the Milpitas Municipal Code.

Financial Donations

Monetary donations to the Milpitas Public Library are appreciated and welcomed. Donors may earmark monies for the purchase of specific materials, supplies, equipment, furnishings, and other items according to the library's needs. Donors may also request that the Milpitas City Council select the appropriate use of a monetary donation.

All financial donations shall be used towards purchases and events or other applications directly supporting the Milpitas Public Library.

Suggested ways that individuals, businesses, civic groups or foundations may contribute funds to benefit the Milpitas Public Library:

- **Memorial Donations:** This type of donation allows for individuals to contribute funds in memory, for example, of a family member who has passed away. Memorial donations do not include pets. In addition, individuals may name the City of Milpitas, Milpitas Public Library Fund as a beneficiary in their wills. The will might stipulate that the funds (or interest from part of an estate) be used to purchase particular items or materials in certain subject areas. In all cases, materials purchased with donated funds shall be selected in accordance with the library's collection development policy.
- **Specified Use:** An individual or organization may request donations be used for the purchase of materials or items for use in certain subject areas, provide support for a special event or the display of community art in the library, or for furnishings and equipment subject to the needs of the library.

Recognition Program

The City of Milpitas desires to formally thank and memorialize substantial gifts that help sustain library services. A tiered recognition program is established to publicly acknowledge donors:

Bronze: A monetary gift of \$1,000 to \$2,499.

Silver: A monetary gift of \$2,500 to \$4,999.

Gold: A monetary gift of \$5,000 to \$9,999.

Platinum: A monetary gift of \$10,000 or greater.

Donations less than \$1,000 shall be directed to the County Library JPA and are subject to the requirements of its Donations of Funds and Materials for the Collection policy.

Donors, or for memorial gifts the named individual, shall be acknowledged within this precious-metal color system on a plaque or by other means provided by the City of Milpitas. This tiered recognition program includes display of named donor within the Milpitas Public Library.

All financial donations made to the Milpitas Public Library shall be acknowledged by a letter of thanks. Receipts for cash contributions shall be provided upon request.

Procedures & Guidelines

All inquiries about monetary donations shall be directed to the Library Advisory Commission (LAC) for review and recommendation to the Milpitas City Council. The LAC shall provide a copy of the Milpitas Public Library Financial Donation Form to potential donors. Upon receipt of this form by the staff liaison, the donor information shall be placed on the next LAC agenda.

The LAC shall review all Milpitas Public Library Donation Forms and provide a recommendation for either accepting or declining the donation to the Milpitas City Council. Each recommendation shall include a description of how the donation would benefit library patrons. Such benefits may include increasing literary awareness, expanding a collection, promoting cultural and historical interests of the Milpitas community, raising awareness of the arts, or increasing access to equipment and other materials.

Final review and action to accept or decline a donation on behalf of the City of Milpitas is determined by the Milpitas City Council. Donations accepted by the Milpitas City Council shall be tracked in a separate account. The Finance Department shall provide reporting of expenditures and fund balance upon request of the LAC.

Additional guidelines for consideration to accept a specific type of financial donation shall be as follows:

- **Memorial Donation:** Donations in memory of an individual shall be appropriate and relevant to the Milpitas community (i.e. past resident, business person or other person having contributed to the good of the community).
- **Specified Use:** Donations with a specified use for the library shall be as defined above. Such materials, support of special events and other items shall be in accordance with subject areas within the library, cultural and historical interests of the Milpitas community, and / or ongoing furnishings and equipment needs of the library.
- **Undesignated Gifts:** Contributions not earmarked for a specific purpose shall be considered based upon the contributor's expressed desire to support the Milpitas Public Library in a manner deemed appropriate by the Milpitas City Council. Undesignated gifts shall be allocated for library-related purchases on an as needed basis. For use of these funds, the LAC shall prepare a report detailing the intended use of a portion or all of the funds for consideration by the Milpitas City Council.
- **Anonymous Gifts:** Donations with the request to remain anonymous shall be considered and honored in the same manner as undesignated gifts. The contributor shall be advised that anonymous gifts shall not be acknowledged in the donor listings.

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	312-2940	500,000	331-9513416-2-	
☒ Budget Appropriation	317-2940	500,000	4237	25,000
☐ Budget Transfer	214-2940	200,000	331-9513416-9-	
			4237	1,175,000

Explain the reason for the budget change:

Establish a Capital Improvement Project and related Budget Appropriation for the update of the City of Milpitas General Plan (Staff Contact: Sarah Fleming, Senior Planner, 408-586-3278).

Background:

California state law requires that each city adopt and regularly update its general plan. While it has been amended multiple times through 2010, the City of Milpitas General Plan has not been comprehensively updated since it was prepared and adopted in 1994 (Housing Element updated in 2015).

Council action will permit the establishment of a multi-year Capital Improvement Project (CIP) for a comprehensive general plan update and required CEQA analysis, and appropriate funding for the project in FY 15/16.

Fiscal Impact:

The project and related CEQA analysis is estimated to cost \$2,100,000 which is expected to be spent over three fiscal years.

FY 15/16: The City currently collects a Community Planning Fee of 5% on all building-related permits, to provide funds that enable the General Plan Update Project. \$200,000 is currently available from this source for FY 15/16. Additionally, Developer Fee contributions for FY 15/16 are provided through the Trumark/Lennar Waterstone Residential Development Project in the amount of \$1,000,000.

Future Funding: Future funding for this project is expected from a combination of Community Planning Fee Collections and Developer Contributions.

Recommendations:

Establish a Capital Improvement Project for the City of Milpitas General Plan Update Project in the amount of \$2,100,000 and appropriate \$1,200,000 to this project in FY 15/16.

☒ Check if City Council Approval required.

Meeting: October 6, 2015

Itemization of funds, if needed:			Amount
Requested by:	Sarah Fleming, Senior Planner	Date:	
Department Head:	Bill Ekern, Interim Director, Planning	Date:	
Reviewed by:	Finance Director: <i>D C Kue</i>	Date:	9/21/15
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING
SOLE SOURCE FINDINGS AND AUTHORIZING THE PURCHASE OF POLICE
AMMUNITION FROM SAN DIEGO POLICE EQUIPMENT COMPANY, INC.,
ADAMSON POLICE PRODUCTS, INC., AND MIWALL CORPORATION
FOR A COMBINED ANNUAL TOTAL NOT-TO-EXCEED \$57,000**

WHEREAS, Section I-2-3.09 of the Milpitas Municipal Code authorizes the City Council to make purchases without competition when the Purchasing Agent determines that there is only one source for the required supply or service; and

WHEREAS, after testing the market through competitive bid and conducting a good faith review of the available sources that can deliver ammunition in California, the Purchasing Agent has determined that San Diego Police Equipment Company, Inc. is the authorized sole source distributor for Federal brand ammunition in California, Adamson Police Products, Inc. is the authorized sole source distributor for Winchester brand ammunition in Northern California, and Miwall Corporation is the authorized sole source distributor for Hornaday brand ammunition in California; and

WHEREAS, the City's Purchasing Agent recommends the City Council approve these sole source procurements with San Diego Police Equipment Company, Inc., Adamson Police Products, Inc., and Miwall Corporation for the combined not-to-exceed annual total of Fifty Seven Thousand dollars (\$57,000.00).

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The sole source designation of San Diego Police Equipment Company, Inc., Adamson Police Products, Inc., and Miwall Corporation as sole source ammunition suppliers for the City is necessary due to the sole source nature of the vendors.
3. Putting the purchase of Police ammunition out to formal bid would not produce any advantage to the public, since the winning bids would be limited to these same, authorized sole source suppliers already identified through formal and informal solicitations.
4. City staff sought informal quotes from multiple suppliers, thereby securing market pricing information and sparking market competition to the extent possible. Thus, the authorization to execute purchases with the only available suppliers would not constitute any sign of favoritism, improvidence, extravagance, fraud or corruption.
5. City staff is therefore authorized to negotiate and execute three separate ammunition purchases, each for up to five years per the Sole Source designation, with San Diego Police Equipment Company, Inc., Adamson Police Products, Inc., and Miwall Corporation, for a combined annual total not-to-exceed \$57,000.

PASSED AND ADOPTED this ____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose Esteves, Mayor

APPROVED AS TO FORM:

Chris Diaz, City Attorney

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE
PURCHASE OF SEVEN CITY VEHICLES FROM THE NATIONAL AUTO FLEET GROUP THROUGH
A COOPERATIVE PROCUREMENT CONTRACT**

WHEREAS, Section I-2-3.08 (“Cooperative Procurement”) of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the purchase is pursuant to a cooperative agreement by another public agency in California that used competitive negotiation or bidding procedures at least as restrictive as the City’s; and

WHEREAS, Municipal Code Section I-2-3.08 (“Cooperative Procurement”) specifically authorizes the Purchasing Agent to make purchases from the National Joint Powers Alliance; and

WHEREAS, the Purchasing Agent, having reviewed all of the documentation from the National Joint Powers Alliance Request for Proposal (RFP) #102811 entitled “Passenger Cars, Light Duty, Medium Duty, and Heavy Duty Trucks with Related Accessories” has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as those of the City of Milpitas and that the price for the vehicles is the same as that offered in the original agreement.

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

1. 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 it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Purchasing Agent is authorized to purchase three 2016 Ford Sedan Police Interceptors, two 2016 Ford Utility Police Interceptors, including fitting them with standard push bars, one 2016 Toyota Utility vehicle for undercover operations, and one 2016 Ford F150 regular cab truck for the Finance Department Meter Reader Program, all to replace equipment that has reached the end of its useful life. These are cooperative purchases through the National Joint Powers Alliance from National Auto Fleet Group in the total not-to-exceed amount of \$265,617.53.

PASSED AND ADOPTED this _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Chris Diaz, City Attorney

**THIRD AMENDMENT TO THE AGREEMENT FOR
CONSULTATION AND OTHER SERVICES**

This Amendment is entered into this 6th day of October, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and RMC Water & Environment, Inc., a California corporation (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement on October 7, 2014 entitled "Consultant Services Agreement between the City of Milpitas and RMC Water Environment, Inc." ("Agreement") for engineering services in the amount of \$27,734 with an expiration date of June 30, 2015; and

WHEREAS, on April 7, 2015, the parties entered into Amendment No. 1 to the Agreement to increase the scope of work and compensation by \$58,000, for a total not to exceed amount of \$85,734, and extended the term to December 31, 2015; and

WHEREAS, on June 16, 2015, the parties entered into Amendment No. 2 to the Agreement to increase the scope of work and compensation by \$42,000, for a total not to exceed amount of \$127,734; and

WHEREAS, the parties desire to increase compensation by \$40,000 for a total not to exceed amount of \$167,734 and extend the term through June 30, 2016.

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

1. Section 1.1, entitled "Term of Services" of the Agreement is amended in its entirety to read as follows:

Term of Services. The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2016, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

2. Section 2, entitled "Compensation" of the Agreement is amended in its entirety to read as follows:

Section 2. Compensation. City hereby agrees to pay Consultant an amount not to exceed One Hundred Sixty Seven Thousand Seven Hundred Thirty Four Dollars (\$167,734) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for

services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

3. Exhibit B entitled "Compensation Schedule" attached to the Agreement is repealed and replaced in its entirety with the attached Revised Exhibit B, incorporated fully herein.
4. The CONSULTANT agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated October 7, 2014, between CONSULTANT and CITY. The CONSULTANT shall provide CITY with renewal certificates of the current policies upon the expiration of the current policy.
5. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date on the first page.

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

Steve Bui, Principal

APPROVE AS TO FORM:

Steven J. Machida, Director of Engineering

APPROVED

Christopher J. Diaz, City Attorney

PROJECT NAME RMC
PROJECT NO.: Utility Engineering Support

EXHIBIT B
COMPENSATION SCHEDULE

Civil Engineer/Planner (EPS-8)	90% of RMC billing schedule
All other staff	100% of RMC billing schedule

**AMENDMENT NO. 6 TO THE AGREEMENT FOR
CONSULTANT AND OTHER SERVICES**

BETWEEN

CITY OF MILPITAS

AND

RMC WATER AND ENVIRONMENT, INC.

This Amendment is entered into this 6th day of October, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and RMC Water and Environment, Inc. a California Corporation ("CONSULTANT").

RECITALS

WHEREAS, the parties entered into an agreement titled "Consulting Services Agreement" ("Agreement") for professional engineering services for BART Extension and Various City Capital Projects on March 1, 2011 with an expiration date of December 31, 2011 in the amount of One Hundred Fifty Four Thousand Four Hundred Sixty Eight Dollars (\$154,468); and

WHEREAS, on August 16, 2011, the parties entered into Amendment No. 1 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of June 30, 2012, and increase the compensation to an amount not to exceed Four Hundred Twenty Thousand Sixty Eight Dollars (\$420,068); and

WHEREAS, on May 10, 2012, the parties entered into Amendment No. 2 to the Agreement to extend the term of the Agreement with an expiration date of October 31, 2012 with no changes to compensation; and

WHEREAS, on August 7, 2012, the parties entered into Amendment No. 3 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of October 31, 2013, and increase the compensation to an amount not to exceed Eight Hundred Seven Thousand One Hundred Sixteen Dollars (\$807,116); and

WHEREAS, on October 15, 2013, the parties entered into Amendment No. 4 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of October 31, 2014, and increase the compensation to an amount not to exceed One Million One Hundred Seven Thousand One Hundred Sixteen Dollars (\$1,107,116); and

WHEREAS, on October 21, 2014, the parties entered into Amendment No. 5 to the Agreement to extend the term of the Agreement with an expiration date of October 31, 2015 with no changes to compensation; and

WHEREAS, the parties desire to extend the term of the Agreement with an expiration date of October 31, 2016 for additional services with no changes to compensation.

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

1. The first sentence in Subsection 1.1, entitled "Term of Services" of the Agreement is amended to read:
"The term of this Agreement shall begin on the date first noted above and shall end on October 31, 2016."
2. The CONSULTANT agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated March 1, 2011, between CONSULTANT and CITY. The CONSULTANT shall provide CITY with renewal certificates of the current policies upon the expiration of the current policy.
3. All other provisions of the amended Agreement not amended by this Amendment No. 6 shall remain in full force and effect.

This Amendment is executed as of the date written on page one.

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

Steve Bui, Vice President

APPROVED AS TO CONTENT

Steven J. Machida, Director of Engineering

APPROVED AS TO FORM

Christopher J. Diaz, City Attorney

**AMENDMENT NO. 6 TO THE AGREEMENT FOR
CONSULTATION AND OTHER SERVICES**

BETWEEN CITY OF MILPITAS

AND

SCHAAF AND WHEELER

This Amendment is entered into this 6th day of October, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and Schaaf and Wheeler, a California Corporation ("CONSULTANT").

RECITALS

WHEREAS, the parties entered into an agreement entitled "Consulting Services Agreement" for professional engineering services for BART Extension on January 26, 2012 in the amount of Eighteen Thousand Dollars (\$18,000.00) ("Agreement"); and

WHEREAS, on February 7, 2012, the parties entered into Amendment No. 1 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of June 30, 2012, and increase the compensation to an amount not to exceed Fifty Thousand Dollars (\$50,000.00); and

WHEREAS, on May 11, 2012, the parties entered into Amendment No. 2 to the Agreement to extend the term of the Agreement with an expiration date of December 31, 2012 with no changes to compensation; and

WHEREAS, on August 7, 2012, the parties entered into Amendment No. 3 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of October 31, 2013, and increase the compensation to an amount not to exceed Seventy Thousand Dollars (\$70,000.00); and

WHEREAS, on October 15, 2013, the parties entered into Amendment No. 4 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of October 31, 2014, and increase the compensation to an amount not to exceed Ninety Thousand Dollars (\$90,000.00); and

WHEREAS, on October 21, 2014, the parties entered into Amendment No. 5 to the Agreement to increase the scope of work, extend the term of the Agreement with an expiration date of October 31, 2015, and increase the compensation to an amount not to exceed One Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, the parties desire to extend the term of the Agreement with and expiration date of October 31, 2016 with no changes to compensation for additional services.

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

1. The first sentence in Subsection 1.1, entitled "Term of Services" of the Agreement is amended to read:

"The term of this Agreement shall begin on the date first noted above and shall end on October 31, 2016."

2. The CONSULTANT agrees to continue to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated January 26, 2012, between CONSULTANT and CITY. The CONSULTANT shall provide CITY with renewal certificates of the current policies upon the expiration of the current policy.
3. All other provisions of the amended Agreement not changed by this Amendment No. 6 shall remain in full force and effect.

This Amendment is executed as of the date written on page one.

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

Charles D. Anderson, President

APPROVED AS TO CONTENT

Steven J. Machida, Director of Engineering

APPROVED AS TO FORM

Christopher J. Diaz, City Attorney

**AMENDMENT No. 3 TO AGREEMENT WITH
CALRECOVERY INC. FOR CONSULTATION AND OTHER SERVICES**

This Amendment is entered into this 6th day of October, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and CalRecovery, Inc., a California corporation (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement for professional consulting services, on October 16, 2014 in the amount of Fifteen Thousand Dollars (\$15,000.00) for a term ending October 16, 2016 for on-call solid waste support services; and

WHEREAS, on January 20, 2015, the parties entered into Amendment 1 to add additional scope and compensation in the amount of Thirty-Five Thousand Dollars (\$35,000.00) for a total not-to-exceed amount of Fifty Thousand Dollars (\$50,000.00); and

WHEREAS, on July 1, 2015, the parties entered into Amendment 2 to add compensation in the amount of Fifty Thousand Dollars (\$50,000.00) for a total not-to-exceed amount of One Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, the parties desire to amend the Agreement to allow CONSULTANT to provide additional professional consulting services for an additional cost of One Hundred and Five Thousand Dollars (\$105,000.00) for a total not-to-exceed amount of Two Hundred and Five Thousand Dollars (\$205,000.00).

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

1. Section 2, entitled "Compensation" of the Agreement is amended in its entirety to read as follows:

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed Two Hundred and Five Thousand Dollars (\$205,000.00) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree

that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

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

This Amendment is executed as of the date on page 1.

APPROVED BY:

CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

George Savage, Executive Vice President

APPROVED AS TO CONTENT:

Steven J. Machida, Director of Engineering

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

City of Milpitas, California**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	280-2909	50,000	280-416-4237	105,000
☒ Budget Appropriation	450-2970	80,000	280-423-4237	25,000
☐ Budget Transfer				

Explain the reason for the budget change:

Approve Amendment No. 3 to the Consultant Services Agreement with CalRecovery, Inc. to Increase the Compensation by \$105,000 for Technical Odor Support Services and Approve a Budget Appropriation of \$130,000 (Staff Contact: Steven Machida, 408-586-3355)

Background: On October 16, 2014, the City entered into an agreement for \$15,000 with CalRecovery, Inc. to provide technical on-call consulting support services for odor issues and other technical solid waste management related matters. The agreement was amended on January 20, 2015 and July 1, 2015 for \$35,000 and \$50,000 respectively, for continued services, for a total not to exceed \$100,000. The work has included field visits to odor-generating sites, review of Newby Island permit application documents, preparing written documents, attending regulatory hearings, providing expert witness testimony, and other odor-related technical support services. Additional services will be required to support review of the regional odor study, review of the Newby Island landfill expansion and City of San Jose's Planned Development Permit, and the City's appeal of San Jose's Hearing Officer's decision to CalRecycle.

The Bay Area Air Quality Management District (BAAQMD) staff is requesting the City to submit an application for an Air Permit for the City's sewer lift station located on McCarthy Boulevard. The City will perform air quality sampling and submit the results with the permit application. BAAQMD will then determine if a permit and/or odor treatment facilities are required. CalRecovery will coordinate the sampling, review the results, prepare the application, and assist the City through the permit process. It is now necessary to increase the agreement amount by \$105,000, for a total not to exceed \$205,000, for continued technical odor support services. The permit application is estimated to cost up to \$25,000. A budget appropriation of \$130,000 is necessary to perform this work. Staff will request additional funding in the future, if odor treatment facilities are required.

California Environmental Quality Act (CEQA): This item is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change to the environment.

Alternative: If the amendment is not approved, engineering staff will not receive technical odor consulting services to address ongoing odor problems in the City, will need to accept BAAQMD's decisions on the City's lift station without the ability to review and/or discuss and challenge complex odor emissions chemistry, and will use operating funds, allocated for other activities for the permit application fees.

Fiscal Impact: An operating budget appropriation of \$50,000 from Solid Waste Fund and \$80,000 from Sewer Fund is necessary to perform this work, with \$25,000 from the Sewer Fund going to the Utility Maintenance operating budget and the remaining funds going to the Utility Engineering operating budget.

Recommendation: Approve Amendment No. 3 to the consultant services agreement with CalRecovery, Inc. to increase the compensation by \$105,000 for technical odor support services and approve a budget appropriation of \$130,000.

☒ Check if City Council Approval required.

Meeting: October 6, 2015

Itemization of funds, if needed:	Amount

Requested by:	Elizabeth Koo, Administrative Analyst	Date:
Department Head:	Steven Machida, Director of Engineering	Date:
Reviewed by:	Finance Director: <i>[Signature]</i> for Emma Karlen	Date: 9/29/15
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

FI/24786/V

Form 30-222 (Rev. 1/92)

Control No. 2015-0__
Recording Requested by
and when Recorded, return to:

CITY OF MILPITAS
455 E. CALAVERAS BOULEVARD
MILPITAS, CA 95035-5479

Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Document Transfer Tax is \$ __0__

() Computed on full value of property conveyed

() Computed on full value less value of liens and encumbrances remaining

City transfer tax is \$ __

O&M PJ No. 9006

**STORMWATER MANAGEMENT FACILITIES
OPERATION AND MAINTENANCE AGREEMENT
FOR PACE, Tract 10138**

This Stormwater Management Facilities Operation and Maintenance Agreement ("AGREEMENT") is made and entered into this 7th day of August, 2015__ ("Effective Date"), by and between Contour Trade Zone LLC; ("Property Owner") and the City of Milpitas, a municipal corporation of the State of California ("City").

RECITALS

This AGREEMENT is made and entered into with reference to the following facts:

WHEREAS, the Property Owner is the owner of real property more particularly depicted and described on the attached as **Exhibit A** ("Property") and fully incorporated herein by reference; and

WHEREAS, on November 15, 2011, the Milpitas City Council adopted Resolution No. 8136 approving the construction of 134 residential units and associated improvements on an 8.3 acre site at 300, 324-368 Montague Expressway in Milpitas and more commonly known as the PACE Project, Project No. PJ2762, (the "Project") on the Property; and

WHEREAS, the City's Stormwater and Urban Runoff Pollution Control Ordinance as codified in Milpitas Municipal Code Chapter 16 ("Ordinance"), Section XI-16-7 and the conditions of approval for the Project require proper installation, operation and maintenance of Permanent Stormwater Pollution Prevention Measures (BMPs) on the Property as part of the Project; and

WHEREAS, the City has approved the Stormwater Control Operation and Maintenance Plan for the Project attached hereto as **Exhibit B** and fully incorporated herein by reference requiring the Property Owner to properly construct, operate and maintain the BMPs at its sole cost and expense; and

WHEREAS, the Stormwater Control Operation and Maintenance Plan attached hereto as **Exhibit B** may be subsequently modified from time to time with City's written approval and such changes shall be fully incorporated as part of this Agreement by this reference; and

WHEREAS, the Stormwater Control Operation and Maintenance Plan includes provisions for the BMP Operation and Maintenance and an annual inspection checklist for the BMPs constructed on the Property, and

WHEREAS, this Agreement memorializes the Property Owner's maintenance, operations, and inspection obligations under the City's Ordinance and the approved Stormwater Control Operation and Maintenance Plan.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

SECTION 1

Responsibility for Operation and Maintenance: The Property Owner, at its sole cost and expense, shall make available copies of the approved Stormwater Control Operation and Maintenance Plan (hereinafter the "Plan") at the site with the facility or property manager and, at its sole cost and expense, shall maintain the BMPs in good working condition acceptable to the City for the life of the Project, and in compliance with the Ordinance and the approved Plan, and as required by the State Municipal Regional Permit (MRP).

SECTION 2

Inspection by Property Owner: The Property Owner, at its sole cost and expense, shall conduct annual inspections of all permanent installed BMPs per the Plan. The annual inspection report shall include completion of the checklist described in the approved Stormwater Control Operation and Maintenance Plan. The BMPs must be inspected by a qualified independent inspector who is acceptable to the City. The Property Owner shall submit the Inspection Report on these BMPs to the City Engineer no later than July 15th of each year. The Annual Inspection Report submitted shall be accompanied by a nonrefundable processing fee per the City's standard fee schedule.

SECTION 3

Facility Inspection by the City: The Property Owner grants permission to the City, its authorized agents and employees, to enter the Property, and to inspect the BMPs whenever the City deems necessary to enforce provisions of the City's Stormwater and Urban Runoff Pollution Control Ordinance, this Agreement, or any other local or state requirements. The City may enter the premises at any reasonable time to inspect the premises and BMP operation and maintenance, to inspect and copy records related to storm water compliance, and to collect samples and take measurements. Whenever possible, the City will provide notice prior to entry. The Property Owner shall create a Private Job Account with the City and deposit Four Thousand Dollars (\$4,000.00) for inspection by City Staff pursuant to this Section 3. The deposit of Four Thousand Dollars (\$4,000.00) shall be made simultaneously with the execution of this Agreement and shall be replenished to the initial balance when drawdown reaches Two Thousand Dollars (\$2,000.00).

SECTION 4

Failure to Perform Required Facility Repairs or Maintenance by the Property Owner: If the Property Owner or its successors fail to operate and maintain the BMPs in good working order and in accordance with the approved Plan and the City's Ordinance, the City, with prior notice, may enter the Property to return the BMPs to good working order. The City is under no obligation to maintain or repair the BMPs, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this Section 4 takes any action to return the BMPs to good working order, the Property Owner shall reimburse the City for all the costs and expenses incurred by the City. The City will provide the Property Owner with an itemized invoice of the City's costs and expenses and the Property Owner shall make full payments to the City within thirty (30) days of the date of the invoice. If the Property Owners fails to pay the invoice within thirty (30) days, the City may secure a lien against the real property of the Property Owner in the amount of such costs and expenses. This Section 4 does not prohibit the City from pursuing other legal recourse against the Property Owner.

SECTION 5

Successors and Assigns: This Agreement applies to the Property Owner and its successors. This agreement runs with the land and imposes a continuing obligation on anyone who owns the Property. Upon transfer of the property, the Property Owner shall provide the new owner with the current Plan and a copy of this Agreement.

SECTION 6

Indemnity: The Property Owner indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims against the City which may in anyway arise or relate to the construction, operation, presence, existence or maintenance of the BMPs, or from any personal injury or property damage that may arise or relate from the City entering the property under Section 4. If a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend the claim and any resulting litigation at its sole cost and expense. If any judgment is entered against the City, or its authorized agents or employees, the Property Owner must pay all costs and expenses to satisfy the judgment.

SECTION 7

Severability: Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

SECTION 8

Non-Discrimination: The Property Owner shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 9

Governing Law: City and Property Owner agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 10

Compliance with Laws: The Property Owner shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Without limiting the generality of the preceding sentence, CONSULTANT shall comply with the provisions of CITY's Business Tax Ordinance in the Milpitas Municipal Code.

SECTION 11 **BOOKS AND RECORDS.**

- A. The Property Owner shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements or in anyway relating to the performance of this Agreement for a minimum period of three (3) years, or for any longer period required by law.
- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the Property Owner's address indicated for receipt of notices in this Agreement.

SECTION 12

Notices: All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:	City of Milpitas (Utility Engineering) Attn: Utility Engineer 455 East Calaveras Blvd. Milpitas, CA 95035
To PROPERTY OWNER:	Momentum at PACE Homeowners Association Attn: Courtney B. Fanello First Service Residential 4637 Chabot Drive, Suite 202 Pleasanton, CA 94588 925-701-3393

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 13

Venue: In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 14

Interpretation, Prior Agreements: This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this Agreement, the terms specified in the body of this Agreement shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.

PROPERTY OWNER'S NAME:

Momentum at PACE Homeowners Association

BY: _____


Angela Schmidt, Secretary
c/o First Service Residential
4637 Chabot Drive, Suite 202
Pleasanton, CA 94588

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

By: _____

City Engineer's recommendation for approval

By: _____

City Attorney as to form

By: _____

City Manager

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)SS
COUNTY OF ORANGE)

On August 10, 2015, before me, Vivian Susana Fernandez, Notary Public, personally appeared Angela Schmidt, 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, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

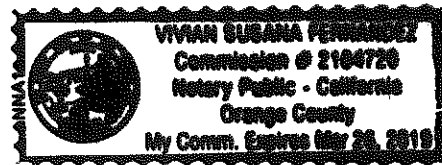
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



My Commission expires: 3/26/2019



This area for official notarial seal

EXHIBIT A
Legal description and Plat Map

REAL PROPERTY SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Tract #_____, filed _____, in Map Book _____, Pages _____, inclusive,
Santa Clara County Records

TRACT 10138

PACE

CONSISTING OF 7 SHEETS

BEING A SUBDIVISION FOR CONDOMINIUM PURPOSES OF PARCEL 2 OF PARCEL MAP 421-M-48, FILED FOR RECORD ON JULY 3, 1979 IN BOOK 421 OF MAPS, PAGE 48 EXCEPTING THAT PORTION OF SAID PARCEL 2 OF PARCEL MAP 421-M-48, PARCELS 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, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

JANUARY, 2013



1870 Oakland Road San Jose, CA 95131

LOT#	1	2	3	4	5	6	7	8	9	10	11	12
NUMBER OF APPROVED UNITS	11	5	10	5	6	7	6	13	7	8	5	8

CURVE	RADIUS	DELTA	LENGTH
C1	150.00'	180.00'	44.30'
C2	50.00'	53.03'	48.30'
C3	50.00'	53.03'	48.30'
C4	50.00'	53.03'	48.30'
C5	50.00'	53.03'	48.30'
C6	50.00'	53.03'	48.30'
C7	50.00'	53.03'	48.30'
C8	50.00'	53.03'	48.30'
C9	50.00'	53.03'	48.30'
C10	50.00'	53.03'	48.30'
C11	50.00'	53.03'	48.30'
C12	50.00'	53.03'	48.30'
C13	50.00'	53.03'	48.30'
C14	50.00'	53.03'	48.30'
C15	50.00'	53.03'	48.30'
C16	50.00'	53.03'	48.30'
C17	50.00'	53.03'	48.30'
C18	50.00'	53.03'	48.30'
C19	50.00'	53.03'	48.30'
C20	50.00'	53.03'	48.30'
C21	50.00'	53.03'	48.30'
C22	50.00'	53.03'	48.30'
C23	50.00'	53.03'	48.30'
C24	50.00'	53.03'	48.30'
C25	50.00'	53.03'	48.30'
C26	50.00'	53.03'	48.30'
C27	50.00'	53.03'	48.30'
C28	50.00'	53.03'	48.30'
C29	50.00'	53.03'	48.30'
C30	50.00'	53.03'	48.30'
C31	50.00'	53.03'	48.30'
C32	50.00'	53.03'	48.30'
C33	50.00'	53.03'	48.30'
C34	50.00'	53.03'	48.30'
C35	50.00'	53.03'	48.30'
C36	50.00'	53.03'	48.30'
C37	50.00'	53.03'	48.30'
C38	50.00'	53.03'	48.30'
C39	50.00'	53.03'	48.30'
C40	50.00'	53.03'	48.30'
C41	50.00'	53.03'	48.30'
C42	50.00'	53.03'	48.30'
C43	50.00'	53.03'	48.30'
C44	50.00'	53.03'	48.30'
C45	50.00'	53.03'	48.30'
C46	50.00'	53.03'	48.30'
C47	50.00'	53.03'	48.30'
C48	50.00'	53.03'	48.30'
C49	50.00'	53.03'	48.30'
C50	50.00'	53.03'	48.30'
C51	50.00'	53.03'	48.30'
C52	50.00'	53.03'	48.30'
C53	50.00'	53.03'	48.30'
C54	50.00'	53.03'	48.30'
C55	50.00'	53.03'	48.30'
C56	50.00'	53.03'	48.30'
C57	50.00'	53.03'	48.30'
C58	50.00'	53.03'	48.30'
C59	50.00'	53.03'	48.30'
C60	50.00'	53.03'	48.30'
C61	50.00'	53.03'	48.30'
C62	50.00'	53.03'	48.30'
C63	50.00'	53.03'	48.30'
C64	50.00'	53.03'	48.30'
C65	50.00'	53.03'	48.30'
C66	50.00'	53.03'	48.30'
C67	50.00'	53.03'	48.30'
C68	50.00'	53.03'	48.30'
C69	50.00'	53.03'	48.30'
C70	50.00'	53.03'	48.30'
C71	50.00'	53.03'	48.30'
C72	50.00'	53.03'	48.30'
C73	50.00'	53.03'	48.30'
C74	50.00'	53.03'	48.30'
C75	50.00'	53.03'	48.30'
C76	50.00'	53.03'	48.30'
C77	50.00'	53.03'	48.30'
C78	50.00'	53.03'	48.30'
C79	50.00'	53.03'	48.30'
C80	50.00'	53.03'	48.30'
C81	50.00'	53.03'	48.30'
C82	50.00'	53.03'	48.30'
C83	50.00'	53.03'	48.30'
C84	50.00'	53.03'	48.30'
C85	50.00'	53.03'	48.30'
C86	50.00'	53.03'	48.30'
C87	50.00'	53.03'	48.30'
C88	50.00'	53.03'	48.30'
C89	50.00'	53.03'	48.30'
C90	50.00'	53.03'	48.30'
C91	50.00'	53.03'	48.30'
C92	50.00'	53.03'	48.30'
C93	50.00'	53.03'	48.30'
C94	50.00'	53.03'	48.30'
C95	50.00'	53.03'	48.30'
C96	50.00'	53.03'	48.30'
C97	50.00'	53.03'	48.30'
C98	50.00'	53.03'	48.30'
C99	50.00'	53.03'	48.30'
C100	50.00'	53.03'	48.30'

*PER R7

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N05°48'24"E (R)	51.00'
L2	N51°49'24"E	32.01'
L3	N01°23'11"W (R)	10.00' ^a
L4	N31°35'49"E	53.69' ^a
L5	N64°34'49"E (R)	10.00' ^a
L6	N64°35'22"W	20.48'

PAGE

BEING A SUBDIVISION FOR CONDOMINIUM PURPOSES OF PARCEL 2 OF PARCEL MAP
FILED FOR RECORD ON JULY 3, 1978 IN BOOK 421 OF MAPS, PAGE 48 EXCEPTING
THAT PORTION AS DESCRIBED IN THAT GRANT DEED RECORDED ON DECEMBER 5, 1983
IN BOOK 1123 OFFICIAL RECORDS, PAGE 85, SANTA CLARA COUNTY RECORDS, AND
LIE WITHIN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.
CONSISTING OF 7 SHEETS

JANUARY 2013



1570 Oakland Road · San Jose, CA 95131



LOT#	1	2	3	4	5	6	7	8	9	10	11	12
NUMBER OF APPROVED UNITS	11	5	10	5	6	7	6	13	7	8	5	8

NOTES

- NOTES
1. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
 2. THE DISTINCTIVE BORDER DENOTES THE BOUNDARY OF THE SUBDIVISION.
 3. THE AREA WITHIN THE DISTINCTIVE BORDER IS 9.96 ACRES, MORE OR LESS.
 4. BEARINGS NOT SHOWN ON LOT LINES ARE PARALLEL WITH OR PERPENDICULAR TO THE STREET CENTERLINE BEARING SHOWN.
 5. AN EXISTING UNRECORDED LEASE, AS DISCLOSED BY MEMORANDUM OF AGREEMENT DOC. NO. 14321051, TO BE AMENDED TO RELOCATE THE LEASE AREA TO LOT D.
 6. SET BACK AND TAG STAMPED "LS 7452" ON TOP OF CURB AT THE PROLONGATION OF ALL PROPERTY SIDE LINES.

BASIS OF BEARINGS

THE BEARING NORTH 84°10'38" WEST OF THE CENTER LINE OF TRADE ZONE BOULEVARD (FORMERLY TRIMBLE ROAD) FROM LUGBY AVENUE TO RINGWOOD AVENUE AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN BOOK 305 OF MAPS, PAGE 15, SANTA CLARA COUNTY RECORDS, AND CALCULATED FROM THE FOUND INTERSECTION MONUMENT AT LUGBY AVENUE AND THE FOUND 13 FOOT OFFSET MONUMENT ON THE CENTER LINE OF RINGWOOD AVENUE WAS ADOPTED AS THE BASIS OF BEARINGS.

LEGEND

DISTINCTIVE BORDER LINE
 LOT LINE
 MILPITAS - SAN JOSE CITY LIMITS
 EASEMENT LINE
 NO ACCESS RIGHTS TO MONTAGUE EXPRESSWAY
 RECORD DOCUMENT R1: 386-M-16
 RECORD DOCUMENT R2: 295-M-6
 R#

STD. CITY MONUMENT BOX, 2.5" BRASS DISK IN 6" CONC. COLUMN IN SQUARE MONUMENT BOX, UNLESS OTHERWISE NOTED.
 3/4" IRON PIPE FOUND AS DESCRIBED IN RECORD UNLESS OTHERWISE NOTED.
 STANDARD CITY MONUMENT, 2.5" BRASS DISK IN 6" CONC. COLUMN IN RND.
 MONUMENT BOX, SET & STAMPED "LS 7422"
 NAL. & TAG SET & STAMPED "LS 7422"

3/4" IRON PIPE SET & TAGGED "LS 7422"

— LINE NOT DRAWN TO SCALE

RADIAL BEARING

**TOTAL OF DIMENSIONS ALONG THIS LINE OR CURVE
BEGIN CURVE TO LOT LINE DIMENSIONS**

CENTERLINE INTERSECTION TO CENTERLINE INTERSECTION

CENTERLINE INTERSECTION TO LOT LINE DIMENSIONS

MONUMENT TO CENTERLINE INTERSECTION DIMENSIONS

MONUMENT TO MONUMENT DIMENSIONS
 MONUMENT TO COVERTURE BECAUSE CUBIC DIMENSIONS

MONUMENT TO LOT LINE DIMENSIONS
MONUMENT TO CURVE BEGIN CURVE DIMENSIONS

DIMENSION AS DESCRIBED IN RECORD

EMERGENCY VEHICLE ACCESS EASEMENT

PUBLIC SERVICE UTILITY EASEMENT
PRIVATE SIDEWALK EASEMENT

PRIVATE SIDEWALK EASEMENT
PUBLIC STORM DRAIN EASEMENT

SIDEWALK EASEMENT

INGRESS AND EGRESS EASEMENT

PARKING EASEMENT
PRIVATE UTILITY EASEMENT

- RIGHT ANGLE BEARING

MT11-0003 SHEET 4 OF 7 SHEETS

23

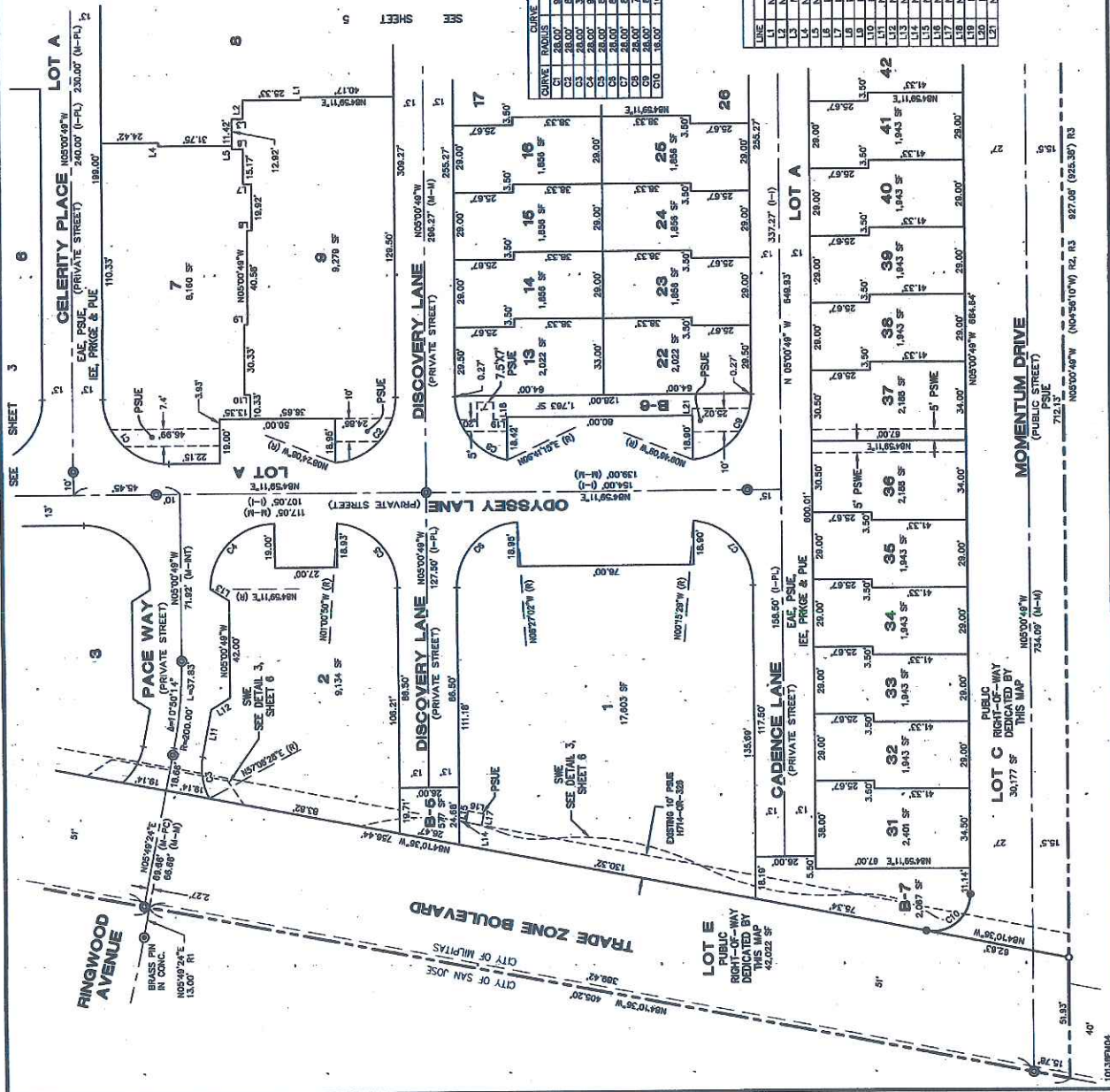
—

...

10

DATE 11-0003 SHEET 4 OF 7 SHEETS HMH 4'07.00.240

1-237



TRACT 10138

PACE

CONSISTING OF 7 SHEETS

BEING A SUBDIVISION FOR CONDOMINIUM PURPOSES OF PARCEL 2 OF PARCEL MAP 10138, AS RECORDED IN THE PUBLIC RECORDS OF THE COUNTY OF SANTA CLARA, CALIFORNIA, THAT PORTION AS DESCRIBED IN THAT GRANT DEED RECORDED ON DECEMBER 5, 1983 IN BOOK 1123 OFFICIAL RECORDS, PAGE 85, SANTA CLARA COUNTY RECORDS, AND LYING WITHIN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

JANUARY, 2013



1070 Oakland Road, San Jose, CA 95131

1 INCH = 30 FEET

LOT#	1	2	3	4	5	6	7	8	9	10	11	12
NUMBER OF APPROVED UNITS	11	5	10	5	6	7	6	13	7	8	5	9

BASIS OF BEARINGS

THE BEARING NORTH 84°00'00" WEST OF THE CENTER LINE OF TRADE ZONE BOULEVARD (FORMERLY TRADE ZONE BOULEVARD) FROM THE POINT OF BEGINNING TO THE POINT OF BEGINNING OF THE CENTER LINE OF TRADE ZONE BOULEVARD (FORMERLY TRADE ZONE BOULEVARD) IS 10°00'00" NORTH OF THE CENTER LINE OF TRADE ZONE BOULEVARD (FORMERLY TRADE ZONE BOULEVARD) AND THE FOUND 13 FOOT OFFSET FROM THE POINT OF BEGINNING TO THE POINT OF BEGINNING OF THE CENTER LINE OF TRADE ZONE BOULEVARD (FORMERLY TRADE ZONE BOULEVARD) WAS ADOPTED AS THE BASIS OF BEARINGS.

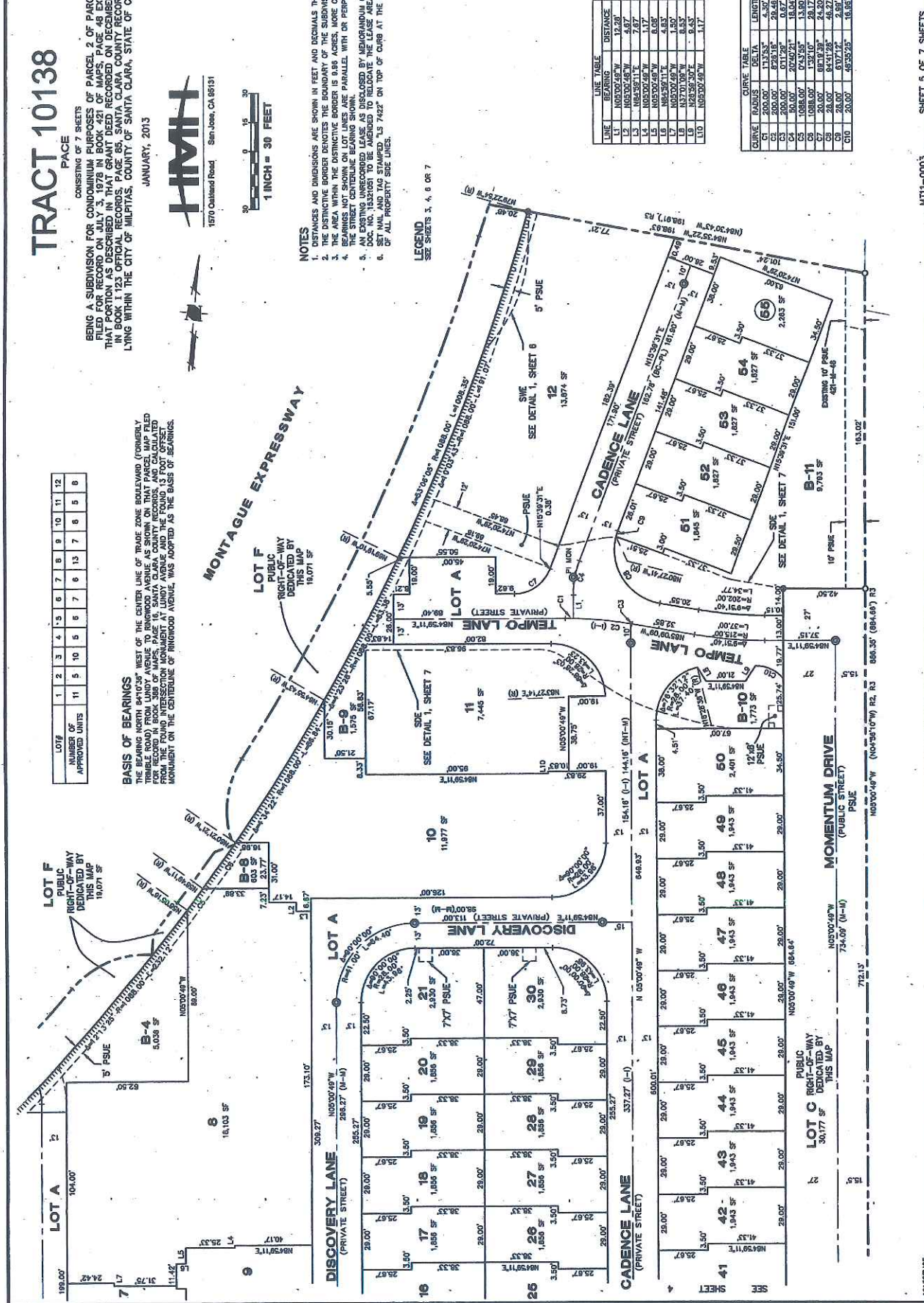
NOTES

1. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
2. THE DISTINCTIVE BORDER DENOTES THE BOUNDARY OF THE SUBDIVISION.
3. THE AREA WITHIN THE DISTINCTIVE BORDER IS 0.88 ACRES, MORE OR LESS.
4. THE DISTANCE BETWEEN THE CENTER LINE OF TRADE ZONE BOULEVARD (FORMERLY TRADE ZONE BOULEVARD) AND THE CENTER LINE OF TRADE ZONE BOULEVARD (FORMERLY TRADE ZONE BOULEVARD) IS 10 FEET ON TOP OF CURB AT THE PROLONGATION OF ALL PROPERTY SIDE LINES.
5. AN EXISTING UNRECORDED LEASE AS DISCLOSED BY MEMORANDUM OF AGREEMENT DOC NO. 1502671 TO ALLOCATE TO RELOCATE THE LEASE AREA TO LOT D.
6. THE DISTANCE BETWEEN THE CENTER LINE OF TRADE ZONE BOULEVARD (FORMERLY TRADE ZONE BOULEVARD) AND THE CENTER LINE OF TRADE ZONE BOULEVARD (FORMERLY TRADE ZONE BOULEVARD) IS 10 FEET ON TOP OF CURB AT THE PROLONGATION OF ALL PROPERTY SIDE LINES.

LEGEND
SEE SHEETS 3, 4, 6 OR 7

LINE	BEARING	DISTANCE
1	N05°00'48"W	12.28'
2	N05°00'48"W	12.28'
3	N05°00'48"W	12.28'
4	N05°00'48"W	12.28'
5	N05°00'48"W	12.28'
6	N05°00'48"W	12.28'
7	N05°00'48"W	12.28'
8	N05°00'48"W	12.28'
9	N05°00'48"W	12.28'
10	N05°00'48"W	12.28'
11	N05°00'48"W	12.28'
12	N05°00'48"W	12.28'

CURVE	RADIUS	DELTA	LENGTH	TANGENT
C1	200.00'	113.53°	29.45'	4.50'
C2	200.00'	113.53°	29.45'	4.50'
C3	200.00'	113.53°	29.45'	4.50'
C4	200.00'	113.53°	29.45'	4.50'
C5	200.00'	113.53°	29.45'	4.50'
C6	200.00'	113.53°	29.45'	4.50'
C7	200.00'	113.53°	29.45'	4.50'
C8	200.00'	113.53°	29.45'	4.50'
C9	200.00'	113.53°	29.45'	4.50'
C10	200.00'	113.53°	29.45'	4.50'
C11	200.00'	113.53°	29.45'	4.50'
C12	200.00'	113.53°	29.45'	4.50'



TRACT 10138

PAGE

CONSISTING OF 7 SHEETS

BEING A SUBDIVISION FOR CONDOMINIUM PURPOSES OF PARCEL 2 OF PARCEL MAP
FILED FOR RECORD ON JULY 3, 1978 IN BOOK 427 OF MAPS, PAGE 48 EXCEPTING
THAT THE SUBDIVISION IS NOT TO BE CONSIDERED VALID UNLESS THE RECORDS
IN BOOK 11433 OFFICIAL RECORDS, PAGE 83, SANTA CLARA COUNTY RECORDS, AND
LYING WITHIN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

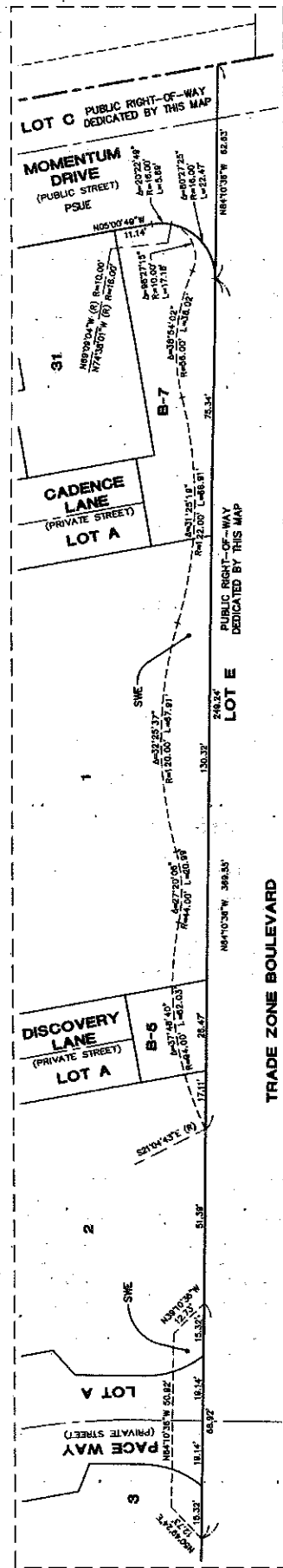
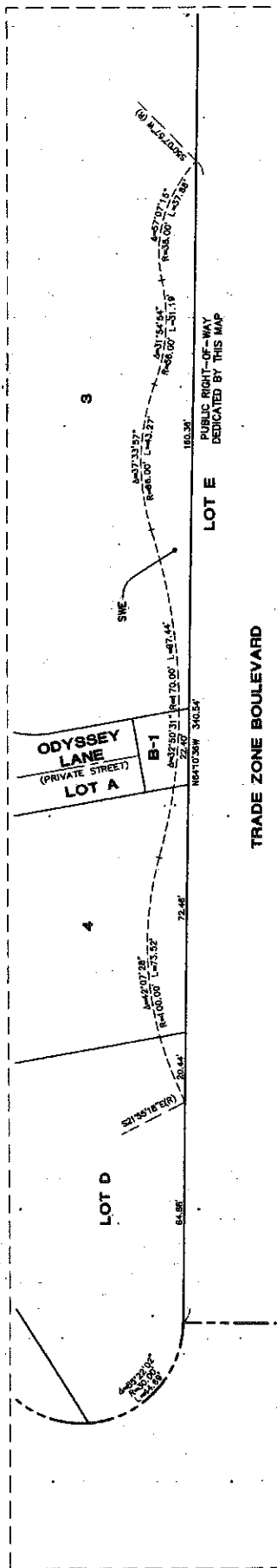
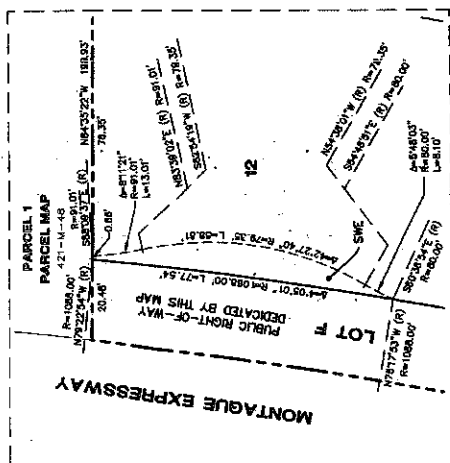
JANUARY, 2013



1 INCH = 20 FEET

LEGEND

- DISTINCTIVE BORDER LINE
- LOT LINE
- EASEMENT LINE
- NO ACCESS RIGHTS TO MONTAGUE EXPRESSWAY
- RECORD DOCUMENT
- RECORD
- 3/4" IRON PIPE FOUND AS DESCRIBED IN RECORD UNLESS OTHERWISE NOTED.
- STANDARD CITY MONUMENT, 2.5" BRASS DISK IN 6" CONC. COLUMN IN RND.
- MONUMENT BOX SET & STAMPED "LS 7422"
- NAIL & TAG SET & STAMPED "LS 7422"
- 3/4" IRON PIPE SET & TAGGED "LS 7422"
- MONUMENT TO SCALE
- TOTAL OF DIMENSIONS ALONG THIS LINE OR CURVE
- BEGIN CURVE TO LOT LINE DIMENSIONS
- CENTERLINE INTERSECTION TO CENTERLINE INTERSECTION DIMENSIONS
- CENTERLINE INTERSECTION TO LOT LINE DIMENSIONS
- MONUMENT TO MONUMENT DIMENSIONS
- MONUMENT TO MONUMENT DIMENSIONS
- MONUMENT TO LOT LINE DIMENSIONS
- DIMENSION AS DESCRIBED IN RECORD
- MONUMENT TO MONUMENT DIMENSION
- PUBLIC SERVICE UTILITY EASEMENT
- PRIVATE SIDEWALK EASEMENT
- PUBLIC STORM DRAIN EASEMENT
- SIDEWALK EASEMENT
- MONUMENT TO MONUMENT DIMENSION
- PARKING EASEMENT
- PRIVATE UTILITY EASEMENT
- PUE
- RIGHT ANGLE BEARING



TRACT 10138

PAGE

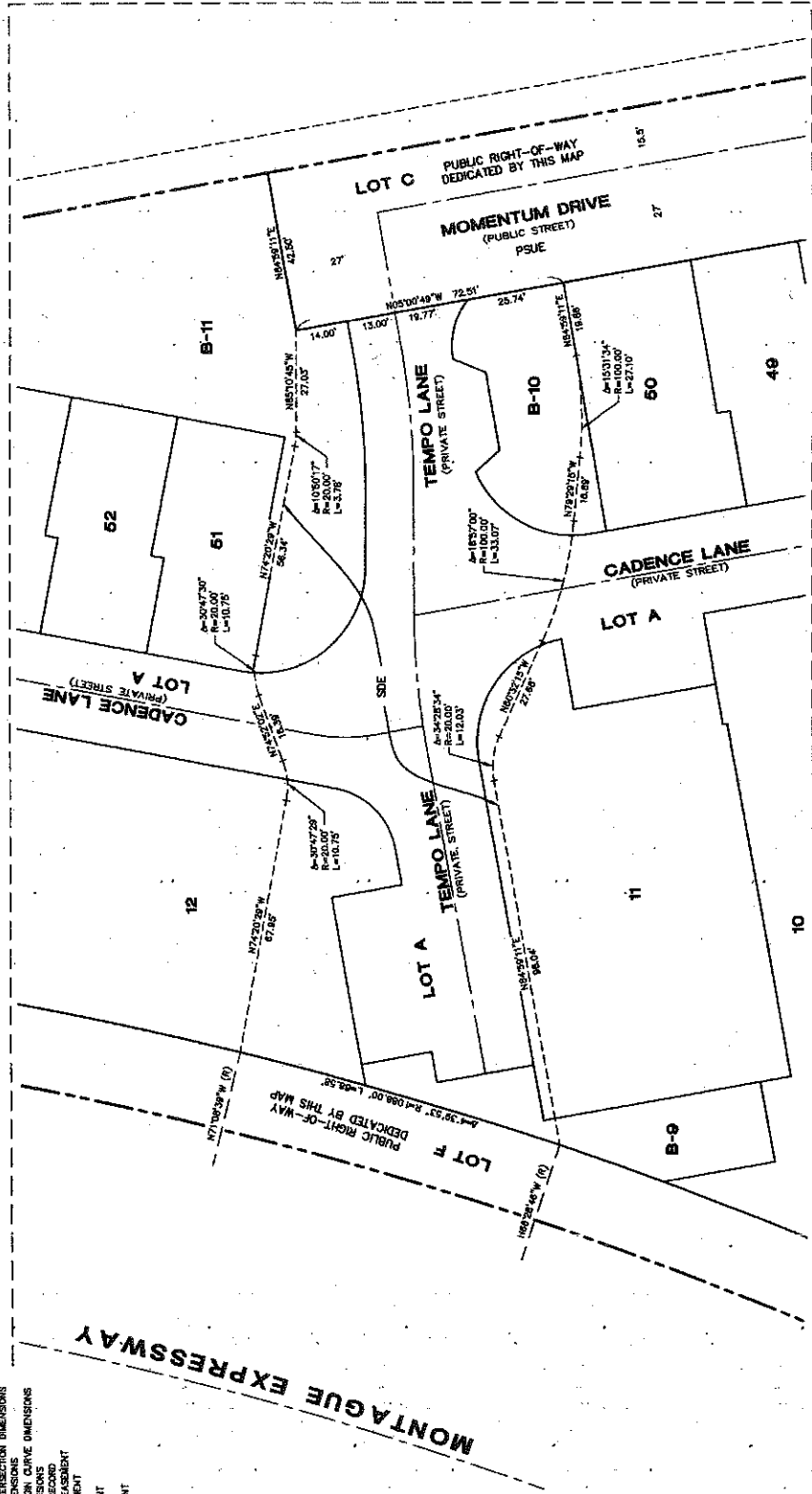
CONSISTING OF 7 SHEETS

BEING A SUBDIVISION FOR CONDOMINIUM PURPOSES OF PARCEL 2 OF PARCEL MAP 147, FOR RECORD ON JULY 3, 1979 IN BOOK 427 OF MAPS, COUNTY OF MILPITAS, CALIFORNIA, WITH THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, Lying Within The City Of Milpitas, County Of Santa Clara, State Of California.

JANUARY, 2013



1 INCH = 20 FEET



LEGEND

- DETERMINATIVE BORDER LINE
- LOT LINE
- EASEMENT LINE
- NO ACCESS RIGHTS TO MONTAGUE EXPRESSWAY
- MILPITAS - SAN JOSE CITY LIMITS
- RECORD DOCUMENT R11 388-M-16
- REFERENCES R12 427-M-48
- R13 427-M-48
- R14 335-M-42
- STD. CITY MONUMENT FOUND 2.5" BRASS DISK OR 8" CONC. COLUMN IN
- 3/4" IRON PIPE FOUND AS DESCRIBED IN RECORD UNLESS OTHERWISE NOTED.
- STANDARD CITY MONUMENT 2.5" BRASS DISK IN 8" CONC. COLUMN IN RHD.
- MONUMENT BOX SET & STAMPED "LS 7427"
- NAIL & TAG SET & STAMPED "LS 7427"
- 3/4" IRON PIPE SET & TAGGED "LS 7427"
- ARE NOT DRAWN TO SCALE
- TOTAL OF DIMENSIONS ALONG THIS LINE OR CURVE
- (1) BEGIN CURVE TO LOT LINE DIMENSIONS
- (10) CENTERLINE INTERSECTION TO CENTERLINE INTERSECTION DIMENSIONS
- (11) MONUMENT TO CENTERLINE INTERSECTION DIMENSIONS
- (12) MONUMENT TO LOT LINE DIMENSIONS
- (13) MONUMENT TO LOT LINE DIMENSIONS
- (14) DIMENSION AS DESCRIBED IN RECORD
- (15) EASEMENT
- (16) PRIVATE STORM DRAIN EASEMENT
- (17) PRIVATE STORM DRAIN EASEMENT
- (18) SIDEWALK EASEMENT
- (19) SIDEWALK AND EXPRESS EASEMENT
- (20) PRIVATE UTILITY EASEMENT
- (21) PRIVATE UTILITY EASEMENT
- (22) PRIVATE UTILITY EASEMENT
- (23) PRIVATE UTILITY EASEMENT
- (24) PRIVATE UTILITY EASEMENT
- (25) PRIVATE UTILITY EASEMENT
- (26) PRIVATE UTILITY EASEMENT
- (27) PRIVATE UTILITY EASEMENT
- (28) PRIVATE UTILITY EASEMENT
- (29) PRIVATE UTILITY EASEMENT
- (30) PRIVATE UTILITY EASEMENT
- (31) PRIVATE UTILITY EASEMENT
- (32) PRIVATE UTILITY EASEMENT
- (33) PRIVATE UTILITY EASEMENT
- (34) PRIVATE UTILITY EASEMENT
- (35) PRIVATE UTILITY EASEMENT
- (36) PRIVATE UTILITY EASEMENT
- (37) PRIVATE UTILITY EASEMENT
- (38) PRIVATE UTILITY EASEMENT
- (39) PRIVATE UTILITY EASEMENT
- (40) PRIVATE UTILITY EASEMENT
- (41) PRIVATE UTILITY EASEMENT
- (42) PRIVATE UTILITY EASEMENT
- (43) PRIVATE UTILITY EASEMENT
- (44) PRIVATE UTILITY EASEMENT
- (45) PRIVATE UTILITY EASEMENT
- (46) PRIVATE UTILITY EASEMENT
- (47) PRIVATE UTILITY EASEMENT
- (48) PRIVATE UTILITY EASEMENT
- (49) PRIVATE UTILITY EASEMENT
- (50) PRIVATE UTILITY EASEMENT
- (51) PRIVATE UTILITY EASEMENT
- (52) PRIVATE UTILITY EASEMENT
- (53) PRIVATE UTILITY EASEMENT
- (54) PRIVATE UTILITY EASEMENT
- (55) PRIVATE UTILITY EASEMENT
- (56) PRIVATE UTILITY EASEMENT
- (57) PRIVATE UTILITY EASEMENT
- (58) PRIVATE UTILITY EASEMENT
- (59) PRIVATE UTILITY EASEMENT
- (60) PRIVATE UTILITY EASEMENT
- (61) PRIVATE UTILITY EASEMENT
- (62) PRIVATE UTILITY EASEMENT
- (63) PRIVATE UTILITY EASEMENT
- (64) PRIVATE UTILITY EASEMENT
- (65) PRIVATE UTILITY EASEMENT
- (66) PRIVATE UTILITY EASEMENT
- (67) PRIVATE UTILITY EASEMENT
- (68) PRIVATE UTILITY EASEMENT
- (69) PRIVATE UTILITY EASEMENT
- (70) PRIVATE UTILITY EASEMENT
- (71) PRIVATE UTILITY EASEMENT
- (72) PRIVATE UTILITY EASEMENT
- (73) PRIVATE UTILITY EASEMENT
- (74) PRIVATE UTILITY EASEMENT
- (75) PRIVATE UTILITY EASEMENT
- (76) PRIVATE UTILITY EASEMENT
- (77) PRIVATE UTILITY EASEMENT
- (78) PRIVATE UTILITY EASEMENT
- (79) PRIVATE UTILITY EASEMENT
- (80) PRIVATE UTILITY EASEMENT
- (81) PRIVATE UTILITY EASEMENT
- (82) PRIVATE UTILITY EASEMENT
- (83) PRIVATE UTILITY EASEMENT
- (84) PRIVATE UTILITY EASEMENT
- (85) PRIVATE UTILITY EASEMENT
- (86) PRIVATE UTILITY EASEMENT
- (87) PRIVATE UTILITY EASEMENT
- (88) PRIVATE UTILITY EASEMENT
- (89) PRIVATE UTILITY EASEMENT
- (90) PRIVATE UTILITY EASEMENT
- (91) PRIVATE UTILITY EASEMENT
- (92) PRIVATE UTILITY EASEMENT
- (93) PRIVATE UTILITY EASEMENT
- (94) PRIVATE UTILITY EASEMENT
- (95) PRIVATE UTILITY EASEMENT
- (96) PRIVATE UTILITY EASEMENT
- (97) PRIVATE UTILITY EASEMENT
- (98) PRIVATE UTILITY EASEMENT
- (99) PRIVATE UTILITY EASEMENT
- (100) PRIVATE UTILITY EASEMENT

EXHIBIT B
Stormwater Control Plan

Stormwater Control Plan

Pace Project

330 Montague Expressway
Milpitas, CA

Prepared By:



September 26, 2014

TABLE OF CONTENTS

1. Project Setting	1
1.A. Project Description	1
1.B. Existing Site Condition	1
1.C. Opportunities and Constraints	1
1.D. Hydrograph Modification Management Requirements	1
2. Measures to Limit Imperviousness	2
2.A. Measures to Make Development More Compact	2
2.B. Measures to Limit Directly Connected Impervious Surface Area	2
3. Selection and Preliminary Design of Stormwater Treatment BMPs	2
3.A. General Characteristics of the Treatment Facilities	2
3.B. Specific Characteristics of Each Impervious Area and Treatment Facility	2
4. Source Control Measures	5
5. Permitting and Code Compliance Issues	6
6. BMP Operation and Maintenance	6
6.A. Means to Finance and Implement BMP Maintenance	6
6.B. Summary of Maintenance	7
7. Certification	8

TABLES

Table 1. Proposed Biotreatment Summary	3
Table 2. Media Filter Summary	4
Table 3. Sources and Source Controls	5

APPENDICES

APPENDIX A: City of Milpitas C.3 Data Form
APPENDIX B: Infiltration/Harvesting Feasibility Worksheet
APPENDIX C: Special Project Worksheet
APPENDIX D: Soil Properties
APPENDIX E: MRP Calculation Worksheet
APPENDIX F: BMP Sizing Calculations
APPENDIX G: Site Plan
APPENDIX H: Treatment Measure Details
APPENDIX I: Operations and Maintenance Plan

1. PROJECT SETTING

1.A. Project Description

The proposed project consists of a Site Development Permit, Planned Unit Development and Tentative Map to allow up to 92 single-family attached and 42 single-family detached residential units on an 8-acre site. The project includes 268 covered parking spaces and 45 uncovered guest parking spaces. The proposed buildings will be three stories in height. The project site is located at the easterly side of the intersection of Montague Expressway and Trade Zone Boulevard. Public right-of-way improvements will be included with the project along the Montague Expressway and Trade Zone Boulevard frontages, and half street improvements will be included along the easterly project boundary.

1.B. Existing Site Condition

The project site is a triangle-shaped property that currently contains three vacant light industrial buildings surrounded by surface parking (Montague Technology Park). Two of the buildings are single-story, and the third is two stories. Turf and landscaping surrounds the buildings, with concrete paths providing pedestrian access between the buildings. A tree-lined turf berm runs along the property line at the back of the sidewalk along the Montague Expressway and Trade Zone Boulevard frontages.

1.C. Opportunities and Constraints

The project site is constrained by existing clay soils and high groundwater elevations. According to the *City of Milpitas Soil Map*, the site is underlain by silty clay loam having a hydrologic group classification of C. The depth to first groundwater is estimated to be less than 10 feet below the ground surface, based on the *City of Milpitas Groundwater Elevation Map*. Both of these conditions make the use of infiltration devices problematic for the project.

The project proposes to maximize the utilization of interior and perimeter landscaping and open space areas for biotreatment of runoff from impervious surfaces, with the incorporation of under drains to reduce the potential for contact between the treated runoff and the surrounding subgrade.

1.D. Hydrograph Modification Management Requirements

The project site is mapped as being within the category of Catchments and Subwatersheds Greater Than or Equal to 65% Impervious (red area) on the Santa Clara Valley Urban Runoff Pollution Prevention Program's map entitled *Classification of Subwatersheds and Catchment Areas for Determining Applicability of Hydromodification Management (HM) Requirements* (Municipal Regional Stormwater Permit, Attachment M). The Hydromodification Standard and associated requirements do not apply to projects within this category, therefore the project is exempt from these requirements.

2. MEASURES TO LIMIT IMPERVIOUSNESS

2.A. Measures to Make Development More Compact

The site plan for the project was designed to incorporate enclosed garages beneath the units, and use minimum widths required by the City of Milpitas for drive aisles. The townhouse and single-family units are up to 3 stories in height, which minimizes their building footprints. The number of surface parking spaces is minimized, as well. This allows for more open space and landscaping throughout the project and reduces the total amount of impervious surface area.

2.B. Measures to Limit Directly Connected Impervious Surface Area

Measures to limit overall impervious surface area on the site include preservation of existing trees along the Montague Expressway and Trade Zone Boulevard frontages, maximizing the use of pervious surface materials and landscaping in open space areas, and creating self retaining areas by disconnecting roof downspouts in appropriate locations. Locations and details are provided on the Conceptual Stormwater Control Plan. (See APPENDIX B)

3. SELECTION AND PRELIMINARY DESIGN OF STORMWATER TREATMENT BMPS

3.A. General Characteristics of the Treatment Facilities

The proposed stormwater treatment facilities for the project include two basic types of controls – media filters and biotreatment cells. The biotreatment cells are consistent with the Low Impact Development controls described on Provision C.3 of the Municipal Regional Permit, and represent the most feasible landscape-based controls, given the site constraints imposed by the existing clay soil and high groundwater conditions of the site. Most of the biotreatment cells are located around the perimeter of the site, where they can be integrated into the landscape design. The proposed media filters are proposed to be located along the new street and within the interior areas of the project. They are proposed to treat runoff from impervious areas of the site that could not otherwise be engineered to drain to landscape areas for treatment.

3.B. Specific Characteristics of Each Impervious Area and Treatment Facility

Biotreatment Cells

Each of the proposed biotreatment cells has been sized using a sizing factor of 3.4% (0.034), as specified in the City of Milpitas Stormwater C.3 Guidebook. This factor incorporates a design flow rate of 0.17 inches per hour, which represents two times the 85th percentile hourly rainfall intensity for the local area (from Provision C.3.d of the Municipal Regional Permit). The factor of 0.034 is multiplied by the drainage area to establish the minimum surface area required for each cell. The sizing factor assumes a minimum infiltration rate of 5 inches per hour for the sandy loam soil mixture within the cell, and a conservative runoff coefficient (C-factor) of 1.0. A cross section detail of the proposed biotreatment cells is provided in Appendix A.

The following Table 1 presents a summary of the various biotreatment cell drainage areas, as designated on the Conceptual Stormwater Control Plan. The table indicates the sizes of the drainage areas, types of impervious surfaces treated, sizing factor utilized in the sizing calculations, and minimum surface areas required and proposed.

Table 1. Proposed Biotreatment Summary					
Drainage Area Designation	Size	Impervious Surfaces	Sizing Factor	Minimum Surface Area	Surface Area as Designed
B1	11,050 sf.	Roof, Paved Driveway	0.034	376 sf.	457 sf.
B2	2,325 sf.	Roof, Paved Driveway	0.034	79 sf.	116 sf.
B3	28,712 sf.	Roof, Sidewalk	0.034	976 sf.	1,279 sf.
B4	10,494 sf.	Paved Driveway, Sidewalk	0.034	357 sf.	536 sf.
B5	9,878 sf.	Roof, Sidewalk	0.034	336 sf.	400 sf.
Total	62,459 sf.			2,124 sf.	2,788 sf.

Media Filters

In addition to sediment, trash and debris, the proposed media filters remove fine particles, oil and grease, and chemical pollutants from stormwater runoff. Three of the four filter units are configured in 48-inch manholes, and one is configured in a 9" x 14' below-ground vault. The filter units contain plastic structures called modules that are filled with disposable filter media material. Upon entering the unit, trash and sediment drop out of the flow and are collected in the bottom of the manhole, while the runoff passes through the filter modules for treatment. The filter units are proposed for areas of the project that have the highest concentrations of directly connected impervious surface and least amount of landscaping available for surface treatment. They are sized in accordance with the specifications of the manufacturer, based on a treatment flow calculated using the Rational Method ($Q = C \cdot i \cdot A$, where Q = flow [cubic feet/second], C = runoff coefficient, i = rainfall intensity [inches/hour], and A = total site area [acres]). The rainfall intensity (0.20 flow rate) is dictated by Provision C.3.

The following table summarizes the four media filter units proposed for the project, with drainage areas, types of impervious surfaces treated, runoff coefficients, minimum treatment flows, and units proposed and their maximum treatment capacities provided. A detail of the proposed media filter units are contained in Appendix A.

Table 2. Media Filter Summary							
Drainage Area	Size (A)	Impervious Surfaces	Runoff Coefficient (C)	Rainfall Intensity (i)	Treatment Flow	Proposed Unit	Treatment Capacity
MF1	.26 ac.	Roof, Paved Driveway	.85	.18	.04 cfs	48" Manhole - Up-Flo Filter (1 Module)	.06 cfs
MF2 - A	1.49 ac.	Roof, Paved Driveway, Sidewalk	.85	.18	.23 cfs	48" Manhole - Up-Flo Filter (5 Modules)	.28 cfs
MF2 - B	0.37 ac.	Roof, Paved Driveway	.85	.18	.06 cfs	48" Manhole - Up-Flo Filter (1 Module)	.06 cfs
MF3	1.40 ac.	Roof, Paved Driveway, Sidewalk	.85	.18	.21 cfs	48" Manhole - Up-Flo Filter (4 Modules)	.34 cfs
MF4	.64 ac.	Roof, Paved Driveway, Sidewalk	.85	.18	.10 cfs	48" Manhole - Up-Flo Filter - 2 Modules	.11 cfs
MF5	.53 ac.	Roof, Paved Driveway	.85	.18	.08 cfs	48" Manhole - Up-Flo Filter - 2 Modules	.11 cfs
MF6	.39 ac.	Roof, Paved Driveway	.85	.18	.06 cfs	48" Manhole - Up-Flo Filter - 2 Modules	.11 cfs
MF7	.66 ac.	Paved Street, Sidewalk	.85	.18	.10 cfs	48" Manhole - Up-Flo Filter - 3 Modules	.16 cfs
Total	5.74 ac.				.88 cfs		1.23 cfs

Self Treating Areas

An additional drainage area category shown on the Conceptual Stormwater Control Plan is Self Treating Area. This designation is given to areas containing limited quantities of disconnected impervious surfaces – roofs with disconnected downspouts, sidewalks, porches/patios, etc – that are immediately adjacent to landscaping or other pervious surface areas, and will drain to these depressed surfaces. The criterion used in designating the Self Treating Areas is that the amount of pervious surface or landscaping to which the impervious surfaces drain is greater

than or equal to 50% of the impervious tributary area. This is consistent with the guidance for designing self treating areas provided in Chapter 5 of the City of Milpitas Stormwater C.3 Guidebook.

4. Source Control Measures

Development of the project site as proposed would result in potential exposure of runoff to pollutants from the following activities or sources:

- Storm drain inlets
- Trash enclosures;
- Landscape maintenance;
- Car washing and maintenance

Permanent and operational stormwater BMPs will be utilized to control pollutants from these sources, as described in the following table.

Table 3. Sources and Source Control BMPs		
Potential Source	Permanent BMPs	Operational BMPs
On-Site Storm Drain Inlets	• All on-site inlets shall be stenciled with “No dumping – drains to creek” or similar message.	• Inlet stencils shall be inspected once annually and replaced or renewed as required. • Residents to receive stormwater pollution prevention information to be provided by the City. • Inlets shall be inspected periodically to avoid blockages and overflows.
Trash Enclosures	• Any trash enclosure structures containing dumpsters or bins shall have drains that are plumbed to the sanitary sewer.	• Drains shall be periodically inspected to avoid blockages and overflows.
Landscape/Outdoor Pesticide Use	• Landscaping shall be designed to minimize required irrigation and runoff, to promote surface infiltration, and to minimize the use of	• Residents to receive Integrated Pest Management (IPM) information to be provided by the City. • All site landscaping is

	fertilizers and pesticides that can contribute to stormwater pollution. • Plantings for biotreatment cells will be selected to be appropriate for anticipated soil and moisture conditions. • Where possible, pest-resistant plants will be selected, especially for locations adjacent to hardscape. • Plants will be selected appropriate for site soils, slopes, climate, sun, wind, rain, land use, air movement, ecological consistency, use of recycled water (where applicable), and plant interactions.	to be maintained by a professional landscaping contractor. Contract must state that landscaping is to be maintained using IPM principles, with minimal or no use of pesticides.
Vehicle and Equipment Cleaning		• Residential leases shall prohibit maintenance, repair, or cleaning of vehicles or other equipment on site.

5. Permitting and Code Compliance Issues

There are no known conflicts between the proposed Stormwater Control Plan and the City of Milpitas ordinances or policies. Any conflicts that are found will be resolved through the design review process or during subsequent permit processing.

6. BMP Operation and Maintenance

6.A. Means to Finance and Implement BMP Maintenance

Proper operation and maintenance of stormwater management facilities will be the responsibility of the property owner in perpetuity. The property owner will be subject to an annual fee (set by the City's standard fee schedule) to offset the cost of inspecting the site or verifying that stormwater management facilities are being maintained.

The applicant will prepare and submit, for the City's review, an acceptable Stormwater Control Operation and Maintenance Plan prior to completion of construction, and will execute a Stormwater Management Facilities Operation and Maintenance Agreement before sale, transfer, or permanent occupancy of the site. The applicant accepts responsibility for maintenance of stormwater management facilities until such responsibility is transferred to another entity.

6.B. Summary of Maintenance

Bioretention cells remove pollutants primarily by filtering runoff slowly through an active layer of soil. Routine maintenance is needed to ensure that flow is unobstructed, that erosion is prevented, and that soils are held together by plant roots and are biologically active. Typical routine maintenance consists of the following:

- Inspect inlets for channels, exposure of soil, or other evidence of erosion. Clear any obstructions and remove any accumulation of sediment. Examine rock or other material used as a splash pad and replenish as necessary;
- Inspect outlets for erosion or plugging;
- Inspect side slopes for evidence of instability or erosion and correct as necessary;
- Observe soil in the biotreatment cell or tree filter for uniform percolation throughout. If portions of the facility do not drain within 48 hours after the end of a storm, the soil should be tilled and replanted. Remove any debris or accumulations or sediment;
- Examine the vegetation to ensure that it is healthy and dense enough to provide filtering and to protect soil from erosion. Replenish mulch as necessary, remove fallen leaves and debris, prune large shrubs or trees, and mow turf areas. Confirm that irrigation is adequate and not excessive. Replace dead plants and remove invasive vegetation;
- Abate any potential vectors by filling holes in the ground in and around the cell and by insuring there are no areas where water stands longer than 48 hours following a storm. If mosquito larvae are present and persistent, contact the Santa Clara County Vector Control District for information and advice. Mosquito larvacides should be applied only when absolutely necessary and then only by a licensed individual or contractor.

Maintenance for the proposed media filter units consists of routine tasks such as inspection, and removal of floatable materials and sediment, and annual tasks such as the replacement of disposal media packs. The manufacturer recommends that during the first year of operation, the units be inspected every six months to determine the rate of floatables and sediment accumulation. Accumulated sediment must be removed before it completely fills the sump of the manhole or vault, to prevent it from blocking the entryway to the filter media. The media filter packs are typically replaced once per year, or following a spill within the drainage area.

7. Certification

The selection, sizing and preliminary design of treatment BMPs and other control measures in this plan meet the requirements of Regional Water Quality Control Board Order R2-2009-0074, as amended.

APPENDIX A:

City of Milpitas C.3 Data Form



City of Milpitas – Stormwater Requirements C.3 Data Form
Santa Clara Valley Urban Run-Off Pollution Prevention Program

Which Projects Must Comply with Stormwater Requirements?

All projects that create and/or replace **10,000 sq. ft.** or more of impervious surface on the project site must fill out this worksheet and submit it with the development project application.

All restaurants, auto service facilities, retail gasoline outlets, and uncovered parking lot projects (stand-alone or part of another development project, including the top uncovered portion of parking structures) that create and/or replace **5,000 sq. ft.** or more of impervious surface on the project site must also fill out this worksheet.

Interior remodeling projects, routine maintenance or repair projects such as re-roofing and re-paving, and single family homes that are not part of a larger plan of development are **NOT** required to complete this worksheet.

What is an Impervious Surface?

An impervious surface is a surface covering or pavement that prevents the land's natural ability to absorb and infiltrate rainfall/stormwater. Impervious surfaces include, but are not limited to rooftops, walkways, paved patios, driveways, parking lots, storage areas, impervious concrete and asphalt, and any other continuous watertight pavement or covering. Pervious pavement, underlain with pervious soil or pervious storage material (e.g., drain rock), that infiltrates rainfall at a rate equal to or greater than surrounding unpaved areas OR that stores and infiltrates the water quality design volume specified in Provision C.3.d of the Municipal Regional Stormwater Permit (MRP) is not considered an impervious surface.

For More Information

For more information regarding selection of Best Management Practices for stormwater pollution prevention or stormwater treatment in Santa Clara County: http://www.scvurppp-w2k.com/c3_handbook_2012.shtml

1. Project Information

Project Name: PAGE **APN #** 086-36-043

Project Address: 300, 324-368 Montague Expressway

Cross Streets: Trade Zone Boulevard

Applicant/Developer Name: Trumark Companies

Project Phase(s): 1 **of** 1 **Engineer:** HMH

Project Type (Check all that apply): ☐ New Development ☒ Redevelopment

☒ Residential ☐ Commercial ☐ Industrial ☐ Mixed Use ☐ Public ☐ Institutional

☐ Restaurant ☐ Uncovered Parking ☐ Retail Gas Outlet ☐ Auto Service (SIC code) _____

☐ Other _____ (5013-5014, 5541, 7532-7534, 7536-7539)

Project Description: 92 single-family attached and 42 single-family detached residential units

Project Watershed/Receiving Water (creek, river, or bay): Coyote Creek

2. Project Size

a. Total Site Area: 9.2 _____ acre		b. Total Site Area Disturbed: 9.2 _____ acre (including clearing, grading, or excavating)		
	Existing Area (ft ²)	Proposed Area (ft ²)		Total Post-Project Area (ft ²)
		Replaced	New	
Impervious Area				
Roof	127,820			
Parking	212,700			
Sidewalks and Streets	14,950			
c. Total Impervious Area	355,470	289,210	0	289,210
d. Total new and replaced impervious area		289,210		
Pervious Area				
Landscaping	45,280			
Pervious Paving	-	-	-	-
Other (e.g. Green Roof)	-	-	-	-
e. Total Pervious Area	45,280			111,540
f. Percent Replacement of Impervious Area in Redevelopment Projects (Replaced Total Impervious Area ÷ Existing Total Impervious Area) x 100% = 81.4 _____ %				

3. State Construction General Permit Applicability:

a. Is #2.b. equal to one acre or more?

☒ Yes, applicant must obtain coverage under the State Construction General Permit (i.e., file a Notice of Intent and prepare a Stormwater Pollution Prevention Plan) (see www.swrcb.ca.gov/water_issues/programs/stormwater/construction.shtml for details).

☐ No, applicant does not need coverage under the State Construction General Permit.

4. MRP Provision C.3 Applicability:

a. Is #2.d. equal to 10,000 sq. ft. or more, or 5,000 sq. ft. or more for restaurants, auto service facilities, retail gas outlets, and uncovered parking?

☒ Yes, C.3. source control, site design, and treatment requirements apply.

☐ No, C.3. source control and site design requirements may apply – check with local agency

b. Is #2.f. equal to 50% or more?

☒ Yes, C.3. requirements (site design, source control, as appropriate, and stormwater treatment) apply to entire site.

☐ No, C.3. requirements only apply to impervious area created and/or replaced.

5. Hydromodification Management (HM) Applicability:

a. Does project create and/or replace one acre or more of impervious surface AND is the total post-project impervious area greater than the pre-project (existing) impervious area?

☒ Yes (continue)

☐ No – exempt from HM, go to page 3

b. Is the project located in an area of HM applicability (green area) on the HM Applicability Map? (www.scvurppp-w2k.com/hmp_maps.htm)

☐ Yes, project must implement HM requirements

☒ No, project is exempt from HM requirements

6. Selection of Specific Stormwater Control Measures:

Site Design Measures

- ☐ Minimize land disturbed
- ☐ Minimize impervious surfaces
- ☐ Minimum-impact street or parking lot design
- ☒ Cluster structures/pavement
- ☒ Disconnected downspouts
- ☐ Pervious pavement
- ☐ Green roof
- ☒ Microdetention in landscape
- ☐ Other self-treating area
- ☐ Self-retaining area
- ☐ Rainwater harvesting and use (e.g., rain barrel, cistern connected to roof drains) ¹
- ☐ Preserved open space: _____ ac. or sq. ft
(circle one)
- ☐ Protected riparian and wetland areas/buffers (Setback from top of bank: _____ft.)
- ☐ Other _____

Source Control Measures

- ☐ Alternative building materials
- ☐ Wash area/racks, drain to sanitary sewer²
- ☒ Covered dumpster area, drain to sanitary sewer²
- ☐ Sanitary sewer connection or accessible cleanout for swimming pool/spa/fountain²
- ☒ Beneficial landscaping (minimize irrigation, runoff, pesticides and fertilizers; promotes treatment)
- ☐ Outdoor material storage protection
- ☐ Covers, drains for loading docks, maintenance bays, fueling areas
- ☒ Maintenance (pavement sweeping, catch basin cleaning, good housekeeping)
- ☒ Storm drain labeling
- ☐ Other _____

Treatment Systems

- ☐ None (all impervious surface drains to self-retaining areas)

LID Treatment

- ☐ Rainwater harvest and use (e.g., cistern or rain barrel sized for C.3.d treatment)
- ☐ Infiltration basin
- ☐ Infiltration trench
- ☐ Exfiltration trench
- ☐ Underground detention and infiltration system (e.g. pervious pavement drain rock, large diameter conduit)

Biotreatment ³

- ☒ Bioretention area
- ☐ Flow-through planter
- ☐ Tree box with bioretention soils
- ☐ Other _____

Other Treatment Methods

- ☐ Proprietary tree box filter⁴
- ☒ Media filter (sand, compost, or proprietary media)⁴
- ☐ Vegetated filter strip⁵
- ☐ Dry detention basin⁵
- ☐ Other _____

Flow Duration Controls for Hydromodification Management (HM)

- ☐ Detention basin
- ☐ Underground tank or vault
- ☐ Bioretention with outlet control
- ☐ Other _____

¹ Optional site design measure; does not have to be sized to comply with Provision C.3.d treatment requirements.

² Subject to sanitary sewer authority requirements.

³ Biotreatment measures are allowed only with completed feasibility analysis showing that infiltration and rainwater harvest and use are infeasible.

⁴ These treatment measures are only allowed if the project qualifies as a "Special Project".

⁵ These treatment measures are only allowed as part of a multi-step treatment process.

7. Treatment System Sizing for Projects with Treatment Requirements

Indicate the hydraulic sizing criteria used and provide the calculated design flow or volume:

Treatment System Component	Hydraulic Sizing Criteria Used ³	Design Flow or Volume (cfs or cu.ft.)
Bioretention	3	.034 sizing factor
Media Filters	2b	.88 cfs

³Key: 1a: Volume – WEF Method
1b: Volume – CASQA BMP Handbook Method
2a: Flow – Factored Flood Flow Method
2b: Flow – CASQA BMP Handbook Method
2c: Flow – Uniform Intensity Method
3: Combination Flow and Volume Design Basis

8. **Alternative Certification:** Was the treatment system sizing and design reviewed by a qualified third-party professional that is not a member of the project team or agency staff?

☐ Yes ☒ No Name of Reviewer: _____

9. Operation & Maintenance Information

A. Property Owner's Name: Trumark Companies

B. Responsible Party for Stormwater Treatment/Hydromodification Control O&M:

a. Name: Trumark Companies
b. Address: 4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94056
c. Phone/E-mail: (925) 648-8300

This section to be completed by City of Milpitas staff.

O&M Responsibility Mechanism

Indicate how responsibility for O&M is assured. Check all that apply:

- ☐ O&M Agreement
☐ Other mechanism that assigns responsibility (describe below):

Reviewed:

Planning Department

Planning Division: _____

Other (Specify): _____

Public Works Department

Land Development: _____

Other (Specify): _____

APPENDIX B:

Infiltration/Harvesting Infeasibility Worksheet



Infiltration/Harvesting and Use Feasibility Screening Worksheet

Apply these screening criteria for **C.3 Regulated Projects*** required to implement Provision C.3 stormwater treatment requirements. See the Glossary (Attachment 1) for definitions of terms marked with an asterisk (*). Contact municipal staff to determine whether the project meets **Special Project*** criteria. If the project meets Special Project criteria, it may receive LID treatment reduction credits.

1. Applicant Info

Site Address: 300, 324 – 368 Montague Expressway, Milpitas, CA APN: 086-36-043

Applicant Name: Trumark Companies Phone No.: (925) 648-8300

Mailing Address: 4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94056

2. Feasibility Screening for Infiltration

Do site soils either (a) have a **saturated hydraulic conductivity*** (Ksat) that will NOT allow infiltration of 80% of the annual runoff (that is, the Ksat is LESS than 1.6 inches/hour), or, if the Ksat rate is not available, (b) consist of Type C or D soils?¹

☒ Yes (continue) ☐ No – complete the Infiltration Feasibility Worksheet. If infiltration of the C.3.d amount of runoff is found to be feasible, there is no need to complete the rest of this screening worksheet.

3. Recycled Water Use

Check the box if the project is installing and using a recycled water plumbing system for non-potable water use.

☐ The project is installing a recycled water plumbing system, and installation of a second non-potable water system for harvested rainwater is impractical, and considered infeasible due to cost considerations. Skip to Section 6.

4. Calculate the Potential Rainwater Capture Area* for Screening of Harvesting and Use

Complete this section for the entire project area. If rainwater harvesting and use is infeasible for the entire site, and the project includes one or more buildings that each have an individual roof area of 10,000 sq. ft. or more, then complete Sections 4 and 5 of this form for each of these buildings.

4.1 Table 1 for (check one): ☒ The whole project ☐ Area of 1 building roof (10,000 sq.ft. min.)

Table 1: Calculation of the Potential Rainwater Capture Area*				
The Potential Rainwater Capture Area may consist of either the entire project area or one building with a roof area of 10,000 sq. ft. or more.				
	1	2	3	4
	Pre-Project Impervious surface ² (sq.ft.), if applicable	Proposed Impervious Surface ² (IS), in sq. ft.		Post-project landscaping (sq.ft.), if applicable
		Replaced ³ IS	Created ⁴ IS	
a. Enter the totals for the area to be evaluated:	355,470	289,210	0	111,540
b. Sum of replaced and created impervious surface:	N/A	289,210		N/A
c. Area of existing impervious surface that will NOT be replaced by the project.	0	N/A		N/A

¹ Base this response on the site-specific soil report, if available. If this is not available, consult soil hydraulic conductivity maps in Attachment 3.

² Enter the total of all impervious surfaces, including the building footprint, driveway(s), patio(s), impervious deck(s), unroofed porch(es), uncovered parking lot (including top deck of parking structure), impervious trails, miscellaneous paving or structures, and off-lot impervious surface (new, contiguous impervious surface created from road projects, including sidewalks and/or bike lanes built as part of new street). Impervious surfaces do NOT include vegetated roofs or pervious pavement that stores and infiltrates rainfall at a rate equal to immediately surrounding, unpaved landscaped areas, or that stores and infiltrates the **C.3.d amount of runoff***.

³ "Replaced" means that the project will install impervious surface where existing impervious surface is removed.

⁴ "Created" means the project will install new impervious surface where there is currently no impervious surface.

* For definitions, see Glossary (Attachment 1).

- 4.2 Answer this question ONLY if you are completing this section for the entire project area. If existing impervious surface will be replaced by the project, does the area to be replaced equal 50% or more of the existing area of impervious surface? (Refer to Table 1, Row "a". Is the area in Column 2 > 50% of Column 1?)

- ☒ Yes, C.3. stormwater treatment requirements apply to areas of impervious surface that will remain in place as well as the area created and/or replaced. This is known as the 50% rule.
☐ No, C.3. requirements apply only to the impervious area created and/or replaced.

- 4.3 Enter the square footage of the **Potential Rainwater Capture Area***. If you are evaluating only the roof area of a building, or you answered "no" to Question 4.2, this amount is from Row "b" in Table 1. If you answered "yes" to Question 4.2, this amount is the sum of Rows "b" and "c" in Table 1.:

289,210 square feet.

- 4.4 Convert the measurement of the **Potential Rainwater Capture Area*** from square feet to acres (divide the amount in Item 4.3 by 43,560):

6.64 acres.

5. Feasibility Screening for Rainwater Harvesting and Use

- 5.1 Use of harvested rainwater for landscape irrigation:

Is the onsite landscaping LESS than 2.5 times the size of the **Potential Rainwater Capture Area*** (Item 4.3)? (Note that the landscape area(s) would have to be contiguous and within the same Drainage Management Area to use harvested rainwater for irrigation via gravity flow.)

- ☒ Yes (continue) ☐ No – Direct runoff from impervious areas to **self-retaining areas*** OR refer to Table 11 and the curves in Appendix F of the LID Feasibility Report to evaluate feasibility of harvesting and using the C.3.d amount of runoff for irrigation.

- 5.2 Use of harvested rainwater for toilet flushing or non-potable industrial use:

- a. Residential Projects: Proposed number of dwelling units: 92

Calculate the dwelling units per impervious acre by dividing the number of dwelling units by the acres of the **Potential Rainwater Capture Area*** in Item 4.4. Enter the result here:

13.9

Is the number of dwelling units per impervious acre LESS than 100 (assuming 2.7 occupants/unit)?

- ☒ Yes (continue) ☐ No – complete the Harvest/Use Feasibility Worksheet.

- b. Commercial/Industrial Projects: Proposed interior floor area: _____ (sq. ft.)

Calculate the proposed interior floor area (sq.ft.) per acre of impervious surface by *dividing the interior floor area (sq.ft.) by the acres of the **Potential Rainwater Capture Area*** in Item 4.4. Enter the result here:*

Is the square footage of the interior floor space per impervious acre LESS than 70,000 sq. ft.?

- ☐ Yes (continue) ☐ No – complete the Harvest/Use Feasibility Worksheet

- c. School Projects: Proposed interior floor area: _____ (sq. ft.)

Calculate the proposed interior floor area per acre of impervious surface by *dividing the interior floor area (sq.ft.) by the acres of the **Potential Rainwater Capture Area*** in Item 4.4. Enter the result here:*

Is the square footage of the interior floor space per impervious acre LESS than 21,000 sq. ft.?

- ☐ Yes (continue) ☐ No – complete the Harvest/Use Feasibility Worksheet

- d. Mixed Commercial and Residential Use Projects

* For definitions, see Glossary (Attachment 1).

- Evaluate the residential toilet flushing demand based on the dwelling units per impervious acre for the residential portion of the project, following the instructions in Item 5.2.a, except you will use a prorated acreage of impervious surface, based on the percentage of the project dedicated to residential use.
- Evaluate the commercial toilet flushing demand per impervious acre for the commercial portion of the project, following the instructions in Item 5.2.a, except you will use a prorated acreage of impervious surface, based on the percentage of the project dedicated to commercial use.

e. Industrial Projects: Estimated non-potable water demand (gal/day): _____

Is the non-potable demand LESS than 2,400 gal/day per acre of the Potential Rainwater Capture Area?

- ☐ Yes (continue) ☐ No – refer to the curves in Appendix F of the LID Feasibility Report to evaluate feasibility of harvesting and using the C.3.d amount of runoff for industrial use.

6. Use of Biotreatment

If only the “Yes” boxes were checked for all questions in Sections 2 and 5, or the project will have a recycled water system for non-potable use (Section 3), then the applicant may use appropriately designed bioretention facilities for compliance with C.3 treatment requirements. The applicant is encouraged to maximize infiltration of stormwater if site conditions allow.

7. Results of Screening Analysis

Based on this screening analysis, the following steps will be taken for the project (check all that apply):

- ☒ Implement biotreatment measures (such as an appropriately designed bioretention area).
- ☐ Conduct further analysis of infiltration feasibility by completing the Infiltration Feasibility Worksheet.
- ☐ Conduct further analysis of rainwater harvesting and use (check one):
- ☐ Complete the Rainwater Harvesting and Use Feasibility Worksheet for:
 - ☐ The entire project
 - ☐ Individual building(s), if applicable, describe: _____
 - ☐ Evaluate the feasibility of harvesting and using the C.3.d amount of runoff for irrigation, based on Table 11 and the curves in Appendix F of the LID Feasibility Report
 - ☐ Evaluate the feasibility of harvesting and using the C.3.d amount of runoff for non-potable industrial use, based on the curves in Appendix F of the LID Feasibility Report.

* For definitions, see Glossary (Attachment 1).

APPENDIX C:

Special Project Worksheet

The project has not requested Special Project status, therefore no Special Project Worksheet was prepared.

APPENDIX D:
Soil Properties

The project site is constrained by existing clay soils and high groundwater elevations. According to the *City of Milpitas Soil Map*, the site is underlain by silty clay loam having a hydrologic group classification of C. The depth to first groundwater is estimated to be less than 10 feet below the ground surface, based on the *City of Milpitas Groundwater Elevation Map*.

APPENDIX E:

MRP Calculation Worksheet

See Appendix F: BMP Sizing Calculations

APPENDIX F:

BMP Sizing Calculations

BMP Sizing Calculations

Biotreatment Facilities

The following table summarizes the sizing of the proposed biotreatment facilities for the project. A sizing factor of 0.034 was used to determine the minimum surface area of the proposed facilities, in conformance with Chapter 5-3 of the City of Milpitas Stormwater C.3 Guidebook, 3rd Edition (October 6, 2005), which was in effect at the time of project approval.

Table 1. Proposed Biotreatment Summary					
Drainage Area Designation	Size	Impervious Surfaces	Sizing Factor	Minimum Surface Area	Surface Area as Designed
B1	11,050 s.f.	Roof, Paved Driveway	0.034	376 s.f.	457 s.f.
B2	2,325 s.f.	Roof, Paved Driveway	0.034	79 s.f.	116 s.f.
B3	28,712 s.f.	Roof, Sidewalk	0.034	976 s.f.	1,279 s.f.
B4	10,494 s.f.	Paved Driveway, Sidewalk	0.034	357 s.f.	536 s.f.
B5	9,878 s.f.	Roof, Sidewalk	0.034	336 s.f.	400 s.f.
Total	62,459 s.f.			2,124 s.f.	2,788 s.f.

Media Filters

Treatment flow rates for the proposed manhole media filter units were determined using the Rational Method ($Q = CiA$), consistent with the methodology provided by the Santa Clara Valley Urban Runoff Pollution Prevention Program for calculating Provision C.3 design flow rates. The following table summarizes the sizing of the proposed media filters for the project.

Table 2. Media Filter Summary

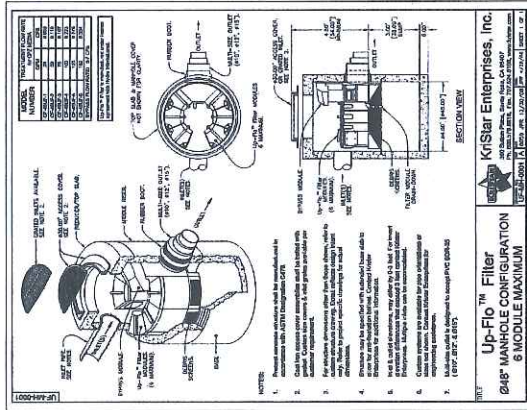
Drainage Area	Size (A)	Impervious Surfaces	Runoff Coefficient (C)	Rainfall Intensity (i)	Treatment Flow	Proposed Unit	Treatment Capacity
MF1	0.26 ac.	Roof, Paved Driveway	0.85	0.18	0.04 cfs	48" Manhole – Up-Flo Filter (1 module)	0.06 cfs
MF2-A	1.49 ac.	Roof, Paved Driveway, Sidewalk	0.85	0.18	0.23 cfs	48" Manhole – Up-Flo Filter (5 modules)	0.28 cfs
MF2-B	0.37 ac.	Roof, Paved Driveway	0.85	0.18	0.06 cfs	48" Manhole – Up-Flo Filter (1 module)	0.06 cfs
MF3	1.40 ac.	Roof, Paved Driveway, Sidewalk	0.85	0.18	0.21 cfs	48" Manhole – Up-Flo Filter (4 modules)	0.34 cfs
MF4	0.64 ac.	Roof, Paved Driveway, Sidewalk	0.85	0.18	0.10 cfs	48" Manhole – Up-Flo Filter (2 modules)	0.11 cfs
MF5	0.53 ac.	Roof, Paved Driveway	0.85	0.18	0.08 cfs	48" Manhole – Up-Flo Filter (2 modules)	0.11 cfs
MF6	0.39 ac.	Roof, Paved Driveway	0.85	0.18	0.06 cfs	48" Manhole – Up-Flo Filter (2 modules)	0.11 cfs
MF7	0.66 ac.	Paved Street, Sidewalk	0.85	0.18	0.10 cfs	48" Manhole – Up-Flo Filter (3 modules)	0.16 cfs
Total	5.74 ac.				0.88 cfs		1.23 cfs

APPENDIX G:

Site Plan

APPENDIX H:

Treatment Measure Details

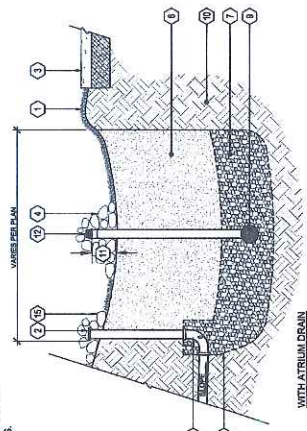


Up-Flo™ Filter
846" MANHOLE CONSTRUCTION
6 MODULE MAXIMUM

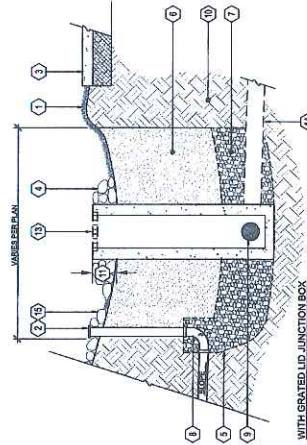
KiStar Enterprises, Inc.
 1000 N. 10th St., Suite 100, San Jose, CA 95131
 (408) 281-1111

MEDIA FILTER MANHOLE MF7 (OWN AND MAINTAIN BY CITY OF MILPITAS)
 SCALE: NTS

NOTES:
 1. SEE CIVIL PLANS FOR PIPE SIZES AND TYPES.



BIOTREATMENT CELL (OWN AND MAINTAIN BY HOA)
 SCALE: NTS



Drainage Area (A)	Size	Impervious Surface (B)	Rainfall Intensity (C)	Treatment Flow (D)	Treatment Unit	Treatment Capacity (E)
MF1	28 ac.	Road Paved Driveway	.05	.04 cfs	48" Manhole Filter (1) Up-Flo (2) Media	.06 cfs
MF2 - A	1.48 ac.	Road Paved Driveway	.05	.23 cfs	48" Manhole Filter (1) Up-Flo (2) Media	.28 cfs
MF2 - B	0.37 ac.	Road Paved Driveway	.05	.06 cfs	48" Manhole Filter (1) Up-Flo (2) Media	.06 cfs
MF3	1.40 ac.	Road Paved Driveway	.05	.21 cfs	48" Manhole Filter (1) Up-Flo (2) Media	.34 cfs
MF4	.84 ac.	Road Paved Driveway	.05	.10 cfs	48" Manhole Filter (1) Up-Flo (2) Media	.11 cfs
MF5	.83 ac.	Road Paved Driveway	.05	.09 cfs	48" Manhole Filter (1) Up-Flo (2) Media	.11 cfs
MF6	.39 ac.	Road Paved Driveway	.05	.06 cfs	48" Manhole Filter (1) Up-Flo (2) Media	.11 cfs
MF7	1.11 ac.	Paved Street, Sidewalk	.05	.10 cfs	48" Manhole Filter (1) Up-Flo (2) Media	.11 cfs
Total	5.74 ac.			.88 cfs		1.18 cfs

1. VEGETATION (SEE LANDSCAPE PLANS)
2. GREEN SPRINKLER BUBBLE UP EMITTER TO 9" USE NDS PART #624 EMITTER WITH ELBOW AND CORRUGATED PIPE ADAPTER
3. ADJACENT PAVING, SEE PLAN FOR LOCATION AND TYPE
4. COBBLE STONES AROUND PIPE
5. NON-WOVEN FILTER FABRIC, MIRAFL 140N OR APPROVED EQUAL (TYPICAL)
6. SANDY LOAM WITH PERCOLATION RATE OF 6" TO 10" PER HOUR (MIN. 18" DEPTH)
7. 12" TO 3/4" CRUSHED DRAIN ROCK WITH NO MORE THAN 5% PASSING THE NO. 200 SIEVE (MIN. 12" DEPTH)
8. PVC ELBOW WITH 1/4" WEEP HOLE
9. PERFORATED PVC SUBDRAIN PIPE, PERFORATIONS PLACED DOWN
10. NATIVE GRASS OR CERTIFIED COMPACTED SUBGRADE
11. FINISHING DEPTH FROM INLET OPENING TO GRADE (MIN. 4" DEPTH)
12. ATRIUM DRAIN WITH COBBLE COLLAR
13. JUNCTION BOX WITH GRATED LID, SEE PLAN
14. STORM DRAIN LATERAL TO MANHOLE, SEE CIVIL PLANS

Land Planning
 Landscape Architecture
 Civil Engineering
 Utility Design
 Land Surveying
 Stormwater Compliance

1570 Oakland Road
 San Jose, CA 95131
 (408) 467-2200
 www.fhmi.com

CITY OF MILPITAS
ENGINEERING DIVISION
PUBLIC IMPROVEMENT PLANS
PAGE - TRACT 10138
STORMWATER CONTROL DETAILS

Revisions

No.	Date	By	Description
1	08/11/2017	AL	REPLACE THIS DRAWING WITH THE LATEST REVISION

Drawn By: J.E. BIL... Date: 08/11/2017
 Checked By: J.E. BIL... Date: 08/11/2017
 Designed By: J.E. BIL... Date: 08/11/2017

Approved: _____
 Project No. 2712
 File No. _____
 Drawing No. 2-1181
 Scale: As shown
 Sheet 228 of 231

APPENDIX I:

Operations and Maintenance Plan

**Bioretention Cell Maintenance Plan
for
PACE Development Project**

Project Address and Cross Streets _____

Assessor's Parcel No.: _____

Property Owner: _____ Phone No.: _____

Designated Contact: _____ Phone No.: _____

Mailing Address: _____

The property contains five bioretention (biotreatment) cells, located as described below and as shown in the attached Stormwater Control Plan.

- **Biotreatment Cell #1** is located adjacent to the sidewalk along the Montague Expressway frontage, approximately 700 feet east of Trade Zone Boulevard.
- **Biotreatment Cell #2** is located adjacent to the sidewalk along the Trade Zone Boulevard frontage, northwest of the intersection with Ringwood Avenue.
- **Biotreatment Cell #3** is located adjacent to the sidewalk along the Montague Expressway frontage, approximately 500 feet east of Trade Zone Boulevard.
- **Biotreatment Cell #4** is located adjacent to the sidewalk along the Trade Zone Boulevard frontage, northeast of the intersection with Ringwood Avenue.
- **Biotreatment Cell #5** is located adjacent to the sidewalk along the Montague Expressway frontage, approximately 400 feet east of Trade Zone Boulevard.

I. Routine Maintenance Activities

The principal maintenance objective is to prevent sediment buildup and clogging, which reduces pollutant removal efficiency and may lead to bioretention cell failure. Routine maintenance activities, and the frequency at which they will be conducted, are shown in Table 1.

Table 1. Routine Maintenance Activities for Biotreatment Cell		
No.	Maintenance Task	Frequency of Task
1	Remove obstructions, debris and trash from bioretention cell and dispose of properly.	Monthly, or as needed after storm events
2	Inspect biotreatment cell to ensure that it drains between storms and within five days after rainfall.	Monthly, or as needed after storm events
3	Inspect inlets for channels, soil exposure or other	Monthly, or as needed after

	evidence of erosion. Clear obstructions and remove sediment.	storm events
4	Remove and replace all dead and diseased vegetation.	Twice per year
5	Maintain vegetation and the irrigation system. Prune and weed to keep biotreatment cell neat and orderly in appearance.	Before wet season begins, or as needed
6	Check that mulch is at appropriate depth (3 inches per soil specifications) and replenish as necessary before wet season begins.	Monthly (if applicable)
7	Inspect biotreatment cell using the attached inspection checklist.	Monthly, or after large storm events, and after removal of accumulated debris or material

II. Prohibitions

The use of pesticides and quick-release fertilizers shall be minimized, and the principles of integrated pest management (IPM) followed:

1. Employ non-chemical controls (biological, physical and cultural controls) before using chemicals to treat a pest problem.
2. Prune plants properly and at the appropriate time of year.
3. Provide adequate irrigation for landscape plants. Do not over water.
4. Limit fertilizer use unless soil testing indicates a deficiency. Slow-release or organic fertilizer is preferable. Check with municipality for specific requirements.
5. Pest control should avoid harming non-target organisms, or negatively affecting air and water quality and public health. Apply chemical controls only when monitoring indicates that preventative and non-chemical methods are not keeping pests below acceptable levels. When pesticides are required, apply the least toxic and the least persistent pesticide that will provide adequate pest control. Do not apply pesticides on a prescheduled basis.
6. Sweep up spilled fertilizer and pesticides. Do not wash away or bury such spills.
7. Do not over apply pesticide. Spray only where the infestation exists. Follow the manufacturer's instructions for mixing and applying materials.
8. Only licensed, trained pesticide applicators shall apply pesticides.
9. Apply pesticides at the appropriate time to maximize their effectiveness and minimize the likelihood of discharging pesticides into runoff. With the exception of pre-emergent pesticides, avoid application if rain is expected.
10. Unwanted/unused pesticides shall be disposed as hazardous waste.

Standing water shall not remain in the treatment measures for more than five days, to prevent mosquito generation. Should any mosquito issues arise, contact the Santa Clara Valley Vector Control District (District). Mosquito larvicides shall be applied only when absolutely necessary, as indicated by the District, and then only by a licensed professional or contractor. Contact information for the District is provided below.

III. Vector Control Contact

Santa Clara Valley Vector Control District
1580 Berger Drive
San Jose, California 95112
Phone: (408) 918-4770 / (800) 675-1155; Fax: (408) 298-6356

IV. Inspections

The attached Bioretention Area Inspection and Maintenance Checklist shall be used to conduct inspections monthly (or as needed), identify needed maintenance, and record maintenance that is conducted.

Bioretention Area Inspection and Maintenance Checklist

Property Address: _____ Property Owner: _____

Treatment Measure No.: _____ Date of Inspection: _____ Type of Inspection: _____ Monthly _____ Pre-Wet Season _____
 Inspector(s): _____ After heavy runoff _____ End of Wet Season _____
 Other: _____

Defect	Conditions When Maintenance Is Needed	Maintenance Needed? (Y/N)	Comments (Describe maintenance completed and if needed maintenance was not conducted, note when it will be done)	Results Expected When Maintenance Is Performed
1. Standing Water	When water stands in the bioretention area between storms and does not drain within five days after rainfall.			There should be no areas of standing water once inflow has ceased. Any of the following may apply: sediment or trash blockages removed, improved grade from head to foot of bioretention area, or added underdrains.
2. Trash and Debris Accumulation	Trash and debris accumulated in the bioretention area.			Trash and debris removed from bioretention area and disposed of properly.
3. Sediment	Evidence of sedimentation in bioretention area.			Material removed so that there is no clogging or blockage. Material is disposed of properly.
4. Erosion	Channels have formed around inlets, there are areas of bare soil, and/or other evidence of erosion.			Obstructions and sediment removed so that water flows freely and disperses over a wide area. Obstructions and sediment are disposed of properly.
5. Vegetation	Vegetation is dead, diseased and/or overgrown.			Vegetation is healthy and attractive in appearance.
6. Mulch	Mulch is missing or patchy in appearance. Areas of bare earth are exposed, or mulch layer is less than 3 inches in depth.			All bare earth is covered, except mulch is kept 6 inches away from trunks of trees and shrubs. Mulch is even in appearance, at a depth of 3 inches.
7. Miscellaneous	Any condition not covered above that needs attention in order for the bioretention area to function as designed.			Meet the design specifications.

STORMWATER TREATMENT MEASURE OPERATION AND MAINTENANCE INSPECTION REPORT

This report and attached Inspection and Maintenance Checklists document the inspection and maintenance conducted for the identified stormwater treatment measure(s) subject to the Maintenance Agreement between the City and the property owner during the annual reporting period indicated below:

I. Property Information:

Property Address or APN: _____

Property Owner: _____

II. Contact Information:

Name of person to contact regarding this report: _____

Phone number of contact person: _____ Email: _____

Address to which correspondence regarding this report should be directed:

III. Reporting Period:

This report, with the attached completed inspection checklists, documents the inspections and maintenance of the individual treatment measures during the time period from _____ to _____.

IV. Stormwater Treatment Measure Information:

The following stormwater treatment measures (identified treatment measures) are located on the property identified above and are subject to the Maintenance Agreement:

Identifying Number of Treatment Measure	Type of Treatment Measure	Location of Treatment Measure on the Property

V. Summary of Inspections and Maintenance:

Summarize the following information using the attached Inspection and Maintenance Checklists:

Identifying Number of Treatment Measure	Date of Inspection	Operation and Maintenance Activities Performed and Date(s) Conducted	Additional Comments

VI. Sediment Removal:

Total amount of accumulated sediment removed from the stormwater treatment measure(s) during the reporting period: _____cubic yards.

How was sediment disposed?

- ___ landfill
- ___ other location on-site as described in and allowed by the maintenance plan
- ___ other, explain _____

VII. Inspector Information:

The inspections documented in the attached Inspection and Maintenance Checklists were conducted by the following inspector(s):

Inspector Name and Title	Inspector's Employer and Address

VIII. Certification:

I hereby certify, under penalty of perjury, that the information presented in this report and attachments is true and complete:

_____	_____
Signature of Property Owner or Other Responsible Party	Date

Type or Print Name

Company Name

Address

Phone Number: _____

Email: _____

**Media Filter Maintenance Plan
For
PACE Development Project**

Project Address and Cross Streets _____

Assessor's Parcel No.: _____

Property Owner: _____ Phone No.: _____

Designated Contact: _____ Phone No.: _____

Mailing Address: _____

The property contains seven media filter units, located as described below.

- **Media Filter No. 1** is located in Tempo Lane (private street), approximately 125 feet west of Momentum Drive.
- **Media Filter No. 2A** is located in Tempo Lane (private street), approximately 50 feet west of Momentum Drive.
- **Media Filter No. 2B** is approximately 25 feet west of the terminus of Momentum Drive.
- **Media Filter No. 3** is located in Pace Way (private street), approximately 25 feet north of Trade Zone Boulevard.
- **Media Filter No. 4** is located on the east side of Montague Expressway, approximately 600 feet north of Trade Zone Boulevard.
- **Media Filter No. 5** is located on the west side of Momentum Drive, approximately 350 feet north of Trade Zone Boulevard.
- **Media Filter No. 6** is located on the west side of Momentum Drive, approximately 600 feet north of Trade Zone Boulevard.
- **Media Filter No. 7** is located on the east side of Momentum Drive, approximately 650 feet north of Trade Zone Boulevard.

I. Routine Maintenance Activities

The principal maintenance objective is to prevent sediment buildup and clogging, which reduces pollutant removal efficiency and may lead to Media Filter failure. Routine maintenance activities, and the frequency at which they will be conducted, are shown in Table 1.

Table 1 Routine Maintenance Activities for Media Filters		
No.	Maintenance Task	Frequency of Task
1	Inspect for standing water, sediment, trash and debris.	Monthly during rainy season.
2	Remove sediment, trash and debris from sedimentation basin, riser pipe and filter bed. Dispose of sediment, trash and debris properly.	As needed.
3	Ensure that media filter drains completely within five days.	After major storm events as needed.
4	For media filters with a filter bed, inspect media depth to ensure proper drainage.	Monthly during rainy season, or as needed after storm events.
5	For manufactured media filter, follow manufacturer's guidelines for maintenance and cartridge replacement.	As per manufacturer's specifications.
6	Inspect media filter using the attached inspection checklist.	Monthly, or after large storm events, and after removal of accumulated debris or material.

II. Prohibitions

Trees and other large vegetation shall be prevented from growing adjacent to the media filter to prevent damage.

Standing water shall not remain in the treatment measures for more than five days, to prevent mosquito generation. Should any mosquito issues arise, contact Santa Clara Valley Vector Control District (District). Mosquito larvicides shall be applied only when absolutely necessary, as indicated by the District, and then only by a licensed professional or contractor. Contact information for the District is provided below.

III. Vector Control Contact

Santa Clara Valley Vector Control District
 1580 Berger Drive
 Santa Jose, California 95112
 Phone: (408) 918-4770 / (800) 675-1155. Fax: (4098) 298-6356
www.sccgov.org/portal/site/vector

IV. Inspections

The attached Media Filter Inspection and Maintenance Checklist shall be used to conduct inspections monthly (or as needed), identify needed maintenance, and record maintenance that is conducted.

Media Filters Inspection and Maintenance Checklist

Property Address: _____ Property Owner: _____
 Treatment Measure No.: _____ Date of Inspection: _____ Type of Inspection: ☐ Monthly ☐ Pre-Wet Season
☐ After heavy runoff ☐ End of Wet Season
 Inspector(s): _____ Other: _____

Defect	Conditions When Maintenance Is Needed	Maintenance Needed? (Y/N)	Comments (Describe maintenance completed and if needed maintenance was not conducted, note when it will be done)	Results Expected When Maintenance Is Performed
1. Sediment, trash and debris accumulation on filter	Sediment, trash and debris accumulated in the media filter unit, vault or piping.			Sediment, trash and debris removed and disposed of properly.
2. Standing water	Treatment unit or vault does not drain within five days after rainfall.			Source of clogging removed. Filter drains per design specifications.
3. Mosquitoes	Evidence of mosquito larvae in treatment unit.			No evidence of mosquito larvae.
4. Miscellaneous	Any condition not covered above that needs attention in order for the manufactured treatment measure to function as designed.			Meet the design specifications.

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

BETWEEN CITY OF MILPITAS AND MILPITAS UNIFIED SCHOOL DISTRICT

(Portion of McCandless Property)

This First Amendment to Purchase and Sale Agreement ("First Amendment") is entered into as of October __, 2015 ("Effective Date") by and between Milpitas Unified School District, a public school district organized and existing under the laws of the State of California ("DISTRICT"), and the City of Milpitas, a municipal corporation of the State of California ("CITY") (collectively, the "Parties") with reference to the following.

RECITALS

A. Effective October 21, 2014, CITY and DISTRICT entered into a Purchase and Sale Agreement ("**Purchase Agreement**"), attached hereto as **Exhibit 1 – Purchase Agreement** and by this reference made a part hereof, pursuant to which the DISTRICT is purchasing approximately 6.7 acres of a 10.9-acre CITY property commonly referred to as the McCandless Property and legally described in Exhibit A to the Purchase Agreement ("**CITY Property**").

B. DISTRICT intends to use the 6.7 parcel, legally described in Exhibit B to the Purchase Agreement, for construction and operation of a new K-6 elementary school ("**DISTRICT Property**") and CITY intends to develop a City park on the remaining 3.2 acre parcel ("**CITY Park Property**").

C. Pursuant to Section 4(1)(b) of the Purchase Agreement and in order to meet state requirements for approval of an elementary school site, the DISTRICT is conducting tests and inspections of the DISTRICT Property, which includes obtaining an Environmental Impact Report ("**EIR**").

D. The EIR is in progress, but will not be completed by the original Close of Escrow date of October 21, 2015, as defined in Section 3(2) of the Purchase Agreement.

AGREEMENT

NOW THEREFORE, the DISTRICT and CITY agree as follows:

1. The Close of Escrow date referenced in Section 3(2) of the Purchase Agreement shall be extended from October 21, 2015 to a date mutually determined by the Parties on or before October 21, 2016.

2. The Purchase Agreement, as modified by this First Amendment, remains in full force and effect.

3. From and after the full execution of this First Amendment, all references in the Purchase Agreement and in any other document related to the Purchase Agreement to the term "Agreement" or "Purchase Agreement" shall be deemed to refer to the Purchase Agreement as modified by this First Amendment.

4. Each person executing this First Amendment represents and warrants that he or she has the requisite authority to bind the Party on whose behalf the First Amendment is being executed.

5. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall comprise one and the same original document.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

The Parties have executed this First Amendment as of the latest date below.

DISTRICT

Milpitas Unified School District, a public school district organized and existing under the laws of the State of California

By: _____
Name: Danny Lau
Title: President of the Milpitas Unified School District Governing Board

Date: _____

APPROVED AS TO FORM:

By: _____
Kathleen J. McKee, Esq.
District Real Estate Counsel

CITY

City of Milpitas, a municipal corporation of the State of California

By: _____
Name: Jose S. Esteves
Title: Mayor of the City of Milpitas

Date: _____

APPROVED AS TO FORM:

By: _____
Christopher J. Diaz
City of Milpitas City Attorney

EXHIBIT 1
PURCHASE AND SALE AGREEMENT



**PURCHASE AND SALE AGREEMENT
BETWEEN
THE CITY OF MILPITAS
AND
MILPITAS UNIFIED SCHOOL DISTRICT**



(Portion of McCandless Property)

Table of Contents

Recitals

Section 1. Purchase and Sale

Section 2. Purchase Price and Inspection Period

- (1) Purchase Price
 - (a) Total Compensation
 - (b) Deposit
 - (c) Balance of Purchase Price
 - (d) Liquidated Damages
- (2) Inspection Period
 - (a) Inspection
 - (b) Access to Property during Inspection Period
 - (c) Indemnification (during Inspection Period)
 - (d) Approvals and Studies
 - (e) "AS IS" clause

Section 3. Escrow

- (1) Escrow Holder/Title Company Information
- (2) Opening of Escrow
- (3) Deliveries to Escrow Holder
- (4) Escrow Fees and Costs
- (5) Prorations

Section 4. Conditions to Close of Escrow

- (1) DISTRICT's Conditions
 - (a) Governmental Approvals and School Property Review
 - (b) Environmental Condition
 - (c) Title Insurance
 - (d) Deed
 - (e) Performance by CITY
 - (f) Additional Deliveries
- (2) CITY's Conditions
 - (a) Override Resolution
 - (b) Resolution of Litigation
 - (c) Deposit
 - (d) Balance of Purchase Price
 - (e) Joint Use Agreement

- (f) Additional Deliveries
- (g) Performance by DISTRICT

Section 5. Representations and Warranties

- (1) CITY'S
 - (a) Authority
 - (b) Litigation
 - (c) Ownership of Property
- (2) DISTRICT'S
 - (a) Authority
- (3) Real Estate Commissions
- (4) Survival of Representations and Warranties
- (5) Disclaimer of Representations and Warranties

Section 6. Condemnation

Section 7. Assignment

Section 8. Notices

Section 9. Indemnification

Section 10. Power of Termination by CITY

Section 11. Entire Agreement

Section 12. Time of Essence

Section 13. Severability

Section 14. Waivers

Section 15. Construction

Section 16. Governing Law

Section 17. Venue

Section 18. Binding on Successors

Section 19. Delegation of Authority

Section 20. Further Assurances

Section 21. Exhibits

Section 22 Termination of Joint Use Agreement.

- Exhibit A. City Property
- Exhibit B. School Property
- Exhibit C. Insurance Requirements
- Exhibit D. Grant Deed with Power of Termination

This Purchase and Sale Agreement ("Agreement") is entered into as of the 21st day of October, 2014, ("Effective Date") by and between Milpitas Unified School District, a public school district organized and existing under the laws of the State of California ("DISTRICT"), and the City of Milpitas, a municipal corporation of the State of California ("CITY").

Recitals

- A. **WHEREAS**, CITY is the owner in fee simple of certain vacant real property consisting of approximately 10.90 acres on the corner of McCandless Drive and Penitencia Creek East Channel, located in the City of Milpitas, County of Santa Clara, as further depicted and described in Exhibit A of this Agreement (the "CITY Property").
- B. **WHEREAS**, DISTRICT desires to purchase approximately 6.70 acres of the CITY Property as more particularly depicted and described in Exhibit B (the "School Property") for the development of a public elementary school serving grades kindergarten through 6th grade.
- C. **WHEREAS**, the CITY Property, located in the McCandless/Centre Pointe region of the "Transit Area," has been designated as Park and Open Space under the City's Zoning Code, which does not allow the School Property to be used for a public school, but, as permitted under Government Code section 53094, the DISTRICT's governing board will exempt the DISTRICT from the zoning restriction prior to the close of escrow.
- D. **WHEREAS**, DISTRICT desires to purchase the School Property and CITY desires to sell the School Property on the terms and conditions in this Agreement for the total amount of Twenty Million Seven Hundred Seventy Thousand Dollars (\$20,770,000.00) (6.7 acres at \$3,100,000.00/acre).
- E. **WHEREAS**, DISTRICT and CITY, as adjacent property owners, also desire to enter into a joint use agreement prior to the close of escrow under which DISTRICT and CITY shall jointly share the use of property for a soccer field and other possible uses ("Joint Use Agreement").
- F. **WHEREAS**, CITY desires to sell the School Property and DISTRICT desires to purchase the School Property on the terms and conditions in this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

Section 1. Purchase and Sale.

Subject to the terms and conditions in this Agreement, CITY agrees to sell and DISTRICT agrees to purchase the School Property.

Section 2. Purchase Price and Inspection Period.

(1) Purchase Price

(a) Total Compensation. The total compensation to be paid by DISTRICT to CITY for the School Property shall be made in cash, at the rate of Three Million One Hundred Thousand Dollars (\$3,100,000.00) per acre for 6.7 acres, for a total of Twenty Million Seven Hundred Seventy Thousand Dollars (\$20,770,000.00) ("Purchase Price") on date of closing.

(b) Deposit. The sum of Fifty Thousand dollars (\$50,000.00) shall be deposited into an escrow account ("Escrow") by DISTRICT, to be opened at Chicago Title Company located at 12156 Saratoga-Sunnyvale Road, Saratoga, CA 95070, (408) 973-1900 (Phone) (408) 973-8778 (Fax), Attention: Lori Young, Escrow Branch Mgr., e-mail: younglo@ctt.com (referred to in this Agreement as either "Title Company" or "Escrow Holder") within ten (10) days of the Effective Date of this Agreement ("Deposit"). The Deposit shall be applied to the Purchase Price upon satisfaction of all conditions by the parties under this Agreement at the Close of Escrow. The Deposit shall be returned to DISTRICT if the Agreement and the Escrow are terminated due to non-satisfaction of any of DISTRICT's conditions, or for any other reason whatsoever other than DISTRICT's default, and thereafter neither party shall have any further rights or obligations except as otherwise stated in this Agreement. The Deposit shall be paid to CITY as liquidated damages pursuant to subsection (d) below if Escrow fails to close as a result of a default by DISTRICT and if CITY is not otherwise in default.

(c) Balance of Purchase Price. DISTRICT shall deliver the balance of the Purchase Price to Escrow Holder in cash by wire transfer of immediately available funds, prior to the Close of Escrow and, in any event, a sufficient time to permit disbursement of such funds on the Closing Date under applicable law and Escrow Holder's standard practice.

The full lump sum amount of purchase price must be deposited with the Title Company prior to closing. Title Company shall transfer the funds from the purchase to CITY at time of closing.

(d) **LIQUIDATED DAMAGES.** IF ESCROW FAILS TO CLOSE DUE TO DISTRICT'S BREACH OF THIS AGREEMENT AND PROVIDED CITY IS NOT IN MATERIAL BREACH, CITY WILL BE DAMAGED AND WILL BE ENTITLED TO COMPENSATION FOR THOSE DAMAGES. SUCH DAMAGES WILL, HOWEVER, BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN. DISTRICT AND CITY WISH TO AVOID THE COSTS AND LENGTHY DELAYS WHICH WOULD RESULT FROM THE FILING OF A LAWSUIT. THEREFORE, IF ESCROW FAILS TO CLOSE DUE TO DISTRICT'S BREACH UNDER THIS AGREEMENT, THEN CITY SHALL BE ENTITLED TO RETAIN DISTRICT'S DEPOSIT. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369. BY INITIALING THIS PROVISION IN THE SPACES BELOW, DISTRICT AND CITY AFFIRM THE AGREEMENT IN THIS SECTION. THE ABOVE LIQUIDATED DAMAGES SHALL NOT LIMIT DISTRICT'S OBLIGATIONS OF INDEMNITY, HOLD HARMLESS AND DEFENSE PROVIDED IN THIS AGREEMENT, NOR DOES THE ABOVE LIQUIDATED

DAMAGES IN ANY WAY LIMIT ANY CITY RIGHTS OR REMEDIES IN EQUITY OR LAW UNDER THIS AGREEMENT.

DISTRICT's Initials

CITY's Initials

(2) Inspection Period

(a) Inspection. Subject to subsection (b) below and Exhibit C attached hereto, from the Effective Date to the Close of Escrow, DISTRICT shall have the right to conduct all inspections and studies and remove all contingencies to the purchase of the School Property in writing ("Inspection Period"). During and continuing through the Inspection Period, DISTRICT shall be granted the right of entry upon the School Property for the purpose of conducting soils tests, environmental assessments and other engineering or feasibility studies, and physical inspections of any and all kinds concerning the School Property ("Right of Entry"), provided that DISTRICT obtains the required insurance as set forth in Exhibit C to the reasonable satisfaction of the City Manager for CITY, prior to any entry on School Property. DISTRICT's right of entry extends to any and all of DISTRICT's agents and/or any and all governmental entities and state agencies requiring access to the School Property to conduct such inspections.

(b) Access to Property During Inspection Period. Subject to its having given CITY reasonable advance notice, DISTRICT, or persons designated by DISTRICT, shall have the right at all reasonable times to enter on the School Property for the purpose of conducting those soil tests, surveys, and studies as DISTRICT may require to ascertain the suitability of the School Property for DISTRICT's purposes. DISTRICT shall repair and replace any damage to the School Property caused by any entry on the School Property by DISTRICT or any persons designated by DISTRICT.

(c) Indemnification. DISTRICT hereby indemnifies, agrees to defend, with counsel acceptable to CITY, and hold CITY, its officers, employees and agents, harmless from any claim, liability, loss, injury, damage or expense, including without limitation, liability for personal death or injury and property damage, to the extent arising directly or indirectly out of, or in connection with, performance of this Section by DISTRICT and/or its agents or employees, excepting only loss, injury or damage to the extent caused by the gross negligence or willful misconduct of personnel employed or retained by CITY.

(d) Approvals and Studies. During the Inspection Period DISTRICT, at its sole cost and expense, shall conduct inspections and studies and obtain approvals or waive requirements listed below, any waiver to be in DISTRICT's sole, absolute and unrestricted discretion.

(i) Title Matters. Review of the Preliminary Title Report, as the same may be supplemented prior to the expiration of the Inspection Period and, subject to CITY'S response to requests for removal of exceptions, approve or waive of any remaining disapproved exceptions.

(ii) School Property Review. Obtain approval of all government requirements for use of the School Property as K-6 school site, after such examination, inspection, investigation and review as DISTRICT considers is appropriate to undertake, including, but not limited to the following:

- Department of Education and Title 5 Review. Approvals by the California Department of Education ("CDE") and any other government agencies with authority over site selection for public schools. Implementation and review of studies required for compliance with California Education Code Section 17521 and California Code of Regulations ("CCR") Title 5, sections 14001-14012 for suitability as a school site, including but not limited to a Phase 1 environmental study, California Department of Toxic Substances Control ("DTSC") review, soils studies, engineering studies, surveys and geological work.
- CEQA Review. Implementation and review of studies required for compliance with the California Environmental Quality Act ("CEQA"), including certification of the required level of environmental document.
- Other Matters. All other matters relating to the condition, value, fitness, suitability or use of the School Site, including any and all matters DISTRICT may deem necessary or appropriate.

(e) AS IS. DISTRICT acknowledges and agrees that the School Property is being sold and accepted in its "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable laws governing the use, occupancy, management, operation and possession of the School Property. Without limiting the foregoing, this Agreement and the sale of the School Property is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the School Property, or any portion thereof of record or not of record. DISTRICT acknowledges and agrees that neither CITY, nor any of their agents have made, and CITY hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the School Property, (ii) the physical, geological, seismological or environmental condition of the School Property, (iii) the quality, nature or adequacy of any utilities serving the School Property, (iv) the present or future suitability of the School Property for DISTRICT's intended uses, (v) the feasibility, cost or legality of constructing any improvements on the School Property, or (vi) any other matter whatsoever relating to the School Property or its use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. For the avoidance of doubt, it is agreed that DISTRICT shall rely solely upon Title Company's CLTA Owner's policy of title insurance, if any, for protection with respect to matters affecting title to the School Property.

If, prior to the expiration of the Inspection Period, DISTRICT, in its sole discretion, determines not to proceed with the purchase of the School Property, DISTRICT shall not be in default and shall have the right to terminate this Agreement by delivering written notice

of such election to CITY and Escrow Holder. In such event, DISTRICT and CITY shall have no further rights or obligations hereunder and Escrow Holder shall refund the Deposit to DISTRICT.

Section 3. Escrow.

(1) Escrow Holder/Title Company Information. For convenience, information regarding Escrow Holder is repeated from Section 2(1)(b).

Escrow Holder: Chicago Title Company
12156 Saratoga-Sunnyvale Road
Saratoga, CA 95070
Phone: (408) 973-1900
Fax: (408) 973-8778

Escrow Officer: Attn: Lori Young, Escrow Branch Mgr.
Email: younglo@ctt.com

(2) Opening of Escrow. An escrow shall be opened by DISTRICT to close the sale of the School Property pursuant to this Agreement at the office of Chicago Title Company (referred to herein as either "Escrow Holder" or "Title Company") immediately upon the Effective Date. The parties shall deliver this fully executed Agreement to Title Company. The parties shall execute any additional instructions requested by Escrow Holder in a manner consistent with the Agreement. All amounts deposited by DISTRICT with Title Company are to be held in escrow in an interest-bearing account with interest credited to CITY. Unless the parties otherwise mutually agree in writing to an extension, the escrow shall close, the School Property shall be transferred, and the Purchase Price paid to CITY on or before, but no later than **October 21, 2015 ("Close of Escrow")**. District agrees to close escrow as soon as legally possible, subject to satisfaction of approvals required for State of California school site authorization.

(3) Deliveries to Escrow Holder. Prior to the Close of Escrow, each party shall timely deliver to Escrow all funds and documents required to complete the Close of Escrow under the terms of this Agreement.

(4) Escrow Fees and Costs.

(a) CITY's Payments. CITY shall pay: (i) fifty percent (50%) of the cost of the Title Policy of a standard CLTA Form Owner's Title Insurance Policy; and (ii) fifty percent (50%) of Escrow Holder's escrow fee or escrow cancellation charge.

(b) DISTRICT's Payments. DISTRICT shall pay: (i) fifty percent (50%) of the cost of the Title Policy of a standard CLTA Form Owner's Title Insurance Policy; and (2) fifty percent (50%) of Escrow Holder's escrow fee or escrow cancellation charge.

(c) Default. Notwithstanding the foregoing, in the event of a default by DISTRICT or CITY, all cancellation and other escrow charges shall be paid by the defaulting party.

(5) Prorations. Escrow Holder shall make the following prorations: Prorations for taxes, assessments, and other expenses, if any, affecting the School Property shall be pro-rated as of the day

prior to the Close of Escrow ("**Proration Date**"). The CITY shall pay all taxes and assessments on the School Property due prior to the Close of Escrow, including, without limitation, all special assessments. With respect to general and supplemental ad valorem real property taxes, because DISTRICT is a public agency, such taxes terminate on the Close of Escrow and therefore such taxes will not be prorated. Escrow Holder shall base such prorations, credits and debits on a proration statement ("**Proration Statement**") executed by CITY and DISTRICT and delivered to Escrow Holder prior to the Close of Escrow. Escrow Holder shall prepare a Proration Statement within ten (10) days prior to the Close of Escrow and have a copy delivered to CITY and DISTRICT for approval and execution.

Section 4. Conditions to Close of Escrow.

(1) DISTRICT's Conditions. The Close of Escrow and DISTRICT's obligation to purchase the School Property pursuant to this Agreement are conditioned on each of the following first occurring:

(a) Governmental Approvals and School Property Review. DISTRICT's approval or waiver of all aspects of the School Property, including, but not limited to the inspections and approvals listed above during the Inspection Period. DISTRICT shall obtain all requisite approvals from any and all governmental entities with jurisdiction for the use and development of the School Property for a public elementary school serving grades kindergarten through sixth, including but not limited to, all approvals required by the State of California.

(b) Environmental Condition. DISTRICT shall determine that the environmental and physical condition of the School Property is conducive for its intended uses and in conformance with, local, State and federal regulations for said uses.

(c) Title Insurance. Title Company's issuance of or commitment to issue to DISTRICT a California Land Title Association (CLTA) owner form policy of title insurance in the amount of Twenty Million Seven Hundred Seventy Thousand Dollars (\$20,770,000.00), subject only to the permitted exceptions, together with any endorsements designated by DISTRICT. In the event that DISTRICT elects to obtain an ALTA owner's policy of title insurance, it shall so notify Title Company. DISTRICT shall be responsible for any additional costs for the ALTA policy, including survey.

(d) Deed. The delivery by CITY to Escrow Holder, of a grant deed, in a form substantially similar to the form attached as **Exhibit D**, conveying the School Property to DISTRICT, subject to any restrictions agreed to by DISTRICT, including but not limited to a deed restriction to run with the land limiting the use of the School Property to public school use, as further described in **Section 10 Power of Termination by CITY**, containing the legal description of the School Property, properly executed and acknowledged ("**Grant Deed**"). The Grant Deed shall be delivered to Escrow Holder no later than ten (10) days prior to the Close of Escrow.

(e) Performance by the CITY. The performance by the CITY of each condition and obligation under this Agreement.

(f) Additional Deliveries. The delivery by CITY to Escrow Holder of such other documents as DISTRICT or the Title Company may reasonably request to enable DISTRICT to consummate the transaction contemplated by this Agreement.

Should these conditions fail to occur, then DISTRICT shall have the right, exercisable by the giving of written notice to Title Company and to CITY, to cancel the escrow and terminate this Agreement and the Deposit shall be returned to DISTRICT.

(2) CITY's Conditions. The Close of Escrow and CITY's obligation to sell the School Property pursuant to this Agreement are conditioned on each of the following first occurring:

(a) Pursuant to Government Code Section 53094, approval by DISTRICT's governing board of a resolution exempting the School Property from restrictions under City's Zoning Code which limit the use of the School Property to "Park and Open Space."

(b) Resolution of Litigation. The final resolution, as solely determined by CITY, of any claims, demands, litigation, or threatened litigation, if any, relating to the (i) proposed sale of the School Property from CITY to DISTRICT, (ii) proposed use of the School Property for educational purposes, (iii) the proposed construction of improvements on the School Property or CITY Property, (iv) environmental clearance for this Agreement or subsequent Joint Use Agreement, or (v) School Property, CITY Property, or Joint Use Area in any other manner whatsoever. For this condition only, and notwithstanding any other language in this Section (2), if the condition described in this subsection (b) fails to be satisfied, the Deposit shall be returned to DISTRICT.

(c) Deposit. The sum of Fifty Thousand Dollars (\$50,000.00) deposited by DISTRICT into escrow with Title Company within ten (10) days from the Effective Date ("Deposit") to be applied to the Purchase Price at the Close of Escrow.

(d) Balance of Purchase Price. The balance of the Purchase Price deposited by DISTRICT into escrow with Title Company ten (10) days prior to Close of Escrow.

(e) Joint Use Agreement. Execution of the Joint Use Agreement relating to the School Property and remaining City Property approved by their respective governing bodies.

(f) Additional Deliveries. The delivery by DISTRICT to Escrow Holder of such other documents as CITY or the Title Company may reasonably request to enable CITY to consummate the transaction contemplated by this Agreement.

(g) Performance by the DISTRICT. The performance by DISTRICT of each condition and obligation under this Agreement.

Should these conditions fail to occur, then CITY shall have the right, exercisable by the giving of written notice to Title Company and to DISTRICT, to cancel the Escrow and terminate this Agreement and the Deposit shall be retained by CITY.

Section 5. Representations and Warranties.

(1) CITY's Representations and Warranties. City makes the following representations and warranties as of the date of execution of this Agreement and, subject to City's right to modify the same by additional disclosures, as of Close of Escrow:

(a) Authority. CITY has full legal right, power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action; and the persons executing this Agreement and other documents on behalf of CITY are the duly designated agents of CITY and are authorized to do so.

(b) Litigation. To CITY's knowledge, there is no litigation pending or threatened against CITY involving the School Property that: (i) arises out of the ownership of the School Property, or (ii) might detrimentally affect the value of the School Property or the use or operation of the School Property or the ability of CITY to perform its obligations under this Agreement.

(c) Ownership of the School Property. CITY is the owner of fee title to the School Property, with full right to convey the same. CITY has not granted to any party any option or right of refusal or first opportunity to acquire any interest in any portion of the School Property.

(2) DISTRICT's Representations and Warranties. DISTRICT makes the following representations and warranties as of the date of execution of this Agreement and, subject to DISTRICT's right to modify the same by additional disclosures, as of Close of Escrow:

(a) Authority. DISTRICT has full legal right, power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action; and the persons executing this Agreement and other documents on behalf of DISTRICT are the duly designated agents of DISTRICT and are authorized to do so.

(3) Real Estate Commissions. Each party represents and warrants to the other party that no brokers have been employed or are entitled to a commission or compensation in connection with this transaction. Each party agrees to indemnify, hold harmless, protect and defend the other party (and its governing board or council members, administrators, managers, agents, successors and assigns) from and against any obligation or liability to pay any other commission or compensation to any other brokers arising from the act or agreement of the indemnifying party.

(4) Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall be deemed remade as of the date of Close of Escrow and shall survive the Close of Escrow.

(5) Disclaimer of Representations and Warranties. There are no representations, agreements, arrangements, or circumstances, oral or written, between the parties relating to the subject matter contained in this Agreement that are not fully expressed in the Agreement, and the

parties have not made and do not make any representation or warranty concerning any matter or thing affecting or relating to the School Property not expressed in this Agreement.

Section 6. Condemnation.

(1) If, prior to the Close of Escrow, all of the School Property is taken by eminent domain, or is the subject of a pending taking which has not been consummated, CITY shall immediately notify DISTRICT in writing of the event. In this event, this Agreement shall be immediately terminated. On termination of this Agreement, neither party shall have any rights or responsibilities to the other, and the Deposit shall be promptly returned to DISTRICT. In this event, any escrow cancellation fees in connection with the termination shall be paid by DISTRICT.

(2) If, prior to the Close of Escrow, a material portion but not all of the School Property is taken by eminent domain, or is the subject of a pending taking which has not been consummated, CITY shall immediately notify DISTRICT in writing of this event. DISTRICT shall then have the right to terminate this Agreement by written notice to CITY delivered within ten (10) days after DISTRICT's receipt of this notice, if DISTRICT reasonably believes that the portion of the School Property subject to being taken would materially and adversely affect DISTRICT's intended use of the School Property. The parties shall proceed to the Close of Escrow pursuant to the terms of this Agreement, without modification of this Agreement, except as necessitated by eminent domain action, and without any reduction in the Purchase Price. If DISTRICT terminates pursuant to this Section, then neither party shall have any rights or responsibilities to the other, and the Deposit shall be promptly returned to DISTRICT. Any escrow cancellation fees connected with this termination shall be paid by DISTRICT.

Section 7. Assignment.

This Agreement shall not be assigned by either party without the prior written approval of the other party.

Section 8. Notices.

All notices to be given under this Agreement shall be in writing and either:

(a) Sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail;

(b) Sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with this courier; or

(c) By fax, e-mail, or similar means, if a copy of the notice is also sent by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by fax, e-mail or other similar means provided that a transmission report is generated reflecting the accurate transmission of the notices, as follows:

To DISTRICT:

Milpitas Unified School District
Attention: Cary Matsuoka, Superintendent
1331 East Calaveras Blvd
Milpitas, CA 95035
Email: cmatsuoka@musd.org

To CITY:

City of Milpitas
Attention: Thomas C. Williams, City Manager
455 East Calaveras Boulevard, 3rd Floor
Milpitas, California 95035
twilliams@ci.milpitas.ca.gov

These addresses may be changed by written notice to the other party, provided that no notice of a change of address shall be effective until actual receipt by the parties of the notice as provided herein. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

Section 9. Indemnification.

(1) DISTRICT's Indemnification. DISTRICT agrees to indemnify and hold CITY free and harmless from any losses, damages, costs, or expenses (including attorney's fees) resulting from any inaccuracy in or breach of any representation or warranty of DISTRICT and any breach or default by DISTRICT under any of DISTRICT's covenants or agreements under this Agreement.

(2) Survival. The provisions of this Section 9 shall survive the Close of Escrow, expiration or earlier termination of this Agreement.

Section 10. Power of Termination by CITY.

CITY agrees to sell the School Property under the terms and conditions herein for the specific purpose of DISTRICT's construction and operation of a public school serving Milpitas students. The Grant Deed, a form of which is attached hereto as Exhibit D, reserves to GRANTOR a power of termination in the School Property as such powers are described in California Civil Code Section 885.010 et seq., which shall become enforceable should DISTRICT cease using the School Property as described in this Section (unless such cessation is due to a natural disaster or act of God).

Section 11. Entire Agreement.

This instrument contains the entire agreement of the parties; any previous understandings of the parties regarding the subject matter of this Agreement are expressly declared void and are superseded by this Agreement. Any revisions or amendments to this Agreement must be in writing, signed by both parties and approved by both governing bodies.

Section 12. Time of Essence.

Time is of the essence for each condition, term, and provision in this Agreement in which time is a factor. Days, unless otherwise specified, shall mean calendar days.

Section 13. Severability.

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

Section 14. Waivers.

A waiver or breach of a covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

Section 15. Construction.

Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to and incorporated by this reference.

Section 16. Governing Law.

This Agreement shall be governed and construed in accordance with California law.

Section 17. Venue.

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 Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Section 18. Binding on Successors.

This Agreement inures to the benefit of and is binding on the parties, their respective heirs, personal representatives, successors, and assigns.

Section 19. Delegation of Authority.

The City Manager or the City Manager's designee has the authority, on behalf of CITY, to execute all documents necessary to complete the purchase and sale of the School Property. DISTRICT has the legal ability to enter into this Agreement and DISTRICT's signatory(ies) to

this Agreement is/are duly authorized to execute all documents necessary to complete the purchase and sale of the School Property. The parties represent and warrant that they have the legal power, right, and authority to enter into this Agreement and the instruments referenced herein and no authority of any third party is required.

Section 20. Further Assurances.

Each of the parties agree that they will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to the Close of Escrow, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.

Section 21. Exhibits.

References herein to exhibits are to Exhibit A, Exhibit B, Exhibit C and Exhibit D attached hereto, which exhibits are hereby incorporated by reference.

Exhibit A. Legal Description and Plat Map of CITY Property

Exhibit B. Legal Description and Plat Map of School Property

Exhibit C. Insurance Requirements

Exhibit D. Grant Deed with Power of Termination

Section 22. Termination of Joint Use Agreement.

If this Agreement is terminated, including for the failure of the Conditions of Escrow to be satisfied, then the Joint Use Agreement shall also be terminated and neither DISTRICT nor CITY shall have any further obligations thereunder.

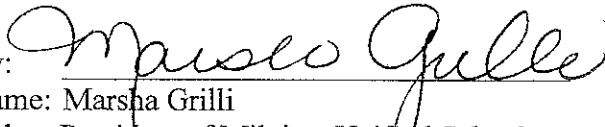
[SIGNATURES ARE ON THE FOLLOWING PAGE]

The parties have executed this Agreement as of the latest date below.

"DISTRICT"

**Milpitas Unified School District, a school district
organized and existing under the laws of the
State of California**

Its: Board President

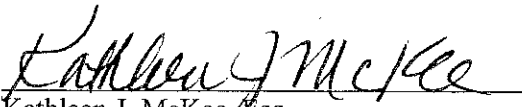
By: 

Name: Marsha Grilli

Title: President of Milpitas Unified School
District Board

Date: 10-21-14

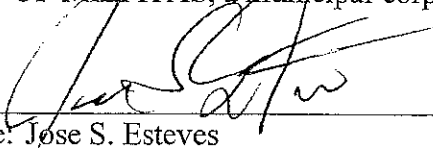
APPROVED AS TO FORM

By: 

Kathleen J. McKee, Esq.
District Real Estate Counsel

"CITY"

CITY OF MILPITAS, a municipal corporation

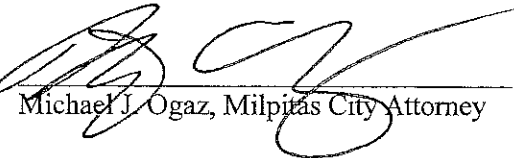
By: 

Name: Jose S. Esteves

Title: Mayor of City of Milpitas

Date: 10/21/14

APPROVED AS TO FORM

By: 

Michael J. Ogaz, Milpitas City Attorney

EXHIBIT A

CITY PROPERTY*

Legal Description

the following described property in the City of **Milpitas**, County of **Santa Clara**, State of **California**:

PARCELS 2 AND 3 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS, PAGE(S) 41, 42 AND 43.

EXCEPTING FROM THE NORTHERLY 50 FEET OF PARCEL 3:

ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND, PROVIDED HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS OF THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTED THEREON, AS RESERVED IN THE GRANT DEED EXECUTED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 24, 1975 IN BOOK B788, PAGE 512 OFFICIAL RECORDS.

***Plat map for City Property will be inserted prior to Close of Escrow.**

EXHIBIT B

SCHOOL PROPERTY*

Legal Description

An approximately 6.7 acre portion of:

the following described property in the City of **Milpitas**, County of **Santa Clara**, State of **California**:

PARCELS 2 AND 3 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS, PAGE(S) 41, 42 AND 43.

EXCEPTING FROM THE NORTHERLY 50 FEET OF PARCEL 3:

ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND, PROVIDED HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS OF THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTED THEREON, AS RESERVED IN THE GRANT DEED EXECUTED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 24, 1975 IN BOOK B788, PAGE 512 OFFICIAL RECORDS.

* The exact area will be determined after soil testing and other studies conducted by District. A plat map and legal description of the approximate 6.7 acres will be inserted prior to Close of Escrow and replace the above legal description.

EXHIBIT C

INSURANCE REQUIREMENTS

DISTRICT, at DISTRICT's sole cost and expense, shall procure and maintain for the duration of the Inspection Period insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, the performance of the services hereunder by DISTRICT, its officers, employees, agents or consultants.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

There shall be no endorsement reducing the scope of coverage required above unless approved in writing by the CITY's City Manager.

B. Minimum Limits of Insurance

DISTRICT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by CITY's City Manager. At the option of CITY, either the insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors, or DISTRICT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's City Manager.

D. **Other Insurance Provisions**

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

1. Commercial General Liability and Automobile Liability Coverages
 - a. CITY, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of DISTRICT; products and completed operations of DISTRICT; premises owned, leased or used by DISTRICT; and automobiles owned, leased, hired or borrowed by DISTRICT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. DISTRICT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of DISTRICT's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by DISTRICT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that DISTRICT'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.
 - e. Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten

(10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's City Manager.

F. **Verification of Coverage**

DISTRICT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: twilliams@ci.milpitas.ca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the City Manager):

City of Milpitas – City Manager
Thomas C. Williams
455 East Calaveras Blvd, 3rd Floor
Milpitas, CA 95035

G. **Consultants**

DISTRICT shall include all subconsultants as insured under its policies or shall obtain separate certificates and endorsements for each subconsultant.

EXHIBIT D (FORM OF GRANT DEED)

RECORDING REQUESTED BY:

MILPITAS UNIFIED SCHOOL DISTRICT,
a public school district organized and existing
under the laws of the State of California

AND WHEN RECORDED MAIL TO:

MILPITAS UNIFIED SCHOOL DISTRICT
1331 East Calaveras Blvd
Milpitas, CA 95035
Attn: Cary Matsuoka, Superintendent

ASSESSOR'S PARCEL NO: 086-41-016, 086-41-017, 086-41-018 (ABOVE SPACE FOR RECORDER'S USE ONLY)

NO DOCUMENTARY TAX DUE
EXEMPT PER REVENUE AND TAX CODE 11922

GRANT DEED WITH POWER OF TERMINATION

For valuable consideration, receipt of which is hereby acknowledged,

CITY OF MILPITAS, a municipal corporation of the State of California
("GRANTOR")

hereby grants to

MILPITAS UNIFIED SCHOOL DISTRICT, a public school district organized and
existing under the laws of the State of California ("GRANTEE")

all that real property described in Exhibit A and depicted on Exhibit B attached hereto and made
a part hereof, in the City of Milpitas, County of Santa Clara, State of California, ("**Property**")
which conveyance is made expressly subject to the following covenants, conditions, and
restrictions:

This Grant Deed reserves to GRANTOR a power of termination in the Property as such
powers are described in California Civil Code Section 885.010 et seq. and further set
forth in Exhibit C, attached hereto. The power of termination shall become enforceable
should GRANTEE cease using and operating the Property for a public school serving
Milpitas students (unless such cessation is due to a natural disaster or act of God).

Date: _____

CITY OF MILPITAS

By: _____
Title: _____

EXHIBIT A TO GRANT DEED*
LEGAL DESCRIPTION

An approximately 6.7 acre portion of:

the following described property in the City of **Milpitas**, County of **Santa Clara**, State of **California**:

PARCELS 2 AND 3 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS, PAGE(S) 41, 42 AND 43.

EXCEPTING FROM THE NORTHERLY 50 FEET OF PARCEL 3:

ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AND LYING BELOW A PLANE WHICH IS 500 FEET BELOW THE SURFACE OF THE GROUND, PROVIDED HOWEVER, THAT ANY EXPLORATION FOR OR REMOVAL OF ANY SUCH OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM SHALL BE BY MEANS OF SLANT DRILLING OR TUNNELING FROM LANDS ADJACENT TO SAID REAL PROPERTY OR OTHER METHODS NOT REQUIRING OPERATIONS OF THE SURFACE OF SAID REAL PROPERTY AND SHALL BE PERFORMED SO AS NOT TO ENDANGER SAID SURFACE OR ANY STRUCTURE WHICH SHALL BE ERECTED OR CONSTRUCTED THEREON, AS RESERVED IN THE GRANT DEED EXECUTED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 24, 1975 IN BOOK B788, PAGE 512 OFFICIAL RECORDS.

* The exact area will be determined after soil testing and other studies conducted by District. A legal description of the approximate 6.7 acres will be inserted prior to Close of Escrow and replace the above legal description.

EXHIBIT B TO GRANT DEED
DEPICTION OF PROPERTY

PLAT MAP
(WILL BE INSERTED PRIOR TO CLOSE OF ESCROW)

PUBLIC AGENCY CERTIFICATE OF ACCEPTANCE

(Government Code section 27281)

This Certificate of Acceptance certifies that the interest in real property conveyed by the Grant Deed dated _____ from the City of Milpitas, a municipal corporation of the State of California ("Grantor"), is hereby accepted in the form to which this Certificate of Acceptance is attached, by the undersigned on behalf of the Board of Trustees of the Milpitas Unified School District ("Grantee"), pursuant to the authority conferred by California Education Code section _____ and the resolution of said Board of Trustees adopted on _____. Grantee consents to recordation thereof by its duly authorized officer.

GRANTEE

MILPITAS UNIFIED SCHOOL DISTRICT

By: _____
Cary Matsuoka, Superintendent

EXHIBIT C to Grant Deed
Power of Termination

A. GENERAL.

1. Conditions Subsequent. The sale of the School Property to District is made expressly subject to the following conditions subsequent that: (i) District shall construct and operate a public school on the School Property on or before October 21, 2019, provided District, at its sole discretion, may extend the date to October 21, 2024 with written notice to City, and the parties may further extend the date by written agreement; and (ii) that any future use of the School Property shall only be for a public school operated by the Milpitas Unified School District serving Milpitas students (each, a "Condition" and collectively "Conditions").

2. Reservation of Power of Termination. The sale of the School Property reserves to City a power of termination in the Property as such powers are described in California Civil Code Section 885.010 et seq, as may be amended or replaced in the future. The power of termination shall become enforceable should District cease using and operating the School Property for a public school serving Milpitas students (unless such cessation is due to a natural disaster or act of God).

B. EXERCISE OF POWER OF TERMINATION.

1. Civil Code Section 885.050. Exercise of the power of termination shall be carried out pursuant to the requirements of Civil Code section 885.050, as amended or replaced.

2. Notice and Cure Period. In the event of a default of a Condition, CITY shall provide written notice to District of the alleged default and the manner in which District can cure the default. District shall have a period of twenty (20) business days after receipt of written notice (the "**Notice Period**") to cure such default. During the Notice Period, District shall have the right to cure any such default. If the default takes longer than twenty (20) business days to cure, so long as District has begun the cure within the twenty (20) business days and continues it to completion, District shall not be in default.

3. Failure to Cure. Upon the failure to cure a default as described above, City may exercise the power of termination by delivering notice thereof in writing to District and recording such notice ("**Notice of Exercise**"). The delivery and recording of the Notice of Exercise shall apply to re-vest in City, the School Property together with any and all improvements thereon and rights or interests appurtenant thereto on the terms and conditions set forth in this Exhibit. In the event the City exercises its power of termination within forty (40) years beginning from the date the school commences instruction to students, the City and District agree that any revesting of the School Property from the District back to the City shall be at absolutely no cost to City, including

no cost for the real property, improvements or otherwise in any manner whatsoever. In the event the City exercises its power of termination after forty (40) years, the parties shall negotiate the price the City will pay for the School Property.

4. Notice. The Notice provisions of the Purchase and Sale Agreement dated October 21, 2014, to which this exhibit is attached, shall apply.

SINGER ASSOCIATES, INC.
PUBLIC AFFAIRS & CORPORATE COMMUNICATIONS

19 August 2015

To: Tom Williams, City of Milpitas

From: Sam Singer and Tina Walker, Singer Associates, Inc.

Re: City of Milpitas Strategic Communications Plan

This strategic communications plan is designed to identify goals and strategies to effectively communicate with community members, drive the development of internal communications policies and improve the overall effectiveness of the City in meeting the needs of the community.

This plan will lay the foundation for future communication policies and programs and will be a dynamic document reviewed and updated annually.

MISSION

Produce and manage strategic public communications that provide information with regards to City services; foster community dialogue and problem-solving between residents, businesses, stakeholders and the City; highlight investments in the community; provide transparency of City policies, goals and the decision-making process; and promote a positive image of Milpitas.

GOALS

- Enhance the quality of information provided to residents, businesses, stakeholders, City employees and other target audiences
- Strengthen residents' relationships with the City and each other
- Foster a sense of pride in Milpitas
- Increase outreach to stakeholders on the local, regional, national and international levels
- Showcase current businesses, residents and institutions investing in Milpitas
- Promote future investment opportunities in Milpitas
- Highlight City services that stakeholders can access to improve their quality of life.

TARGET AUDIENCES

- **Citizens of Milpitas:** By keeping residents informed, we will create a sense of ownership that will foster good communications with other audiences.
- **Media:** Local media coverage of meetings, issues, events, programs and projects reaches a significant number of target audiences. City communications are also shared with local television and radio stations, magazines and other publications, as well as government

agencies. Non-English speaking media also are an important outlet. The relationship between the City and the media is vital in order to maintain a positive image of the City.

- **City of Milpitas Mayor and City Council:** Keeping elected officials informed will assist them in representing the City, answering questions and responding to criticisms with factual and current information. Keeping elected officials up to date on City issues is extremely important as the community looks to them for answers and understanding.
- **City of Milpitas employees:** Many employees communicate with citizens on a daily basis. Employees are one of the most valuable resources when it comes to maintaining and enhancing the City's image.
- **Milpitas's Community Organizations:** Milpitas has numerous civic and community organizations. These groups are made up of volunteers who give time and money to support their organizations and their outreach efforts.
- **Local Businesses and Business Owners:** Businesses based in Milpitas serve as an economic generator for the City and help establish ownership and pride in place. Working with business owners directly to address their needs and provide them with a voice will go a long way to maintain local business. Working with the local chamber of commerce and economic development groups will help foster this relationship.
- **Surrounding Community Citizens/Visitors:** Residents of surrounding communities work, shop, dine and attend entertainment venues within the City of Milpitas. They are not residents of Milpitas, but they may be affected by the actions and decisions of the City. Milpitas' economic health is supported by out of town residents – another reason to maintain a strong public image.

COMMUNICATIONS PLAN

Branding/Marketing: A consistent and recognizable identity is vital to the success of any brand. This identity along with key graphic elements in marketing materials will serve to build and maintain a positive image of the city in the minds of our target audiences.

Objectives

- Determine current perceptions of Milpitas and vision for the future
- Building on Milpitas' rich history, create a refreshed and progressive identity for the City to assist with strategic goals, including economic development
- Develop a Milpitas pride campaign that will weave throughout all materials and outreach

Strategies

- Conduct focus groups and online surveys to determine current perceptions of the city and the community's vision for the future
- Initiate re-branding campaign
- Retain city seal for select documents and utilize new brand for marketing purposes
- Develop citywide rollout plan for city brand (web, business system, city signage/gateways, newsletters/publications, promotional items, uniforms, vehicles, council chambers, television programming and interior signage/marqueses)

News and New Media Relations The media are an objective third-party to deliver news to citizens. When working with the media, it's important to honor their deadlines and respond in a timely manner. To make certain the City receives maximum coverage and exposure for its public messaging, regular dialogue is vital.

Objectives

- Proactive rather than reactive media relations
- Expand professional relationships with members of the media/blogosphere
- Develop a reputation as a “media friendly” City of accessible experts
- Ensure information being disseminated is consistent and timely, spoken with “one voice”

Strategies

- Routine press releases and photo opportunities surrounding breaking news, as well as upcoming events and milestones for the city – including the Super Bowl, Festival of Colors and other popular events
- Press conferences organized around breaking news and milestone events
- Furnish tailored pitches to media contacts
- Regular meetings with local reporters
- Update/develop comprehensive media lists
- Develop media kit folders for public events
- Editorial calendar monitoring of feature possibilities
- Increased use of social media (FB, Twitter, Pinterest, etc.) by City of Milpitas

Community Relations and Communications Engaging the community and disseminating timely and relevant information about the City is crucial for the success of any municipality.

Objectives

- Keep the public informed of all major news, events and milestones within the City
- Increase opportunities for two-way communications with all members of the community
- Increase opportunities for community members to interact with the City Council
- Present progressive, transparent and effective image of the City
- Obtain important feedback from the community
- Encourage civic and community pride and participation

Strategies

- Create an annual report to highlight the City's accomplishments from the prior year and disseminate to community members (digital online version will save City money and make it easier to disseminate).
- Create online newsletters apprising community members of recent news and upcoming events

- Town Hall meetings to interact with community members and provide useful information Conduct focus groups and online “Community Satisfaction Surveys” to create a benchmark and evaluate ways to improve community relations
- Continue routine communications/coordination of information with the School District, community organizations and major private sector employers within the City

Web/Social Media: The purpose of web-based information is to have an additional way of communicating to those who have an interest in the City of Milpitas and its services. Additionally, social media is an important way to engage civic participation. This format has the potential to reach a new demographic, breaking down barriers, and bringing a positive view of the City to citizens and stakeholders inside and outside of Milpitas.

Objectives

- Enhance the City’s presence on the web, social media
- Disseminate timely information through a variety of web-based communication channels
- Engage in online interaction with community members to improve outreach and efficiency

Strategies

- Update the current City of Milpitas website to create a new dynamic and interactive presence on the web, including:
 - A news portal through the site
 - Create a “submit story idea” page
 - E-Newsletter signup
 - Create and post welcome video from Mayor on home page
- Enhance the City’s existing Facebook page to promote transparency, connect with residents, business owners and visitors, and share information. The City will post links to press releases and public notices, newsletters, City Hall topics, City-sponsored community meeting information, and project updates and pictures.
- Create a Twitter account to provide quick, inexpensive, and interesting content. The City will live tweet public meetings to engage those who are unable to attend. There is also potential to reach commuters and non-residents who use Twitter but would not subscribe to a City newsletter.
- Create an Instagram account to share a steady stream of photos of City operations to give residents visual insight into the day to day operations of Milpitas, thereby increasing their connection to the city.
- Consider other forms of digital communications.
- Promote e-newsletter signup through social media and on the website

Internal Communications: Creating strong relationships with City employees creates a sense of ownership in the City, builds trust, fosters a positive work environment and creates ambassadors for the City to utilize to tell its story.

Objectives

- Ensure that employees are kept in the loop of developing news and upcoming events
- Increase recognition of employees' accomplishments, both internally and externally
- Boost morale and enhance trust in City leadership

Strategies

- More frequent communications from City Manager to staff
- Create digital regular/monthly employee newsletter
- Implement employee of the month and feature them in employee newsletter and website
- Provide employees with talking points on current events and issues within the City so they can talk comfortably with community members

Communications Training: Being comfortable when dealing with the media and having prepared messages are essential in order to optimize media interviews and public communication.

Objectives

- Ensure council and City leadership are comfortable dealing with the media
- Increase opportunities for employees to receive communications training

Strategies

- Conduct communications training briefings

Crisis Communication: Crisis communication can entail emergency management as well as image management during challenging events. Being prepared for these situations ensures that the City's response is swift and effective.

Objectives

- Effectively prepare staff to manage crisis communications
- Provide timely, accurate information to internal and external audiences during a crisis

Strategies

- Crisis management protocol
- Structure strategic messages that acknowledge the ongoing issues, while continuing to highlight the strengths, accomplishments and attributes of the City as a whole.
- Written materials for council/departments to use in emergencies
- Timely updates in emergencies

BUDGET

Singer Associates works on a time and materials basis. We estimate, based on our experience, that this effort would include an average of \$12,000 - \$15,000 in professional fees per month over the course of the engagement, excluding out of pocket costs, which we expect to be minimal. We can tailor a program to meet any budgetary requirements you may have at the City.

CONCLUSION

We are honored to be of assistance to the City of Milpitas. Thank you for the opportunity to provide you with this action to develop, plan and execute public affairs and public information services on behalf of the City of Milpitas. Please feel free to contact us at your earliest convenience to discuss this plan in more detail. Thank you.

**List of Attachments for Joint Meeting of City Council and
Economic Development Corporation**

- **Five (5) Memorandums of Termination of Option to Purchase
Certain Properties**

Attachments:

- 19-A Vacant Lot – 86 North Main
- 19-B Vacant Lot – 230 North Main
- 19-C Cracolice – 540 South Abel Street
- 19-D Public Works Corporation Yard – 1265 North Milpitas Boulevard
- 19-E Milpitas Sports Center – 1325 East Calaveras Boulevard

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, California, 95035
Attn: City Manager

EXEMPT FROM RECORDING FEE PER
CA GOVERNMENT CODE §§ 6103, 27383

MEMORANDUM OF TERMINATION OF OPTION

This Memorandum of Termination of Option is made on October 6, 2015, between the City of Milpitas ("Optionor"), a municipal corporation of the State of California, and the Milpitas Economic Development Corporation, a nonprofit public benefit corporation, ("Optionee"), who agree as follows:

1. Optionor has previously granted to Optionee the option to purchase the real property described in Exhibit "A" (the "Option Property"), by that Memorandum of Option ("Memorandum of Option") recorded on March 29, 2011 as document #21128235 in the Office of the Recorder for the County of Santa Clara, California, which Memorandum commemorates the terms of that certain Option to Purchase Agreement between Optionor and Optionee concerning the Option Property and dated March 28, 2011 ("Option Agreement"). Together the Memorandum of Option and Option Agreement grant to Optionee certain option rights to the Option Property commonly known as 86 North Main Street, in Milpitas, California.
2. At this time it is the intent of Optionor and Optionee to terminate all rights and benefits, and in particular any option rights, conferred upon Optionee under the aforementioned Memorandum of Option and Option Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Termination of Option Agreement.

OPTIONOR
CITY OF MILPITAS

Thomas C. Williams,
City Manager

Date: _____

OPTIONEE
MILPITAS ECONOMIC DEVELOPMENT CORPORATION

Thomas C. Williams,
President

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

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

Beginning at a point in the Northwestern line of the parcel of land described in the deed from Flora Wigmore to Frank Dutra, dated December 10, 1910 and recorded April 3, 1911 in Book 370 of Deeds, at Page 83, Santa Clara County Records, distant thereon Southwesterly 76.64 feet from the Northeasterly corner thereof in the Westerly line of the Old San Jose Mission Road; thence from said point of beginning, Southwesterly along said Northwestern line of 105.00 feet to the Easterly line of the Oakland Highway; thence Southeasterly along said line 60.37 feet; thence Northeasterly, parallel with the said Northwestern line of the Dutra parcel 105.00 feet to a point which bears Southwesterly, parallel with said Northwestern line 76.73 feet from the Westerly line of the Old San Jose Mission Road; thence Northwesternly 60.37 feet to the point of beginning.

Being a portion of the Tularcitos Rancho.

APN: 028-24-025

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, California, 95035
Attn: City Manager

EXEMPT FROM RECORDING FEE PER
CA GOVERNMENT CODE §§ 6103, 27383

MEMORANDUM OF TERMINATION OF OPTION

This Memorandum of Termination of Option is made on October 6, 2015, between the City of Milpitas ("Optionor"), a municipal corporation of the State of California, and the Milpitas Economic Development Corporation, a nonprofit public benefit corporation, ("Optionee"), who agree as follows:

1. Optionor has previously granted to Optionee the option to purchase the real property described in Exhibit "A" (the "Option Property"), by that Memorandum of Option ("Memorandum of Option") recorded on March 29, 2011 as document #21128234 in the Office of the Recorder for the County of Santa Clara, California, which Memorandum commemorates the terms of that certain Option to Purchase Agreement between Optionor and Optionee concerning the Option Property and dated March 28, 2011 ("Option Agreement"). Together the Memorandum of Option and Option Agreement grant to Optionee certain option rights to the Option Property commonly known as 230 North Main Street, in Milpitas, California.
2. At this time it is the intent of Optionor and Optionee to terminate all rights and benefits, and in particular any option rights, conferred upon Optionee under the aforementioned Memorandum of Option and Option Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Termination of Option Agreement.

OPTIONOR
CITY OF MILPITAS

Thomas C. Williams,
City Manager

Date: _____

OPTIONEE
MILPITAS ECONOMIC DEVELOPMENT CORPORATION

Thomas C. Williams,
President

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

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

LOT 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "TRACT NO. 9690, ONE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES APTON PLAZA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 1, 2007 IN BOOK 819 OF MAPS AT PAGES 1 AND 2.

EXCEPTING AND RESERVING THEREFROM, ALL OIL, GAS AND OTHER HYDROCARBONS, GEOTHERMAL RESOURCES AS DEFINED IN SECTION 6903 OF THE CALIFORNIA PUBLIC RESOURCE CODE AND ALL OTHER MINERALS, WHETHER SIMILAR TO THOSE SPECIFIED OR NOT, WITHIN OR THAT MAY BE PRODUCED FROM SAID REAL PROPERTY, PROVIDED; HOWEVER, THAT ALL RIGHTS AND INTEREST IN THE SURFACE OF SAID REAL PROPERTY ARE HEREBY CONVEYED TO GRANTEE, NO RIGHT OR INTEREST OF ANY KIND TO USE THE SURFACE, EXPRESSED OR IMPLIED, BEING EXCEPTED OR RESERVED TO GRANTOR; AND PROVIDED FURTHER THAT GRANTOR SHALL NOT, IN EXERCISING SUCH RIGHTS, DO ANYTHING WHICH WILL DAMAGE THE SURFACE OF SAID REAL PROPERTY OR ANY STRUCTURES THEREON, AND SHALL NOT CONDUCT ANY DRILLING OR OTHER OPERATIONS OF ANY KIND IN THE FIRST FIVE HUNDRED FEET BELOW THE SURFACE OF SAID REAL PROPERTY.

FURTHER EXCEPTING AND RESERVING THEREFROM, THE SOLE AND EXCLUSIVE RIGHT FROM TIME TO TIME TO DRILL AND MAINTAIN WELLS OR OTHER WORKS INTO OR THROUGH SAID REAL PROPERTY AND THE ADJOINING STREETS, ROADS AND HIGHWAYS BELOW A DEPTH FOR FIVE HUNDRED FEET AND TO PRODUCE, OR INJECT, STORE AND REMOVE FROM AND THROUGH SUCH WELLS OR WORKS, OIL, GAS, WATER AND OTHER SUBSTANCES OF WHATEVER NATURE INCLUDING THE RIGHT TO PERFORM BELOW SAID DEPTH ANY AND ALL OPERATIONS DEEMED BY GRANTOR NECESSARY OR CONVENIENT FOR ALL EXERCISE OF SUCH RIGHTS.

APN: 028-34-001 thru 006 (Affects Unit 101 thru 106), 028-34-007 thru 024 (Affects Unit 108 thru 125), 028-34-025 thru 029 (Affects Unit 128 thru 132), 028-34-030 thru 061 (Affects Unit 201 thru 232), 028-34-062 thru 093 (Affects Unit 301 thru 332), 028-34-094 (Affects Unit A)

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, California, 95035
Attn: City Manager

EXEMPT FROM RECORDING FEE PER
CA GOVERNMENT CODE §§ 6103, 27383

MEMORANDUM OF TERMINATION OF OPTION

This Memorandum of Termination of Option is made on October 6, 2015, between the City of Milpitas ("Optionor"), a municipal corporation of the State of California, and the Milpitas Economic Development Corporation, a nonprofit public benefit corporation, ("Optionee"), who agree as follows:

1. Optionor has previously granted to Optionee the option to purchase the real property described in Exhibit "A" (the "Option Property"), by that Memorandum of Option ("Memorandum of Option") recorded on March 29, 2011 as document #21128237 in the Office of the Recorder for the County of Santa Clara, California, which Memorandum commemorates the terms of that certain Option to Purchase Agreement between Optionor and Optionee concerning the Option Property and dated March 28, 2011 ("Option Agreement"). Together the Memorandum of Option and Option Agreement grant to Optionee certain option rights to the Option Property commonly known as 540 South Abel Street, in Milpitas, California.
2. At this time it is the intent of Optionor and Optionee to terminate all rights and benefits, and in particular any option rights, conferred upon Optionee under the aforementioned Memorandum of Option and Option Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Termination of Option Agreement.

OPTIONOR
CITY OF MILPITAS

Thomas C. Williams,
City Manager

Date: _____

OPTIONEE
MILPITAS ECONOMIC DEVELOPMENT CORPORATION

Thomas C. Williams,
President

Date: _____

EXHIBIT A

Legal Description

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

Parcel One:

Beginning at an iron pipe in the Northwestern line of Parcel 2 as described in Deed, Frank S. Dophna, et us, to City and County of San Francisco, recorded in Book 1985, page 612, Official Records, at the most Southerly corner of Parcel No. 2 as described in the Deed, Clarence L. Smith, et al, to Auto Employees Federal Credit Union, recorded in Book 5517, page 151, Official Records of Santa Clara County; thence along the Southwesterly line of said Parcel No. 2 so conveyed to Auto Employees Federal Credit Union and the Northwestern prolongation thereof, North 11° 31'50" West, 180.24 feet to an iron point; thence South 78° 35' 30" West, 121.87 feet to a point in the Northeasterly line of Parcel "A" as shown on Record of Survey Map recorded in Book 157 of Maps, page 56, Santa Clara County Records; thence along last mentioned line, being also the center line of Penitencia Creek, South 34° 17' 10" East, 112.36 feet to an iron pipe; and South 29° 37' East, 93.33 feet to an iron pipe at the most Easterly corner of said Parcel "A"; thence along the Northwestern line of said Parcel 2 conveyed to City and County of San Francisco, North 65° 00'30" East, 50.83 feet to the point of beginning, and being a portion of Milpitas Rancho.

Parcel Two:

Parcel "A" as shown on Record of Survey Map recorded in Book 157 of Maps, page 56, Santa Clara County Records.

Excepting therefrom that portion thereof described in the Deed to John F. Pyle, et al, recorded July 20, 1964 in Book 6589 of Official Records, at page 446, Santa Clara County Records.

APN: 8610025

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, California, 95035
Attn: City Manager

EXEMPT FROM RECORDING FEE PER
CA GOVERNMENT CODE §§ 6103, 27383

MEMORANDUM OF TERMINATION OF OPTION

This Memorandum of Termination of Option is made on October 6, 2015, between the City of Milpitas ("Optionor"), a municipal corporation of the State of California, and the Milpitas Economic Development Corporation, a nonprofit public benefit corporation, ("Optionee"), who agree as follows:

1. Optionor has previously granted to Optionee the option to purchase the real property described in Exhibit "A" (the "Option Property"), by that Memorandum of Option ("Memorandum of Option") recorded on March 29, 2011 as document #21128236 in the Office of the Recorder for the County of Santa Clara, California, which Memorandum commemorates the terms of that certain Option to Purchase Agreement between Optionor and Optionee concerning the Option Property and dated March 28, 2011 ("Option Agreement"). Together the Memorandum of Option and Option Agreement grant to Optionee certain option rights to the Option Property commonly known as 1265 North Milpitas Boulevard, in Milpitas, California.
2. At this time it is the intent of Optionor and Optionee to terminate all rights and benefits, and in particular any option rights, conferred upon Optionee under the aforementioned Memorandum of Option and Option Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Termination of Option Agreement.

OPTIONOR
CITY OF MILPITAS

Thomas C. Williams,
City Manager

Date: _____

OPTIONEE
MILPITAS ECONOMIC DEVELOPMENT CORPORATION

Thomas C. Williams,
President

Date: _____

EXHIBIT A
Legal Description

All of that certain real property situated in the City of Milpitas, County of Santa Clara, State of California, described as follows:

Police station and corporation yard facility commonly known as 1265 North Milpitas Boulevard in Milpitas, California, County of Santa Clara, Assessor's Parcel No. 2202012, and more particularly described in Exhibit "A" of the Santa Clara County Superior Court Final Order of Condemnation, filed in the Santa Clara County Recorder's Office as Document No. 10684099.

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, California, 95035
Attn: City Manager

EXEMPT FROM RECORDING FEE PER
CA GOVERNMENT CODE §§ 6103, 27383

MEMORANDUM OF TERMINATION OF OPTION

This Memorandum of Termination of Option is effective on September 14, 2015 and made between the City of Milpitas ("Optionor"), a municipal corporation of the State of California, and the Milpitas Economic Development Corporation, a nonprofit public benefit corporation, ("Optionee"), who agree as follows:

1. Optionor has previously granted to Optionee the option to purchase the real property described in Exhibit "A" (the "Option Property"), by that Memorandum of Option ("Memorandum of Option") recorded on March 29, 2011 as document #21128234 in the Office of the Recorder for the County of Santa Clara, California, which Memorandum commemorates the terms of that certain Option to Purchase Agreement between Optionor and Optionee concerning the Option Property and dated March 28, 2011 ("Option Agreement"). Together the Memorandum of Option and Option Agreement grant to Optionee certain option rights to the Option Property commonly known as 1325 East Calveras Boulevard, in Milpitas, California.
2. At this time it is the intent of Optionor and Optionee to terminate all rights and benefits, and in particular any option rights, conferred upon Optionee under the aforementioned Memorandum of Option and Option Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Termination of Option Agreement.

OPTIONOR
CITY OF MILPITAS

Thomas C. Williams,
City Manager

Date: _____

OPTIONEE
MILPITAS ECONOMIC DEVELOPMENT CORPORATION

Thomas C. Williams,
President

Date: _____

EXHIBIT A
Legal Description

All that certain real property situated in the City of Milpitas, County of Santa Clara, State of California, described as follows:

PARCEL 1 through PARCEL 12, inclusive, and Easements A, B and C of Amended Parcel Map filed June 4, 1986 in Book 560 of Maps, at pages 45 and 46, Santa Clara County Records.

RESERVING therefrom an easement for access and utility purposes over that portion thereof within Easement C as shown on said Map

Assessor's Parcel Nos. 2917004, 2917005, 2917006, 2917007, 2917008, 2917009, 2917010, 2917011, 2917012, 2917013, 2917015.

MEETING MINUTES CITY OF MILPITAS

Minutes of: Special Joint Meeting of the Milpitas City Council and Planning Commission
Date: Tuesday, October 6, 2015
Time: 5:30 PM
Location: Milpitas City Hall Committee Room
455 E. Calaveras Blvd.

CALL TO ORDER

Mayor Esteves called the joint meeting to order at 5:33 PM.

ROLL CALL

CITY COUNCIL: Mayor Esteves, Councilmembers Barbadillo, Giordano and Grilli

PLANNING COMMISSION: Chair Mandal, Commissioners Lien, Madnawat, Maglalang, Sandhu and Alternate Member Mohsin

ABSENT: Vice Mayor Montano, Commissioners Ciardella and Morris

Staff present included City Manager Tom Williams, City Attorney Chris Diaz, City Clerk Mary Lavelle, Planning Director Bill Ekern and Economic Development Manager Edesa Bitbadal

PLEDGE OF ALLEGIANCE

Mayor Esteves led all in the Pledge of Allegiance to the flag.

Mayor Esteves welcomed all the Planning Commissioners to this joint meeting. Planning Commission Chair Sudhir Mandal offered his thanks to the Mayor, who took up the offer and idea to meet together, which came from the entire group of Commissioners.

Public Forum speakers:

Rob Means, Milpitas resident, announced a conference in spring of next year 2016 on podcars.

Cary Matsuoka, Superintendent of Milpitas Unified School District, stated that as the City prepared to begin the process of creating a new General Plan, schools wanted to be involved. Where schools located was very important.

Councilmember Giordano suggested on timing for the agenda that maybe the group should plan to spend ten minutes per item on the agenda, so as to finish prior to 7:00 PM, when the City Council needed to move upstairs for its regular meeting.

Understanding Council Priorities

Mayor Esteves reported that priorities have been approved by City Council, especially the Capital Improvement Program (CIP) which was a priority and should be implemented in that year. In terms of development, the focus was on housing in the Transit Area Specific Plan (TASP) and the MidTown Specific Plan areas.

City Manager Tom Williams announced that the core City services of public safety, traffic, parks and open space, and maintenance of infrastructure were critical. Land use decisions by the Planning Commission must take into account the jobs/housing balance as most important right now. The City enjoyed a 1.9 jobs to population ratio at this time. Business attraction and retention were key. A water augmentation program and maintaining affordable water rates were critical. Integrity of ordinances and the processes of the City Council were important and a top priority.

Councilmember Giordano agreed the jobs/housing balance was a key factor. She did not realize that figure was provided to decision makers or did not recall. She felt there was a need for the Council and the Commission to look at the same data and same things when making decisions.

Mayor Esteves said that was why the city hired a new Economic Development Manager. The city did not want to lose job sites and that's why no residential building was allowed in some industrial areas.

Councilmember Grilli was bothered by a recent potential project brought to Council for the Serra Center. That area, if built, would be 80% residential and was not really good for the balance.

Councilmember Barbadillo said it was a good term – jobs/housing balance - as a concept. At Town Center, the Council voted to have no residential there.

Chair Mandal felt that some topics were interrelated, for him.

Commissioner Madnawat felt the jobs/housing balance was a good idea on a macro level. Yet, it was hard to implement for one specific project. "Mixed use" was a concept that the Commission struggled with, when projects were brought before the Commission, so it would be prudent to define. If a site was vacant for a long period, then such definition may not apply.

Mayor Esteves remarked that when the General Plan and Zoning were established, it should not be arbitrarily changed based on the market only. Preserve industrial and commercial zones, he urged.

Councilmember Giordano asked if the Economic Development Manager came to Commission meetings to give presentations and Commissioner Maglalang said no.

Commissioner Sandhu said when the Commission made decisions, the main item considered was the staff reports with facts to consider. He asked to make those as explicit as possible.

Planning Director Mr. Bill Ekern confirmed that every staff report from the Planning Department contained findings related to the recommendation for a decision by the Planning Commission.

Commissioner Maglalang felt it was hard to implement the General Plan. The City was "client driven" as in a developer/applicant. Fix the General Plan and he recommended putting it on the ballot every 6 – 8 years. He mentioned lobbyists hired by developers, too.

The Mayor explained that the General Plan was going to be in process for a major update, the first one since 1994, after lots of review and discussion to be scheduled.

Councilmember Giordano asked about the mixed use ratio. It should be more defined. Mr. Ekern responded that there was no magic number to make a particular project work. She felt it should be a policy, to firmly adhere to. Mr. Ekern said there could be profound economic impacts, and with strict imposition, there must be a strong economic analysis.

Commissioner Madnawat said overall, they talked about the Transit Area Specific Plan with no grocery store and lots of traffic. Mayor Esteves responded the grocery store was coming, as part of the plan.

Economic Development Manager Edessa Bitbadal reported that she worked routinely with Planning Department staff, always including economic development input on all reports to Commissioners. In the future, it could be called out more on the staff reports. She often spoke with interested developers about best use of land and regarding the financial responsibilities of the city.

Commissioner Maglalang wanted to know more specifics of what the Council desired to see built in the City, i.e. for mixed use, in front or back of a property, or other design features.

Chair Mandal said on every large project before the Commission, questions were asked about schools and impact to schools. But then the topic was not taken any further.

Superintendent of Schools Cary Matsuoka replied that for any development proposal, the Milpitas Unified School District received figures from its demographer to learn how many students would be added to the district. Staff would then err on the side of the highest possible estimate. He would commit to getting good information to the City and then MUSD had to turn it into costs of building new facilities.

In terms of the TASP area, Mayor Esteves noted the projection was for 7,000 new homes over the build-out of the area. Not all would occur next year, but over the term of the Plan. The Mayor agreed with the Commission Chair that some projects were far from schools, so there was not a worry about where students would go. Biggest growth right now was in the TASP area (not MidTown).

Councilmember Grilli remarked, that in the TASP, all those students would eventually impact middle schools and high schools. That there was no plan to build new ones was a fact to consider.

Councilmember Giordano asked how much schools should weigh in. A more in-depth analysis would need to be done. Long term impacts needed to be figured out to educate deeper on the impacts of a development project.

Commissioner Madnawat commented that decision makers always needed factual findings to make decisions. Perhaps there was a need to “slow down” as regards development.

Councilmember Giordano asked the Planning Director what other cities did in terms of schools with new projects. He replied: same as Milpitas. By law, all developers must pay school impact fees based on the size of a given project, and impacts got addressed in the EIR or mitigation report. This topic of the developer fees should be on agenda of the City Council, she replied.

Commissioner Lien wanted to know how the City was doing at this time in terms of class size numbers and any over crowding. Mr. Matsuoka responded that capacity was at 98% at most school sites while class sizes were fine, based on staff ratios.

Chair Mandal recalled an update to the General Plan two years ago. For the new update planned, he asked what the time frame was. Mr. Ekern explained the budget for starting the comprehensive General Plan review was on the Council’s agenda this date, and then it would be a three-year process to complete the new document, after many meetings and opportunities for input.

Vision for the Future

Councilmember Giordano reported to Commissioners that the City was in progress completing a new Strategic Plan, as a great tool. The major concern would be traffic, she felt. The whole picture on traffic was most critical for the future.

Mayor Esteves responded that traffic was both local and regional. Some projects were ongoing with Santa Clara Valley Transportation Authority (VTA) and Caltrans as a result.

A local shuttle bus was a good idea, Mr. Madnawat agreed with the Mayor, and it should start soon, i.e. do not wait until BART station opens.

Chair Mandal said the TASP and MidTown plans were not producing results of seeing people walking, biking and using transit. In fact, there were more cars and traffic with all the new housing.

Councilmember Giordano asked Commissioners if they felt they were weighing in on the future vision of the City. She wanted to hear more from them as to weighing in stronger on the vision of the City and maybe more meetings to do that were needed.

Chair Mandal said, yes, have more of these joint meetings, as needed. He wanted to hear from Council and to share remarks. He reported that staff reports from Planning Department were excellent and that Commissioners needed to ask more questions.

Mayor Esteves mentioned other topics including: executive homes on Barber Lane, the Pacific Mall, keeping roads up with a high Pavement Condition Index, a clean city, a diverse community and other elements form the vision for a good quality of life in Milpitas.

Commissioner Sandhu said the City needed more opportunity for new churches or temples or gurdwara. Mayor Esteves replied with comments about appropriately zoned land throughout the City.

Roles in Implementation of Strategic Vision

City Manager Williams reported that staff and City Council would work closely with the Planning Commission as the Strategic Plan was implemented.

Mayor Esteves asked if the Commissioners had any comments on their roles.

Chair Mandal felt as a group, they were doing really well with really good staff reports. He wanted to open the horizon a little bit. Provide the idea on what the City Council's vision was and where the City was going. He knew it was good to hear that the General Plan was going to be updated with their input.

Commissioner Madnawat reported that the new Planning Director was very good about asking if Commissioners had questions before the meetings began. He always tried to learn more.

Councilmember Barbadillo confirmed the Planning Commission Chair's thoughts on the staff reports on which decisions shall be based. More data would help decision makers, with pros/cons, as he had asked for from City staff. Being objective along with integrity on all decision making was important.

Commission Alternate Member Mohsin reported she was happy to participate in the joint session. The biggest issue to her was traffic and there was a need for transit within the City.

Mayor Esteves invited comments from the audience. Mr. Tom Valore wanted to know how various plans mentioned inter-related and how they were followed.

Finally, the Mayor thanked all for their presence at this joint meeting, especially Commissioners whom he thanked for their input and important work on land use decision making.

The joint meeting-study session was adjourned at 6:56 PM.

The foregoing minutes were approved, as amended, by the Milpitas City Council on March 3, 2015.

**Mary Lavelle
Milpitas City Clerk**

MEETING MINUTES CITY OF MILPITAS

Minutes of: Joint Meeting of Milpitas City Council
and Economic Development Corporation
Date: Tuesday, October 6, 2015
Time: 7:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER Mayor Esteves called the meeting to order at 7:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Councilmembers Barbadillo, Giordano and Grilli

ABSENT: Vice Mayor Montano

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

INVOCATION Councilmember Barbadillo read aloud a prayer.

MEETING MINUTES Motion: to approve minutes of September 15, 16 and 22, 2015 City Council meetings

Motion/Second: Councilmember Grilli/Councilmember Giordano

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

SCHEDULE OF MEETINGS Motion: to approve the Council Calendars/Schedules of Meetings for October 2015

Motion/Second: Councilmember Giordano/Councilmember Barbadillo

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

PRESENTATIONS Mayor Esteves presented the following:

- Proclaimed *Fire Prevention Week* for October 4 – 10, 2015, accepted by Milpitas Fire Marshal and Deputy Chief Albert Zamora.
- Commended Friends of the Milpitas Library, in celebration of National Friends of the Library week in October, for all their support of the Milpitas Library, accepted by Linda and Dana Arbaugh along with Judy Duffy.
- Commended Rob Devincenzi, long time editor and publisher of The Milpitas Post newspaper, upon his departure from Milpitas for a new assignment.

PUBLIC FORUM Peter Munoz, Gilroy City Councilmemberr, invited all to the annual Silicon Valley Turkey Trot event on Thanksgiving morning. He especially urged the Council to participate in the Mayor's cup race. This was a great event put on by the Silicon Valley Leadship Group and Summerhill Homes, with funds raised for the Housing Trust and other non-profit groups. He provided flyers for the event to the City Clerk.

Robert Marini, Milpitas resident, talked about the City sending out another notice after one that didn't count (regarding utility rates). What was the City getting for the contract with RMC Water

and Envorniment, he wanted to know. The City also planned to spend \$180,000 for a contract with Singer Associates, so he asked what the City was getting for this expenditure.

Rob Means, 1421 Yellowstone Ave resident, mentioned the recently adopted plastic bag ban. There was less conversing about its environmental impacts. He quoted the ill effects of the disintegrating plastic and thanked the City Council for adopting the ban at the last meeting.

Frank DeSmidt, Milpitas Rotary Club, announced a lunch fundraiser offered by Rotary Club the following week, October 13 – 17, at the Outback Steakhouse restaurant. Tickets cost \$15.00 each and funds raised would go to help the needy in Milpitas.

Voltaire Montemayor, Milpitas resident, said the fire alarm was in the right position, the City had a good library and each Thursday night he expected to have the Milpitas Post in his driveway. He said there was a need for another high school.

Jezzell Delfina, Crater Lake neighborhood resident, had safety concerns for the performing arts building. She wanted to address the park issue and advocated keeping it (displaying a recent edition of the Milpitas Post newspaper). The City needed to collaborate on the park design. She also referred to Comcast cable rates and telecommunications.

Councilmember Giordano responded that she had recently mentioned the performaing arts center at the Milpitas Arts Commission meeting, and hoped to discuss this topic soon.

ANNOUNCEMENTS

Councilmember Giordano congratulated three of her elected official colleagues voted in as one of best elected officials by readers of The Milpitas Post: Mayor Esteves along with Councilmembers Grilli and Barbadillo.

Mayor Esteves announced a free health fair on Sunday, October 11 from 8:00 am to 3:00 pm at St. John’s Church Pavalkis Hall on Main Street with lots of free services and information offered to participants. Also, October is Filipino American Heritage Month, and a group offered free film screening of “Delano Manongs” on October 10 from 2–5 PM at the Barbara Lee Senior Center.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

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

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

CONSENT CALENDAR

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

Councilmember Barbadillo asked to remove agenda items no. 9 (resolution - ammunition), no. 10 (resolution – purchase vehicles), no. 14 (CalRecovery contract) and no. 18 (Singer Associates) from consent.

Councilmember Giordano recommended removing items no. 11 and no. 12 (Agreements with RMC Water and Environment Inc.), per public comment.

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

- * 3. Odor Report Update Received the update of the odor control report.
- * 4. Commission Appointments Approved the following as recommended by Mayor Esteves:
- Arts Commission
Appointed Doris Roth as voting member to a term that will expire in October 2017.
Appointed Marsha Tran as Alternate No. 1 to a term that will expire in October 2016.
Appointed Christina Driggers as Alternate No. 2 to a term that will expire in Oct. 2017.
Newly appointed Luqiang Shu as Alternate No. 3 to a term that will expire in October 2016.
- Community Advisory Commission: newly appointed Vishal Gandhi as Alternate No. 4 to a term that will expire in January 2016.
- Economic Development Commission: newly appointed Anna Wang as the real estate voting representative to a term that will expire in April of 2018.
- Youth Advisory Commission: all YAC terms would expire in September of 2016.
Moved Alternate No. 1 Christie Maly to a seat as a regular voting member.
Moved Alternate No. 2 Emerald Gilana to the seat as Alternate No. 1.
Newly appointed Jenna Zarbis as Alternate No. 2.
Newly appointed Madeline Cacao as Alternate No. 3.
Newly appointed Amanda Jimenez as Alternate No. 4.
- * 5. Establish and Appoint Members to City Council Subcommittees Authorized the formation of three Ad Hoc City Council Subcommittees: Land Use and Transportation, Joint Use, and Facilities Naming Subcommittees; and appointed members to those and the Finance Subcommittee.
- Land Use Transportation Subcommittee: Mayor Esteves, Chair & Councilmember Barbadillo, Member
Joint Use Subcommittee: Mayor Esteves, Chair & Vice Mayor Montano, Member
Facilities Naming Subcommittee: Vice Mayor Montano, Chair & Councilmember Grilli, Member
Finance Subcommittee: Vice Mayor Montano, Chair and Councilmember Indihar-Giordano, Member
- * 6. Request for report Directed staff to conduct a study and bring back to City Council a gender and ethnicity pay equity policy or ordinance that would include both the City of Milpitas as an employer and the agencies with which the City contracts; as well as City compliance with Senate Bill 358, if signed into law.
- * 7. Donation from Republic of Korea to Library Accepted the donation gift of \$2,500 to the Milpitas Public Library and the spending plan, as recommended by the Library Advisory Commission.
- * 8. New CIP for General Plan Established a Capital Improvement Project for the City of Milpitas General Plan Update Project in the amount of \$2,100,000 and appropriated \$1,200,000 to this project in FY 2015-16.
- *13. Amendment No. 6 Approved Amendment No. 6 to the consultant agreement with Schaaf & Wheeler to extend the term to October 31, 2016 for Storm Drain/Stormwater Program Documentation Review for the Silicon Valley Rapid Transit (BART) Program Berryessa Extension, Project No. 4265.
- *15. Storm Management for Pace project Approved and authorized the execution of a Storm Management Operation and Maintenance agreement for Pace Development at 324 Montague Expressway, Project No. 2762.

***16. Award Bid to ACCO**

1. Awarded the bid to ACCO Engineered Systems, Inc. and authorized the City Manager to execute an agreement with ACCO for citywide HVAC Maintenance and Repair Service with for the not-to-exceed amount of \$300,000 for the first year and the annual not-to-exceed amount of \$187,527 for the remaining four years of the contract, for a total amount of \$1,050,108 during the five year term.
2. Authorized the Purchasing Agent to extend the term of the agreement annually for the next four years with an annual price increase per the terms of the agreement and without further City Council action, except for appropriation of funds.

***17. Amendment No. 1 to
Purchase and Sale Agreement**

Approved the first amendment to the Purchase and Sale Agreement between the City of Milpitas and Milpitas Unified School District to extend the escrow closing date, regardless McCandless property in the Transit Area Specific Plan area.

PUBLIC HEARINGS

1. Water Rates

City Engineer Steven Machida provided history on the City of Milpitas rates for water utility service, the recent City of San Juan Capistrano court decision, tiered versus uniform rates, the water rate study update, allowable method for calculating rates, and the new schedule for notices to rate payers and the scheduled hearing in December, per Proposition 218.

Mr. Doug Dove of Bartle Wells Associates addressed the Council about the draft report on water rates prepared for the City. The Mayor and Councilmembers asked various questions for clarification of facts during his presentation.

Councilmember Barbadillo asked if there was a way to subsidize the increased costs for wholesale water. The City Manager replied only from the General Fund and he did not recommend doing that.

Councilmember Giordano asked how the proposed new rates (at this meeting) compared to what was proposed last spring. Staff replied that overall, uniform rates would be a little higher for many residential customers. Mr. Williams remarked that lower quantity users would pay a bit more while higher quantity users would pay less overall when uniform rates were applied compared to current tiered rates.

Mayor Esteves asked when a bond funding issue would occur. That could be authorized by the City Council at the December 15 council meeting, the City Engineer replied.

Next, Mayor Esteves opened the public hearing for comments.

Robert Marini, Milpitas resident, questioned the \$1.2 million cost for the water rate study and outreach efforts planned. He questioned costs for the status report and various items listed on the proposed budget for water service. He then quoted data in the water rate study report and asked for all information to be printed on mailed notice to customers.

Voltaire Montemayor, Milpitas resident, commented on the listed costs for water service, which he agreed with.

(1) Motion: to close the public hearing, after hearing two speakers

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Montano)

Mayor Esteves remarked that the bulk of the increase comes from the increase in the wholesale costs to procure water from the City's suppliers.

City Attorney Diaz read aloud the title of Ordinance No. 120.47, “An Ordinance of the City of Milpitas Amending Chapter 1 of Title VIII of the Milpitas Municipal Code Relating to Water Service Charges.”

(2) Motion: to waive the first reading beyond the title of Ordinance No. 120.47

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(3) Motion: to introduce Ordinance No. 120.47

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(4) Motion: to authorize mailing of the Proposition 218 notice of public hearing on rate increase proposed and set December 15, 2015 as the public hearing date

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

2. Water Conservation Ordinance

Public Works Director Nina Hawk reviewed this ordinance requested a “housekeeping” matter for the City Council. Recently on June 16, City Council adopted an urgency ordinance for measures to be taken related to the drought, which included financial penalties. The recent court decision regarding City of San Juan Capistrano (on tiered water rates) yielded an outcome including the fact that penalties could not be attached to any tiered rate structure for water utility. Meanwhile, non-financial penalties were noted, and the Director reported that the City had reached 32% savings since the Governor’s declaration.

The proposed ordinance at this meeting would remove the 10% penalties attached to the City’s tiered rates, required due to the court’s decision.

Councilmember Giordano asked staff, in what time frame the 32% savings covered. Ms. Hawk replied that was determined in August, over a three months’ period of savings versus the base year of 2013.

Next, Mayor Esteves opened the public hearing for comments.

Robert Marini, Milpitas resident, said the City was punishing people based on the size of pipe coming in to the building of the homeowner. He complained about how the fee was charged, regardless of the amount of water used.

Voltaire Montemayor, Milpitas resident, said removing the supplemental water penalty would be great.

(1) Motion: to close the public hearing, after hearing two speakers

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

Councilmember Barbadillo asked the City Attorney about changed language in the ordinance, specifically on penalties for when the overuse of water occurred. Staff reviewed the text of the ordinance with him.

City Attorney Diaz read aloud the title of Ordinance No. 240.4, "An Ordinance of the City Council of the City of Milpitas Amending Chapter 6 of Title VIII of the Milpitas Municipal Code Relating to Supplemental Water Use."

(2) Motion: to waive the first reading beyond the title of Ordinance No. 240.4

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

(3) Motion: to introduce Ordinance No. 240.4

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

UNFINISHED BUSINESS One item was approved on consent calendar.

REPORTS Four items were approved on consent calendar.

NEW BUSINESS One item was approved on consent calendar.

RESOLUTIONS

9. Resolution related to ammunition for Police Dept. Councilmember Barbadillo asked if all information was considered before preparing the recommendation and asked staff to make a brief presentation.

Police Chief Pangelinan and Purchasing Agent Chris Schroeder explained the process for an RFP and the rationale for the sole source purchase needed for the bullets that police officers use at Milpitas Police Department, including for training purposes.

Motion: to adopt Resolution No. 8504 approving the sole source purchase of ammunition for the police department from San Diego Police Equipment Company, Inc., Adamson Police Products, Inc. and Miwall Corporation for a combined annual not-to-exceed amount of \$57,000

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

10. Resolution related to Purchase of City Vehicles Councilmember Barbadillo requested more detailed reasons on the need for the purchase of the vehicles for City staff, as recommended.

Purchasing Agent Chris Schroeder explained the mandate in the Police Memorandum of Understanding for replacement of police vehicles at certain mileage points, noting the safety and heavy use of the vehicles by officers. Police Chief Pangelinan also explained so many cars were needed out in the city, and what was the ideal. The action on the agenda for was for replacement of current vehicles, not simply buying new additional ones.

Councilmember Barbadillo asked what happened to the proceeds of the sales of used cars that go out to Public Surplus. Finance Director Emma Karlen answered that by stating the funds go into the equipment replacement fund.

Mayor Esteves invited comments from the audience.

Resident Voltaire Montemayor said it was a need, and to be current on equipment. He did not police cars slower and needing replacement.

Resident Jezzell Delfino said it was good that there was great tracking of such equipment, and working effectively. She suggested a used vehicle for the meter reading function, not a new purchase.

Mayor Esteves asked about green vehicles, if any. Mr. Schroeder replied there were no specifications for those at this time. City Manager Williams replied that police cars were yet not produced yet that were “green” fueled.

Motion: to adopt Resolution No. 8505 authorizing the purchase of seven city vehicles from the National Auto Fleet Group for the not-to-exceed amount of \$265,617.53 through a cooperative procurement contract, per Milpitas Municipal Code on cooperative purchasing

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

AGREEMENTS

11. Amendment No. 3 to Agreement with RMC

Four items were approved on consent.

Resident Robert Marini addressed the Council and said it seemed like every year the city was approving more funding for help from RMC. He asked what was City getting for the \$170,000 and were other contractors considered.

City Engineer Machida referred to page 8 on the water rate report for the response. This current agenda item was not related to the water rate study (in earlier report). That firm served to provide staff augmentation on utility reviews, plan checking, running water model software and coordinating city responses on documents for new development plans.

Mayor Esteves clarified this item was for only \$40,000 (not an amount questioned by Mr. Marini).

Motion: to approve Amendment No. 3 to the consultant services agreement with RMC Water and Environment, Inc. for Utility Engineering Support for \$40,000 and extend the term through June 30, 2016

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

12. Amendment No. 6 to Agreement with RMC

Resident Robert Marin asked again about the use of the same company for the same services and whether or not other firms were considered for the contracted service.

City Engineer Machida responded that that yes, the City did go out for on-call Engineering Services with a Request For Proposals (RFP). Six firms were interviewed that responded to the RFP. Staff determined the one with the best fit, working on both water and sewer utility services, and RMC was selected.

Motion: to approve Amendment No. 6 to the consultant services agreement with RMC Water and Environment to extend the term to October 31, 2016 for support on the Silicon Valley Rapid Transit (BART) Program Berryessa Extension, Project No. 4265 and various city capital projects

Motion/Second: Councilmember Giordano/Councilmember Grilli

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

14. Amendment No. 3 to Agreement with CalRecovery

City Engineer Steven Machida explained this was the odor expert hired since 2004 to understand the process around Newby Island expansion and odors. The consultant served as expert witness for the City and provided recommendations on how to mitigate odors from Newby Island landfill and the Water Pollution Control Plant. The recommended amendment was for work related to sewer pump station data to be provided to BAAQMD. He responded to questions from Mayor Esteves and Council member Barbadillo

Motion: to approve Amendment No. 3 to the consultant services agreement with CalRecovery, Inc. to increase the compensation by \$105,000 for technical odor support services and approve a budget appropriation of \$130,000

Motion/Second: Councilmember Barbadillo/Councilmember Giordano

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

18. Agreement with Singer Associates, Inc.

Robert Marini, Milpitas resident, asked what services the company would provide to the City. He suggested it could help on the notice of utility rate (water) increase and to improve that notice by including how calculations were made.

Councilmember Barbadillo had the same concern as the resident (speaker above). He felt there might be duplication of service going on, for example with some of the work being accomplished by the Economic Development Manager, and possibly other city staff doing those tasks already.

City Manager Williams explained the need for this communications firm to be hired to help the city with public information and communication, often performed in other cities by a Public Information Officer. It could be done more efficiently this way (versus hiring an-house staff person) to do a much better effort at outreach with the media and the public. The company could work on a quarterly newsletter and an annual report, along with improved press releases going out.

Councilmember Giordano noted a factor of growing pains with so much activity in the city recently, especially with development efforts, so this was a good step to hire this person to help the city with media and community relations.

Councilmember Grilli supported this effort and liked the idea of focusing on the

positive activity of the City and getting the message out.

Mayor Esteves asked if a Request for Proposals was necessary. Mr. Williams replied the City could do so but was not required. The Mayor asked if other cities in the South Bay had similar firms hired or in-house staff and he wanted to know about other clients of the recommended firm. Mayor Esteves strongly urged bringing the support of the senior management team explicitly to the selected firm.

Motion: to authorize the City Manager to enter into an agreement with Singer Associates, Inc. in the amount not to exceed \$120,000 (for the remainder of Fiscal Year 2014-15) and to seek the involvement of City department directors (senior management team)

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 3
NOES: 1 (Barbadillo)
ABSENT: 1 (Montano)

JOINT MEETING of EDC and CITY COUNCIL

Mayor Esteves called the joint meeting of the Economic Development Corporation and City Council to order at 10:23 PM. Four members were present (Vice Mayor absent).

CONSENT CALENDAR

Mayor Esteves asked staff to explain the recommended action first, before voting on the motion. City Attorney Diaz summarized terms of the litigation settlement, having to do with five city properties and options to purchase those. City Manager Williams explained that the City Council had moved assets from the City to the Economic Development Corporation, prior to dissolution of the Milpitas Redevelopment Agency several years ago. This was essentially a “housekeeping” action by the EDC and City Council on the agenda this evening.

Councilmember Barbadillo asked for additional explanation and information to be clear on the City Council’s vote on this action, to which the City Manager responded.

Motion: to adopt the joint meeting consent calendar item (agenda item no. 19 below)

Motion/Second: Board/Councilmember Giordano / Board/Councilmember Grilli

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

Resident Robert Marini came to the podium to ask questions about the parcel next to the Milpitas Library and its potential use as a park. He wanted to know if that parcel would be purchased to make that land a park. City Manager Williams replied, stating the current General Plan designation and the zoning for that parcel.

***19. Five Memorandums of Termination of Option**

Authorized the City Manager and the Milpitas Economic Development Corporation President to execute five Memorandums of Termination of Option to purchase the five properties (listed below), which will then be recorded with the County of Santa Clara Recorder’s Office.

1265 N. Milpitas Blvd. – Corporation Yard
1325 E. Calaveras Blvd. – Milpitas Sports Center and open space
86 and 230 N. Main Street – vacant land
540 S. Abel Street – Cracolice Building

ADJOURNMENT

Mayor/Chair Esteves adjourned the Joint City Council and Economic Development Corporation meeting at 10:32 PM.

The foregoing minutes were approved, as amended, by the Milpitas City Council on October 20, 2015.

Mary Lavelle.
Milpitas City Clerk

City Council

Jose Esteves, Mayor
Carmen Montano, Vice Mayor
Garry Barbadillo, Councilmember
Debbie Indihar Giordano, Councilmember
Marsha Grilli, Councilmember



Planning Commission

Sudhir Mandal, Chair
Lawrence Ciardella, Vice Chair
Hon Lien
Rajeev Madnawat
Ray Maglalang
Demetress Morris
Gurdev Sandhu
Zeya Mohsin, Alternate

NOTICE OF SPECIAL MEETING – STUDY SESSION

NOTICE IS HEREBY GIVEN that a Special Meeting of the Milpitas City Council meeting jointly with the Milpitas Planning Commission will be held at 5:30P.M. on Tuesday, October 6, 2015 at Milpitas City Hall, in the first floor Committee Room, 455 E. Calaveras Boulevard, Milpitas, CA. Following is the agenda:

STUDY SESSION AGENDA

TUESDAY, OCTOBER 6, 2015

5:30 P.M.

Milpitas City Hall

Committee Room 1st Floor

455 East Calaveras Boulevard

Milpitas, CA 95035

I. CALL TO ORDER / ROLL CALL

II. PLEDGE OF ALLEGIANCE

III. TOPICS FOR DISCUSSION

1. Understanding Council Priorities (Jobs/Housing Balance)
2. Planning Commission Role in Implementing the General Plan
3. General Discussion on Vision for the Future
4. Roles in Implementing the Strategic Vision
5. Open Forum

IV. ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

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