



**MILPITAS CITY COUNCIL MEETING AGENDA
TUESDAY, MARCH 5, 2013**

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

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
 - 1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Pursuant to California Government Code §54956.9(b), (c)
City of Milpitas as Plaintiff or Defendant
 - 2. CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to California Government Code §54957.6, City Negotiator: Tom Williams
Employee Groups: Milpitas Employees Association (MEA), Milpitas Police Officers Association (MPOA), and International Association of Fire Fighters (IAFF)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Gomez)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – February 19, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR - March 2013**
- VIII. PRESENTATION to City of Milpitas by County's Menthol & Flavored Tobacco Prevention Project**
- IX. PUBLIC FORUM**

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, 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 agendize the item for a future meeting.

- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR (Items with asterisks*)**

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

XIV. PUBLIC HEARING

- 1. Hold a Public Hearing to Consider Request to Fly Flags in Honor of Black History Month (Staff Contacts: Michael Ogaz, 408-586-3041 and Mary Lavelle, 408-586-3001)**

XV. UNFINISHED BUSINESS

- * 2. Receive the February 2013 Odor Control Report (Staff Contact: Kathleen Phalen, 408-586-3345)**

XVI. REPORTS OF MAYOR AND COMMISSION

- 3. Consider Proposed Resolution Regarding Visits from the Socialist Republic of Vietnam (Contact: Mayor Esteves, 408-586-3029)**
- 4. Consider the Criteria for Establishing a Donation and Fee Waiver Policy (Staff Contacts: Tom Williams, 408-586-3051 and Emma Karlen, 408-586-3145)**
- 5. Consider Mayor's Recommendations for Councilmember Appointments to Three Outside Government Entities (Contact: Mayor Esteves, 408-586-3029)**
- * 6. Consider Mayor's Recommendation for One Appointment to the Community Advisory Commission (Contact: Mayor Esteves, 408-586-3029)**

Bicycle Pedestrian Advisory Commission:

- * 7. Approve and Authorize Amendment to the Bicycle Pedestrian Advisory Commission By-Laws to Reflect Change to the Meeting Dates (Staff Contact: Cindy Hom, 408-586-3284)**

XVII. NEW BUSINESS

- * 8. Accept the 2013 Citizen Options for Public Safety (COPS) Grant (Staff Contact: Charlotte Pang, 408-586-2432)**

XVIII. ORDINANCE

- 9. Consider Introduction of Proposed Ordinance No. 284 Requiring Council Disclosure of Developer Contributions (Staff Contact: Michael Ogaz, 408-586-3040)**

XIX. RESOLUTION

- * 10. Adopt a Resolution Approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco (Staff Contact: Kathleen Phalen, 408-586-3345)**

XX. CONTRACTS

- * 11. Authorize the Chief of Police to Execute the Service Agreement with the County of Santa Clara Public Health Department for the 2013 San Jose Bike Party Grant Program (Staff Contact: Henry Kwong, 586-2419)**
- * 12. Authorize the City Manager to Execute an Agreement with DR Horton for Fee Credit Reimbursement for Public Facilities and Improvements within the Transit Area Specific Plan (Staff Contacts: Steve McHarris, 408-586-3273 and Felix Reliford, 408-586-3071)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 19, 2013 AT 7:00 P.M.**

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, boards, and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: mogaz@ci.milpitas.ca.gov / Fax: 408-586-3056 / Phone: 408-586-3040

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

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

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

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist on the:

*Arts Commission (alternate member)
Public Art Committee (Alliance for the Arts member)
Economic Development Commission (alternate members)
Library Advisory Commission (alternate member)*

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall.
Contact the City Clerk's office (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 Council Chambers for all meetings.

AGENDA REPORTS

XIV. PUBLIC HEARING

1. **Hold a Public Hearing to Consider Request to Fly Flags in Honor of Black History Month (Staff Contacts: Michael Ogaz, 408-586-3041 and Mary Lavelle, 408-586-3001)**

Background: On February 19, the City Clerk received an application from Ms. Demetress Morris on behalf of Flamekeepers organization to fly flags at Milpitas City Hall, to recognize and celebrate Black History Month which occurs for the month of February each year. The City Council established procedures for approving flag flying ceremonies at Higuera Adobe Park in Milpitas, and under specific conditions, flying the flags of another country at Milpitas City Hall.

A public hearing is required before the City Council in order to consider approval of the current application.

Fiscal Impact: None.

Attachments:

1. Copy of Flag Ceremony Request Form
2. Milpitas Municipal Code Title 1 Chapter 600 "Display of Flags"

Recommendations:

1. Hold public hearing to receive any comments, and then move to close the hearing.
2. Move to approve request to fly flag of South Africa at Milpitas City Hall Lobby, as requested by Demetress Morris and Flamekeepers.

XV. UNFINISHED BUSINESS

- * 2. **Receive the February 2013 Odor Control Report (Staff Contact: Kathleen Phalen, 408-586-3345)**

Background: From January 22 through February 18, 2013, the Bay Area Air Quality Management District (BAAQMD) received twenty odor complaints originating in Milpitas. Ten complaints identified a garbage-related odor, eight identified a sewage-related odor and two did not identify an odor source. As of the last Council update, the City's odor reporting website has received twenty-nine reported complaints.

Fiscal Impact: None.

Recommendation: Receive the February 2013 odor report.

XVI. REPORTS OF MAYOR AND COMMISSION

3. **Consider Proposed Resolution Regarding Visits from the Socialist Republic of Vietnam (Contact: Mayor Esteves, 408-586-3029)**

Background: The non-profit Vietnamese American Community of Northern California has contacted Mayor Esteves seeking Council approval of a resolution regarding unexpected visits from delegations from communist Vietnam. Citing examples of where visits from such delegations have in the past caused unrest in other communities resulting in increased expenditures for police services to those communities, the Vietnamese American Community of Northern California proposes passage of a resolution that addresses the excess police cost from these unexpected visits. A copy of a Petition to the Mayor and City Council requesting action is included in agenda packet material.

The proposal is to direct the Police Chief to create a policy seeking 14-day prior notice of proposed visits from the Socialist Republic of Vietnam. No sanction would occur if the proper notice is given, but if no notice of the visit is provided, the cost of police services attributed to the visit can be billed to the outside organizer of the visit.

Fiscal Impact: Minimal.

Recommendation: Consider adoption of resolution seeking reimbursement for unexpected visits from the Socialist Republic of Vietnam.

4. Consider the Criteria for Establishing a Donation and Fee Waiver Policy (Staff Contacts: Tom Williams, 408-586-3051 and Emma Karlen, 408-586-3145)

Background: At a Finance Subcommittee meeting in the past, Mayor Esteves requested City staff to make recommendations on a donation and fee waiver policy. Finance Department staff reviewed some policies received from various cities and determined that there are certain common criteria that should be considered before establishing such a policy.

Staff will present the criteria for establishing a donation and fee waiver policy at the meeting.

Recommendation: Provide direction to staff in order to prepare a final policy for Council approval, on donations and fee waivers approved by City Council.

5. Consider Mayor's Recommendations for Councilmember Appointments to Three Outside Government Entities (Contact: Mayor Esteves, 408-586-3029)

Background: On December 18, 2012, Mayor Esteves appointed Councilmember Montano as the City's representative to the Santa Clara County Library Joint Powers Authority Board of Directors. At this time, Mayor Esteves seeks a Councilmember to volunteer to serve as the Alternate to Ms. Montano.

Previously, Mayor Esteves was appointed to serve as the City's representative on the Cities Association of Santa Clara County, in all three aspects (Board, Cities Selection and Legislative committees). At this time, he recommends that Vice Mayor Polanski serve as his Alternate to the Association Board and on Cities Selection Committee. In December, Councilmember Montano was appointed as his Alternate on the Legislative Action Committee.

Finally, Mayor Esteves seeks to have the Council appoint the Councilmember-delegate and alternate for the annual ABAG General Assembly, which will meet on Thursday, April 18, 2013 at Jack London Square in Oakland.

Recommendations:

1. Seek one Council volunteer, and then move to appoint one Councilmember as the Alternate Member to the Santa Clara County Library Joint Powers Authority Board.
2. Move to appoint Vice Mayor Polanski to serve as the Alternate to Mayor Esteves on the Cities Association of Santa Clara County, both the Board and on the Cities Selection Committee.
3. Seek two Council volunteers, then move to appoint one Councilmember as the City's delegate and one as alternate to the General Assembly of the Association of Bay Area Governments.

*** 6. Consider Mayor's Recommendation for One Appointment to the Community Advisory Commission (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the new appointment of Jacqueline Holland to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014.

Recommendation: Appoint Jacqueline Holland to the Community Advisory Commission as Alternate No. 4.

Report of Bicycle Pedestrian Advisory Commission:

- * 7. **Approve and Authorize Amendment to the Bicycle Pedestrian Advisory Commission By-Laws to Reflect Change to the Meeting Dates (Staff Contact: Cindy Hom, 408-586-3284)**

Background: Bicycle Pedestrian Advisory Commissioners request to amend their By-Laws to reflect a change in the regular meeting dates. Several current members express scheduling conflicts with the Monday meeting date. At the January 13, 2013, BPAC regular meeting, Commissioners were polled and it is proposed to add flexibility in which the Commission meets every two months on undesignated days selected and agreed upon by current Commissioners. The proposed amended By-Laws are included in the Council agenda packet.

Fiscal Impact: None.

Recommendation: Authorize and approve an amendment to Bicycle Pedestrian Advisory Commission By-Laws to change meeting dates as recommended by BPAC Commissioners.

XVII. NEW BUSINESS

- * 8. **Accept the 2013 Citizen Options for Public Safety (COPS) Grant (Staff Contact: Charlotte Pang, 408-586-2432)**

Background: The California State Legislature awarded \$107,684 to the City of Milpitas through the Citizen Options for Public Safety (COPS) Grant, authorized by Government Code sections 30061-30063. No City matching funds are required. Government Code section 30062 specifies that these funds must be used exclusively for front line law enforcement services. These funds shall be appropriated pursuant to a written request from the Chief of Police.

Milpitas Police Department recommends the following list of front line municipal police services, or equivalent, to be purchased with the 2013 COPS Grant monies for fiscal year 2013:

1. Collision Investigation Equipment
2. Crime Analysis Software
3. Firearms and Accessories
4. Critical Incident Response Equipment
5. Surveillance Equipment
6. Police Canine and Training

Fiscal Impact: None. The 2013 Citizen Options for Public Safety (COPS) Grant of \$107,684.00 will fully cover the cost for six frontline services listed.

Recommendations:

1. Accept the 2013 Citizen Options for Public Safety (COPS) grant in the amount of \$107,684.
2. Approve a budget appropriation in the amount of \$107,684 to the Police Department's operating budget.

XVIII. ORDINANCE

- 9. **Consider Introduction of Proposed Ordinance No. 284 Requiring Council Disclosure of Developer Contributions (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: At the request of Mayor Esteves, the City Attorney prepared a draft ordinance which would require City Councilmembers to disclose whether a developer or employee of a developer has made a campaign contribution to the City Councilmember within the past 12 months. The disclosure would be required only for contributions aggregating \$100 or more during the period. Disclosure would be made when an agenda item considering a development project approval is before the Council. It would be made prior to the presentation of the staff report in response to a request for such information by the City Attorney.

Fiscal Impact: None. There is no fiscal impact to the proposed ordinance adoption.

Recommendations:

1. The City Attorney will read aloud the title of the proposed ordinance.
2. Move to waive the first reading beyond the title of Ordinance No. 284.
3. Move to introduce Ordinance No. 284 requiring the City's Mayor and City Council members' disclosure of developer contributions.

XIX. RESOLUTION

- * 10. **Adopt a Resolution Approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco (Staff Contact: Kathleen Phalen, 408-586-3345)**

Background: In 2012, the group *Restore Hetch Hetchy* placed an initiative before San Francisco voters that would have required the City and County of San Francisco to plan to drain Hetch Hetchy Reservoir, located in Yosemite National Park. San Francisco voters defeated the initiative last November, but *Restore Hetch Hetchy* stated it will continue pursuing this goal. The City of Milpitas purchases over 60% of its potable water from San Francisco under a 2009 Water Supply Agreement (WSA). San Francisco obtains 85% of this supply from the pristine Tuolumne Watershed and stores the water in several high-country reservoirs, including Hetch Hetchy, Cherry, and Eleanor. While this water storage system is owned by San Francisco, it was authorized by the 1913 Raker Act for the purpose of supplying the greater San Francisco Bay Area. Wholesale Customers of Santa Clara, San Mateo, and Alameda Counties are guaranteed two-thirds of the Tuolumne Watershed supply by the WSA.

To protect the interests of the Wholesale Customers, including the City of Milpitas, the Bay Area Water Supply & Conservation Agency (BAWSCA) and San Francisco have prepared an Amendment to the WSA that will ensure that the Hetch Hetchy Reservoir is maintained, unless the governing boards of the BAWSCA member agencies agree otherwise through further amendment. If the parties do not agree, San Francisco may not drain the Hetch Hetchy Reservoir. San Francisco Public Utilities Commission approved the Amendment on January 22, 2013 and authorized its General Manager to execute the Amendment, pending approval by two-thirds of the Wholesale Customers.

Fiscal Impact: None.

Recommendation: Adopt a resolution approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco.

XX. CONTRACTS

- * 11. **Authorize the Chief of Police to Execute the Service Agreement with the County of Santa Clara Public Health Department for the 2013 San Jose Bike Party Grant Program (Staff Contact: Henry Kwong, 408-586-2419)**

Background: The County of Santa Clara Public Health Department is administering the 2013 San Jose Bike Party grant program that offers grant funds from the California Office of Traffic Safety to reimburse law enforcement agencies for overtime expenditures in response to the

monthly San Jose Bike Party, which consists of up to 4,000 bicyclists traversing a route of up to 30 miles through different cities in the County on the third Friday night monthly. The goals of the program include ensuring the safety of and law compliance by bicyclists as well as affected motorists on the roadways. The City of Milpitas was approved for a grant of \$6,072.26 to coordinate responses to the San Jose Bike Party with other local law enforcement agencies in the County as needed.

Fiscal Impact: None. Overtime expenditures will be reimbursed by the grant.

Recommendations:

1. Authorize the Chief of Police to execute the service agreement with the County of Santa Clara Public Health Department for the 2013 San Jose Bike Party grant program.
2. Approve a budget appropriation in the amount of \$6,072.26 to the Police Department overtime budget, per 2013 San Jose Bike Party Grant.

*** 12. Authorize the City Manager to Execute an Agreement with DR Horton for Fee Credit Reimbursement for Public Facilities and Improvements within the Transit Area Specific Plan (Staff Contacts: Steve McHarris, 408-586-3273 and Felix Reliford, 408-586-3071))**

Background: Chapter 4 of Title VIII of the Milpitas Municipal Code (Fees for New Development) establishes the procedures for the collection of developer impact fees and funds as part of the infrastructure improvements. Section 66485-66487 of the Subdivision Map Act further authorizes the City to enter into reimbursement agreements to defray a developer's costs in "oversizing" facilities (i.e. constructing facilities of supplemental size, length or capacity over the needed for the impacts of the development, and when such construction is necessary to ensure efficient and timely construction of the facilities network).

On November 15, 2011, City Council adopted Resolution No. 8138 approving the DR Horton Harmony Project, which requires the developer to pay Transit Area Specific Plan (TASP) developer impact fees to defray all or a portion of the costs of sewer facilities and to mitigate other impacts of the project. Based on the Council's recent approval of the TASP Fee adjustment, DR Horton is required to pay \$8,007,312 (276 units x \$29,012/per unit) impact fee based on the developer's project. These impact fees includes park in-lieu, trail improvements, traffic signal, open space/landscaping, recycled water, McCandless Road-eastside, environmental work on pedestrian bridge, and construction of Sewer Lines 11A/11B).

Since the dissolution of redevelopment, the City no longer has the ability to finance large infrastructure projects such as Sewer Line 11A/11B, therefore the developers within TASP have agreed to construct the sewer lines and other required public facilities and improvements subject to future reimbursement from the TASP Fees collected by City. On November 20, 2012, Council approved DR Horton Acquisition and Reimbursement Agreement for the construction of Sewer Lines 11A/11B.

DR Horton is requesting reimbursement in the amount of \$7,316,605. The majority of the reimbursement costs are park fee credits (\$2,951,544) and construction of Sewer Lines 11A/11B (\$2,961,624). The developer will also construct sidewalk and improvements on the east side of McCandless Drive, which is City-owned property. The developer provided the documentation for staff's review to justify the costs of the reimbursement. After the deductions from the reimbursement fee credits, the developer will be required to pay the City \$690,707, the remaining balance due. Included in the Council's agenda packet is the exhibit itemizing costs of the reimbursement fee costs and credits and the contract agreement.

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute an Agreement with DR Horton for Fee Credit Reimbursement in the amount of \$7,316,605 for the Transit Area Specific Plan Public Facilities and Improvements.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 19, 2013 AT 7:00 P.M.**

ANNOUNCEMENTS

Vice Mayor Polanski invited all this Sunday, February 24 from 1:00 - 3:00 PM to Christ Community Church for refresher training for SAFE members and CPR graduates.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

CONSENT CALENDAR

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

City Manager Williams recommended placing HA2 (Resolution) on consent. Also, he noted that for agenda Item No. 7 (new ProTech MOU) the fiscal impact was \$128,000 approximately. For agenda item No. 16 (CSG contract amendment), add "Approve Budget Appropriation" to the staff recommendation for Council action.

Mayor Esteves asked, regarding the proposed new Youth Advisory Scholarship Program, who would select the winners and staff replied that Commissioners would do so.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

* 1. Commission Appointments

Appointed the following Commissioners, per Mayor's recommendation:

Community Advisory Commission: newly appointed Ms. Van Lan Truong as Alternate No. 3 to a term that will expire in January 2014.

Senior Advisory Commission: re-appointed Bal Daquigan and Amanda Santos to terms that expire in December 2014.

Telecommunications Commission: re-appointed Debra Whitlock Lax to a term that will expire in January 2015.

* 2. 2013 PRCRC Work plan

Approved 2013 Parks, Recreation and Cultural Resources Commission work plan.

* 3. YAC Scholarship program

Approved the new Youth Advisory Commission scholarship program and application.

* 4. Accept Assistance to Firefighters Grant for radios

Accepted the regional Assistance to Firefighters Grant toward the cost to purchase portable radios for the Fire Department, and authorized the expenditure of \$34,596.25 (City of Milpitas portion of the cost).

* 6. Resolution for new MOU with Mid-Management

Adopted Resolution No. 8228 approving the Memorandum of Understanding between the United Public Employees of California (UPEC) Local 792 AFL-CIO for the Mid-Management and Confidential bargaining unit and the City of Milpitas for the period January 1 – December 31, 2013.

* 7. Resolution for new MOU with Professional Technical

Adopted Resolution No. 8229 approving the Memorandum of Understanding between the Milpitas Professional and Technical Group (ProTech) and the City of Milpitas for the period of January 1 through December 31, 2013, at a cost of approximately \$128,000.

- * 8. Resolution Initial Accepting Project No. 4268 Adopted Resolution No. 8230 granting initial acceptance of the Street Resurfacing Project 2013 No. 4268, subject to a one year warranty period and reduction of the faithful performance bond to \$84,183.
- * 9. Resolution Initial Accepting Project No. 7102 Adopted Resolution No. 8231 granting initial acceptance of Ayer Reservoir & Pump Station Emergency Repairs Project No. 7102, subject to a one year warranty period and reduction of the faithful performance bond to \$50,091.
- *10. Resolution Initial Accepting Project No. 9002 Adopted Resolution No. 8232 granting initial acceptance of Wrigley Ford Creek Maintenance Project No. 9002, subject to a one year warranty period and reduction of the faithful performance bond to \$30,343.33.
- *11. Resolution for Summit Uniforms contract Adopted Resolution No. 8233 authorizing the City Manager to execute a separate contract with the vendor Summit Uniforms for Police Department uniforms, selected by the originating agency, the City of Sunnyvale, and incorporating by reference the original solicitation, terms, conditions, and pricing for annual not-to-exceed amount of \$17,000.
- *12. Resolution for Peelle Technologies contract Adopted Resolution No. 8234 authorizing the City Manager to execute a separate contract with the vendor Peelle Technologies, selected by the originating agency, the City of Dublin, and incorporating by reference the original solicitation, terms, conditions, and pricing for the annual not-to-exceed amount of \$85,000.
- *14. Award Bid for Police Vehicle Awarded the bid for a 2013 Ford Taurus police interceptor Frontier Ford for the not-to-exceed amount of \$30,375.25.
- *15. Agreement with HT Harvey & Associates Approved and authorized the City Manager to execute an agreement with HT Harvey & Associates in the not to exceed amount of \$97,000, Project No. 3700, subject to approval as to form by the City Attorney.
- *16. 5th Amendment to Contract with CSG Approved a budget appropriation and authorized the City Manager to execute the fifth amendment to the contract with CSG Consultants Inc. for fire inspection and plan review services for an increase of \$120,360 and a total amount-not-to-exceed \$242,760 annually (which includes the original contract amount of \$122,400).
- *17. Agreement with Renne Sloan law firm Authorized the City Attorney to execute the contract for Attorney Services with the law firm of Renne Sloan Holtzman Sakai LLP, in the amount of \$50,000.
- *18. Authorize Standstill Agreement Authorized the City Manager to execute a Stand Still Agreement on behalf of the City, and that the Board of the Successor Agency to the former Redevelopment Agency move to authorize its Executive Officer to execute the Stand Still Agreement on behalf of the Successor Agency to the former Milpitas Redevelopment Agency.

JOINT HOUSING AUTHORITY AND CITY COUNCIL MEETING

- HA1.** Call to Order/Roll Call This occurred jointly with start of meeting at 7:00 PM.
- ***HA2.** Amendments to Agreement for Coyote Creek On consent, adopted Resolution No. HA 7 approving amendments to the Regulatory Agreement for the Coyote Creek residential development project, releasing 37 moderate-income housing units for an in-lieu housing fee of \$1,480,000.
- HA3.** Adjourn This occurred jointly with adjournment of City Council meeting.

- REPORTS** Three items were approved on consent calendar.
- NEW BUSINESS** One item was approved on consent calendar.
- RESOLUTIONS** Eight resolutions (including Housing Authority) were adopted on consent calendar.

5. Demolition of Buildings at McCandless Drive

Principal Planner Felix Reliford discussed recently identified problems at property on McCandless Drive on parcels owned by the City of Milpitas. Staff recommended urgent demolition of the facilities due to increasing activity there.

Mayor Esteves asked how the demolition would take care of dumping issue. Staff responded that all debris on site would be removed in addition to the building material. City Manager Williams added that the property would be fenced in. There was potential later to turn it into a turf/park area for minimal recreation use, as an interim park/green space, using Development Impact Fees for parks. He also mentioned that if used with a public purpose, that could help if any attempt was made to claw back by the state.

Councilmember Montano asked if there was any plan to trim the vegetation there, and staff replied some trees would be removed. City Manager added the City would trim trees and would maintain some of them to enhance a future park.

Mayor Esteves inquired about funding for this urgent action. Mr. Williams replied that City-budgeted housing and park funds would pay for demolition.

Motion: to adopt Resolution No. 8227 by urgent action to permit Public Works Director to direct the demolition of City-owned buildings at 1650-1690 and 1740-1830 McCandless Drive, due to health and safety reasons

Motion/Second: Councilmember Giordano/Councilmember Montano

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

BID/CONTRACTS

Five items were approved on consent calendar.

13. Update on Alviso Adobe Project

Engineer Michael Boitnott presented a current update on the Alviso Adobe structure renovation and park improvements project at the historic site in Milpitas. He defined Phases I through V, and announced the upcoming Park Opening and Ribbon Cutting ceremony on Saturday, March 16 at 10:00 AM. A total of \$5,594,272 in budgeted costs was expended so far through Phase IV. Informational signs would be installed around the park site, and these were displayed overhead.

City Manager Williams noted the request by Councilmember Montano to add additional displays, with more historic information on the site, prior even to the Alviso Adobe's existence. He looked forward to developing more historic information for display.

Mayor Esteves identified that funds could be spent on signs outdoors now, or perhaps the Council should consider that the interior of the house which would identify information about the Spanish/Mexican era of 1820s to 1850s.

Vice Mayor Polanski remarked that it took since 1996 to get to this point with Alviso Adobe, to get funding for the park and renovations so far. It was going to take a while to gain more than \$1 million to complete the interior renovations, so she valued the historic signs now. Councilmember Giordano agreed with moving forward now with signs. Ms. Polanski recommended that any new signs with historic information go before Parks, Recreation and Cultural Resources Commission for input.

Motion: to receive a staff progress report; to approve the request by Councilmember Montano for installation of Spanish/Mexican displays and signs on the park grounds; and, to approve and authorize the City Manager to execute an agreement with Page & Turnbull, in the not to exceed amount of \$150,000 for Spanish/Mexican era park displays and signs for Project No. 5055, subject to approval as to form by the City Attorney

Motion/Second: Councilmember Montano/Vice Mayor Polanski

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

ADJOURNMENT

Mayor Esteves adjourned the meeting at 8:07 PM.

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

February 2013						
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April 2013						
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Council Calendar

March 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 7:00 PM -Parks, Recreation & Cultural Resources Commission (AP)	5 6:00 PM -Closed Session 7:00 PM -City Council	6 7:30 AM -VTA Northeast Group (JE) 12:00 PM -Santa Clara Valley Water Commission (AG) 7:00 PM -Community Advisory Commission (AG)	7 5:30 PM -VTA Board of Directors (JE)	8	9
10  Don't forget to set all of your clocks one hour ahead!	11 6:00 PM -Economic Development Commission (CM) 7:00 PM -Bicycle Pedestrian Adv. Comm. (AG) (Sports Center)	12	13 7:00 PM -Planning Commission	14 4:00 PM -VTA Policy Advisory Committee (AG) 4:30 PM -Treatment Plant Advisory Committee (JE) (San Jose) 7:00 PM -Cities Assoc of SCC (JE) 7:00 PM -Youth Advisory Comm. (DG)	15	16 10:00 AM Alviso Adobe Park opening
17	18 7:00 PM -Telecommunications Commission (AP) 7:00 PM -Library Advisory Commission (CM)	19 6:00 PM -Closed Session 7:00 PM -City Council	20	21 4:00 PM -SVRT Program Working Committee (JE) 7:00 PM -Bay Area Water Supply Consv. Agency (AG) (Foster City) 7:00 PM -Emergency Prepared. Commission (AP)	22	23
24	25 6:00 PM -Arts Commission (DG) 7:00 PM -Public Art Committee (DG)	26	27 7:00 PM -Planning Commission	28 7:00 AM -Milpitas Chamber of Commerce Board (DG) 12:00 PM -Terrace Gardens Board of Directors (DG) 4:00 PM -Milpitas Oversight Board 7:00 PM -Sister Cities Commission (CM)	29	30

Milpitas, California, Code of Ordinances >> Title I - ADMINISTRATION >> Chapter 600 - DISPLAY OF FLAGS >> Section 1 - Definitions >>

Section 1 - Definitions

I-600-1.10 - City Hall Display Flag Poles

I-600-1.20 - Ceremonial Flag Poles

I-600-1.10 - City Hall Display Flag Poles

"City Hall Display Flag Poles" shall mean those three (3) flag poles situated at the northeast corner of the intersection of Calaveras Boulevard and Milpitas Boulevard in front of City Hall. "City Hall Display Flag Poles" shall also refer to those four (4) flag poles located to the rear of City Hall and adjacent to the pond, those three (3) flag poles located between the Senior Center and the Community Center buildings, and the three (3) flag poles located at the front entrance to the Senior Center.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

I-600-1.20 - Ceremonial Flag Poles

"Ceremonial Flag Poles" shall mean those two (2) City-owned flag poles situated at the City-owned Higuera Adobe which the City has designated to be used by members of the community to conduct flag raising ceremonies.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

Milpitas, California, Code of Ordinances >> Title I - ADMINISTRATION >> Chapter 600 - DISPLAY OF FLAGS >> Section 2 - City Hall Display Flag Poles >>

Section 2 - City Hall Display Flag Poles

I-600-2.10 - City Hall Display Flag Poles

I-600-2.20 - Display of Other Flags at City Hall

I-600-2.30 - Exception—Sister City Flags and City Council Approved Ground Level Ceremonies

I-600-2.40 - City Approval

I-600-2.10 - City Hall Display Flag Poles

City Hall Display Flag Poles shall at all times be used exclusively by the City of Milpitas as follows:

- (1) Those three (3) flag poles located at the front of City Hall shall at all times be used exclusively by the City for the purpose of the display of the flags of the United States of America, the State of California, and the City of Milpitas in accordance with all applicable federal and state regulations.
- (2) Those four (4) flag poles located at the rear of City Hall adjacent to the pond shall be used to display the flags of the United States of America, the State of California, the National POW/MIA flag and the City of Milpitas in accordance with all applicable federal and state regulations at all times except the flags of Sister Cities may be displayed at this location at limited times as set forth in section 2.30 below.
- (3) Those three (3) flag poles located between the Senior Center and the Community Center buildings shall at all times be used exclusively by the City for the purpose of the display of the flags of the United States of America, the State of California, and the City of Milpitas in accordance with all applicable federal and state regulations.
- (4) Those three (3) flag poles located at the front entrance to the Senior Center shall at all times be used exclusively by the City for the purpose of the display of the flags of the United States of America, the State of California and the City of Milpitas in accordance with all applicable federal and state regulations.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

I-600-2.20 - Display of Other Flags at City Hall

Except as allowed in Section 2.30, the ceremonial display of flags other than the flags of the United States of America, State of California, National POW/MIA and City of Milpitas, on City Hall Display Flag Poles or within the Civic Center Complex and City of Milpitas Community Center is not permitted.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

I-600-2.30 - Exception—Sister City Flags and City Council Approved Ground Level Ceremonies

- (1) The flag of the country and that of a city officially recognized by the City Council as a Sister City may be displayed in lieu of the MIA/POW flag and the flag of the State of California on two of the four flag poles located at the rear of City Hall adjacent to the pond during the time of the Sister City delegation's visit to the City of Milpitas.
- (2) The City Council may, after a public hearing, direct City staff to permit the ground level display of a flag of another nation in existence after 1954, only at the following specified locations at the Civic Center complex or the City of Milpitas Community Center:
 - (1) City Hall Rotunda
 - (2) Area adjacent to pond at City Hall
 - (3) City of Milpitas Community Center
 - (4) City Council Chambers

Said flag display shall not be permitted on City Hall Display Flag Poles and shall only be permitted on a flagstaff, flagstand or similar device which does not cause the flag height to exceed ten (10) feet.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

I-600-2.40 - City Approval

All ground level ceremonies must be approved by the City Council. Any party intending to conduct a ground level ceremony at one of the designated locations shall submit an application to the Office of the City Manager, on a form approved by the City Council, at least thirty (30) days prior to the requested ceremony date. A public hearing will be held regarding each ground level ceremony application prior to its approval or denial by the City Council.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

Section 3 - Ceremonial Flag Poles

I-600-3.10 - Location

I-600-3.20 - Use

I-600-3.30 - Flag Raising Ceremony

I-600-3.40 - City Approval

I-600-3.50 - Limitation on Use

I-600-3.10 - Location

The City's Ceremonial Flag Poles consist of two (2) flag poles owned by the City of Milpitas and located at the Higuera Adobe in the City of Milpitas.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

I-600-3.20 - Use

The City's Ceremonial Flag Poles shall remain unused at all times other than during City-approved flag raising ceremonies. The Ceremonial Flag Poles shall be used only to conduct flag raising ceremonies in accordance with the provisions of this Chapter.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

I-600-3.30 - Flag Raising Ceremony

Flag raising ceremonies shall be conducted in accordance with all applicable provisions of federal and state laws, including provisions of the United States Code and California Government Code relating to the proper display of flags. During an approved flag raising ceremony, one (1) pole shall at all times be used to raise and display the flag of the United States of America. The other flag pole shall be used to raise and display the flag of another nation in existence since 1954. The flag of the United States of America displayed during a flag raising ceremony shall be equal to or larger in size and dimension than the other flag.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

I-600-3.40 - City Approval

All flag raising ceremonies must be approved by the City Council. Any party intending to conduct a flag raising ceremony at the City's designated Ceremonial Flag Poles shall submit an application to the Office of the City Manager, on a form approved by the City Council, at least thirty (30) days prior to the requested ceremony date. A public hearing will be held regarding each flag raising ceremony application prior to its approval or denial by the City Council.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

Municode

I-600-3.50 - Limitation on Use

No individual or organization shall have more than one (1) flag raising ceremony per calendar year.

(Ord. No. 260:1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

Municode

Milpitas, California, Code of Ordinances >> Title I - ADMINISTRATION >> Chapter 600 - DISPLAY OF FLAGS >> Section 4 - Severability >>

Section 4 - Severability

I-600-4.10 - Severability

I-600-4.10 - 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.

(Ord. No. 260.1, § 2, 1/17/12)

Milpitas Complaints

Received by BAAQMD From 1/1/2013 to 1/31/2013

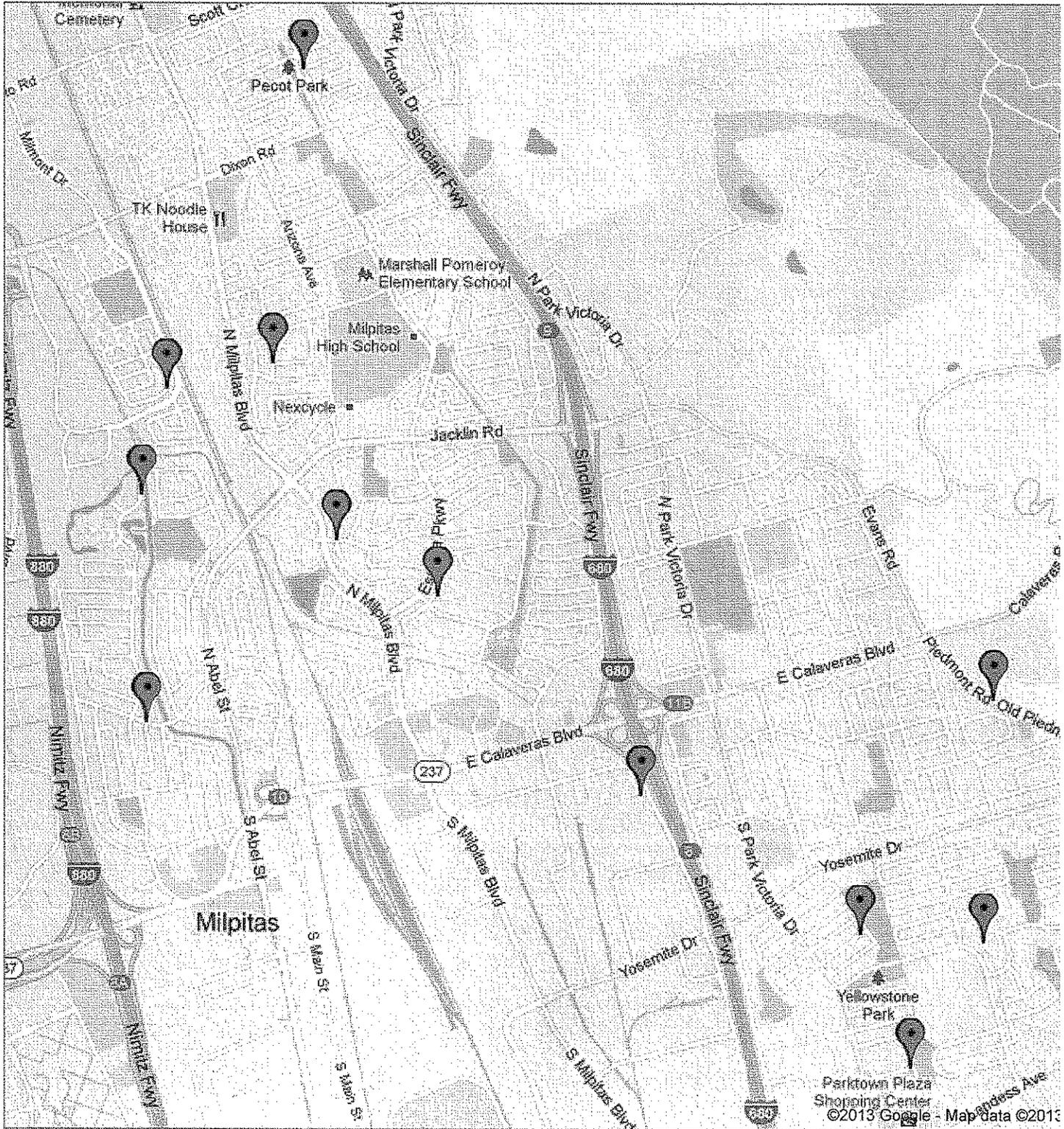
<u>Complaint#</u>	<u>Received</u>	<u>Occured</u>	<u>Alleged Source</u>	<u>Description</u>	<u>General Location</u>	<u>Status</u>	<u>Attributed</u>	
							<u>Site#</u>	<u>Referral</u>
213382	1/3/13 18:36	1/3/13 18:15	NONE	rotten eggs	1400 GINGERWOOD DR	Unconfirmed		
213384	1/4/13 13:14	1/4/13 13:00	BFI - The Recyclery	rotten	100 BEAUMERE WAY	Pending		
213404	1/8/13 13:17	1/8/13 13:00	NONE	garbage	100 BEAUMERE WAY	Unconfirmed		
213412	1/10/13 17:43	1/10/13 17:40	BFI - The Recyclery	stinky	1600 EVERGLADES DR	Unconfirmed		
213413	1/10/13 18:27	1/10/13 18:25	NONE	garbage	2000 SKYLINE DR	Unconfirmed		
213440	1/16/13 13:02	1/16/13 12:00	BFI - The Recyclery	garbage	100 BEAUMERE WAY	Unconfirmed		
213442	1/16/13 16:06	1/16/13 10:00	BFI - The Recyclery	garbage	2100 AGUILAR CT	Unconfirmed		
213455	1/17/13 18:02	1/17/13 17:50	BFI - The Recyclery	garbage	2000 SKYLINE DR	Unconfirmed		
213462	1/18/13 15:02	1/18/13 15:00	BFI - The Recyclery	strong compost	300 MONTECITO WAY	Pending		
213466	1/18/13 18:16	1/18/13 18:00	BFI - The Recyclery	garbage	45500 KIOWA CT	Unconfirmed		
213470	1/19/13 12:51	1/19/13 12:51	BFI - The Recyclery	None	2100 CONWAY ST	Unconfirmed		
213472	1/20/13 12:57	1/20/13 12:30	BFI - The Recyclery	Garbage	1700 GOLDEN HILLS DR	Unconfirmed		
213477	1/21/13 14:29	1/21/13 13:15	BFI - The Recyclery	compost/garbage	100 BEAUMERE WAY	Confirmed		
213480	1/21/13 16:55	1/21/13 16:45	BFI - The Recyclery	leachy	200 SPRING VALLEY LN	Unconfirmed		
213488	1/22/13 14:01	1/22/13 14:00	NONE	methane	1600 CLEAR LAKE AVE	Unconfirmed		
213489	1/22/13 14:20	1/22/13 11:30	NONE	compost	100 BEAUMERE WAY	Unconfirmed		
213493	1/22/13 16:40	1/22/13 9:00	NONE	rotten egg	1500 PLATT AVE	Unconfirmed		
213497	1/23/13 8:41	1/23/13 0:00	NONE	garbage	2100 CONWAY ST	Unconfirmed		
213516	1/23/13 17:52	1/23/13 17:30	BFI - The Recyclery	garbage	100 BEAUMERE WAY	Unconfirmed		
213533	1/25/13 16:25	1/25/13 16:15	BFI - The Recyclery	sewer	500 SHELLEY CT	Unconfirmed		
213570	1/30/13 18:41	1/30/13 18:00	BFI - The Recyclery	strong garbage	200 TRAMWOOD	Unconfirmed		
<u>Total:</u>	21							



Get Google Maps on your phone



Text the word "GMAPS" to 4664



BAAQMD Odor Complaint Location (January 22 through February 18, 2013)

Unlisted · 0 views

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DIRECTING THE CHIEF OF POLICE TO IMPLEMENT A POLICY REQUESTING PRIOR NOTICE OF VISITS OF DELEGATIONS FROM THE SOCIALIST REPUBLIC OF VIETNAM

WHEREAS, the Council has received a Petition from the Vietnamese American Community of Northern California requesting adoption of a resolution requiring the Police Chief to implement a policy seeking prior notice of visits from delegations from the Socialist Republic of Vietnam; and

WHEREAS, the Petition cites examples of where such visits have in the past caused political disruption in other communities requiring increased police services and causing additional expense to those communities for provision of those services; and

WHEREAS, in the event that visits from Socialist Republic of Vietnam delegations to the City of Milpitas do create a need for additional police services in order to protect the public health and safety, it would reduce or eliminate added expense for provision of those services if at least 14 days prior notice were given to the City to plan for such event; and where failure to provide 14 days prior notice would likely result in unexpected additional expenditures for police services; and

WHEREAS, the need for unexpected additional police services resulting from political disruption caused by inadequately noticed visits from the Socialist Republic of Vietnam is a preventable event and therefore inadequately noticed unexpected visits from the Socialist Republic of Vietnam predictably will result in political disruption injurious to health and unlawful obstruction of streets, sidewalks and public spaces constituting a public nuisance and the costs thereof should be borne by the outside organizer, agency or jurisdiction sponsoring the visit and who failed to give adequate notice of such visit; and

WHEREAS, under the California Environmental Quality Act (CEQA), this action is considered exempt as there is no possibility that it will have an impact upon the environment; and

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council of Milpitas does not condone or sanction high-profile visits, stopovers, or drive-bys by representatives and officials of the Socialist Republic of Vietnam government or that of any delegations affiliated with or organized by the same within the physical boundary of the City of Milpitas.
3. The City Council of Milpitas is opposed to the expenditure of much needed City funds and resources in a manner that promotes visits from the Socialist Republic of Vietnam delegations to Milpitas. This policy statement does not prevent the Chief of Police or other affected security manager of the City from taking appropriate security and public safety measures for the community.

4. The City Council of Milpitas hereby directs the Chief of Police to implement a detailed “PRIOR NOTICE” policy of requesting outside organizers, agencies and jurisdictions to inform on the nature, purpose and duration of visits, drive-bys, or stopovers of government delegations and affiliated groups from the Socialist Republic of Vietnam, at least fourteen (14) calendar days before such occurrence;
5. The City Council of Milpitas further directs that the Police Chief at the earliest available opportunity, report to the Mayor and all Council Members of such visits, drive-bys, or stopovers, once the notification is made from the requesting organizer, agency or jurisdiction.
6. In the event an outside organizer, agency or jurisdiction fails to provide the 14-day “PRIOR NOTICE” described above in Section 3, the City Council of Milpitas directs the Police Chief to prepare an invoice for services for submission to the City Council for approval concerning police services rendered resulting from a visit or drive-by to the City of Milpitas by delegations or groups affiliated with the Socialist Republic of Vietnam government, for submission to the outside organizer, agency or jurisdiction.

PASSED AND ADOPTED this ____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mary Lavelle, City Clerk

APPROVED:

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney



VIETNAMESE AMERICAN COMMUNITY OF NORTHERN CALIFORNIA

CỘNG ĐỒNG VIỆT NAM BẮC CALIFORNIA

Mailing address: 2299 South King Rd., San Jose, CA 95122

Phone: 408-242 4056 or 408 224 4800 * * Email: norcalvacom@yahoo.com

❖ **Executive Board**

- *Tien Nguyen N.
- *John Nhan Nguyen
- *Christine Do
- *Mai Tran
- *Hao Thai

❖ **Supervisor Board**

- *Nghiep Phan Q.
- *Hung Nguyen M.
- *Nghiem Nguyen V.

PETITION

HONORABLE
MAYOR AND CITY COUNCIL OF MILPITAS

Dear HON. Mayor and Council Members,
ON behalf of The Vietnamese-American Community of Northern California and the Vietnamese-American Community of Milpitas, acting as their official elected representative I, President of the Vietnamese American Community of Northern California hereby appeal to the Mayor and the City Council Members of Milpitas the following:

WHEREAS, the City of Milpitas is home to a high percentage of Vietnamese-American citizens and residents of any city in The United States;

WHEREAS, the vast majority of America Citizens and residents of Vietnamese descent residing in The United States, and particularly in Milpitas, reject the current dictatorial rule of the Vietnamese Communist Party;

WHEREAS, many citizens and residents of Vietnamese descent residing in Milpitas risked their lives to escape from communist-occupied Vietnam following the fall of South Vietnam on April 30th 1975 and came to The United States in their search for freedom and democracy;

WHEREAS, visits and proposed visits by representatives or officials of the Socialist Republic of Vietnam to regions where there are large concentrations of Vietnamese-American citizens and residents, in Milpitas area, neighboring Milpitas and especially in the LITTLE SAIGON, have been previously met with angry protests and demonstrations;

WHEREAS, in the past (1999), the Vietnamese-American community was outraged by sympathizers of the Socialist Republic of Vietnam who provoked the community by displaying a photograph of the deceased tyrant HO CHI MINH and the flag of communist-occupied Vietnam;

WHEREAS, that act of provocation resulted in fifty-three (53) continuous days of demonstrations with more than fifteen thousand (15,000) persons demonstrating against the symbols of the Vietnamese communist regime;

WHEREAS, The City of Westminster incurred expenses in excess of seven hundred fifty thousand (750,000) dollars as a result, including not only the additional cost to the Westminster Police Department, but also the cost of support from neighboring law enforcement agencies which assisted in

controlling the unprecedented demonstrations;

WHEREAS, the anti-communist sentiments held by the members of the Vietnamese-American community in Northern California State and particularly in Milpitas City are as strong, if not stronger than those held anywhere else in the World;

WHEREAS, the risks to public safety and to the community and also to representatives and officials of the Socialist Republic of Vietnam or their commercial or trade delegations, from stops, drive-bys or visits in or near Milpitas, particularly when inadequate notice is provided, are enormous, creating a significant threat of civil disturbance and unrest;

WHEREAS, from stops, drive-bys or visits in or near Milpitas, by representatives and officials of the Socialist Republic of Vietnam or their commercial or trade delegations, are certain to provoke, and appear to be intended to provoke, outrage and reaction by the Vietnamese-American community;

WHEREAS, inadequate notice and last-minute requests for security service from the city to protect Vietnamese communist delegations coming to or through the city creates unanticipated safety risks and a financial burden to the community and to the city.

WHEREAS, the current deficit in California has adversely impacted counties and municipalities in the State, including The City of Milpitas, which results in hiring freezes and cuts in public safety personnel and programs;

WHEREAS, communist delegations and trade groups formally affiliated with the Hanoi regime visiting MILPITAS bring no economic or political benefit to Milpitas City, but only causes turmoil and disruption to the city and its residents.

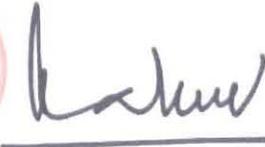
For these Reasons, We appeal to the Milpitas City Council to issue a Resolution that read as follows:

1. The City Council of Milpitas does not condone, welcome or sanction high-profile visits, stopovers, drive-bys, by representatives and officials of the Vietnamese communist government or that of any delegations affiliated with or organized by the same within the physical boundary of the city of Milpitas.
2. The City Council of Milpitas is opposed to the expenditure of much needed city funds and resources in a manner that promotes visits from Vietnamese communist delegations to Milpitas. This policy statement does not prevent the Chief of Police or other affected security manager of the city from taking appropriate security and public safety measures for the community;
3. The City Council of Milpitas hereby directs the Chief of Police to implement a detailed "PRIOR NOTICE" policy of requiring outside agencies and jurisdictions requesting public safety assistance from the

Milpitas Police Department and other public safety personnel in the city, to inform on the nature, purpose and duration of such visits, drive-bys, or stopovers of government delegations and affiliated groups from communist Vietnam, at least fourteen (14) calendar days before such occurrence;

4. The City Council of Milpitas further directs that the Police Chief at the earliest available opportunity, report to the mayor and all council members of such visits, drive-bys, or stopovers, once the request is made from the requesting agency or jurisdiction.
5. The City Council of Milpitas requests that the police chief prepare a completed "Co-Bill" for submission to the city council concerning police services rendered to the requesting agency or jurisdiction in the aftermath of a visit or drive-by by delegations of groups affiliated with the Vietnamese communist government that failed to abide by the city's 14-day "PRIOR NOTICE" policy;

Respectfully,
MILPITAS, February 19, 2013



President of VAC-Norcal.
Tien Nguyen Ngoc

Non-Communist zone Petition Committee of VAC-Norcal:

Name	phone	email
1.- Tien nguyen	408-242-4056	nnt9009@gmail.com
2.- David Mac	408-313-7831	thuanmac@earthlink.net
3.- Nghiep Phan	408-833-9707	nghiepphan@sbcglobal.net
4.- Johnny Lee	408-601-9969	johnny@whatsanjoseneeds.com

*6

RECEIVED

CITY OF MILPITAS
COMMISSION/COMMITTEE APPLICATION

Community Advisory Commission
COMMISSION APPLYING FOR ↑

PROVIDE COMPLETE INFORMATION (in black ink)

Mr.

Mrs./Ms.

Name: Jacqueline Ellen Holland
First Middle Last

Address: _____
Number Street (apt. # if needed), Milpitas CA 95035

Telephone Number(s) 949-241-0463 e-mail address jeholland356@gmail.com

Present Employer Freelance Business Telephone 408-713-4000

Address 415 Calaveras Pkwy, Sunnyvale, CA 94085 Occupation Administrative Assistant / Event Planner

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

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
<u>University of California, Irvine</u>	<u>Psychology</u>	<u>2006/2010</u>	<u>Sigma cum laude psychology</u>

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):

My experience in finance, medicine and psychology has taught me valuable skills such as analytic thinking, being able to think "big picture" and insight into community matters. I was actively involved with the Santa Ana district of Orange County and have been on the Irvine Chamber of Commerce. I hope to bring fresh ideas and lend my experience to better Milpitas.

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]
Signature

2/4/2013
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, fax (586-3030), e-mail (mlavelle@ci.milpitas.ca.gov) or drop off your completed application to City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

**CITY OF MILPITAS
BICYCLE PEDESTRIAN ADVISORY COMMISSION**

***7**

BYLAWS

This Bicycle Pedestrian Advisory Commission was established by the Milpitas City Council on June 19, 1990.

Section 1. Purpose

The purpose of the Milpitas Bicycle Pedestrian Advisory Commission (BPAC) is to serve as an advisory body to the City Council on matters having to do with modifying or expanding the City's non-motorized transportation systems. Its intent shall be to provide information that will ultimately result in safe and convenient routes throughout the City that connect to other cities. The Commission will promote safety education and awareness of all forms of non-motorized transportation modes with the intent of promoting all forms of alternative transportation.

Section 2. Membership

The Bicycle Pedestrian Advisory Commission is composed of five (5) regular members and two (2) alternate members appointed by the Mayor and approved by the City Council. All members and alternates shall be Milpitas residents or residents within the boundaries of the Milpitas Unified School District. In addition, the City Council may appoint a Council liaison to serve on the Commission in a non-voting capacity.

Section 3. Term of Office and Removal

The term of office for Commission members is three years, or until reappointed or a successor is appointed. The term of office for alternates is two years, or until reappointed or a successor is appointed. Members and alternates are expected to attend all meetings. When any member or alternate has three or more unexcused absences in a 12-month period, the Commission shall forward this information to the City Council for review and possible removal of the member or alternate from the Commission. Any member or alternate of BPAC may be removed from office by a majority vote of the City Council at a regularly scheduled City Council meeting.

Members and alternates may apply for reappointment by submitting a letter or e-mail of interest by mail or electronic transmittal to the Mayor with a copy to the Commission Chair one month prior to the expiration of his/her term of office. Any member or alternate of the Commission who wishes to resign should submit a letter of resignation by mail or electronic transmittal to the Mayor with a copy to the Commission Chair.

Section 4. Vacancies

Vacancies will be filled for the unexpired portion of the term in the same manner as the original appointment.

Section 5. Officers

A Chair or Vice Chair will be selected annually at the first meeting of the calendar year from the appointed members for a term of one year. The Chair will call for meetings and preside over all sessions. In the absence of the Chair, the Vice Chair will preside. In the absence of both the Chair and Vice Chair, the member with the longest continuous service on the Commission will preside.

Section 6. Meetings

The BPAC shall hold regular meetings ~~on a bi-monthly basis in which the commission shall hold meetings six (6) times each year on dates as be determined by the Commission.~~ All meetings shall be open to the public. Should a scheduled meeting occur on a holiday, said meeting will be deferred to the same day of the following week or to a date agreed upon by a majority of the Commission. Special meetings of BPAC may be called by a majority of the members, the Chair, or the City Council. Notice of any special meeting shall be given as required by law. Except as otherwise provided by these Bylaws, BPAC will follow the latest edition of Roberts Rules of Order for the orderly conduct of meetings.

Deleted: on the second Monday of February, April, June, August, October, and December, at 7:00 p.m

Section 7. Quorum

Any three (3) members of the Commission shall constitute a quorum for the transaction of business.

Section 8. Voting and Seating of Alternates

Voting authority is extended to five (5) members. An alternate member shall vote only if seated in the absence of a regular member. In the event that a regular member is absent, alternate members shall be seated in order of their alternate position. If a member arrives after an alternate has been seated, the alternate shall remain as the voting member until the end of the meeting.

Section 9. Duties of Commission to be Advisory Only

It is intended that the Commission shall be an advisory body to the City Council. Nothing herein contained shall be construed as a limitation on the power of the City Council or the administrative staff of the City in their supervision or authority over property or personnel under their jurisdiction.

Section 10. Assistance of Staff

The City Manager of the City of Milpitas shall provide BPAC with such information and staff assistance as BPAC may from time to time request subject to the limitations imposed by the City Council. The staff member designated by the City Manager shall attend meetings of the BPAC and submit such reports as said BPAC may request and as deemed necessary or desirable, subject to limitations imposed by the City Council.

Section 11. Amendments

These Bylaws and operating procedures may be amended by simple majority of those voting at any regular BPAC meeting, subject to approval by City Council.

PASSED AND ADOPTED by the Bicycle Pedestrian Advisory Commission this 4th day of April, 2002.

PASSED AND ADOPTED by the Milpitas City Council on the 19th day of August, 2003.

PASSED AND ADOPTED by the Milpitas City Council on the 16th day of January, 2007.

PASSED AND ADOPTED by the Milpitas City Council on the 2nd day of June, 2009.

MEMORANDUM

Office of Steve Pangelinan, Chief of Police



To: Tom Williams, City Manager
From: Steve Pangelinan, Chief of Police
Subject: 2013 Citizen Options for Public Safety (COPS) Grant
Date: February 22, 2013

The City of Milpitas anticipates receiving COPS funds from the state pursuant to Government Code sections 30061-30063, in the amount of \$107,684. These funds must be used to support front line law enforcement services and must supplement and not supplant existing funding for front line law enforcement services. No city matching funds are required.

These funds shall be appropriated pursuant to written request from the Chief of Police of the law enforcement agency that provides police services for the city. The request shall specify the front line law enforcement needs of the requesting entity including the personnel, equipment and programs that are necessary to meet those needs.

Below are recommended expenditures for COPS grant monies for fiscal year 2013, including tax and shipping, as applicable:

1. Collision Investigation Equipment	\$3,100
2. Crime Analysis Software	\$12,500
3. Firearms and Accessories	\$5,484
4. Critical Incident Response Equipment	\$50,150
5. Surveillance Equipment	\$10,250
6. Police Canine and Training	\$26,200

TOTAL: \$107,684

Further specifics on these spending areas are as follows:

1. Collision Investigation Equipment (\$3,100):

Officers utilize a variety of tools and techniques to investigate traffic collisions in order to establish the sequence of what occurred, and some traffic collision investigations necessitate inquiries into the data stored by the involved vehicles. Technology exists for the retrieval of data from the on-board computers of some vehicles, and the data can include acceleration, air bag deployment, and throttle control. The purchase of hardware and software to access such data would enable officers to obtain additional empirical information for traffic collision investigations.

2. Crime Analysis Software (\$12,500):

Software exists to facilitate the analysis of information from reports of prior crimes in order to identify possible crime trends and attempt to anticipate where the crime trends might lead. The software would supplement the knowledge attained by officers working in the field and would help direct resources to potential target areas.

3. Firearms and Accessories (\$5,484):

The Police Department's armory contains an inventory of firearms and accessories to equip officers as needed. The purchase of about ten (10) additional pistols and needed accessories would ensure the inventory is able to respond to personnel changes.

4. Critical Incident Response Equipment (\$50,150):

The Special Weapons and Tactics (SWAT) Team and Crisis Negotiators are trained to mitigate critical incidents and respond effectively to high-risk situations, such as search warrant executions, confrontations with armed suspects, felonious arrests, active shooters, and hostage rescues. The necessary equipment includes tactical communication devices, remote controlled intelligence gathering devices, and ballistic shields. The proposed tactical communication devices would replace existing equipment that has become technologically obsolete, and the remote controlled intelligence gathering devices would enable officers to safely assess situations without exposing themselves to unnecessary danger. The proposed ballistic shields would be capable of resisting high-power ammunition.

5. Surveillance Equipment (\$10,250):

The Police Department currently deploys surveillance equipment in order to further criminal investigations while limiting the amount of personnel needed for each operation. As technology progresses, such equipment is becoming more efficient and more reliable. The purchase of new surveillance equipment to supplement the existing inventory would enable officers to conduct investigations more efficiently.

6. Police Canine and Training (\$26,200):

The Police Department currently has two (2) active police canines in service, and the police canines are reaching the end of their expected working period. The purchase of two (2) additional police canines and the requisite training in the coming months would enable succession planning and ensure the availability of police canines as a resource would be uninterrupted as the currently active police canines are removed from service.

RECOMMENDATION:

Allocate 2013 COPS grant funds for the above program areas.

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	261-3567	\$ 107,684	261-722-4922 261-721-4923 261-721-4921 261-724-4921	\$ 3,100 12,500 81,834 10,250

Explain the reason for the budget change:

Background:

The California State Legislature awarded \$107,684 to the City of Milpitas through the Citizen Options for Public Safety (COPS) Grant as authorized by Government Code sections 30061-30063. No City matching funds are required. Government Code section 30062 specifies that these funds must be used exclusively for front line law enforcement services. These funds shall be appropriated pursuant to a written request from the Chief of Police. The Milpitas Police Department recommends the following list of front line municipal police services, or equivalent, to be purchased with the 2013 COPS Grant monies for fiscal year 2013:

1. Collision Investigation Equipment
2. Crime Analysis Software
3. Firearms and Accessories
4. Critical Incident Response Equipment
5. Surveillance Equipment
6. Police Canine and Training

Fiscal Impact: None – The 2013 Citizen Options for Public Safety (COPS) Grant of \$107,684 will fully cover the cost for the frontline services listed above.

Recommendation:

1. Accept the 2013 Citizen Options for Public Safety (COPS) Grant in the amount of \$107,684.
2. Approve a budget appropriation in the amount of \$107,684 to the Police Department's operating budget.

Check if City Council Approval required.

Meeting Date: March 5, 2013

Requested by:	Henry Kwong, Police Department	Date: February 22, 2013
Reviewed by:	Finance Director: <i>[Signature]</i>	Date: 2/25/13
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

REGULAR

NUMBER: 284

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING MILPITAS MUNICIPAL CODE SECTION I-210-5.20 REQUIRING DISCLOSURE OF DEVELOPER CONTRIBUTIONS TO CITY COUNCIL

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, 2013, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, 2013, 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:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas finds that persons or entities desiring to develop properties within the City are often also amongst those making contributions to City Council or Mayoral election campaigns; and

WHEREAS, the public perception of such contributions made by persons seeking Council approval on development projects might be that it undermines the objectiveness of the decision making process and gives the appearance of unfairness; and

WHEREAS, principles of freedom of expression, as guaranteed by the Federal and State Constitutions, prevent the City from banning contributions to Council or Mayoral campaigns by those seeking development approval for projects within the City of Milpitas; and

WHEREAS, full disclosure of contributions from those seeking Council approval of their development projects protects the public interest by informing the public, fellow members of the City Council, and all other interested persons of the fact of a Council Person having received campaign contributions from such project proponents; and

WHEREAS, the City Council finds that the requirements imposed by this Ordinance are intended to provide for the public safety and well being of the community; and

WHEREAS, the City Council finds that this Ordinance is a reasonable time, place and manner regulation of speech; and

WHEREAS, the City Council finds that this Ordinance is content neutral and is not intended and does not restrict the right of free speech or alternative channels of communication; and

WHEREAS, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

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. ADDITION OF MILPITAS MUNICIPAL CODE SECTION I-210-5.20

Section I-210-5.20 is hereby added to Chapter 210 of Title I as follows:

I-210-5.20 Disclosure of Developer Contributions.

- (a) At such time as a Development Project comes before the City Council for approval, each Council Person and the Mayor shall identify any contribution received from the Applicant in the prior 12-month period aggregating \$100 or more.
- (b) Disclosure shall be made in response to a request by the City Attorney to disclose all developer contributions required under section (a). The City Attorney shall make such request immediately after the Development Project agenda item is announced and before the staff presentation.
- (c) For purposes of this Section, “Development Project” shall mean any land use approval including tentative map approval, site development permit approval, conditional use permit approval, variance approval, Development Agreement approval, zoning change approval, General Plan amendment approval, Planned Unit Development approval or similar land use approval.
- (d) For purposes of this Section, “Applicant” shall mean any individual named on the Planning and Zoning Project Application form as Project Owner or Project Contact. If a partnership or corporation is listed as Applicant, Applicant includes any employee or officer of the partnership or corporation.
- (e) In determining the aggregate amount of contributions in the 12-month reporting period, the provisions of Section I-210-3.10(e) shall govern.

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.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING AN AMENDMENT TO THE WATER SUPPLY AGREEMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO

WHEREAS, the City and County of San Francisco, acting by and through its Public Utilities Commission, entered into a Water Supply Agreement with Wholesale Customers in Alameda County, San Mateo County and Santa Clara County in June 2009 (WSA); and

WHEREAS, Proposition F, the "Water Sustainability and Environmental Restoration Act," appeared on the San Francisco November 2012 ballot and, if it had been enacted, would have required the City of San Francisco to evaluate how to drain Hetch Hetchy Reservoir; and

WHEREAS, the San Francisco Charter acknowledges that the Hetch Hetchy Water System, including O'Shaughnessy Dam, is an irreplaceable asset such that San Francisco could not drain Hetch Hetchy Reservoir or abandon or decommission O'Shaughnessy Dam absent a Charter amendment as well as additional regulatory and administrative approvals; and

WHEREAS, the parties, at the time of entering into the WSA, contemplated that Hetch Hetchy Reservoir and O'Shaughnessy Dam were both integral parts of the Regional Water System and were considered Existing Assets as that term is used in the WSA, and were included in the calculation of the Wholesale Revenue Requirement; and

WHEREAS, the parties, at the time of entering into the WSA, also contemplated that the reliability and quality of the water to be delivered was premised on the shared assumption of the continued use of Hetch Hetchy Reservoir and O'Shaughnessy Dam as integral components of the Regional Water System; and

WHEREAS, the parties, at the time of entering into the WSA, did not contemplate that an alternate water delivery system created as a result of draining Hetch Hetchy Reservoir, or abandoning or decommissioning O'Shaughnessy Dam, would be considered part of a New Regional Assets described by the WSA; and

WHEREAS, the parties now desire to amend the WSA to reaffirm the water reliability and quality requirements set forth therein, and to acknowledge that Hetch Hetchy Reservoir and O'Shaughnessy Dam will continue to be used as integral components of the Regional Water System, unless both San Francisco and the Wholesale Customers approve any alternate water storage and delivery system to be used for delivery of water under the WSA; and

WHEREAS, said amendment to the WSA was approved by the San Francisco Public Utilities Commission on January 22, 2013 and its General Manager was authorized to execute it, provided the amendment is approved by the Wholesale Customers; and

WHEREAS, the City Manager recommends the approval of the attached amendment.

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 attached amendment to the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County (Amendment) is approved.
- 3. The City Manager is authorized and directed to execute the Amendment, in the form attached hereto, on behalf of the City.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

WATER SUPPLY AGREEMENT
between
THE CITY AND COUNTY OF SAN FRANCISCO
and
WHOLESALE CUSTOMERS
in
ALAMEDA COUNTY, SAN MATEO COUNTY AND
SANTA CLARA COUNTY

AMENDMENT NO. 1

THIS AMENDMENT modifies the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County ("Water Supply Agreement"), which is dated July, 2009.

WHEREAS, the Parties desire to amend the Water Supply Agreement to assure that the existing condition of Hetch Hetchy Reservoir is maintained unless the Parties agree to a further amendment to the Water Supply Agreement that meets certain conditions; and

WHEREAS, except for those changes expressly specified in this First Amendment, all other provisions, requirements, conditions, and sections of the Water Supply Agreement shall remain in full force and effect.

THE PARTIES AGREE to amend the Water Supply Agreement by adding a new Section 3.18 to Article 3, Water Supply.

Section 3.18 Water Supply Agreement Amendment Required

San Francisco may not change the existing condition of the Hetch Hetchy Reservoir by:

- (1) abandoning or decommissioning O'Shaughnessy Dam; or
- (2) draining Hetch Hetchy Reservoir, except for purposes of (i) repair, rehabilitation, maintenance, improvement, or reconstruction of O'Shaughnessy Dam or appurtenances, (ii) supplying water to the Bay Area during drought, or (iii) meeting water release requirements under the Raker Act, or federal or state law,

unless the parties enter into an amendment to the Water Supply Agreement, in full force and effect, adopted in accordance with Section 2.03.

The amendment shall state, or restate, as the case may be:

- A. The level of service goals for seismic reliability and delivery reliability adopted by the Commission in conjunction with such proposed changes to the Regional Water System, provided such goals are at least as protective of the Wholesale Customers as the level of service goals adopted by the Commission on October 30, 2008 in conjunction with the WSIP;
- B. The level of water quality to be delivered, which is currently provided for in Section 3.08, and
- C. The specific cost allocation procedures, written as an amendment to Article 5, which apply to (1) the abandonment or decommissioning of O'Shaughnessy Dam, or (2) the draining of Hetch Hetchy Reservoir, and (3) the development, operation and maintenance of New Regional Assets that may be required to replace water supplied by Hetch Hetchy Reservoir and delivered to the Bay Area.

In the event that the parties are not able to agree upon and approve an amendment to the Water Supply Agreement as set forth above, San Francisco may not abandon or decommission O'Shaughnessy Dam or drain Hetch Hetchy Reservoir.

IN WITNESS WHEREOF the parties have executed this Amendment by their duly authorized officers.

CITY AND COUNTY OF SAN FRANCISCO
Acting by and through its Public Utilities
Commission

CITY OF MILPITAS,
a municipal corporation

By: _____
Harlan L. Kelly, Jr.
General Manager

By: _____
Thomas C. Williams
City Manager

Date: _____, 2013

Date: _____, 2013

Approved by Commission Resolution
No. 13-0022, adopted January 22, 2013

ATTEST:

Donna Hood
Secretary to Commission

Mary Lavelle
City Clerk

Approved as to form:

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Donn W. Furman
Deputy City Attorney

Michael J. Ogaz
City Attorney

SECTION I: GENERAL INFORMATION

Contractor Name: Milpitas Police Department

Purchase Order Number:

Agency/Department Name: Public Health Department Department No: 0410

Brief Description of Services: The Contractor's police department will be responsible for assigning officers to patrol and enforce traffic safety laws at a minimum of two Bike Party events during the grant period.

Maximum Financial Obligation

The maximum amount payable to this contractor under this agreement shall not exceed: \$ 6,072.26

Term of Agreement

Start Date: (When left blank, start date will be the date executed by Authorized County Representative) End Date: 09/30/2013

For County Use Only

	Account Assignment	Plant Number	General Ledger (Expense Code)	Cost Center (Dept Code)	Amount	WBS (Capital Project Code)	Internal Order ("PCA" code - optional)
Line 1	H	410		2811			
Line 2	Select...						
Line 3	Select...						
Line 4	Select...						
Line 5	Select...						

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

SECTION II: PARTIES TO AGREEMENT

Legal notices and invoices pertaining to this Agreement shall be sent to the appropriate contact person listed below. Notices shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows. Notice shall be deemed effective on the date that the notice is personally delivered or, if mailed, three (3) days after deposit in the mail. Either party may designate a different person and/or address for the receipt of notices by sending written notice to the other party, which shall not require an amendment to this Agreement.

Contractor

Business Name	City of Milpitas
Contact Person	Henry Kwong
Street Address *	1275 North Milpitas Boulevard
City, State, Zip *	Milpitas, CA 95035
Telephone number *	408-586-2419
Email Address *	hkwong@ci.milpitas.ca.gov
SCC Vendor Number (SAP)	1002326

* To be completed for Independent Contractors Only – DO NOT COMPLETE FOR DEPENDENT CONTRACTORS

County of Santa Clara

Agency / Department	Public Health Department
Program Manager or Contract Monitor Name	Susan Lowery
Street Address	1400 Parkmoor Avenue, Suite 120B
City, State, Zip	San Jose, CA 95126
Telephone number	408-793-2729
Fiscal Contact (Accounts Payable Contact)	James Ham / 408-885-6832
Contract Preparer	Thomas Chin / 408-792-5027

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

SECTION III: CONTRACT AUTHORIZATION

It is agreed between County and Contractor that Contractor will, for the compensation described in this Agreement, perform the work described in Section V in accordance with all terms and conditions of this Agreement including all exhibits and attachments. In addition, County and Contractor certify that the tax withholding status and benefit documentation (Section IV) accurately reflect the anticipated working relationship between County and Contractor. Further, contractor certifies that the insurance waiver information (Section VIII, Part B) of this form is true and correct. For independent contractors, a certificate demonstrating appropriate insurance is required before work may begin.

SIGNATURES

Contract is not valid until signed by Contractor and County's authorized representative. Signatures of the County Counsel and Office of the County Executive are required for contracts executed by a delegation of authority.

Contractor:

Date:

County Authorized Representative:

Date:

*(Procurement Department, Board of Supervisors,
or Delegated Authority)*

Agency/Department Manager:

Date:

Agency/Department Fiscal Officer:

Date:

County Counsel:

Date:

*(Signature required when the Standard Provisions language (Section VI)
is changed, or for IT Services pursuant to Board Policy 5.3.5.2-4, or when
contract was approved by a delegation of authority from the Board)*

Office of the County Executive:

Date:

*(Signature required when Board approved
contract by a delegation of authority)*

Attest Clerk of the Board:

Date:

*(Signature required when Board approved
contract)*

COUNTY OF SANTA CLARA - SERVICE AGREEMENT

SECTION IV: DETERMINATION OF RELATIONSHIP STATUS

Dependent/Independent status is an important relationship distinction. It determines the contractor's eligibility for Medicare and Social Security, Public Employees' Retirement System benefits, and other benefits and affects how the contractor files tax returns and the contractor's responsibility for various federal and state taxes.

Questionnaire to be Completed by Contracting Department to Determine Relationship Status of Contractor

Supervision: Will the County have the right to tell the contractor how to do the work, when to arrive or leave work, or when to take breaks? Do you have other employees performing similar work with a similar degree of supervision? **If the answer to any of these questions is YES, select YES from the dropdown.**

Training: Will the County instruct the contractor on how to do the job or pay for external training?

Incomplete Work: Will the Contractor be able to resign or terminate the contract without being held either financially or legally liable for unfinished work?

Place of Work/Tools: Will the County provide the Contractor with a place to work at a County location and tools to do the job, i.e. computers, telephones, etc?

Length of Relationship: When the Contractor is hired to complete ongoing departmental duties or functions— **answer YES.** When the contractor is hired to complete a specific project that was not the regular tasks performed by County employees before.

Other Customers: Does the County prevent the Contractor from performing similar services for other customers, either due to the amount of work (full-time), or by contractual provision?

Designation as Business Entity: If the Contractor has a business license or business certificate, or is a corporation, nonprofit organization, or school district, select "No" from the dropdown. (This does not pertain to professional licenses or certificates such as a license for a physician or architect.)

Enter below the business license number and the city/entity where issued.

Bus Lic. # Issued by:

Payment Schedule: Will payments be made either as an hourly wage or as weekly/monthly salary? If payment is by commission or based on project milestones or deliverables, answer "NO" to this question. Be sure this answer matches the contract payment schedule in Section V.

Support Services: Will County employees or other independent contractors provide assistance to this Contractor? Assistance is defined as clerical, technical or professional support.

If at least 5 of the above questions were answered "**NO**", Contractor is an **Independent Contractor**.

If 5 or more of the above questions were answered "**YES**", Contractor is a **Dependent Contractor**, where the relationship resembles that of employer/employee. Tax withholding is required and benefits are provided. Complete and attach the following forms: Employee's Withholding Allowance Certificate—Federal Form W-4, State Withholding Form DE-4, Determining PERS Eligibility and PERS Member Action Request. Visit www.oba for more information regarding Dependent Contractors. County insurance requirements do not apply to Dependent Contractors.

Contractor understands and agrees that the tax withholding and benefit status checked above is correct. Any changes to the contractor's tax withholding and benefit status require a new contract. Contractor is responsible for any penalties and liabilities assessed by any taxing authority, based on a change of tax withholding and benefit status.

Contractor's Initials: Reviewed by Dept. Fiscal Officer:

COUNTY OF SANTA CLARA - SERVICE AGREEMENT

SECTION V: CONTRACT SPECIFICS

A. SERVICE DESCRIPTION AND EXPECTED OUTCOME (SCOPE OF SERVICE)

Contractor shall provide the number of officers that it deems appropriate to meet the law enforcement needs of at least two organized San Jose Bike Party events during the contract period. In addition, Contractor shall maintain records from each officer participating in San Jose Bike Party events that include the number and type of traffic citations issued, number and type of arrests made, name of the officer, overtime hours worked, and a brief narrative of each San Jose Bike Party event. The data will be reported to the Public Health Department on the Police Department Enforcement Reporting Form (Exhibit C).

Or See Attachment incorporated by this reference

B. DELIVERABLES, MILESTONES, TIMELINE FOR PERFORMANCE

See Section V.A.

Or See Attachment incorporated by this reference

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

C. PERFORMANCE STANDARDS

See Section V.A.

Or See Attachment incorporated by this reference

D. PAYMENT SCHEDULE

The Contractor shall be reimbursed, up to a maximum of \$6,072.26, for providing law enforcement services at San Jose Bike Party events. The Contractor shall submit an invoice within 30 days of each San Jose Bike Party event at which it has provided law enforcement services. The invoice shall detail the number of officers that worked at the event and the number of hours worked by each officer. County shall pay each undisputed invoice within 30 days of receipt.

All invoices must be received by September 16, 2013.

Note:

- All reimbursements for travel shall comply with the current County Travel Policy
- Dependent contractors are not permitted to work in excess of 40 hours per week

Or See Attachment incorporated by this reference

COUNTY OF SANTA CLARA - SERVICE AGREEMENT

SECTION VI: STANDARD PROVISIONS

Changes to the terms and conditions in this section require approval of County Counsel

A. ENTIRE AGREEMENT

This document represents the entire Agreement between the parties. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of the agreement are merged into this Agreement.

B. AMENDMENTS

This agreement may only be amended by a written instrument signed by the Parties.

C. CONFLICTS OF INTEREST

Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of Contractor's service to the County under this Agreement. Contractor shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. Contractor shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

D. GOVERNING LAW, VENUE

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

E. ASSIGNMENT

No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.

F. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

Contractor assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

G. WAIVER

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

H. NON-DISCRIMINATION

Standard Non-Discrimination Language

Contractor shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

– OR –

Alternate Non-Discrimination Language Attached As Exhibit _____, incorporated by this reference.
(Requires County Counsel Approval)

I. TERMINATION

Standard Termination Language

The County may, by written notice to Contractor, terminate all or part of this Agreement at any time for the convenience of the County. The notice shall specify the effective date and the scope of the termination. In the event of termination, Contractor shall deliver to County all documents prepared pursuant to the Agreement, whether complete or incomplete. Contractor may retain a copy for its records. Upon receipt of the documents, Contractor shall be compensated based on the completion of services provided, as solely and reasonably determined by County.

– OR –

Alternate Termination Language Attached As Exhibit _____, incorporated by this reference.
(Requires County Counsel Approval).

J. BUDGET CONTINGENCY

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

K. COUNTY NO-SMOKING POLICY

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

L. FOOD AND BEVERAGE STANDARDS

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

M. CONTRACTING PRINCIPLES

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

N. CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor shall clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will use its best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County's deadline for responding to the CPRA request. If Contractor fails to obtain such remedy within County's deadline for responding to the CPRA request, County may disclose the requested information.

O. THIRD PARTY BENEFICIARIES

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

P. INTELLECTUAL PROPERTY RIGHTS:

Ownership: County shall own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term "Deliverables" shall mean any documentation and deliverables created by Contractor during the performance of services that are identified in this Agreement. Contractor hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor's agreement with the County or result from the use of premises leased, owned or contracted for by the County. Contractor acknowledges that all original works of authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County.

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

Q. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in VII of this agreement.

R. OWNERSHIP RIGHTS TO MATERIALS / RESTRICTIONS ON USE

All materials obtained, developed or prepared by Contractor in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the County. To the extent Contractor owns or claims ownership rights to said Deliverables, Contractor hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the County pursuant to the terms and conditions of this Agreement and at no additional cost. The County has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials prepared under this Agreement. If Contractor wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the Contractor shall obtain prior written authorization from the County, which consent may be withheld by the County in its sole discretion. Contractor acknowledges that all original works of authorship which are made by Contractor (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or developed by Contractor, solely or jointly with others, in connection with any agreement with the County. If requested to, and at no further expense to the County, Contractor will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such copyrights. This section shall apply to the extent not otherwise provided under this agreement.

S. COUNTY DATA

"County Data" shall mean data and information received by Contractor from County. As between Contractor and County, all County Data shall remain the property of the County. Contractor shall not acquire any ownership interest in the County Data. Contractor shall not, without County's written permission consent, use or disclose the County Data other than in the performance of its obligations under this Agreement. Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users; and ensure the proper disposal of County data upon termination of this Agreement. Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, notifying County as soon as possible of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users; and be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions hereof. Should confidential and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82 at Contractor's sole expense (if applicable). Contractor shall not charge the County for any expenses associated with Contractor's compliance with the obligations set forth in this section.

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

SECTION VII: INSURANCE / INDEMNIFICATION

Independent Contractors shall comply with the County's insurance and indemnification requirements as indicated below. These requirements do not apply to Dependent Contractors.

A. TYPE OF INSURANCE LANGUAGE

- The following standard insurance and indemnification language is attached and incorporated into this agreement:

B-2C Standard Service Contracts up to \$10,000

Modification or Waiver Attached if Appropriate

B. DETERMINATION OF INSURANCE REQUIREMENTS AND WAIVER DECLARATION

Workers Compensation:

Does the contractor have employees?

If "YES", then, WORKER'S COMPENSATION/EMPLOYER'S LIABILITY INSURANCE IS REQUIRED.

Yes

Owned Auto Insurance:

Will the contractor use any owned autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself?

If "YES", then INSURANCE FOR OWNED AUTOS IS REQUIRED.

Yes

Hired Auto Insurance:

Will the contractor use any hired autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself?

If "YES", then INSURANCE FOR HIRED AUTOS IS REQUIRED.

No

Non-owned Auto Insurance:

Will the contractor be using any non-owned autos in the provision of direct services, such as transporting clients in non-owned autos or operating non-owned autos in performance of the work itself?

If "YES" then, INSURANCE FOR NON-OWNED AUTOS IS REQUIRED.

No

When "NO" is checked, this declaration will serve as a waiver for the specified type of insurance.

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

SECTION VIII: FEDERAL/STATE REQUIRED PROVISIONS

(Examples include Drug-free Workplace Activity, Health Insurance Portability and Accountability Act (HIPAA), Business Associate Language, etc)

A. Federal Required Language Attached (optional)

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

B. State Required Language Attached (optional)

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

SECTION IX: ADDITIONAL ATTACHED EXHIBIT(S) (optional)

If exhibits are added to this Service Agreement, the contract will require review, approval and signature of County Counsel, with the exception of attachments that further explain the Contract Specifics as outlined in Section V, and insurance exhibits. Examples of attachments that require County Counsel approval are: 1) Contractor's terms and conditions that are different than, or add to the standard provisions language, 2) Any changes to the language in Section VI—Standard Provisions.

Exhibit Name(s) Exhibit A - Additional Terms and Conditions

Exhibit C - Police Department Reporting Form

The Exhibits named above are attached and incorporated by this reference

Exhibit A – Additional Terms and Conditions

1. Debarment and Suspension Certification

Contractor guarantees that it, its employees, contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within 30 calendar days advise the County if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b(f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.

2. Non-Supplanting Certification

Contractor guarantees that federal grant funds will only be used to supplement existing funds, and that such funds will not replace (supplant) funds that have been appropriated for the same purpose. Contractor further guarantees that it will document any reduction in non-federal resources, and the reason for the reduction.

3. Request for Information

Contractor must actively cooperate and respond to all requests for information by County relating to services provided or funds expended under this Agreement. Contractor must provide the requested information within ten (10) business days of County's request. Failure to respond as required under this term will be deemed a material breach by Contractor.

4. Master Grant Agreement Obligations

This Agreement is subject to the requirements of the Countywide Traffic Safety Improvement Project Grant Agreement between the California Department of Public Health (CDPH) and the County of Santa Clara for budget period October 1, 2012 through September 30, 2013 ("Master Grant Agreement"), which is incorporated into this Agreement. A copy of the Master Grant Agreement will also be maintained by County and made available upon request to Contractor throughout the term of this Agreement. Contractor is required to comply with all applicable requirements of the Master Grant Agreement. Those terms or conditions in the Master Grant Agreement, which CDPH requires the County to impose on its subcontractors, are hereby imposed on Contractor. If there is any conflict between this Agreement and the Master Grant Agreement, the requirements of the Master Grant Agreement shall control.

EXHIBIT B-2C (revised)

INSURANCE REQUIREMENTS FOR
STANDARD SERVICE CONTRACTS
UP TO \$10,000

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-2C (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than \$15,000 per person, \$30,000 per occurrence, \$5,000 property damage applicable to all owned, non-owned and hired vehicles.

2. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one hundred thousand dollars (\$100,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

3. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under

EXHIBIT B-2C (revised)

this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	100-3577	\$ 6,072	100-722-4113	\$ 6,072
<input type="checkbox"/> Budget Transfer				

Explain the reason for the budget change:

Background:

The County of Santa Clara Public Health Department is administering the 2013 San Jose Bike Party grant program that offers grant funds from the California Office of Traffic Safety to reimburse law enforcement agencies for overtime expenditures in response to the monthly San Jose Bike Party, which consists of up to 4,000 bicyclists traversing a route of up to 30 miles through different cities in the County during the third Friday night of each month. The goals of the program include ensuring the safety of and law compliance by the bicyclists as well as affected motorists on the roadways. The City of Milpitas has been approved for a grant of \$6,072 to coordinate responses to the San Jose Bike Party with other local law enforcement agencies in the County as needed.

Fiscal Impact: None – The overtime expenditures will be reimbursed by the grant.

Recommendation:

1. Authorize the Chief of Police to execute the service agreement with the County of Santa Clara Public Health Department for the 2013 San Jose Bike Party grant program.
2. Approve a budget appropriation in the amount of \$6,072 to the Police Department overtime budget as a result of the 2013 San Jose Bike Party grant program.

Check if City Council Approval required.

Meeting Date: March 5, 2013

Requested by:	Henry Kwong, Police Department	Date:	February 21, 2013
Reviewed by:	Finance Director: <i>[Signature]</i>	Date:	2/25/13
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	

**CITY OF MILPITAS
FEE CREDIT AGREEMENT
FOR TASP PUBLIC FACILITIES**

This Fee Credit Agreement for Public Facilities (“**Agreement**”), dated as of March ____, 2013, is by and between the City of Milpitas, a municipal corporation (“**City**”), and D.R. Horton Bay, Inc., a Delaware corporation (“**Developer**”).

WITNESSETH:

WHEREAS, Developer is the owner of that certain real property in the Transit Area Specific Plan area, in the City of Milpitas, State of California, as more commonly referred to as the Harmony Project, located at 1615 McCandless Street in Milpitas, California (“**Project**”).

WHEREAS, City has adopted a Transit Area Specific Plan fee (“**TASP Fee**”) to provide funds to finance improvements and facilities in the Transit Area Specific Plan area in the City of Milpitas (the “**Plan Area**”). The improvements and facilities to be constructed with the TASP fees are set forth in the adopted Financing Plan (EPS no. 17107) for the TASP area (the “**Financing Plan**”).

WHEREAS, the total TASP Fee for the Harmony project is \$8,007,312.

WHEREAS, pursuant to conditions of approval for the Project set forth in the Milpitas City Council Resolution No. 8138, approving Major Tentative Map No. MT11-0001, Site Development Permit No. SD11-0007, and Conditional Use Permit No. UP11-0031, adopted on November 15, 2011, Developer is required to pay the TASP Fee, subject to fee credits against the TASP Fee for the Improvements constructed by Developer. Developer has constructed, or will construct, certain improvements and facilities in the Plan Area identified in Exhibit A attached hereto (the “**Improvements**”) that are included in the Financing Plan and would otherwise be financed by the TASP Fee, and which Improvements will serve more than the Developer’s properties within the Plan Area. The TASP Fee Credit for the Improvements is estimated to be \$4,365,061 based on the Estimated Cost of the Improvements in the Financing Plan and more particularly set forth in Exhibit B attached hereto.

WHEREAS, in addition to the Improvements, Developer has also prepaid TASP park fees, and shall be entitled to a Fee Credit against TASP Fees, in the amount of \$2,951,544 (“**Park Fee Credit**”).

WHEREAS, The TASP fee credits for the Improvements and the Park Fee Credit are referred to herein as the “**Fee Credits**”. Therefore, the total estimated TASP Fee Credits due to Developer hereunder shall be approximately \$7,316,605.

WHEREAS, in addition to the foregoing Fee Credits, Developer is entitled to certain sewer fee credits pursuant to the Acquisition Agreement dated November 20, 2012 between City and Developer in the amount of \$2,961,624. Exhibit C attached hereto depicts the total estimated fee credits for the Project.

WHEREAS, City and Developer desire to enter into this Agreement to provide for allowable Fee Credits against the TASP Fees to Developer.

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Developer hereby agree as follows:

SECTION 1. Allowable Credits

1.1 Fee Credits

Subject to the terms of this Agreement, the City shall provide TASP Fee Credits to the Developer for the Improvement Costs (defined in Section 1.2 below) for acquisition and installation of the Improvements described in Exhibit A.

1.2 Improvement Costs

The Improvements, with estimated quantities and prices are shown in Exhibit B attached hereto based on the Financing Plan (the “**Estimated Costs**”). Developer shall be entitled to TASP Fee Credits for all actual costs and expenses incurred for the design, permitting and construction of the Improvements, including, without limitation, any and all design fees and costs, bond costs, land acquisition costs, hard and soft construction costs, consulting fees and costs, engineering fees and costs, inspection costs, and fees and expenses payable to the City or other governmental or public utility that, with respect to each of the above items, are incurred for the permitting, plan check, inspection and construction of the Improvements, (“**Improvement Costs**”) provided however the Improvement Costs shall not exceed the Estimated Costs unless approved in accordance with Section 1.3 below.

1.3 Cost Increases

The Fee Credit amount for the Improvements to be provided hereunder shall not exceed the Estimated Costs unless the City approves such increased costs and such increased costs were resulting from any of the following: (i) based on an update or amendment to the Financing Plan, (ii) any changes to the Improvements mandated by requirements of, or conditions imposed by, any governmental authority or public utility which were not reflected in the approved plans or (iii) unforeseen or changed conditions on the ground pursuant to which Developer executes a change order with its contractor(s) in order to complete the Improvements in accordance with the approved plans and City approves such change order pursuant to Section 5 below. If at any time the Developer anticipates that the Improvement Costs will exceed the Estimated Costs, Developer shall notify the City in writing. City shall not unreasonably withhold, condition or delay its approval of an increase in costs resulting from the foregoing, and if such cost increases are approved, City shall include such additional costs in an update or annual indexing to the TASP fee program (and City shall update the then-current cost estimate of the Improvements).

SECTION 2. Issuance of Credits

1.1 Verification of Improvement Costs

Developer shall provide City with reasonable supporting documentation for the Improvement Costs, including copies of executed contracts and copies of invoices from the general contractors, subcontractors, consultants and suppliers, together with evidence of payment showing that payment has been made in connection with such reimbursement request and partial lien releases for work completed.

1.2 Credit Issuance Timing

Fee Credits shall be issued and available for use against the applicable building permit fees. Developer shall have the right to pre-pay any or all TASP fees, and shall be entitled to Fee Credits against such TASP Fees based on the Estimated Cost of the Improvements. Any prepayment in full for a building permit shall be full and final satisfaction of Developer's obligation to pay TASP fees for such building permit (and Developer shall not be subject to any fee increases for such building permit after such prepayment). Upon the Notice of Completion for the last of the Improvements to be constructed by Developer, City and Developer shall "true-up" the TASP fee payment that was due at the time of such prepayment and the Fee Credit amount due to Developer for the actual cost of the Improvements in accordance with Section 1 above. If Developer owes additional TASP fees, Developer shall make such payment within ten (10) business days of such true-up, or if Developer has overpaid such TASP fees, City shall reimburse Developer within such (10) business day period.

SECTION 3. Construction of Improvements

Developer shall complete construction of the Improvements in accordance with the plans and specifications approved by City and in accordance with City standard construction specifications and this Agreement. All Improvements shall be completed (determined by filing of a notice of completion) prior to issuance of the 250th certificate of occupancy, unless City determines in its sole discretion to waive such condition.

SECTION 4. Inspection

City shall at all times have access to the construction site during construction and the Developer shall furnish City with all reasonable information necessary for ascertaining full knowledge of the Improvements with respect to the progress, workmanship and character of materials and equipment used and employed in the work.

Neither observation of the work by City nor failure of City to inspect the Improvements or to discover defects in material or workmanship shall relieve Developer from its obligations to complete construction in accordance with the plans and specifications approved by City and to insure that the Improvements are free of defects in materials and workmanship.

SECTION 5. Change Orders

5.1 Changes in the Improvements requested by City.

Developer agrees to make any changes in the construction of the Improvements as reasonably requested by City, provided that City adopts corresponding adjustments to the TASP Fees to be imposed on other benefiting properties to reimburse Developer for the increased costs of such changes. City agrees to provide Fee Credits for any and all changes made to the plans and specifications that are requested and approved in writing by City.

5.2 Change Orders.

Change Orders may be needed where changes in the scope of work, or the increases to the Estimated Costs of the Improvements, are necessary due to unanticipated or unforeseen conditions encountered during construction for reasons beyond Developer's control. All Change Orders causing the actual costs to exceed the Estimated Costs must be approved by Developer and City in writing in accordance with the following: Developer shall notify City immediately after Developer discovers that it will incur additional costs as a result of unforeseen or

unanticipated conditions encountered during construction or any other event outside of Developer's direct control, that will cause the actual cost of the Improvements to exceed the Estimated Costs. Developer shall also include with such written notice, if possible, the revised estimated construction costs, which shall include an estimate of the additional costs resulting from such event, and shall also provide a recommendation on how to decrease the anticipated costs to an amount that is within the Estimated Costs, if possible. Within three (3) business days of receiving said written notice, City shall either (1) direct Developer to continue with the construction of the Improvements, approve of such revised estimated construction costs, amend Exhibit B to include such additional costs, and adopt corresponding adjustments to the TASP Fees to be imposed on other benefiting properties to reimburse Developer for the increased costs of such changes or (2) modify the approved design and construction documents in order to reduce the construction costs to an amount equal to or less than the amount set forth in Exhibit B, in which case, the Improvements shall be modified in order to bring the costs back within the budget approved in Exhibit B. In this latter event, Developer and the City shall meet and confer in an attempt to agree upon the requisite modifications. City shall make such revisions to the design and construction documents and deliver a copy of the revised design and construction documents to the Developer; or (3) require any combination of (1) and (2).

SECTION 6. Limited City Obligation

The obligations arising from this Agreement are neither a debt of the City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except for the developer impact fees that would have otherwise been collected for the Improvements and other capital facilities set forth in the project plans for the TASP fee program. Neither the City of Milpitas general fund nor any other fund of the City, except the TASP Fee program, shall be liable for the payment of any obligations arising from this Agreement. The credit or taxing power of the City is not pledged for the payment of any obligation arising from this Agreement. The Developer shall not compel the forfeiture of any of the City's property to satisfy any obligations arising from this Agreement.

SECTION 7. Acceptance of Improvements

At such time as the Developer believes that each Improvement is complete, the Developer shall provide written notice of completion to the City, requesting an inspection. Within ten (10) business days or as mutually agreed following the date of receipt of the Developer's written notice of completion of any Improvement, the City shall conduct a final inspection of the applicable Improvements. If, during the final inspection, the City determines that Improvements have not been completed in accordance with all applicable codes, regulations, permits and approved plans, the City shall prepare a punch list of all items to be completed by the Developer and shall provide such punch list to the Developer within ten (10) business days or as mutually agreed following the final inspection. If the City delivers such punch list to the Developer within said ten (10) business day period or period as mutually agreed upon, then the Developer shall undertake to repair such punch list items in a diligent manner within sixty (60) calendar days. Upon completion of the punch list work, the Developer shall request another final inspection from the City and within ten (10) business days following such written notice from the Developer, the City shall conduct another final inspection. If the City determines that the punch list work is complete and no other deficiencies are identified, the Developer will be deemed to have successfully completed the final inspection. If the City determines that the punch list work is not complete, then City and Developer shall repeat the inspection/punch list procedures specified in this Section until the successful completion of the punch list work and a final inspection. At such time as Developer has successfully completed the final

inspection, City shall accept the completed Improvements within thirty (30) calendar days thereafter. City shall not unreasonably withhold, delay or condition acceptance of the Improvements.

SECTION 8. Conveyance of the Improvements

Once any Improvement is accepted by the City and no liens have been filed with respect to such Improvement within ninety (90) days following the date of filing the Notice of Completion for such Improvement (or if valid liens were filed during such period, such liens have been bonded around or removed prior to acceptance), the Improvement(s) shall become the property of the City. The Developer shall take any and all actions necessary to convey to the City and vest in the City full, complete and clear title to the Improvements through the City's initial and final acceptance procedures.

SECTION 9. Delivery of Plans and Specifications

Prior to acceptance of the Improvements by the City, the Developer shall deliver to the City copies of all plans, specifications, shop drawings, as-built plans, operating manuals, service manuals, warranties and other documents relating to the design, construction, installation and operation of the applicable Improvement(s). Plans shall be submitted in CAD format, GIS format and PDF format as acceptable to the City.

SECTION 10. Liens, Claims, and Encumbrances

Prior to acceptance of the Improvements by the City, the Developer shall provide a written guarantee and assurance to the City that there are no liens, claims, or monetary encumbrances on the Improvements, together with unconditional final releases from all contractors and material suppliers, and with copies of invoices and corresponding checks issued by the Developer for all items for which fee credits are requested under this Agreement for the Improvements. The City shall have no obligation to issue any Fee Credits for Improvements until the Developer has cleared any and all liens, claims and monetary encumbrances from the Improvements and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.

SECTION 11. No Third Party Beneficiary

By entering into this Agreement, City and the Developer are not entering into any contract or agreement with any general contractor, subcontractor, or other party nor is any general contractor, subcontractor, or other party a third party beneficiary of this Agreement, and City shall have no obligation to pay any general contractor, subcontractor, or other party for any work that such general contractor, subcontractor, or other party may do pursuant to the plans and specifications for the Improvements.

SECTION 12. Warranty and Repair

The Developer hereby warrants the Improvements as to materials and workmanship and, should any failure of any Improvement occur within a period of one year after initial acceptance of such Improvement by City, the Developer shall promptly cause the needed repairs to be made without cost to City. The provisions contained herein shall not be deemed to limit any rights Developer may have or may have to seek damages or other relief from any acts or omissions of any contractor involved in the construction or design of the Improvements. Notwithstanding the foregoing, Developer's warranty excludes remedy for damage or defect caused by ordinary wear and tear under normal usage, abuse, neglect, modifications not performed by Developer or its agents, and improper or insufficient maintenance not performed by Developer or its agents. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer or any materials used in the Improvements, but the

Agreement to a subsequent developer or builder of Developer's Property, or any portion thereof, the foregoing Fee Credits shall continue to be applied to the development within Developer's Project to reduce and/or eliminate the amount of the TASP Fees otherwise payable thereby.

This Agreement shall not apply to any home buyer who purchases a completed dwelling unit from Developer within Developer's property prior to the date of this Agreement first written above and shall automatically terminate on a Lot-by-Lot basis upon the conveyance of that Lot to a member of the home-buying public following completion of construction of a dwelling unit on such Lot.

SECTION 18. Governing Law; Venue

This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Santa Clara, State of California.

SECTION 19. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by all parties.

SECTION 20. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day of the year first above written.

City of Milpitas:

DEVELOPER:

By: _____

City Manager, City of Milpitas

D.R. HORTON BAY, INC.,
a Delaware corporation

Dated: _____, 2013

By: _____
Dean K. Mills, Vice President of Forward
Planning

Attest:

Date of Execution: _____, 2013

By: _____

City Clerk

Approved as to form:

By: _____

City Attorney

EXHIBIT A- Improvements

[include detailed scope of work for Improvements from COA/Financing Plan]

- 1) Trail Improvement
- 2) Open Space/Landscape
- 3) Recycled Water
- 4) Traffic Signal
- 5) McCandless Roadway Work
- 6) Bridge

DR HORTON TRANSIT AREA SPECIFIC PLAN FEE CREDITS

ITEM	COST
TRANSIT AREA SPECIFIC PLAN FEE TASP Fee includes Park in Lieu Fees (276 units x \$29,012/per unit) Sub Total	\$8,007,312 \$8,007,312
TRANSIT AREA FINANCING PLAN FEE CREDITS Trail Improvements Open Space/Landscape Recycled Water Sub Total	-\$334,732 -\$494,125 -\$828,857
CONDITIONS OF APPROVAL - TASP Reimbursements/Fee Credits McCandless Road (Eastside) Traffic Signal Design Bridge Payment Environmental Reimbursement Sub Total	-\$512,580 -\$37,000 -\$25,000 -\$574,580
SEWER LINE 11A & 11B Sewer Line Sewer Line Construction Sub Total	-\$2,707,506 -\$254,118 -\$2,961,624
CREDITS AND PAYMENTS Total Credits Payment (Park Fee Credit) Sub Total	-\$4,365,061 -\$2,951,544 -\$7,316,605
TOTAL SPECIFIC PLAN PAYMENT	\$690,707

LEGEND

-  RECYCLED WATER
-  CREEK TRAIL
-  McCANDLESS DRIVE MEDIAN

ADDITIONAL REIMBURSEMENTS INCLUDE:

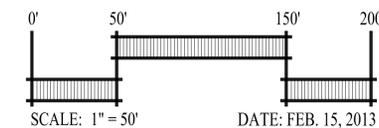
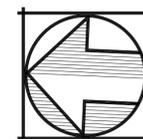
1. ANY WORK OR IMPROVEMENTS EAST OF THE CENTERLINE ON McCANDLESS DRIVE INCLUDING THE CITY OWNED PROPERTY OR CARL'S JR. PROPERTY.
2. ANY ADDITIONAL WORK TRIGGERED BY AREA WIDE IMPROVEMENTS.
3. TRAFFIC SIGNAL IMPROVEMENTS AT MONTAGUE AND/OR FUTURE SIGNAL AT DeLONG LANE.



FEE CREDIT EXHIBIT 'A'

HARMONY

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA



	Carlson, Barbee & Gibson, Inc. CIVIL ENGINEERS • SURVEYORS • PLANNERS
	6111 BOLLINGER CANYON ROAD, SUITE 150 SAN RAMON, CALIFORNIA 94583
	(925) 866-0322 FAX (925) 866-8575



#1

February 17, 2012
 Job No.: 1933-000

**MT11-0001 - Harmony
 D.R. Horton America's Builder
 Park Fee Credits
 Milpitas, California**

Linear Parks (Phase I Improvements)

- Total Linear Park & Trail Improvement in Sub-district McCandless / Centre Point (Item #40) Cost is \$2,022,203
- Total Linear Feet of Linear Park & Trail Improvements in McCandless / Centre Point Sub-district per TASP Figure 3-6
 - 4,500 LF
- Harmony Linear Park & Trail Improvements
 - 1,660 LF
- Cost Allocation:

Revised based on 2012 Fee
 $25' \times 1,660 = 1ac$ \$334,732

#40

- Total Improvements:
 $\$2,022,203 / 4,500 \text{ LF} = \$449.37 / \text{LF}$
- Harmony Improvements:
 $\$449.37 / \text{LF} \times 1,660 \text{ LF} \times 0.80 = \del{\$596,763.36}$

This was a deduction per Fernando based on agreement on the total below.
 Needs to be deleted
~~total~~
 number = $\$1,489,954.2$

Landscape Buffer (Phase I Improvements)

- 23,725 SF of Landscape Buffer
 - $23,725 \text{ SF} \times 0.20 = 4,745 \text{ SF}$
- Land
 - $4,745 \text{ SF} \div 43,560 \text{ SF/AC} \times \$2,047,320 / \text{AC} = \$223,015.00$
- Construction Value
 - $4,745 \text{ SF} \times \$12.00 / \text{SF} = \$56,940.00$
- Total Phase I
 - $\$223,015.00 + \$56,940.00 = \$279,955.00$

Landscape Buffer (Phase II Improvements)

- 26,275 SF of Landscape Buffer
 - $26,275 \text{ SF} \times 0.20 = 5,255 \text{ SF}$
- Land
 - $5,255 \text{ SF} \div 43,560 \text{ SF/AC} \times \$2,047,320 / \text{AC} = \$246,985.00$
- Construction Value
 - $5,255 \text{ SF} \times \$12.00 / \text{SF} = \$63,060.00$
- Total Phase II
 - $\$246,985.00 + \$63,060.00 = \$310,045.00$

Total Park Fee Credits = \$1,186,763.36

Per Meeting and Agreement with Fernando Bravo, Sheldon AhSing and Dean Mills (DR Horton)



#2

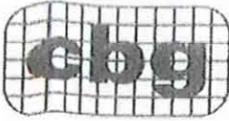
March 13, 2012
Job No.: 1933-000

**Harmony
D.R. Horton America's Builder
Off-Site Infrastructure
Milpitas, California**

Recycled Water

- Total RW Improvement Item (Item #20) Cost is \$5,870,911
- Total Linear Feet of RW Improvements per TASP Figure 6-3
 - o 14,500 LF *Now 18,000 LF per plan = \$335 per LF*
- Harmony RW Improvements
 - o 1,475 LF
- Cost Allocation:
 - o Total RW Improvements:
 $\$5,870,911 / 14,500 \text{ LF} = \$404.89 / \text{LF} *$
 - o Harmony RW Improvements:
 ~~$\$404.89 / \text{LF} \times 1,475 \text{ LF} = \$597,212.75$~~

$1475 \times 335 = \$494,125$



Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS



ENGINEER'S PRELIMINARY CONSTRUCTION COST ESTIMATE

Job No.: 1933-000

SUMMARY

April 12, 2012

McCANDLESS DRIVE

Revised May 4, 2012

HARMONY

MILPITAS, CALIFORNIA

1. TOTAL PUBLIC STREET IMPROVEMENTS CONSTRUCTION COST \$ 702,164

(Estimate assumes existing curb, gutter and sidewalk along East Frontage to remain. Excludes all improvements directly associated with the Project as labeled N.I.C.)

CONTINGENCY (15%)	\$	105,325
DESIGN (10%)	\$	70,216
CONSTRUCTION STAKING (5%)	\$	35,108
PLAN CHECK & INSPECTION FEES (10%)	\$	70,216
CONSTRUCTION MANAGEMENT (5%)	\$	35,108
BONDS (1%)	\$	7,022
Total	\$	1,025,159

CITY SHARE OF McCANDLESS DR. BASE IMPROVEMENTS (50%) \$ 512,580

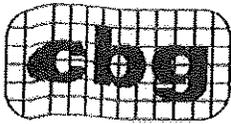
2. TOTAL EAST SIDE WIDENING ONLY CONSTRUCTION COST \$ 363,325

(Estimate for addition construction items associated with the east side widening only (Accel/Decel Lanes))

CONTINGENCY (15%)	\$	54,499
DESIGN (10%)	\$	36,333
CONSTRUCTION STAKING (5%)	\$	18,166
PLAN CHECK & INSPECTION FEES (10%)	\$	36,333
CONSTRUCTION MANAGEMENT (5%)	\$	18,166
BONDS (1%)	\$	3,633
Total	\$	530,455

CITY SHARE OF McCANDLESS DR. EAST SIDE WIDENING IMPROVEMENTS (100%) \$ 530,455

TOTAL CITY OF MILPITAS COST OF McCANDLESS DRIVE IMPROVEMENTS \$ 1,043,034



Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS

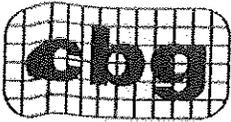
ENGINEER'S PRELIMINARY CONSTRUCTION COST ESTIMATE
PUBLIC STREET IMPROVEMENTS
McCANDLESS DRIVE
HARMONY
MILPITAS, CALIFORNIA

Job No.: 1933-000
 April 12, 2012
 Revised May 4, 2012

Item	Description	Quantity	Unit	Unit Price	Amount
<u>STREET WORK</u>					
1	Sawcut (1' Offset from Future Median)	2,000	LF	\$ 2.00	\$ 4,000.00
2	Sawcut (1' Offset from existing lip of gutter)	1,440	LF	\$ 2.00	N.I.C.
3	Remove Existing Curb and Gutter	1,440	LF	\$ 5.00	N.I.C.
4	Remove Existing AC / AB	11,780	SF	\$ 5.00	N.I.C.
5	Remove Existing Median (Including Landscape and Irrigation)	325	SF	\$ 10.00	\$ 3,250.00
6	Remove and Off-Haul Soil (3' Deep for median & sidewalk L/S)	625	CY	\$ 30.00	\$ 18,750.00
7	Fine Grade (sidewalk)	11,240	SF	\$ 0.35	N.I.C.
8	8" Median Curb	2,000	LF	\$ 20.00	\$ 40,000.00
9	6" Curb and Gutter (includes cushion)	1,320	LF	\$ 20.00	N.I.C.
10	6' Concrete Sidewalk (includes cushion)	7,900	SF	\$ 5.00	N.I.C.
11	Accessible Ramps	3	EA	\$ 2,500.00	N.I.C.
12	Enhanced Concrete Paving (at future intersection)	3,250	SF	\$ 15.00	\$ 48,750.00
13	Replace Existing AC / AB	3,320	SF	\$ 8.00	\$ 26,560.00
14	Grind Existing AC	74,000	SF	\$ 1.00	\$ 74,000.00
15	Overlay Fabric	74,000	SF	\$ 0.50	\$ 37,000.00
16	Minimum 2" AC Overlay	74,000	SF	\$ 3.00	\$ 222,000.00
17	Street Conforms (at McCandless)	2	EA	\$ 2,000.00	\$ 4,000.00
18	Bus Stop	1	LS	\$ 5,000.00	N.I.C.
19	Fog seal	74,000	SF	\$ 0.05	\$ 3,700.00
20	Traffic Striping and Signing	1,500	LF	\$ 15.00	\$ 22,500.00
21	Traffic Control (assume complete roadway closure)	1	LS	\$ 30,000.00	\$ 30,000.00
SUBTOTAL STREET WORK					\$ 534,510.00
<u>LANDSCAPE AND IRRIGATION</u>					
22	Planting Soil (3' Deep)	625	CY	\$ 30.00	\$ 18,750.00
23	Fine Grade (median)	4,725	SF	\$ 0.35	\$ 1,653.75
24	Landscape and Irrigation (median)	4,725	SF	\$ 10.00	\$ 47,250.00
25	Landscape Median Nose Treatment (hardscape)	900	SF	\$ 15.00	\$ 13,500.00
26	Irrigation Sleeves	600	LF	\$ 5.00	\$ 3,000.00
27	Irrigation Controller	1	EA	\$ 20,000.00	\$ 20,000.00
SUBTOTAL LANDSCAPE AND IRRIGATION					\$ 104,153.75

Carlson, Barbee & Gibson, Inc.

Item	Description	Quantity	Unit	Unit Price	Amount
UTILITIES					
28	2" Irrigation Service (median)	1	EA	\$ 1,500.00	\$ 1,500.00
29	2" Irrigation Meter (median)	1	EA	\$ 1,000.00	\$ 1,000.00
30	Remove Existing Catch Basin and Storm Drain Pipe (for Tree-Box Filter)	1	EA	\$ 4,000.00	N.I.C.
31	Storm water Quality Control Features (Tree-Box filters)	5	EA	\$ 15,000.00	N.I.C.
32	Catch Basin (connect to existing 33" storm drain)	1	EA	\$ 5,000.00	N.I.C.
33	Adjust Existing Sanitary Sewer Manholes (in median)	5	EA	\$ 1,000.00	\$ 5,000.00
34	Adjust Existing Utility Valve Covers and Lids to Grade	1	LS	\$ 2,000.00	\$ 2,000.00
35	Fire Hydrants	3	EA	\$ 4,000.00	N.I.C.
36	Electroliers (Decorative)	8	EA	\$ 5,000.00	\$ 40,000.00
37	Remove Existing Electroliers	7	EA	\$ 2,000.00	\$ 14,000.00
SUBTOTAL UTILITIES					\$ 63,500.00
TOTAL PUBLIC STREET IMPROVEMENTS CONSTRUCTION COST				\$	702,163.75



**Carlson, Barbee
& Gibson, Inc.**

CIVIL ENGINEERS • SURVEYORS • PLANNERS

ENGINEER'S PRELIMINARY CONSTRUCTION COST ESTIMATE
PUBLIC STREET IMPROVEMENTS
McCANDLESS DRIVE
EAST SIDE WIDENING ONLY
HARMONY
MILPITAS, CALIFORNIA

Job No.: 1933-000
April 12, 2012
Revised May 4, 2012

Item	Description	Quantity	Unit	Unit Price	Amount
<u>STREET WIDENING WORK ON EAST FRONTAGE</u>					
1	Sawcut (1' Offset from east side lip of gutter)	700	LF	\$ 2.00	\$ 1,400.00
2	Remove Existing Curb and Gutter	700	LF	\$ 5.00	\$ 3,500.00
3	Remove Existing AC/ AB	700	SF	\$ 5.00	\$ 3,500.00
4	Remove Existing Sidewalk and Driveway Entries	4,150	SF	\$ 5.00	\$ 20,750.00
5	Remove Existing Landscape and Irrigation	14,000	SF	\$ 2.00	\$ 28,000.00
6	Remove Existing Trees and Root Systems	33	EA	\$ 400.00	\$ 13,200.00
7	Grading	2,000	CY	\$ 12.00	\$ 24,000.00
8	Fine Grading (street, sidewalk, landscape)	17,500	SF	\$ 0.35	\$ 6,125.00
9	Aggregate Base (street widening)	7,400	SF	\$ 1.00	\$ 7,400.00
10	Asphalt Concrete (street widening)	7,400	SF	\$ 3.00	\$ 22,200.00
11	Enhanced Concrete Paving (at intersection)	1,000	SF	\$ 15.00	\$ 15,000.00
12	6" Curb and Gutter (includes cushion)	700	LF	\$ 20.00	\$ 14,000.00
13	6' Concrete Sidewalk (includes cushion)	4,150	SF	\$ 5.00	\$ 20,750.00
14	Conform Entry to Existing Parking Lot	1	EA	\$ 20,000.00	\$ 20,000.00
15	Accessible Ramps	2	EA	\$ 2,500.00	\$ 5,000.00
16	Bus Stop	1	LS	\$ 5,000.00	\$ 5,000.00
17	Striping	1	LS	\$ 5,000.00	\$ 5,000.00
18	Traffic Control & Temporary Signing	1	LS	\$ 10,000.00	\$ 10,000.00
	SUBTOTAL STREET WIDENING WORK ON EAST FRONTAGE			\$	224,825.00
<u>STORM DRAIN WORK</u>					
19	Remove Existing Storm Drain Inlets	2	EA	\$ 2,000.00	\$ 4,000.00
20	Install Storm Drain Inlets and Extend Pipe	2	EA	\$ 5,000.00	\$ 10,000.00
21	Storm Water Quality Control Features (budget assumed)	1	LS	\$ 20,000.00	\$ 20,000.00
	SUBTOTAL STORM DRAIN WORK			\$	34,000.00
<u>DOMESTIC WATER WORK</u>					
22	Relocate Existing Water & Irrigation Services	5	EA	\$ 1,500.00	\$ 7,500.00
23	Relocate Existing Fire Service	1	EA	\$ 5,000.00	\$ 5,000.00
24	Relocate Existing Fire Hydrant	2	EA	\$ 3,000.00	\$ 6,000.00
	SUBTOTAL DOMESTIC WATER WORK			\$	18,500.00

Carlson, Barbee & Gibson, Inc.

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
<u>JOINT TRENCH WORK</u>					
25	Relocate Existing Joint Trench	700	LF	\$ 100.00	\$ 70,000.00
26	Relocate Existing Electroliers	2	EA	\$ 3,000.00	\$ 6,000.00
SUBTOTAL JOINT TRENCH WORK					\$ 76,000.00
<u>STREET LIGHT WORK</u>					
27	Install Traffic Signal Conduit <i>(at intersection)</i>	1	LS	\$ 10,000.00	\$ 10,000.00
SUBTOTAL STREET LIGHT WORK					\$ 10,000.00
TOTAL EAST SIDE WIDENING ONLY CONSTRUCTION COST					\$ 363,325.00



**Carlson, Barbee
& Gibson, Inc.**

CIVIL ENGINEERS • SURVEYORS • PLANNERS

#4

ENGINEER'S PRELIMINARY CONSTRUCTION COST ESTIMATE

Job No.: 1933-000

FUTURE TRAFFIC SIGNAL

Sept. 27, 2012

McCANDLESS DRIVE

HARMONY

MILPITAS, CALIFORNIA

Item	Description	Quantity	Unit	Unit Price	Amount
<u>TRAFFIC SIGNAL WORK</u>					
1	Signal Design	1	LS	\$ 15,000.00	\$ 15,000.00
2	Consultant Coordination	1	LS	\$ 2,000.00	\$ 2,000.00
3	Infrastructure for Future Signal <i>(Coordination Plan - Sheet TS-3 of the McCandless Drive Improvement Plans)</i>	1	LF	\$ 20,000.00	\$ 20,000.00
SUBTOTAL TRAFFIC SIGNAL WORK					\$ 37,000.00
TOTAL FUTURE TRAFFIC SIGNAL COST					\$ 37,000.00

#5

**EXHIBIT B2
ASSIGNMENT OF REIMBURSEMENT PAYMENTS AND CREDITS TO DEVELOPER AND
OTHER BENEFITTING LANDOWNERS**

(IN EVENT THAT TASP FEE IS INCREASED TO REFLECT THE REVISED COST
ESTIMATE)

Other Benefitting Landowners	Sewer Fund Payment	TASP Credit	TASP Construction In Lieu Credit	Assessor Parcel Numbers of Other Benefitting Landowners Receiving TASP Credit Running with Land
DR Horton	\$914,405.15	\$295,572.09	\$254,117.76	086-41-019, 086-41-020, 086-41-021, 086-41-022
DR Horton (Integral)		\$702,950.00		086-41-019, 086-41-020, 086-41-021, 086-41-022
Taylor Morrison		\$286,335.00		086-33-094, 086-33-095, 086-33-098, 086-33-099
Taylor Morrison (Integral)		\$508,244.00		086-33-094, 086-33-095, 086-33-098, 086-33-099

Total Credits and Reimbursements Payment: \$2,961,624 (Design Costs, Soft Cost Contingency and Bond/Insurance Costs included as part of the \$2,546,576.15 Credit and Reimbursement Payment)