



**MILPITAS CITY COUNCIL MEETING AGENDA
TUESDAY, MARCH 19, 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
City of Milpitas as Defendant
 - 2. CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to California Government Code §54957.6, City Negotiator: Carmen Valdez
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 – March 5, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS - March and April 2013**
- VIII. PRESENTATION - Recognition Certificate to Art of Living Foundation followed by a brief presentation by the Foundation to the City of Milpitas**
- IX. PUBLIC FORUM**

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

- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- 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 and Adopt a Resolution to Adopt the South Milpitas Boulevard Plan Line (Staff Contact: Steve Chan, 408-586-3324)**

XV. UNFINISHED BUSINESS

2. **Receive Progress Report on the Bay Area Rapid Transit (BART) Extension Project (Staff Contact: Kathleen Phalen, 408-586-3345)**
3. **Receive Progress Report on Fire Department Overtime Containment (Staff Contact: Brian Sturdivant, 408-586-2811)**

XVI. REPORTS OF MAYOR AND COMMITTEE

- * 4. **Consider Mayor's Recommendation for Appointments to the Economic Development Commission and Library Commission (Contact: Mayor Esteves, 408-586-3029)**
- * 5. **Approve the Public Art Committee 2013-2015 Master Plan (Staff Contact: Renee Lorentzen, 408-586-3409)**

XVII. ORDINANCE

6. **Waive the Second Reading and Adopt Ordinance No. 284 Requiring Council Disclosure of Campaign Contributions (Staff Contact: Michael Ogaz, 408-586-3040)**

XVIII. RESOLUTIONS

- * 7. **Adopt a Resolution Granting Initial Acceptance of Santa Clara Valley Transportation Authority (VTA) Water, Storm, and Sewer Utility Relocation at Piper Drive, VTA Project No. C610 (Staff Contact: Kathleen Phalen, 408-586-3317)**
- * 8. **Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Abel Street Transit Connection Project No. 4260, Federal Aid Project No. CML-5341 (003) (Staff Contact: Steve Erickson, 408-586-3301)**
- * 9. **Adopt a Resolution Approving Park and Recreation Programs Donation Policy (Staff Contact: Michael Ogaz, 408-586-3040)**
- * 10. **Approve and Authorize Execution of a Subdivision Improvement Agreement, Sewer Acquisition and Reimbursement Agreement 11B-2/11C, On-Site Private Utilities Covenant Agreement, Right-of-Way Encroachment Permit Agreement, Final Map, Sewer 11B-2/11C and Public Improvement Plans, and Adopt Resolution Authorizing Annexing Certain Real Property into Community Facilities District No. 2008-1 for Pace Development/Contour Trade Zone, LLC, Project No. 2762 (Staff Contact: Keyvan Irannejad, 408-586-3244)**
- * 11. **Adopt a Resolution Authorizing the City Manager to Execute a Contract for the Purchase of a Video Imaging Detection System by Piggybacking the City of San Jose Contract with Iteris, Inc. for the Not-to-Exceed amount of \$73,600 (Staff Contact: Chris Schroeder, 408-586-3161)**

XIX. BIDS AND CONTRACTS

- * 12. **Award the Bid for On-Call Pavement Striping and Marking at Various City of Milpitas Sites to Chrisp Company for an Annual Not-To-Exceed Amount of \$100,000 and Allow the City Manager to Approve Annual Increases Per Agreement Terms (Staff Contact: Chris Schroeder, 408-586-3161)**

- * 13. Award the Bid for On-Call Sidewalk Repair, Curbs & Gutters at Various City of Milpitas Sites to JJR Construction, Inc. for an Annual Not-To-Exceed Amount of \$150,000 and Allow the City Manager to Approve Annual Increases Per Agreement Terms (Staff Contact: Chris Schroeder, 408-586-3161)
- * 14. Authorize City Manager to Execute an Agreement with Contour Trade Zone LLC (Trumark) 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)
- * 15. Approve and Authorize the City Manager to Execute an Agreement with Bellinger Foster Steinmetz Landscape Architecture for Pinewood Park Renovation Project No. 5096 (Staff Contact: Steve Erickson, 408-586-3301)
- * 16. Approve Purchase and Installation of a Telescoping Boom for the Vactor Sewer Truck for an Amount not to exceed \$25,000 and Approve a Budget Appropriation (Staff Contact: Kathleen Phalen, 408-586-3345)

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 2, 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)*
- Community Advisory Commission (one regular member and one alternate member)*
- Economic Development Commission (alternate members)*

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 and Adopt a Resolution to Adopt the South Milpitas Boulevard Plan Line (Staff Contact: Steve Chan, 408-586-3324)**

Background: The Transit Area Specific Plan (TASP), adopted by City Council in June 2008, identified a new segment of public roadway that will extend South Milpitas Boulevard from Montague Expressway to Capitol Avenue to serve the future BART station. The City must adopt a plan line to establish the public street right-of-way for this new street extension to ensure there will be sufficient width to construct the street section as described in the TASP. As envisioned in the TASP, this will be a collector road with two 11-foot wide travel lanes in each direction, a median island varying in width from 4 to 10 feet, 6-foot wide bike lanes in each direction, and 9-foot sidewalks on both sides of the street. Space for landscape planter strips is designated at intervals along the back of curb to serve as stormwater treatment facilities, as required by the City's urban runoff permit. The plan line also identifies the affected parcels, land uses, and the extent of dedication needed to establish right-of-way.

In accordance with the 2010 Master Agreement between the City of Milpitas and the Santa Clara Valley Transportation Authority (VTA), VTA will acquire the right-of-way and will design and construct the South Milpitas Blvd. extension from Montague Expressway to Capitol Avenue. VTA and the City will share the costs for this effort in accordance with the Master Agreement. The City will pay its share of costs to VTA from the Transit Area Developer Impact Fees as they become available, up to a maximum amount of \$17 million.

VTA's contract designers have prepared the South Milpitas Boulevard plan line design (copy included in the Council packet) for the South Milpitas Boulevard extension. City staff advised VTA's designers on the City's requirements for this plan line, reviewed the work, and finds that it will acceptably establish the public street right-of-way to accommodate the planned street section in accordance with the TASP and City standards.

Fiscal Impact: None.

Attachments:

1. Resolution
2. South Milpitas Boulevard Plan Line Design

Recommendations:

1. Open the public hearing, and following any comments, move to close the public hearing.
2. Adopt a resolution to establish the South Milpitas Boulevard Plan Line from Montague Expressway to Capitol Avenue.

XV. UNFINISHED BUSINESS

2. **Receive Progress Report on the Bay Area Rapid Transit (BART) Extension Project (Staff Contact: Kathleen Phalen, 408-586-3345)**

Background: The Program Manager from Santa Clara Valley Transportation Authority (VTA) will present a progress report on the Silicon Valley BART Extension project, the 10-mile extension from the Warm Springs Station in Fremont, to the Milpitas Station to be located near the Great Mall, and then on to a Berryessa Station to be constructed in San Jose. The project is now entering the second year of the four-year major construction phase. Construction activities include relocating municipal utilities, constructing street improvements, making flood improvements, constructing the rail extension, and building the station campuses. This

presentation will include a summary of upcoming construction, status of the Residential Noise Insulation Program, and a description of the Maintenance of Traffic and Access (MOTA) plan.

Fiscal Impact: None.

Recommendation: Receive progress report from VTA staff at the Council meeting on the Bay Area Rapid Transit (BART) Extension Project.

3. Receive Progress Report on Fire Department Overtime Containment (Staff Contact: Brian Sturdivant, 408-586-2811)

Background: On February 5, 2013, City Council voted unanimously to follow direction from the City Council Task Force on Fire Department Overtime Cost Containment. The Task Force directives were to delay layoffs to March 20, 2013, allowing time for a vote by Local 1699 on a proposed letter of agreement. The side letter allows for management flexibility to decrease the minimum staffing provisions as stated in the current Memorandum of Understanding (MOU) in an effort to control overtime costs. The side letter includes acceptance of the federal SAFER grant award of \$2.1 million to hire six firefighters necessary to achieve staffing levels in the A, B, and C platoons of 59 full time personnel. Lastly, it was understood that the City Council would allow the transfer of \$600,000 from reserve funds to the Fire Department, to be recouped over six years through the Fire Department budget. IAFF Local 1699 will vote on the proposed letter of agreement on Monday, March 18, 2013.

Fiscal Impact: \$600,000 from reserve funds with no additional impact if Local 1699 votes in favor of management flexibility with minimum staffing provisions in the current Memorandum of Understanding (MOU) with IAFF Local 1699.

Recommendation: If agreement is reached, move forward with hiring six additional fire personnel, once the amended SAFER Grant is funded and transfer \$600,000 from reserve funds to the Fire Department overtime budget. If IAFF Local 1699 does not vote in favor of the agreement, move to reject the SAFER Grant and direct the Fire Chief to implement the previous plan of brownout a fire apparatus and implement the firefighter layoff plan effective March 20, 2013.

XVI. REPORTS OF MAYOR AND COMMITTEE

*** 4. Consider Mayor's Recommendation for Appointments to the Economic Development Commission and Library Commission (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the new appointment of Melanie Holthaus to the Economic Development Commission as Alternate No. 1 to a term that will expire in April 2015; and new appointment of Nonie McDonald to the Library Commission as Alternate No. 2 to a term that will expire in June 2013. Copies of all applications on file are included in the Council agenda packet.

Recommendation: Appoint Melanie Holthaus to the Economic Development Commission as Alternate No. 1 and Nonie McDonald to the Library Commission as Alternate No. 2.

*** 5. Approve the Public Art Committee 2013-2015 Master Plan (Staff Contact: Renee Lorentzen, 408-586-3409)**

Background: At the January 28, 2013 Public Art Committee meeting, Committee members approved a 2-year Public Art Master Plan which outlines Public Art Installation and Maintenance projects they would like to facilitate in fiscal years 2013-2015. Projects listed are based on locations that Committee members believe will aesthetically benefit the community and visitors

to Milpitas as well existing art pieces in need of maintenance repairs. The Public Art Fund currently has a balance of \$166,000.

The Public Art Master Plan also identifies public art projects that are placed on hold indefinitely. These projects were budgeted from monies no longer available from the Redevelopment Agency. The Committee's desire is to complete these projects in the future should additional funding become available.

Those projects on hold and their individual budgets are:

- City Hall Exterior - \$175,000
- Cartwheel Kids Move - \$15,000
- Main St. Transit Shelter Enhancements - \$14,000

All projects in the Public Art Master Plan will return individually to City Council for final budget and art piece approval.

Fiscal Impact: None. Sufficient funds are available in the Public Art Fund.

Recommendation: Approve the Public Art Committee 2013-2015 Master Plan.

XVII. ORDINANCE

6. Waive the Second Reading and Adopt Ordinance No. 284 Requiring Council Disclosure of Campaign Contributions (Staff Contact: Michael Ogaz, 408-586-3040)

Background: Ordinance No. 284 was introduced at the March 5, 2013 City Council meeting. At that time, City Council directed various changes to the Recitals and asked that award of contract agenda items be included within the scope of disclosure. The Ordinance has been revised to reflect this direction and is now ready for adoption.

Fiscal Impact: None.

Recommendations:

1. Move to waive the second reading of the Ordinance No. 284.
2. Adopt Ordinance No. 284 requiring City Council disclosure of developer and contractor campaign contributions to elected officers.

XVIII. RESOLUTIONS

*** 7. Adopt a Resolution Granting Initial Acceptance of Santa Clara Valley Transportation Authority (VTA) Water, Storm, and Sewer Utility Relocation at Piper Drive, VTA Project No. C610 (Staff Contact: Kathleen Phalen, 408-586-3317)**

Background: On September 10, 2010, the City entered into a Master Agreement with the Santa Clara Valley Transportation Authority (VTA) that included provisions for VTA's construction of certain City public improvements in conjunction with VTA's Silicon Valley Rapid Transit Program Berryessa Extension Project. In accordance with this agreement, City engineering staff reviewed the plans and specifications for VTA's relocation of City water, storm and sewer utilities in Piper Drive. On January 5, 2012, staff issued an encroachment permit to VTA's contractor, Con-Quest Contractors Inc., to complete the construction in accordance with the approved plans and specifications. City staff inspected the contractor's work and find it to be complete and in accordance with the provisions of the Master Agreement, the VTA plans and specifications, and City standards. The utility improvements are now ready for the City's initial acceptance. In accordance with the Master Agreement, VTA will warranty the improvements for one year from the date of this initial acceptance.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of VTA's Water, Storm, and Sewer Utility Relocation at Piper Drive, VTA Project No. C610, subject to a one-year warranty period.

- * **8. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for Abel Street Transit Connection Project No. 4260, Federal Aid Project No. CML-5341 (003) (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The City Council authorized the City Manager to award the Abel Street Transit Connection Project to JJR Construction Inc. on May 1, 2012. The project provides for the installation of new streetscape improvements including curb, gutter, sidewalk, decorative paving, decorative street lighting, landscaping and irrigation on a portion of Abel Street south of Great Mall Parkway. The project was successfully completed on time and within budget. Staff recommends that Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$103,440.04, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of Abel Street Transit Connection Project, Project No. 4260, Federal Project No. CML-5314 (003), subject to a one year warranty period and reduction of the faithful performance bond to \$103,440.04.

- * **9. Adopt a Resolution Approving Park and Recreation Programs Donation Policy (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: The Parks, Recreation and Cultural Resources Commission (PRCRC) has contemplated the need for a Park and Recreation Program donation policy since 2012. The Commission has created the policy based upon a similar program used at the Milpitas Public Library. This policy allows for monetary and non-monetary donations and makes acceptance of all donations within the discretion of the Council in accord with current City Standard Operating Procedure 26-2. The policy requires that all donations be used for Parks and Recreation programs with specific uses honored to the extent practical in keeping with the wishes of the donor, but giving the City Manager final authority regarding the specific use. For undesignated gifts, the PRCRC will make recommendations to the Council for the specific use of the donation. A copy of the resolution and policy are included in the agenda packet.

Fiscal Impact: May augment various department budgets to the extent budgeted services or equipment are provided with donated funds.

Recommendation: Adopt a resolution approving the Donation Policy and Procedures for the City of Milpitas Parks and Recreation Programs.

- * **10. Approve and Authorize Execution of a Subdivision Improvement Agreement, Sewer Acquisition and Reimbursement Agreement 11B-2/11C, On-Site Private Utilities Covenant Agreement, Right-of-Way Encroachment Permit Agreement, Final Map, Sewer 11B-2/11C and Public Improvement Plans, and Adopt Resolution Authorizing Annexing Certain Real Property into Community Facilities District No. 2008-1 for Pace Development/Contour Trade Zone, LLC, Project No. 2762 (Staff Contact: Keyvan Irannejad, 408-586-3244)**

Background: On November 15, 2011, the City Council approved a Vesting Tentative Map, Conditional Use Permit and Site Development Permit for Trumark Communities' Contour Project (since renamed the "Pace Project") for construction of 43 single family homes and 91

condominium units. The project is located at 330 Montague Expressway (on northeast corner of Montague Expressway and Trade Zone Blvd.)

The developer submitted a final tract map, off-site sewer replacement plans 11B-2/11C, public improvement plans, and executed a sewer acquisition agreement, and a subdivision improvement agreement and related agreements for the project (on-site private utilities covenant agreement and right-of-way encroachment permit agreement). Staff reviewed the plans, tract map and agreements and has determined they satisfy the City's requirements for this project. The improvements plans for off-site sewer replacement, public improvement plans, final map, on-site private utilities covenant agreement, and right-of-way encroachment agreement are available for review in the City Engineer's office.

The public improvements consist of new curb/gutter, sidewalk, street lights and landscaping and irrigation along the project frontage, new utility connections, new recycled water main, and a new public street. An encroachment agreement is required to construct the roadway and utility improvements. The project will also have on-site private streets and utilities.

The developer petitioned the City to annex the project into Community Facilities District 2008-1 (CFD 2008-1). State law and City Resolution No. 7816 authorize such annexation upon the property owner's written consent without further public hearing or formal election. Annexation into CFD 2008-1 will subject the homeowners to an annual assessment to fund certain City services. The written petition and other required documents are attached to the resolution (included in the Council agenda packet).

Fiscal Impact: None.

Attachments:

1. Subdivision Improvement Agreement
2. Sewer Acquisition and Reimbursement Agreement
3. Resolution Annexing Community Facility District 2008-1 (Annexation No. 2)
4. Final Map (Tract 10138) – Cover Page
5. Public Improvement Plans No. 2-1161 – Cover Page
6. Sewer Replacement 11B-2/11C Plans No. 2-1159 – Cover Page
7. On-Site Private Utilities Covenant Agreement – Cover Page
8. Right-of-Way Encroachment Permit Agreement – Cover Page

Recommendations:

1. Approve and authorize the execution of a subdivision improvement agreement, and a sewer acquisition and reimbursement agreement, on-site private utilities covenant agreement, and right-of-way encroachment permit agreement.
2. Approve the Final Map with the recommended street names.
3. Adopt a resolution annexing properties known as "Pace Project" into Community Facility District 2008-1.
4. Approve the Public Improvement Plans 2-1161 and Sewer Replacement Plans 11B-2/11C (2-1159).

- * **11. Adopt a Resolution Authorizing the City Manager to Execute a Contract for the Purchase of a Video Imaging Detection System by Piggybacking the City of San Jose Contract with Iteris, Inc. for the Not-to-Exceed amount of \$73,600 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The majority of the City's traffic signals are actuated by video imaging detection systems made by Iteris, Inc. Some of these systems have been deployed in the field for 10 years or more, and Iteris, Inc. is no longer providing technical or maintenance support for these legacy devices. In lieu of complete replacement of the existing video imaging detection systems, the most cost effective solution is to upgrade the unsupported components of the existing systems.

On October 27, 2011, the City of San Jose went out with a Request for Bid for Video Imaging Detection Systems. The contract was awarded to Iteris, Inc. for \$190,000. Due to the City of San Jose's significant contract amount, the City of Milpitas can take advantage of the economies of scale not otherwise available to the City.

The practice of, and requirements for, utilizing a contract bid by another agency are defined and sanctioned under Municipal Code Section I-2-3.07 "Piggyback Procurement." Staff's recommendation to piggyback on the City of San Jose's contract with Iteris, Inc. is in full compliance with those requirements.

Fiscal Impact: None. Funding for this purchase is available from the street maintenance departmental supply budget.

Recommendation: Adopt a resolution authorizing the City Manager to execute a separate contract with Iteris, Inc., selected by the originating agency, the City of San Jose, and incorporate by reference the original solicitation, terms, conditions, and pricing for the not-to-exceed amount of \$73,600.

XIX. BIDS AND CONTRACTS

- * 12. **Award the Bid for On-Call Pavement Striping and Marking at Various City of Milpitas Sites to Chrisp Company for an Annual Not-To-Exceed Amount of \$100,000 and Allow the City Manager to Approve Annual Increases Per Agreement Terms (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The Purchasing Agent worked with the City Traffic Engineer to develop a specification for On-Call Pavement Striping and Marking at Various City of Milpitas locations. The Invitation for Bid was released on February 15, 2013. Seven contractors downloaded the bid from the internet program, but only one bid was received on February 28, 2013. The award is based on the total price of 46 individual street markings, per linear foot, plus a call out charge. The contract is for up to \$100,000 for one year with an option for four additional one-year renewals. Any price increase is based on demonstrated cost increases submitted by the vendor not to exceed 5% annually. The bid was advertised in the local newspaper, on Public Purchase and on the City's website. Only one bidder, Chrisp Company, submitted a total base price of \$1,047.84.

Fiscal Impact: None. The on-call purchase order will not exceed available department operating budget for this purchase.

Recommendations:

1. Approve the award for On-Call Pavement Striping and Marking at Various City of Milpitas locations to Chrisp Company for an annual not-to-exceed amount of \$100,000.
 2. Allow the City Manager to approve annual increases per the terms of the agreement without further action by City Council.
- * 13. **Award the Bid for On-Call Sidewalk Repair, Curbs & Gutters at Various City of Milpitas Sites to JJR Construction, Inc. for an Annual Not-To-Exceed Amount of \$150,000 and Allow the City Manager to Approve Annual Increases Per Agreement Terms (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The Purchasing Agent worked with the City Traffic Engineer to develop a specification for On-Call Sidewalk Repair, Curbs & Gutters at Various City of Milpitas locations. The Invitation for Bid was released on February 15, 2013. Seven vendors downloaded the bid from the internet program, but only one bid was received on February 28, 2013. The award is based on the average price per applied square foot of concrete, on a regular or premium time basis, for nine City Standard Engineering Curb Drawings. The contract is for

one up to \$150,000 for one year with an option for four additional one year renewals. Any price increase is based on demonstrated cost increase submitted by the vendor not to exceed 5% annually. The bid was advertised in the local newspaper, on Public Purchase and on the City's website. Only one bidder, JJR Construction, Inc., submitted a base price regular time of \$31.64 per applied sq. ft. and a base price premium time of \$42.11 per applied sq. ft.

Fiscal Impact: None. The on-call purchase order will not exceed available department operating budget for this purchase.

Recommendations:

1. Approve the award to On-Call Sidewalk Repair Curbs & Gutters at various City of Milpitas locations to JJR Construction, Inc. for an annual not-to-exceed amount of \$150,000.
2. Allow the City Manager to approve annual increases per the terms of the agreement without further action by City Council.

*** 14. Authorize City Manager to Execute an Agreement with Contour Trade Zone LLC (Trumark) 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 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. 8136 approving the Trumark Companies-Contour/Pace residential 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, Contour Trade Zone LLC is required to pay \$3,887,608 (134 units x \$29,012/per unit) impact fee based on its project. These impact fees include Montague Expressway Post-Widening, Recycled Water System, and construction of Sewer Lines 11B/11C.

Since the dissolution of the Redevelopment Agency, the City no longer has the ability to finance large infrastructure projects such as Sewer Line 11B/11C. 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 the City.

Contour Trade Zone LLC is requesting reimbursement in the amount of \$1,907,200. The majority of the reimbursement costs are for the construction of Sewer Lines (\$1,510,442) and Recycled Water System (\$328,079). After deductions from the reimbursement fee credits, the developer will be required to pay the City \$1,980,408, the remaining balance due. Included in the Council's agenda packet are exhibits itemizing the costs of the reimbursement fee costs and credits and the contract agreement.

Fiscal Impact: None.

Recommendation: Authorize City Manager to execute an agreement with Contour Trade Zone LLC for fee credit reimbursement in the amount of \$1,907,200 for TASP Public Facilities and Improvements.

- * 15. **Approve and Authorize the City Manager to Execute an Agreement with Bellinger Foster Steinmetz Landscape Architecture for Pinewood Park Renovation Project No. 5096 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: Renovation of Pinewood Park is Project No. 5096 in the approved Capital Improvement Program. Through the City's consultant selection process, staff selected Bellinger Foster Steinmetz Landscape Architectures to provide the design services for the Pinewood Park Renovation. The work consists of professional design services to produce plans, specifications, and construction support for the park renovation project. Park improvements will include a new group picnic area, renovating existing picnic areas, rehabilitating the irrigation and lighting systems, landscaping, and other upgrades to comply with safety and Americans with Disabilities Act standards. Staff negotiated a scope and fee for these services not to exceed \$250,000, which is considered reasonable for the work.

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

Recommendation: Approve and authorize the City Manager to execute an agreement with Bellinger Foster Steinmetz Landscape Architecture, in the amount of \$250,000 for Project No. 5096, subject to approval as to form by the City Attorney.

- * 16. **Approve Purchase and Installation of a Telescoping Boom for the Vactor Sewer Truck for an Amount not to exceed \$25,000 and Approve a Budget Appropriation (Staff Contact: Kathleen Phalen, 408-586-3345)**

Background: On December 6, 2011, the City Council approved purchase of a new Vactor sewer cleaning truck. The City received the new Vactor truck over the winter, and now recommends adding a telescoping boom to improve the Vactor's utility and efficiency in accessing sewer manholes and other drainage facilities located off the roadway. Owen Equipment Sales, the sole authorized Vactor dealer in Northern California, submitted an estimate of \$22,500 to install the telescoping boom, including parts, labor, and sale tax. Staff recommends approving a contingency of \$2,500 for this purchase to allow for payment of any unforeseen parts or labor costs.

Fiscal Impact: A budget appropriation in the amount of \$25,000 from the Sewer Fund into the Public Works Utilities Budget is needed for this purchase.

Recommendations: Approve the purchase of telescoping boom for the Vactor sewer truck for an amount not to exceed \$25,000, and approve a budget appropriation.

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 2, 2013 AT 7:00 P.M.**

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Regular Meeting of Milpitas City Council**
Date: **Tuesday, March 5, 2013**
Time: **6:00 PM**
Location: **Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and for the first part of the meeting. He arrived in Council Chambers at 8:49 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

No announcement out of Closed Session.

PLEDGE

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

INVOCATION

Councilmember Montano offered a prayer to start the meeting.

MINUTES

Motion: to approve meeting minutes of February 19, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

SCHEDULE OF MEETINGS

Motion: to approve Council Calendars/Schedule of Meetings for March 2013, as amended

City Manager Tom Williams stated three changes to the March calendar: Milpitas Planning Commission meeting is cancelled on March 13, while a special meeting will be held on March 20. The San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) meeting was moved from March 14 to Monday, March 25 at 1:30 p.m. Mayor Esteves said the SVRT (re: BART) meeting was changed from March 21 to March 4 at 10:00 AM. Also, Santa Clara Valley Transportation Authority Board's Admin. and Finance Committee was scheduled for March 21 at 12:00.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

PRESENTATION

Victoria Bordon, director of Santa Clara County's Menthol & Flavored Tobacco Prevention Project, came to thank Milpitas City Council for its public stance against promotion of tobacco use by Milpitas residents, especially youth, and for adopting a resolution to stop marketing of flavored tobacco products to youth and other related health and justice issues. She presented a thank you certificate to Mayor Esteves from the project.

PUBLIC FORUM

Maureen Jones of San Jose addressed the City Council about fluoride in the water and about her concerns for the quality of drinking water fluoridation.

Robert Marini, Milpitas resident, addressed the City Council on sewer rate calculations.

Rob Means, Milpitas resident, addressed the City Council on global warming.

A man who was a 7- year resident spoke to the Council about a stress-free living campaign sponsored by the Art of Living. He urged all to view the website stressfreeviolencefree.org.

ANNOUNCEMENTS

Councilmember Giordano read aloud a letter from Terrace Gardens Senior apartments, expressing how valuable the Community Development Block Grant program funds awarded to them in 2012 were and they were applied toward improvements at the property.

Vice Mayor Polanski thanked many of those involved in the wonderful tribute and celebration of the City’s first African American Mayor Ben Gross, held in February at the Senior Center.

Mayor Esteves invited all to attend the opening of the new Alviso Adobe Park, scheduled on Saturday, March 16 at 10:00 AM.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Williams made the request to continue agenda item no. 1 Public Hearing on a flag ceremony request. Applicant requested to return later in the year with a specific program date.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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 submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

- * 2. Odor Report Received the February 2013 odor report.
- * 6. CAC Appointment Newly appointed Jacqueline Holland to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014.
- * 7. Amend BPAC By-laws Authorized and approved an amendment to the Bicycle Pedestrian Advisory Commission By-Laws to change meeting dates as recommended by BPAC Commissioners, in order to add flexibility in which the Commission meets every two months on undesignated days (agreed upon by current Commissioners).
- * 8. 2013 COPS Grant Accepted the 2013 Citizen Options for Public Safety (COPS) grant in the amount of \$107,684, and approved a budget appropriation in the amount of \$107,684 to the Police Department’s operating budget.
- *10. Resolution for Water Supply Agreement Amendment Adopted Resolution No. 8235 approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco.

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

*12. Agreement with DR Horton Authorized 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.

PUBLIC HEARING

1. Request for Flag Ceremony for Black History Month: this item was continued to a date uncertain.

UNFINISHED BUSINESS

One item was approved on consent calendar.

REPORTS

Two items were approved on consent calendar.

3. Proposed Resolution

Mayor Esteves introduced this issue, which was a request he had received from the Vietnamese American community in northern California, including Milpitas, for adoption of a resolution regarding visits to the City from any officials from Vietnam. The Mayor introduced City staff member Ms. Lechi Nguyen from the Barbara Lee Senior Center, who was at the podium to translate remarks between the Vietnamese and English languages for the benefit of audience members.

Vice Mayor Polanski asked the City Attorney if he had reviewed the resolution and if it was legal. Mr. Ogaz responded yes it was. The Vice Mayor was fully supportive of the draft Resolution, as recommended by the Mayor. Councilwomen Montano and Giordano also expressed their support.

The Mayor next invited speakers from the audience.

Dave Cortese, Santa Clara County Supervisor, stated his strong support for the democratic movement of the people of the Vietnamese American immigrant community.

Ro Khanna, spoke in support of those who sought support for the resolution.

Johnny, thanked the Council for the support of City officials for this important issue.

Tam Nguyen, San Jose resident, citizens are lucky to be in Milpitas with such leaders.

A woman was very grateful for approval of the Resolution this evening.

Van Lan Truong, Milpitas Commissioner, thanked the City Council for its leadership.

Chan Nguyen, president of a Vietnamese residents organization, spoke in Vietnamese language, then translated by staff.

A Vietnamese man, was very grateful to Council. He cannot accept cruel treatment by government towards its people in Vietnam.

Vivian Huyen, Milpitas resident, was a young lady who said she represented her friends, and wanted democracy in her family's homeland.

Van Le, Milpitas school board member, celebrated the place she calls home. She was glad the Council would approve the resolution.

Mr. Nguyen, attorney, was the son of Vietnamese immigrants and he spoke of their struggle to be here in America, where they support democracy.

Vice Mayor Polanski agreed with the application and considering these at budget time. She sought clarification on the 60% benefiting in City and need to have a branch in the City. She recommended that groups could receive a waiver or donation only once per year, not up to four. She asked the City Attorney about religious organizations. Mr. Ogaz commented on benefit to the community which must be determined. The Vice Mayor also suggested having a maximum number of years in a row that groups could ask for money or fee waivers.

Councilmember Montano inquired if an id number would be necessary, in support of the application, in order to prove the non-profit status. In the past, individuals asked for grants, even though it was not a public benefit. She agreed that child care grants would not be appropriate. She asked for list of who had requested and received donations in the past, and the City Manager displayed a list overhead for the last two fiscal years.

Mayor Esteves asked staff to define if an event by a church provided a public benefit or not, after he inquired about recent past fee waivers for church organizations.

Councilmember Gomez arrived at meeting at 8:49 PM.

Councilmember Montano noted there were different types of non-profit organizations, like non-profit or not-for-profit. Schools were considered non-profit. How to get the word out to groups that were not aware of the funds available would be important.

Vice Mayor Polanski identified the elements of the policy she supported: the 60% beneficiary in Milpitas, one time per year to receive a donation or fee waiver, the need to define non-profit clearly and provide a public benefit. She also sought groups not being eligible to receive these year after year, and perhaps some type of reporting requirement. Mayor Esteves added that he wanted to freeze the granting of any requests until policy was finalized.

City Manager Williams asked if Council wanted to adopt a policy or an ordinance. Mr. Williams expressed that with an adopted ordinance, requirements would be very clear, for those inquiring to know the rules to abide by.

Councilmember Gomez thanked members of former Finance Subcommittee for bringing up this topic. He would like a policy and to see how it works, before passing a formal ordinance.

Vice Mayor Polanski suggested bringing it back as policy with definitions, allowing for an opportunity to see if any bugs in policy to work out or to adjust. That would be easier to do with a policy rather than a more formal ordinance.

Mayor Esteves wondered if they should determine a specific budget for these items. Ms. Karlen reported that \$6000 - \$8000 was budgeted in the City Council's Unallocated Community Promotions line item in recent budgets.

Motion: to receive staff report from the Finance Director and to direct staff to prepare the final version of the new policy on fee waivers and donations to non-profit organizations, with proper wording including suggestions provided during the discussion, and then after adopting the policy, to bring it back after six months to consider it in ordinance format, and the motion included a freeze on all current requests

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

5. Three Council Appointments Mayor Esteves asked for volunteers from the Council for two appointments, and he recommended Vice Mayor Polanski as his alternate for the Cities Association.

Motion: to make the following appointments

- 1) Mayor Jose Esteves as the Alternate Member on the Santa Clara County Library Joint Powers Authority Board of Directors.
- 2) Vice Mayor Althea Polanski as the Alternate to Mayor Jose Esteves on the Cities Association of Santa Clara County, both the Board and on the Cities Selection Committee.
- 3) Mayor Jose Esteves as alternate to the General Assembly of the Association of Bay Area Governments. No Councilmember was appointed as the delegate/member.

Motion: Vice Mayor Polanski/Councilmember Giordano

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

NEW BUSINESS

One item was approved on consent calendar.

ORDINANCE

9. Ordinance No. 284

City Attorney Mike Ogaz explained a proposed ordinance for a new requirement of the Council to disclose contributions of \$100 or more from a developer or an employee of one, prior to any vote at a Council meeting when a vote on a project was on the agenda.

Councilmember Giordano had no objection noting there was already a public reporting on campaign committee report Form 460 to the City Clerk. She predicted possible challenges to having all information needed to report at a City Council meeting, when the reports were only prepared and reported every six months.

Mr. Ogaz offered that the ordinance could be edited to report donations only “since the last report filed.”

Mayor Esteves expressed his goal with this proposed ordinance was bringing further awareness to the public.

Vice Mayor Polanski felt that contractors should also be included along with developers, giving the examples of Rural Metro or Allied Waste, which might give campaign contributions prior to contract renewals or amendments.

Councilmember Gomez felt it was good to make this information more accessible and he agreed with that idea. He was not sure why it needed to go into an ordinance and noted some problems with some findings in the ordinance. He asked City Attorney if he could strike out the third “whereas” statement in the draft ordinance.

Councilmember Giordano inquired “what is the punishment?” in terms of enforcement of the ordinance. Mr. Ogaz replied there were no enforcement provisions as drafted.

Vice Mayor Polanski wanted to go forward with the ordinance, and asked that it be amended to delete the second “Whereas,” to add contractors and move forward to return to Council for adoption. Councilmember Giordano seconded the Vice Mayor’s statement, if it was a motion.

Mayor Esteves inquired about reporting contributions by spouses and the City Attorney responded that could be difficult to include or report.

Councilmember Giordano inquired about Councilmembers running for another election race (non-Milpitas) and whether contributions to such a campaign would have to be disclosed. The City Attorney responded that was not distinguishable, in the ordinance as written.

Mayor Esteves invited comments from the audience.

Bill Ferguson, Rivera St. resident, thanked the Mayor for bringing this issue forward. It was very good to link the donation to a specific project. He wanted Council to add immediately family members and spouses to the list of donors to reveal.

Vice Mayor Polanski asked to add contractors to those who contribute, to delete the second and third "Whereas" in recitals, and to move forward with a reading of the title. She moved to waive the first reading.

City Attorney Ogaz read aloud the title of Ordinance No. 284, "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."

(1) Motion: to waive the first reading beyond the title of Ordinance No. 284

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

(2) Motion: to introduce Ordinance No. 284 and to direct the City Attorney to incorporate changes in the text to add "contractors" in addition to developers (those whose contributions would be reported), and to delete the second and third "Whereas" in the Ordinance recitals text

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

RESOLUTION

One Resolution was approved on consent calendar.

CONTRACTS

Two items were approved on consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:55 PM.

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

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Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of:

AYES: 4

NOES: 0

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SCHEDULE OF MEETINGS

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NOES: 0

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(2) Motion: to introduce Ordinance No. 284 and to direct the City Attorney to incorporate changes in the text to add "contractors" in addition to developers (those whose contributions would be reported), and to delete the second and third "Whereas" in the Ordinance recitals text

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ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Williams made the request to continue agenda item no. 1 Public Hearing on a flag ceremony request. Applicant requested to return later in the year with a specific program date.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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 submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 4
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PUBLIC HEARING

1. Request for Flag Ceremony for Black History Month: this item was continued to a date uncertain.

UNFINISHED BUSINESS

One item was approved on consent calendar.

REPORTS

Two items were approved on consent calendar.

3. Proposed Resolution

Mayor Esteves introduced this issue, which was a request he had received from the Vietnamese American community in northern California, including Milpitas, for adoption of a resolution regarding visits to the City from any officials from Vietnam. The Mayor introduced City staff member Ms. Lechi Nguyen from the Barbara Lee Senior Center, who was at the podium to translate remarks between the Vietnamese and English languages for the benefit of audience members.

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Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

5. Three Council Appointments Mayor Esteves asked for volunteers from the Council for two appointments, and he recommended Vice Mayor Polanski as his alternate for the Cities Association.

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- 1) Mayor Jose Esteves as the Alternate Member on the Santa Clara County Library Joint Powers Authority Board of Directors.
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Motion: Vice Mayor Polanski/Councilmember Giordano

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NEW BUSINESS

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ORDINANCE

9. Ordinance No. 284

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Mayor Esteves expressed his goal with this proposed ordinance was bringing further awareness to the public.

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(1) Motion: to waive the first reading beyond the title of Ordinance No. 284

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

(2) Motion: to introduce Ordinance No. 284 and to direct the City Attorney to incorporate changes in the text to add "contractors" in addition to developers (those whose contributions would be reported), and to delete the second and third "Whereas" in the Ordinance recitals text

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

RESOLUTION

One Resolution was approved on consent calendar.

CONTRACTS

Two items were approved on consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:55 PM.

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

PUBLIC FORUM

Maureen Jones of San Jose addressed the City Council about fluoride in the water and about her concerns for the quality of drinking water fluoridation.

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Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
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ORDINANCE

9. Ordinance No. 284

City Attorney Mike Ogaz explained a proposed ordinance for a new requirement of the Council to disclose contributions of \$100 or more from a developer or an employee of one, prior to any vote at a Council meeting when a vote on a project was on the agenda.

Councilmember Giordano had no objection noting there was already a public reporting on campaign committee report Form 460 to the City Clerk. She predicted possible challenges to having all information needed to report at a City Council meeting, when the reports were only prepared and reported every six months.

Mr. Ogaz offered that the ordinance could be edited to report donations only “since the last report filed.”

Mayor Esteves expressed his goal with this proposed ordinance was bringing further awareness to the public.

Vice Mayor Polanski felt that contractors should also be included along with developers, giving the examples of Rural Metro or Allied Waste, which might give campaign contributions prior to contract renewals or amendments.

Councilmember Gomez felt it was good to make this information more accessible and he agreed with that idea. He was not sure why it needed to go into an ordinance and noted some problems with some findings in the ordinance. He asked City Attorney if he could strike out the third “whereas” statement in the draft ordinance.

Councilmember Giordano inquired “what is the punishment?” in terms of enforcement of the ordinance. Mr. Ogaz replied there were no enforcement provisions as drafted.

Vice Mayor Polanski wanted to go forward with the ordinance, and asked that it be amended to delete the second “Whereas,” to add contractors and move forward to return to Council for adoption. Councilmember Giordano seconded the Vice Mayor’s statement, if it was a motion.

Mayor Esteves inquired about reporting contributions by spouses and the City Attorney responded that could be difficult to include or report.

Councilmember Giordano inquired about Councilmembers running for another election race (non-Milpitas) and whether contributions to such a campaign would have to be disclosed. The City Attorney responded that was not distinguishable, in the ordinance as written.

Mayor Esteves invited comments from the audience.

Bill Ferguson, Rivera St. resident, thanked the Mayor for bringing this issue forward. It was very good to link the donation to a specific project. He wanted Council to add immediately family members and spouses to the list of donors to reveal.

Vice Mayor Polanski asked to add contractors to those who contribute, to delete the second and third "Whereas" in recitals, and to move forward with a reading of the title. She moved to waive the first reading.

City Attorney Ogaz read aloud the title of Ordinance No. 284, "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."

(1) Motion: to waive the first reading beyond the title of Ordinance No. 284

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

(2) Motion: to introduce Ordinance No. 284 and to direct the City Attorney to incorporate changes in the text to add "contractors" in addition to developers (those whose contributions would be reported), and to delete the second and third "Whereas" in the Ordinance recitals text

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

RESOLUTION

One Resolution was approved on consent calendar.

CONTRACTS

Two items were approved on consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:55 PM.

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

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Regular Meeting of Milpitas City Council**
Date: **Tuesday, March 5, 2013**
Time: **6:00 PM**
Location: **Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and for the first part of the meeting. He arrived in Council Chambers at 8:49 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

No announcement out of Closed Session.

PLEDGE

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

INVOCATION

Councilmember Montano offered a prayer to start the meeting.

MINUTES

Motion: to approve meeting minutes of February 19, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

SCHEDULE OF MEETINGS

Motion: to approve Council Calendars/Schedule of Meetings for March 2013, as amended

City Manager Tom Williams stated three changes to the March calendar: Milpitas Planning Commission meeting is cancelled on March 13, while a special meeting will be held on March 20. The San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) meeting was moved from March 14 to Monday, March 25 at 1:30 p.m. Mayor Esteves said the SVRT (re: BART) meeting was changed from March 21 to March 4 at 10:00 AM. Also, Santa Clara Valley Transportation Authority Board's Admin. and Finance Committee was scheduled for March 21 at 12:00.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

PRESENTATION

Victoria Bordon, director of Santa Clara County's Menthol & Flavored Tobacco Prevention Project, came to thank Milpitas City Council for its public stance against promotion of tobacco use by Milpitas residents, especially youth, and for adopting a resolution to stop marketing of flavored tobacco products to youth and other related health and justice issues. She presented a thank you certificate to Mayor Esteves from the project.

PUBLIC FORUM

Maureen Jones of San Jose addressed the City Council about fluoride in the water and about her concerns for the quality of drinking water fluoridation.

Robert Marini, Milpitas resident, addressed the City Council on sewer rate calculations.

Rob Means, Milpitas resident, addressed the City Council on global warming.

A man who was a 7- year resident spoke to the Council about a stress-free living campaign sponsored by the Art of Living. He urged all to view the website stressfreeviolencefree.org.

ANNOUNCEMENTS

Councilmember Giordano read aloud a letter from Terrace Gardens Senior apartments, expressing how valuable the Community Development Block Grant program funds awarded to them in 2012 were and they were applied toward improvements at the property.

Vice Mayor Polanski thanked many of those involved in the wonderful tribute and celebration of the City’s first African American Mayor Ben Gross, held in February at the Senior Center.

Mayor Esteves invited all to attend the opening of the new Alviso Adobe Park, scheduled on Saturday, March 16 at 10:00 AM.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Williams made the request to continue agenda item no. 1 Public Hearing on a flag ceremony request. Applicant requested to return later in the year with a specific program date.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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 submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

- * 2. Odor Report Received the February 2013 odor report.
- * 6. CAC Appointment Newly appointed Jacqueline Holland to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014.
- * 7. Amend BPAC By-laws Authorized and approved an amendment to the Bicycle Pedestrian Advisory Commission By-Laws to change meeting dates as recommended by BPAC Commissioners, in order to add flexibility in which the Commission meets every two months on undesignated days (agreed upon by current Commissioners).
- * 8. 2013 COPS Grant Accepted the 2013 Citizen Options for Public Safety (COPS) grant in the amount of \$107,684, and approved a budget appropriation in the amount of \$107,684 to the Police Department’s operating budget.
- *10. Resolution for Water Supply Agreement Amendment Adopted Resolution No. 8235 approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco.

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

*12. Agreement with DR Horton Authorized 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.

PUBLIC HEARING

1. Request for Flag Ceremony for Black History Month: this item was continued to a date uncertain.

UNFINISHED BUSINESS

One item was approved on consent calendar.

REPORTS

Two items were approved on consent calendar.

3. Proposed Resolution

Mayor Esteves introduced this issue, which was a request he had received from the Vietnamese American community in northern California, including Milpitas, for adoption of a resolution regarding visits to the City from any officials from Vietnam. The Mayor introduced City staff member Ms. Lechi Nguyen from the Barbara Lee Senior Center, who was at the podium to translate remarks between the Vietnamese and English languages for the benefit of audience members.

Vice Mayor Polanski asked the City Attorney if he had reviewed the resolution and if it was legal. Mr. Ogaz responded yes it was. The Vice Mayor was fully supportive of the draft Resolution, as recommended by the Mayor. Councilwomen Montano and Giordano also expressed their support.

The Mayor next invited speakers from the audience.

Dave Cortese, Santa Clara County Supervisor, stated his strong support for the democratic movement of the people of the Vietnamese American immigrant community.

Ro Khanna, spoke in support of those who sought support for the resolution.

Johnny, thanked the Council for the support of City officials for this important issue.

Tam Nguyen, San Jose resident, citizens are lucky to be in Milpitas with such leaders.

A woman was very grateful for approval of the Resolution this evening.

Van Lan Truong, Milpitas Commissioner, thanked the City Council for its leadership.

Chan Nguyen, president of a Vietnamese residents organization, spoke in Vietnamese language, then translated by staff.

A Vietnamese man, was very grateful to Council. He cannot accept cruel treatment by government towards its people in Vietnam.

Vivian Huyen, Milpitas resident, was a young lady who said she represented her friends, and wanted democracy in her family's homeland.

Van Le, Milpitas school board member, celebrated the place she calls home. She was glad the Council would approve the resolution.

Mr. Nguyen, attorney, was the son of Vietnamese immigrants and he spoke of their struggle to be here in America, where they support democracy.

Vice Mayor Polanski agreed with the application and considering these at budget time. She sought clarification on the 60% benefiting in City and need to have a branch in the City. She recommended that groups could receive a waiver or donation only once per year, not up to four. She asked the City Attorney about religious organizations. Mr. Ogaz commented on benefit to the community which must be determined. The Vice Mayor also suggested having a maximum number of years in a row that groups could ask for money or fee waivers.

Councilmember Montano inquired if an id number would be necessary, in support of the application, in order to prove the non-profit status. In the past, individuals asked for grants, even though it was not a public benefit. She agreed that child care grants would not be appropriate. She asked for list of who had requested and received donations in the past, and the City Manager displayed a list overhead for the last two fiscal years.

Mayor Esteves asked staff to define if an event by a church provided a public benefit or not, after he inquired about recent past fee waivers for church organizations.

Councilmember Gomez arrived at meeting at 8:49 PM.

Councilmember Montano noted there were different types of non-profit organizations, like non-profit or not-for-profit. Schools were considered non-profit. How to get the word out to groups that were not aware of the funds available would be important.

Vice Mayor Polanski identified the elements of the policy she supported: the 60% beneficiary in Milpitas, one time per year to receive a donation or fee waiver, the need to define non-profit clearly and provide a public benefit. She also sought groups not being eligible to receive these year after year, and perhaps some type of reporting requirement. Mayor Esteves added that he wanted to freeze the granting of any requests until policy was finalized.

City Manager Williams asked if Council wanted to adopt a policy or an ordinance. Mr. Williams expressed that with an adopted ordinance, requirements would be very clear, for those inquiring to know the rules to abide by.

Councilmember Gomez thanked members of former Finance Subcommittee for bringing up this topic. He would like a policy and to see how it works, before passing a formal ordinance.

Vice Mayor Polanski suggested bringing it back as policy with definitions, allowing for an opportunity to see if any bugs in policy to work out or to adjust. That would be easier to do with a policy rather than a more formal ordinance.

Mayor Esteves wondered if they should determine a specific budget for these items. Ms. Karlen reported that \$6000 - \$8000 was budgeted in the City Council's Unallocated Community Promotions line item in recent budgets.

Motion: to receive staff report from the Finance Director and to direct staff to prepare the final version of the new policy on fee waivers and donations to non-profit organizations, with proper wording including suggestions provided during the discussion, and then after adopting the policy, to bring it back after six months to consider it in ordinance format, and the motion included a freeze on all current requests

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

5. Three Council Appointments Mayor Esteves asked for volunteers from the Council for two appointments, and he recommended Vice Mayor Polanski as his alternate for the Cities Association.

Motion: to make the following appointments

- 1) Mayor Jose Esteves as the Alternate Member on the Santa Clara County Library Joint Powers Authority Board of Directors.
- 2) Vice Mayor Althea Polanski as the Alternate to Mayor Jose Esteves on the Cities Association of Santa Clara County, both the Board and on the Cities Selection Committee.
- 3) Mayor Jose Esteves as alternate to the General Assembly of the Association of Bay Area Governments. No Councilmember was appointed as the delegate/member.

Motion: Vice Mayor Polanski/Councilmember Giordano

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

NEW BUSINESS

One item was approved on consent calendar.

ORDINANCE

9. Ordinance No. 284

City Attorney Mike Ogaz explained a proposed ordinance for a new requirement of the Council to disclose contributions of \$100 or more from a developer or an employee of one, prior to any vote at a Council meeting when a vote on a project was on the agenda.

Councilmember Giordano had no objection noting there was already a public reporting on campaign committee report Form 460 to the City Clerk. She predicted possible challenges to having all information needed to report at a City Council meeting, when the reports were only prepared and reported every six months.

Mr. Ogaz offered that the ordinance could be edited to report donations only “since the last report filed.”

Mayor Esteves expressed his goal with this proposed ordinance was bringing further awareness to the public.

Vice Mayor Polanski felt that contractors should also be included along with developers, giving the examples of Rural Metro or Allied Waste, which might give campaign contributions prior to contract renewals or amendments.

Councilmember Gomez felt it was good to make this information more accessible and he agreed with that idea. He was not sure why it needed to go into an ordinance and noted some problems with some findings in the ordinance. He asked City Attorney if he could strike out the third “whereas” statement in the draft ordinance.

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Vice Mayor Polanski wanted to go forward with the ordinance, and asked that it be amended to delete the second “Whereas,” to add contractors and move forward to return to Council for adoption. Councilmember Giordano seconded the Vice Mayor’s statement, if it was a motion.

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Councilmember Giordano inquired about Councilmembers running for another election race (non-Milpitas) and whether contributions to such a campaign would have to be disclosed. The City Attorney responded that was not distinguishable, in the ordinance as written.

Mayor Esteves invited comments from the audience.

Bill Ferguson, Rivera St. resident, thanked the Mayor for bringing this issue forward. It was very good to link the donation to a specific project. He wanted Council to add immediately family members and spouses to the list of donors to reveal.

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City Attorney Ogaz read aloud the title of Ordinance No. 284, “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.”

(1) Motion: to waive the first reading beyond the title of Ordinance No. 284

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

(2) Motion: to introduce Ordinance No. 284 and to direct the City Attorney to incorporate changes in the text to add “contractors” in addition to developers (those whose contributions would be reported), and to delete the second and third “Whereas” in the Ordinance recitals text

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

RESOLUTION

One Resolution was approved on consent calendar.

CONTRACTS

Two items were approved on consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:55 PM.

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

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Regular Meeting of Milpitas City Council**
Date: **Tuesday, March 5, 2013**
Time: **6:00 PM**
Location: **Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and for the first part of the meeting. He arrived in Council Chambers at 8:49 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

No announcement out of Closed Session.

PLEDGE

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

INVOCATION

Councilmember Montano offered a prayer to start the meeting.

MINUTES

Motion: to approve meeting minutes of February 19, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

SCHEDULE OF MEETINGS

Motion: to approve Council Calendars/Schedule of Meetings for March 2013, as amended

City Manager Tom Williams stated three changes to the March calendar: Milpitas Planning Commission meeting is cancelled on March 13, while a special meeting will be held on March 20. The San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) meeting was moved from March 14 to Monday, March 25 at 1:30 p.m. Mayor Esteves said the SVRT (re: BART) meeting was changed from March 21 to March 4 at 10:00 AM. Also, Santa Clara Valley Transportation Authority Board's Admin. and Finance Committee was scheduled for March 21 at 12:00.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of:

AYES: 4

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PRESENTATION

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Mayor Esteves invited all to attend the opening of the new Alviso Adobe Park, scheduled on Saturday, March 16 at 10:00 AM.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Williams made the request to continue agenda item no. 1 Public Hearing on a flag ceremony request. Applicant requested to return later in the year with a specific program date.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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 submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

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Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

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Motion: Vice Mayor Polanski/Councilmember Giordano

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NEW BUSINESS

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(1) Motion: to waive the first reading beyond the title of Ordinance No. 284

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

(2) Motion: to introduce Ordinance No. 284 and to direct the City Attorney to incorporate changes in the text to add "contractors" in addition to developers (those whose contributions would be reported), and to delete the second and third "Whereas" in the Ordinance recitals text

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

RESOLUTION

One Resolution was approved on consent calendar.

CONTRACTS

Two items were approved on consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:55 PM.

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

Draft **MEETING MINUTES**
CITY OF MILPITAS

Minutes of: **Regular Meeting of Milpitas City Council**
Date: **Tuesday, March 5, 2013**
Time: **6:00 PM**
Location: **Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. City Clerk Lavelle noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and for the first part of the meeting. He arrived in Council Chambers at 8:49 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations and one litigation matter.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

No announcement out of Closed Session.

PLEDGE

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

INVOCATION

Councilmember Montano offered a prayer to start the meeting.

MINUTES

Motion: to approve meeting minutes of February 19, 2013 City Council meeting, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

SCHEDULE OF MEETINGS

Motion: to approve Council Calendars/Schedule of Meetings for March 2013, as amended

City Manager Tom Williams stated three changes to the March calendar: Milpitas Planning Commission meeting is cancelled on March 13, while a special meeting will be held on March 20. The San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) meeting was moved from March 14 to Monday, March 25 at 1:30 p.m. Mayor Esteves said the SVRT (re: BART) meeting was changed from March 21 to March 4 at 10:00 AM. Also, Santa Clara Valley Transportation Authority Board's Admin. and Finance Committee was scheduled for March 21 at 12:00.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Gomez)

PRESENTATION

Victoria Bordon, director of Santa Clara County's Menthol & Flavored Tobacco Prevention Project, came to thank Milpitas City Council for its public stance against promotion of tobacco use by Milpitas residents, especially youth, and for adopting a resolution to stop marketing of flavored tobacco products to youth and other related health and justice issues. She presented a thank you certificate to Mayor Esteves from the project.

PUBLIC FORUM

Maureen Jones of San Jose addressed the City Council about fluoride in the water and about her concerns for the quality of drinking water fluoridation.

Robert Marini, Milpitas resident, addressed the City Council on sewer rate calculations.

Rob Means, Milpitas resident, addressed the City Council on global warming.

A man who was a 7- year resident spoke to the Council about a stress-free living campaign sponsored by the Art of Living. He urged all to view the website stressfreeviolencefree.org.

ANNOUNCEMENTS

Councilmember Giordano read aloud a letter from Terrace Gardens Senior apartments, expressing how valuable the Community Development Block Grant program funds awarded to them in 2012 were and they were applied toward improvements at the property.

Vice Mayor Polanski thanked many of those involved in the wonderful tribute and celebration of the City’s first African American Mayor Ben Gross, held in February at the Senior Center.

Mayor Esteves invited all to attend the opening of the new Alviso Adobe Park, scheduled on Saturday, March 16 at 10:00 AM.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Williams made the request to continue agenda item no. 1 Public Hearing on a flag ceremony request. Applicant requested to return later in the year with a specific program date.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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 submitted

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

- * 2. Odor Report Received the February 2013 odor report.
- * 6. CAC Appointment Newly appointed Jacqueline Holland to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014.
- * 7. Amend BPAC By-laws Authorized and approved an amendment to the Bicycle Pedestrian Advisory Commission By-Laws to change meeting dates as recommended by BPAC Commissioners, in order to add flexibility in which the Commission meets every two months on undesignated days (agreed upon by current Commissioners).
- * 8. 2013 COPS Grant Accepted the 2013 Citizen Options for Public Safety (COPS) grant in the amount of \$107,684, and approved a budget appropriation in the amount of \$107,684 to the Police Department’s operating budget.
- *10. Resolution for Water Supply Agreement Amendment Adopted Resolution No. 8235 approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco.

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

*12. Agreement with DR Horton Authorized 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.

PUBLIC HEARING

1. Request for Flag Ceremony for Black History Month: this item was continued to a date uncertain.

UNFINISHED BUSINESS

One item was approved on consent calendar.

REPORTS

Two items were approved on consent calendar.

3. Proposed Resolution

Mayor Esteves introduced this issue, which was a request he had received from the Vietnamese American community in northern California, including Milpitas, for adoption of a resolution regarding visits to the City from any officials from Vietnam. The Mayor introduced City staff member Ms. Lechi Nguyen from the Barbara Lee Senior Center, who was at the podium to translate remarks between the Vietnamese and English languages for the benefit of audience members.

Vice Mayor Polanski asked the City Attorney if he had reviewed the resolution and if it was legal. Mr. Ogaz responded yes it was. The Vice Mayor was fully supportive of the draft Resolution, as recommended by the Mayor. Councilwomen Montano and Giordano also expressed their support.

The Mayor next invited speakers from the audience.

Dave Cortese, Santa Clara County Supervisor, stated his strong support for the democratic movement of the people of the Vietnamese American immigrant community.

Ro Khanna, spoke in support of those who sought support for the resolution.

Johnny, thanked the Council for the support of City officials for this important issue.

Tam Nguyen, San Jose resident, citizens are lucky to be in Milpitas with such leaders.

A woman was very grateful for approval of the Resolution this evening.

Van Lan Truong, Milpitas Commissioner, thanked the City Council for its leadership.

Chan Nguyen, president of a Vietnamese residents organization, spoke in Vietnamese language, then translated by staff.

A Vietnamese man, was very grateful to Council. He cannot accept cruel treatment by government towards its people in Vietnam.

Vivian Huyen, Milpitas resident, was a young lady who said she represented her friends, and wanted democracy in her family's homeland.

Van Le, Milpitas school board member, celebrated the place she calls home. She was glad the Council would approve the resolution.

Mr. Nguyen, attorney, was the son of Vietnamese immigrants and he spoke of their struggle to be here in America, where they support democracy.

Vice Mayor Polanski agreed with the application and considering these at budget time. She sought clarification on the 60% benefiting in City and need to have a branch in the City. She recommended that groups could receive a waiver or donation only once per year, not up to four. She asked the City Attorney about religious organizations. Mr. Ogaz commented on benefit to the community which must be determined. The Vice Mayor also suggested having a maximum number of years in a row that groups could ask for money or fee waivers.

Councilmember Montano inquired if an id number would be necessary, in support of the application, in order to prove the non-profit status. In the past, individuals asked for grants, even though it was not a public benefit. She agreed that child care grants would not be appropriate. She asked for list of who had requested and received donations in the past, and the City Manager displayed a list overhead for the last two fiscal years.

Mayor Esteves asked staff to define if an event by a church provided a public benefit or not, after he inquired about recent past fee waivers for church organizations.

Councilmember Gomez arrived at meeting at 8:49 PM.

Councilmember Montano noted there were different types of non-profit organizations, like non-profit or not-for-profit. Schools were considered non-profit. How to get the word out to groups that were not aware of the funds available would be important.

Vice Mayor Polanski identified the elements of the policy she supported: the 60% beneficiary in Milpitas, one time per year to receive a donation or fee waiver, the need to define non-profit clearly and provide a public benefit. She also sought groups not being eligible to receive these year after year, and perhaps some type of reporting requirement. Mayor Esteves added that he wanted to freeze the granting of any requests until policy was finalized.

City Manager Williams asked if Council wanted to adopt a policy or an ordinance. Mr. Williams expressed that with an adopted ordinance, requirements would be very clear, for those inquiring to know the rules to abide by.

Councilmember Gomez thanked members of former Finance Subcommittee for bringing up this topic. He would like a policy and to see how it works, before passing a formal ordinance.

Vice Mayor Polanski suggested bringing it back as policy with definitions, allowing for an opportunity to see if any bugs in policy to work out or to adjust. That would be easier to do with a policy rather than a more formal ordinance.

Mayor Esteves wondered if they should determine a specific budget for these items. Ms. Karlen reported that \$6000 - \$8000 was budgeted in the City Council's Unallocated Community Promotions line item in recent budgets.

Motion: to receive staff report from the Finance Director and to direct staff to prepare the final version of the new policy on fee waivers and donations to non-profit organizations, with proper wording including suggestions provided during the discussion, and then after adopting the policy, to bring it back after six months to consider it in ordinance format, and the motion included a freeze on all current requests

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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

5. Three Council Appointments Mayor Esteves asked for volunteers from the Council for two appointments, and he recommended Vice Mayor Polanski as his alternate for the Cities Association.

Motion: to make the following appointments

- 1) Mayor Jose Esteves as the Alternate Member on the Santa Clara County Library Joint Powers Authority Board of Directors.
- 2) Vice Mayor Althea Polanski as the Alternate to Mayor Jose Esteves on the Cities Association of Santa Clara County, both the Board and on the Cities Selection Committee.
- 3) Mayor Jose Esteves as alternate to the General Assembly of the Association of Bay Area Governments. No Councilmember was appointed as the delegate/member.

Motion: Vice Mayor Polanski/Councilmember Giordano

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

NEW BUSINESS

One item was approved on consent calendar.

ORDINANCE

9. Ordinance No. 284

City Attorney Mike Ogaz explained a proposed ordinance for a new requirement of the Council to disclose contributions of \$100 or more from a developer or an employee of one, prior to any vote at a Council meeting when a vote on a project was on the agenda.

Councilmember Giordano had no objection noting there was already a public reporting on campaign committee report Form 460 to the City Clerk. She predicted possible challenges to having all information needed to report at a City Council meeting, when the reports were only prepared and reported every six months.

Mr. Ogaz offered that the ordinance could be edited to report donations only “since the last report filed.”

Mayor Esteves expressed his goal with this proposed ordinance was bringing further awareness to the public.

Vice Mayor Polanski felt that contractors should also be included along with developers, giving the examples of Rural Metro or Allied Waste, which might give campaign contributions prior to contract renewals or amendments.

Councilmember Gomez felt it was good to make this information more accessible and he agreed with that idea. He was not sure why it needed to go into an ordinance and noted some problems with some findings in the ordinance. He asked City Attorney if he could strike out the third “whereas” statement in the draft ordinance.

Councilmember Giordano inquired “what is the punishment?” in terms of enforcement of the ordinance. Mr. Ogaz replied there were no enforcement provisions as drafted.

Vice Mayor Polanski wanted to go forward with the ordinance, and asked that it be amended to delete the second “Whereas,” to add contractors and move forward to return to Council for adoption. Councilmember Giordano seconded the Vice Mayor’s statement, if it was a motion.

Mayor Esteves inquired about reporting contributions by spouses and the City Attorney responded that could be difficult to include or report.

Councilmember Giordano inquired about Councilmembers running for another election race (non-Milpitas) and whether contributions to such a campaign would have to be disclosed. The City Attorney responded that was not distinguishable, in the ordinance as written.

Mayor Esteves invited comments from the audience.

Bill Ferguson, Rivera St. resident, thanked the Mayor for bringing this issue forward. It was very good to link the donation to a specific project. He wanted Council to add immediately family members and spouses to the list of donors to reveal.

Vice Mayor Polanski asked to add contractors to those who contribute, to delete the second and third “Whereas” in recitals, and to move forward with a reading of the title. She moved to waive the first reading.

City Attorney Ogaz read aloud the title of Ordinance No. 284, “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.”

(1) Motion: to waive the first reading beyond the title of Ordinance No. 284

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

(2) Motion: to introduce Ordinance No. 284 and to direct the City Attorney to incorporate changes in the text to add “contractors” in addition to developers (those whose contributions would be reported), and to delete the second and third “Whereas” in the Ordinance recitals text

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

RESOLUTION

One Resolution was approved on consent calendar.

CONTRACTS

Two items were approved on consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:55 PM.

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

February 2013						
S	M	T	W	T	F	S
					1	2
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17	18	19	20	21	22	23
24	25	26	27	28		

April 2013						
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Council Calendar

March 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 10:00 AM -SVRT Program Working Committee (JE) 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	12	13	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. (Sports Center) (DG) 7:00 PM -Bicycle Pedestrian Adv. Comm. (AG) (City Hall 1 st floor Committee Room)	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 6:30 PM -Closed Session 7:00 PM -City Council	20 7:00 PM -Special Planning Commission	21 12:30 PM -VTA Admin/Finance Committee (JE) 7:00 PM -Bay Area Water Supply Consv. Agency (AG) (Foster City) 7:00 PM -Emergency Preparedness 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) 7:00 PM -Sister Cities Commission (CM)	29	30

March 2013						
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May 2013						
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Council Calendar

April 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 7:00 PM -Parks, Recreation & Cultural Resources Commission (AP)	2 6:30 PM -Closed Session 7:00 PM -City Council	3 7:30 AM -VTA Northeast Group (JE) 5:30 PM -Veterans Commission (DG) 7:00 PM -Community Advisory Commission (AG)	4 5:30 PM -VTA Board of Directors (JE)	5	6
7	8 6:00 PM -Economic Development Commission (CM)	9	10 12:00 PM -Santa Clara Valley Water Commission (AG) 7:00 PM -Planning Commission	11 4:00 PM -VTA Policy Advisory Committee (AG) 4:30 PM -Treatment Plant Advisory Committee (JE) (San Jose) 6:00 PM -Cities Assn of SCC (JE) 7:00 PM -Youth Advisory Commission (DG)	12	13 12:00 AM -Commissioners Luncheon at Milpitas Community Center
14	15 7:00 PM -Telecommunications Commission (AP)	16 6:30 PM -Closed Session 7:00 PM -City Council	17	18 12:30 PM -VTA Admin & Finance Committee (JE) 7:00 PM -Bay Area Water Supply Conserv. Agency (AG) (Foster City)	19	20
21	22	23 1:30 PM -Senior Advisory Commission (JE) 6:00 PM -Recycling & Source Reduction Adv. Comm. (CM)	24 7:00 PM -Planning Commission	25 7:00 AM -Milpitas Chamber of Commerce Board (DG) 12:00 PM -Terrace Gardens Board of Directors (DG) 1:30 PM -SCC JPA Board (CM) 7:00 PM -Sister Cities Commission (CM)	26	27
28	29	30				

RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS TO ADOPT
A PLAN LINE FOR SOUTH MILPITAS BOULEVARD FROM MONTAGUE EXPRESSWAY
TO CAPITOL AVENUE**

WHEREAS, on June 3, 2008, the City Council approved the Transit Area Specific Plan (TASP) for redevelopment of an approximately 437-acre area in the southern portion of the City into a transit-oriented district at the intersection of the Santa Clara Valley Transit Authority (VTA) Light Rail and the Bay Area Rapid Transit (BART) Milpitas Station; and

WHEREAS, the TASP is a component of the City's General Plan and has binding legal authority to guide land use, circulation, and infrastructure in the planning area; and

WHEREAS, pursuant to the requirements of the California Environmental Act, a programmatic environmental impact report (EIR) that made full quantitative analysis of the buildout and traffic impacts and was prepared and certified currently with the TASP; and

WHEREAS, General Plan amendment, Midtown Specific Plan Amendment, Zoning Text Amendments and Zoning Map Amendments were prepared and considered by the Planning Commission and City Council as part of the package for enactment of the TASP; and

WHEREAS, the BART Station Subdistrict of the TASP includes the planned extension of Milpitas Boulevard south from Montague Expressway to Capitol Avenue to serve the future BART station; and

WHEREAS, on September 10, 2010, the City entered into a Master Agreement with VTA relating to the Silicon Valley Rapid Transit Program Extension Project (SVBX); and

WHEREAS, Section 7C of said Master Agreement provides that VTA will acquire right-of-way and will design and construct South Milpitas Boulevard Extension from Montague Expressway to Capitol Avenue, including full improvements consisting of new signalized intersections, roadway pavement, curb and gutter, sidewalks, storm drains, water and sewer utilities, street lighting, median islands, and street landscaping, with City share of costs to be reimbursed to VTA from Transit Area Developer Impact Fees; and

WHEREAS, VTA's SVBX designer has prepared the plan line to establish the right-of-way for the South Milpitas Boulevard extension and to identify the affected parcels, land uses, and the extent of dedication needed to establish this right-of-way; and

WHEREAS, the City Engineering and Planning staff found that the South Milpitas Extension Plan Line was prepared in accordance with the TASP, and Chapter 200 of Title XI of the Milpitas Municipal Code, and City standards; and

WHEREAS, on March 19, 2013, the City Council held a duly noticed public hearing regarding the establishment of a plan line for South Milpitas Boulevard extension from Montague Expressway to Capitol Avenue.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby adopt as more particularly described on Exhibit "A," attached hereto and incorporated by reference herein, as the plan line for extension of South Milpitas Boulevard from Montague Expressway to Capitol Avenue.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

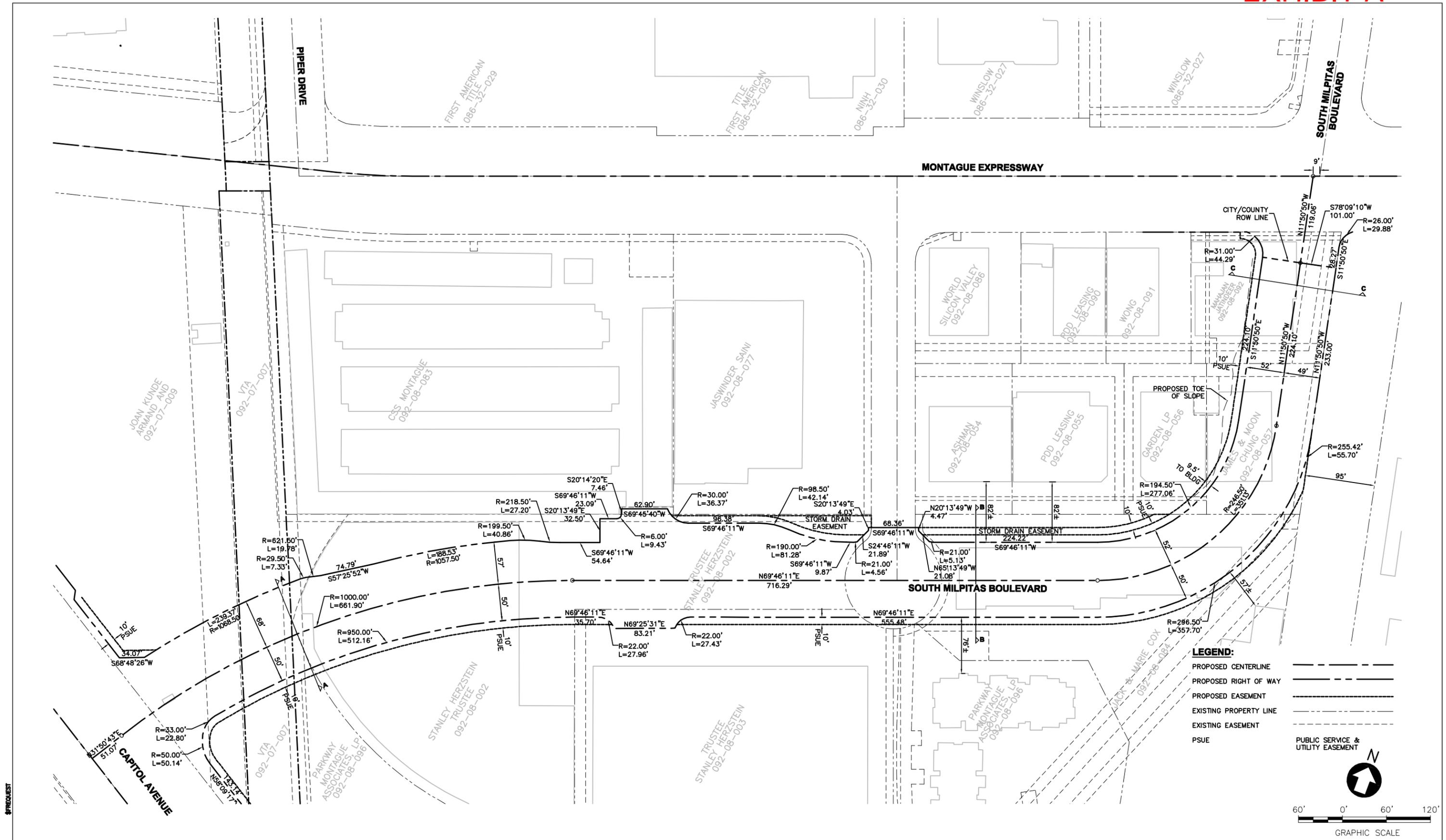
APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney



LEGEND:

- PROPOSED CENTERLINE
- PROPOSED RIGHT OF WAY
- PROPOSED EASEMENT
- EXISTING PROPERTY LINE
- EXISTING EASEMENT
- PSUE
- PUBLIC SERVICE & UTILITY EASEMENT

GRAPHIC SCALE

60' 0' 60' 120'

REV	DATE	BY	SUB	APP	DESCRIPTION
20130301					

DESIGNED BY
T. COPPIN

DRAWN BY
M. FILLMORE

CHECKED BY
C. SPINKS

IN CHARGE
T. COPPIN

DATE

STANLEY HERZSTEIN TRUSTEE 092-08-002

STANLEY HERZSTEIN TRUSTEE 092-08-003

WMH Corporation

50 WEST SAN FERNANDO STREET
SUITE 950
SAN JOSE, CA 95113
PHONE: 408-971-7300
FAX: 408-971-7400

NOT FOR CONSTRUCTION

SUBMITTED _____ APPROVED _____

**OFFICIAL PLAN LINES
MILPITAS BOULEVARD**

CAPITOL AVENUE TO MONTAGUE EXPRESSWAY

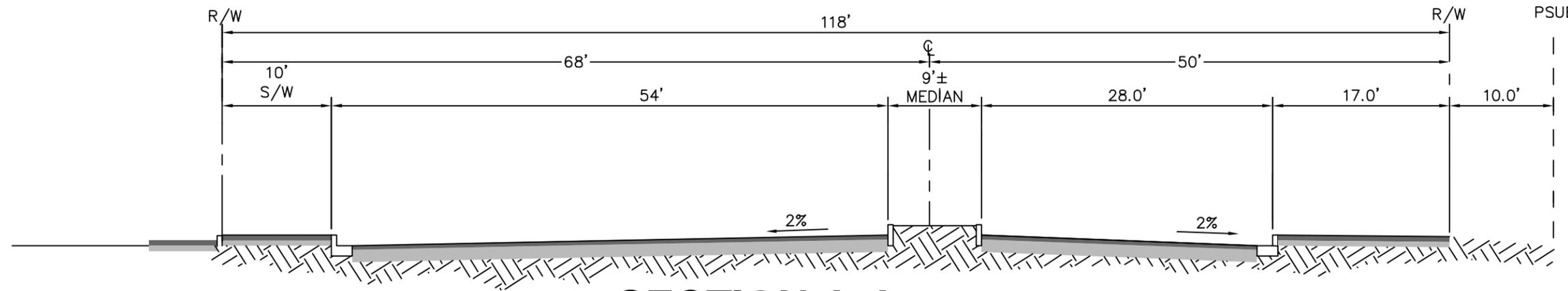
MARCH 2013

CADD FILENAME
2013-02-26-PLAN-LINE

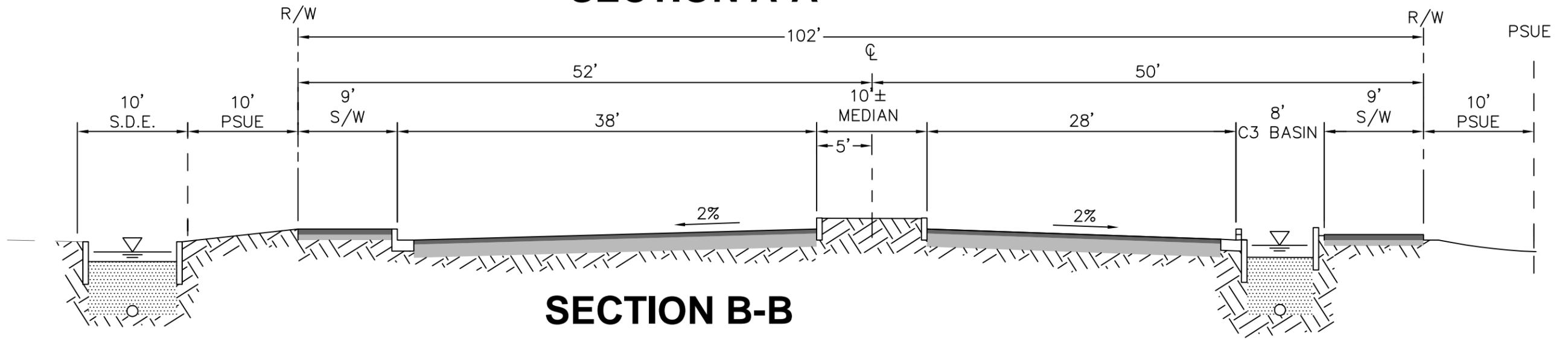
SIZE SCALE
D 1"=60'

CONTRACT NO. _____ REV. _____

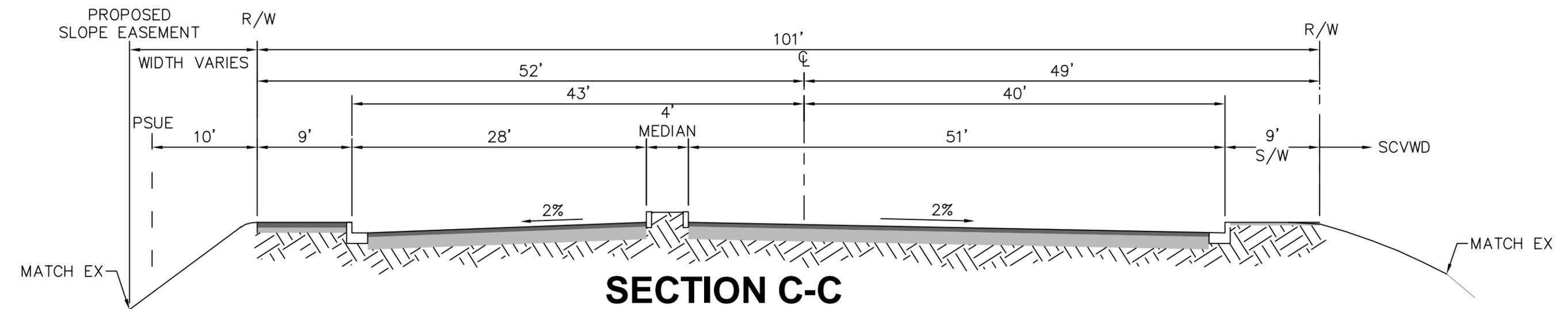
AREA CODE SHEET NO. 1 of 2 PAGE NO. _____



SECTION A-A



SECTION B-B



SECTION C-C

DATE

REV	DATE	BY	SUB	APP	DESCRIPTION
20130301					

DESIGNED BY
T. COPPIN
DRAWN BY
M. FILLMORE
CHECKED BY
C. SPINKS
IN CHARGE
T. COPPIN
DATE



WMH Corporation

50 WEST SAN FERNANDO STREET
SUITE 950
SAN JOSE, CA 95113
PHONE: 408-971-7300
FAX: 408-971-7400

**NOT FOR
CONSTRUCTION**

SUBMITTED _____

APPROVED _____

**OFFICIAL PLAN LINES
MILPITAS BOULEVARD**
CAPITOL AVENUE TO MONTAGUE EXPRESSWAY
MARCH 2013

CADD FILENAME 2013-02-26-PLAN-LINE		
SIZE D	SCALE NTS	REV.
CONTRACT NO.	SHEET NO.	PAGE NO.
AREA CODE	2 of 2	

LETTER OF AGREEMENT

**BETWEEN THE CITY OF MILPITAS AND THE INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, LOCAL UNION NO. 1699**

This letter is an agreement between the City of Milpitas (“City”) and the International Association of Firefighters, Local Union No. 1699 (“Local 1699”) regarding staffing changes in the Milpitas Fire Department (“Agreement”). The parties agree as follows:

1. The City will maintain full staffing of the Fire Department at the level of 59 rank and file staff, provided that FEMA funds the SAFER Grant as amended. This full staffing level does not include the Fire Chief, Battalion Chiefs, Assistant Chiefs, or non-Local 1699 members. In the event that FEMA does not approve the amended SAFER Grant, the minimum staffing changes detailed in this Agreement are null and void.
2. The City will not lay off any Local 1699 member for a period of two (2) years from the beginning date of the two year SAFER Grant period.
3. The City will set a yearly overtime budget of at least \$600,000 for each Fiscal Year covered under this Agreement. The overtime budget will be divided into equal monthly allotments (example: \$50,000 a month for a \$600,000 annual budget) for use by the Fire Department.
4. Overtime usage exceeding \$50,000 in any given month will allow the City to exercise flexible staffing levels, as set forth below in Section 6, for the remainder of that month.
5. Underutilizations or overages of the monthly \$50,000 overtime allowance will carry over to future months.
6. The City will have the ability to fluctuate the minimum staffing of the Fire Department within the term of this Agreement from 15 to as low as 13 under the following protocol only after the monthly overtime budget allotment is exhausted, as outlined in section 3 above:
 - a. Minimum staffing may be reduced to 14 on shifts where staffing at 15 would create additional overtime
 - b. Minimum staffing may be reduced to 13 on shifts where staffing at 14 would create additional overtime
 - c. Minimum staffing will revert back to 15 on subsequent shifts if the monthly overtime allotment is not exhausted
7. It is agreed that all types of leave that create overtime will be used to calculate monthly overtime usage.
8. Overtime created as a result of activities for which the City receives 100% reimbursement, emergency call backs, and “extraordinary and unique” events shall not be calculated against the monthly overtime allotment. It is within the City’s discretion to determine what events are “extraordinary and unique” for purposes of this Agreement.
9. The City shall add any cost savings created by vacancies within the Fire Department to the \$50,000 monthly overtime budget. The overtime usage necessary to trigger minimum

staffing changes under Section 6, above, will increase by the amount of those savings for that particular month and is otherwise subject to the other provisions of this Agreement. The parties acknowledge that safety concerns and SAFER Grant conditions may require City to fill vacancies and City discretion to fill vacancies as they occur is not altered by this Agreement.

10. The City and Local 1699 agree to meet on a regular monthly basis to discuss the Fire Department's overtime expenditures and in an effort to avoid triggering the reduced staffing provisions of this Agreement.
11. Any dispute over interpretation of this Agreement shall be resolved through the Grievance Procedure outlined in the Memorandum of Understanding between the parties.
12. This Agreement shall expire at the time of expiration of the SAFER Grant period unless otherwise mutually agreed upon by the parties in writing.

**CITY OF MILPITAS
COMMISSION/COMMITTEE APPLICATION**

City Clerk's Office

MAR *4 2013

RECEIVED

Library

COMMISSION APPLYING FOR ↑

PROVIDE COMPLETE INFORMATION (in black ink)

- Mr.
 Mrs./Ms./Miss

Name: Nonie First Veccia Middle McDonald Last

Address: [Redacted] Number Street (apt. # if needed) City & Zip Code

Telephone Number(s) 408 946 8750 (w) 408 334 5264 (c) e-mail address nonie@mcdonald.ws

Present Employer Business Telephone

Homemaker/Home Schooler

Business Address Occupation

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

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
<u>University of Arizona</u>	<u>Literature</u>		<u>BA</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
<u>2005-pres</u>	<u>Friends of the Milpitas Library</u>	<u>Board member</u>

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

I've been working in the library as a Friends volunteer for 9+ years. I use the library regularly & my children keep me in touch with what kids need and want from the library.

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.

Nonie McDonald Signature 3/12/13 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

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

CITY OF MILPITAS
COMMISSION/COMMITTEE APPLICATION

FEB 13 2013

ECONOMIC DEVELOPMENT COMMISSION
COMMISSION APPLYING FOR ↑
OR ARTS

PROVIDE COMPLETE INFORMATION (in black ink)

Mr.
 Mrs./Ms./Miss

Name: MELANIE BERTIZ HOLTHAUS
First Middle Last



Address: Number Street (apt. # if needed) City & Zip Code
408 - 645 - 1594 melanieho9@gmail.com
Telephone Number(s) e-mail address

Present Employer: INTERO REAL ESTATE SERVICES 408 -
Business Telephone
200 SERRA WAY Milpitas, CA Realtor
Business Address Occupation

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

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
Philippine Women's University	Business	1975	BSC

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
12-5-12	Women's Council of Realtors	PRESIDENT
1-2008	Milpitas Executive Lions Club	member
1-2000	Santa Clara Board of Realtors	member
1-2012	Silicon Valley Board of Realtors	member
	Santa Clara Board of Realtors	member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):
I have worked in Milpitas since 1993. I have seen this City grow. With my expertise in Commercial Real Estate in health care industry, as well as Residential Real Estate.

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.

Melanie Holthaus
Signature

Feb. 11, 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

Fax (586-3030), e-mail (), mail or drop off your completed application to:
City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

**City of Milpitas
Public Art Master Plan Recommendations**

***5**

**Public Art Committee
2013-2015**

Public Art Program Summary & Goals

Public art enhances the quality of life in the community, generating civic pride and creating a sense of place. Through the Public Art Program:

- Public Art shall be permanently sited and an integral part of the landscaping and/or architecture of a building considering the historical, geographical and social/cultural context of the site.
- Public Art shall be constructed to a scale that is proportional to the scale of the building or property it relates to or is sited upon.
- Public artwork may include sculpture, furnishings or fixtures, including but not limited to gates, walls, railings, streetlights or seating. Public Art may include water elements and walkways.
- Public artwork may include murals, photography and original works of graphic art, water features, neon, glass, mosaics, or any combination of forms of media, furnishings or fixtures permanently affixed to a building or its grounds, or a combination thereof, and may include architectural features of buildings.
- Public artwork shall be displayed in a manner that will enhance enjoyment by the general public.
- Public artwork may include artistic or aesthetic elements of the overall architecture or landscape design if created by a professional artist or design team that includes a professional visual artist.

The Public Art Master Plan identifies key sites over the next year where public art can have the greatest impact, make the most effective use of the Public Art Fund and have a positive impact and long-term contribution to the City of Milpitas. The Master Plan:

- Identifies high impact areas and existing community public art goals
- Includes complimentary project types that would accomplish city goals and assure a cohesive public art collection.

Public Art Fund

The Public Art Fund shall be used to further the intent, purpose and administration of the Public Art Program. The Public Art fund will allow for costs associated with facilitating a

Public Art Project, in addition to the art piece and artist fees. \$166,000 is currently remaining in the Public Art Fund.

Project Administration

The administrations of the Public Art Master Plan projects are listed in order of project budget.

<u>PROJECT</u>	<u>LOCATION</u>	<u>ELIGIBILITY</u>	<u>Budget</u>
Gateway Signs	TBD	National	\$50,000
Park Public Art	Dixon Landing Park	Regional	\$20,000
Fire Station 2	Yosemite and Park Victoria	Regional	\$20,000
Police Station	Milpitas Blvd and Minnis	Regional	\$20,000
Park Public Art (partnership with Milpitas Alliance for the Arts)	Cardoza Park	Regional	\$10,000
City Hall Frontage	South exterior on greenspace	Regional	\$10,000
Mural	Sports Center Snack Shack	Local	\$2,000
Mural	TBD	Local	\$2,000
Electrical Box Paintings	TBD	Local	\$1,000
Mural	Sports Center Interior	Local	\$1,000

Maintenance Program

Each public art project will have a detailed maintenance description specifying maintenance budget allocations, requirements, materials and scheduling, which shall be included in the cataloging of the artwork.

Maintenance	Murphy Park	Orig Artist	\$4,200
Maintenance	Augustine Park	Orig Artist	\$3,000
Maintenance	Hillcrest Park	TBD	\$1,500

Grants

The Public Art Committee will search for grants to completely or partially fund projects in the annual Public Art Master Plan.

Defunded Projects

The Public Art Committee had three projects, in various stages, defunded due to the dissolution of the Redevelopment Agency. The Committee's desire is to complete these projects should additional monies become available and be appropriate from Private funds awarded grants, or City funds.

City Hall	Outer front replacement	National	\$175,000
Cartwheels Kids	TBD	Artist/Contract	\$15,000
Transit Shelter Enhancements	Main Street	Regional	\$14,000

PLEASE NOTE:

This copy of Ordinance No. 284 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

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 March 5, 2013, upon motion by Vice Mayor Polanski 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 or enter into Contracts with the City are often also amongst those making contributions to City Council or Mayoral election campaigns; and

WHEREAS, full disclosure of contributions from those seeking Council approval of their Development Projects and Council approval of their Contracts 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 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 and Contractor Contributions.

- (a) At such time as a Development Project or Contract comes before the City Council for approval, each Council Person and the Mayor shall identify any contribution received from the Development Project Applicant or Contracting Party 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 contributions required under section (a). The City Attorney shall make such request immediately after the agenda item is announced and before the staff presentation, if any.

Deleted: 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¶
Deleted: project

Deleted: developer
Deleted: Development Project

- (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. For purposes of this Section, "Contract" shall mean any Contract submitted to the City Council for 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. For purposes of this Section, "Contracting Party" shall mean any person or entity who is a party to a Contract submitted to the City Council for approval.
- (e) If a partnership or corporation is listed as Applicant or Contracting Party, Applicant or Contracting Party includes any employee or officer of the partnership or corporation.
- (f) 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.

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

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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 or enter into Contracts with the City are often also amongst those making contributions to City Council or Mayoral election campaigns; and

WHEREAS, full disclosure of contributions from those seeking Council approval of their Development Projects and Council approval of their Contracts 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 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:

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- (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. For purposes of this Section, “Contract” shall mean any Contract submitted to the City Council for approval.
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- (e) If a partnership or corporation is listed as Applicant or Contracting Party, Applicant or Contracting Party includes any employee or officer of the partnership or corporation.
- (f) In determining the aggregate amount of contributions in the 12-month reporting period, the provisions of Section I-210-3.10(e) shall govern.

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Recording Requested by and
When Recorded Mail to:

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

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

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING
INITIAL ACCEPTANCE OF THE SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY (VTA) SILICON VALLEY BERRYESSA EXTENSION PROJECT, WATER,
STORM, AND SEWER UTILITY RELOCATION AT PIPER DRIVE, VTA PROJECT NO. C610**

WHEREAS, the City of Milpitas has heretofore entered into a Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for work including the subject project; and

WHEREAS, VTA contracted with Con-Quest Contractors, Inc. to complete this work of VTA Project C610, consisting of relocation of City water, sewer and storm drain utilities in Piper Drive; and

WHEREAS, the City issued an encroachment permit to Con-Quest Contractors, Inc. to construct the work of VTA Project C610 in accordance with the approved VTA plans and specifications; and

WHEREAS, Con-Quest Contractor has completed the work in accordance with the approved VTA C610 Project plans and specifications, and

WHEREAS, the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City of Milpitas does hereby accept said improvement as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer.

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

Recording Requested by and
When Recorded Mail to:

***8**

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

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

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING INITIAL
ACCEPTANCE AND REDUCING PERFORMANCE BOND OF ABEL STREET TRANSIT CONNECTION,
PROJECT NO. 4260**

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

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does hereby accept said improvement as completed on this 19th day of March, 2013, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Section 3093 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account. The penal sum of the faithful performance bond securing said improvement may be reduced to the sum of \$103,440.04 upon request of principal and surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond, provided that said term shall not be less than one year.

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

Recording Requested by and
When Recorded Mail to:

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

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

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Section 3093)

NOTICE IS HEREBY GIVEN:

1. On or about August 21, 2012, the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **Abel Street Transit Connection.**
2. A description of the site of which the City is owner for said work of improvement is: **Abel Street between Great Mall Parkway and Capitol Avenue** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.
3. The nature and interest or estate of the City as owner of said site is: **City of Milpitas.**
4. The name and address of the original contractor is: **JJR Construction Inc., 1120 Ninth Avenue San Mateo, CA 94402.**
5. A general statement of the kind of work done or materials furnished to the City is as follows: **The installation of curb, gutter & sidewalk, street lighting, landscaping & irrigation along Abel Street.**
6. The name of the sureties upon the bond of the contractor for said work of improvement is: **Great American Insurance Company, 1350 Treat Blvd., Suite 300, Walnut Creek, CA 94596; bond # 1511807.**
7. Said work of improvement was accepted by the Milpitas City Council as completed on **March 19, 2013.**

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on _____, 2013 at Milpitas, California.

Kathleen Phalen, Acting PW Director/City Engineer
City of Milpitas

NOTE: RECORD WITHIN 10 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
APPROVING POLICY AND PROCEDURES FOR DONATIONS TO PARKS AND RECREATION
PROGRAMS**

WHEREAS, the City of Milpitas, as a non-profit municipal corporation, accepts monetary and non-monetary contributions from the public and such donations may be directed toward the benefit of the City's Parks and Recreation programs; and

WHEREAS, the Milpitas Parks, Recreation and Cultural Resources Commission created a proposed Donation Policy to Parks and Recreation Programs setting out the procedures for such donations in order to make certain that decisions of acceptance or denial of such donations are made in a timely and consistent manner and are appropriate in terms of the nature, facilities and purposes of the parks and recreation areas throughout the City of Milpitas; and

WHEREAS, on March 4, 2013, the Milpitas Parks, Recreation and Cultural Resources Commission approved the proposed policy and procedures attached hereto as Exhibit A, which is now submitted for approval by the City Council.

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 hereby approves the Donation Policy to Parks and Recreation Programs, attached hereto as Exhibit A.

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

Subdivider: Contour Trade Zone, LLC, a Delaware Limited Liability Company

Project Name: "PACE"

File No. : 100.01.237
Private Job Account No. 2762
Improvement Plan No.: 2-1161
Tract/Parcel Map No.: 10138
Council Approval Date: _____
Completion Period: Four Years

***10**

CITY OF MILPITAS
SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, executed this ____ day of _____ 2013, at Milpitas, California, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "City") and

Contour Trade Zone, LLC, a Delaware Limited Liability Company (hereafter referred to as SUBDIVIDER"):

RECITALS

- A. SUBDIVIDER desires to subdivide certain land in the CITY in accordance with a final map filed with the Milpitas City Council, marked and designated Tract No. 10138 "PACE"
- B. Said map shows certain streets and easements which are offered for dedication for public use.

NOW, THEREFORE, in consideration of the mutual covenants terms and conditions herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

- 1. SUBDIVIDER agrees that it will construct at its sole cost and expense, all those certain improvements listed in the Improvement Plan No. 2-1161 consisting of **approximately** ____ sheets and specifications approved by said City Council on _____, including setting survey monuments and identified by Project/Agency Fund Account No. 2762 (hereby referred to and made a part hereof the same as if set forth at length herein), and as set fourth in the conditions of approval for the SUBDIVIDER.
- 2. No improvement work shall be undertaken by SUBDIVIDER until all plans and specifications have been submitted to the City Engineer and have been approved by him/her in writing nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of CITY.
- 3. SUBDIVIDER agrees that:
 - a. Said improvements will be constructed under and subject to the inspection of and to the satisfaction of the CITY and all other agencies with permitting authority.
 - b. The public improvements (ie, curb/gutter, sidewalk, street lights, furniture, landscaping/irrigation) along the Montague Expressway and Trade Zone Blvd frontage shall be maintained by the Developer and/or the Project's Home Owners Association for a period of one year after final project acceptance by the City Council
 - c. Per Project Condition of Approval No. 27, Developer shall construct that portion of a future public street that lies within the project boundary (currently named "Momentum Drive"). This street shall

be maintained by the Developer and/or the Project's Home Owners Association for a minimum of one year after final project acceptance by the City Council or one-year after completion and acceptance of the ultimate width and standard; whichever comes later.

- d. Per Project Condition of Approval No. 28, Developer shall work cooperatively with the City, County of Santa Clara Roads/Airports, and City of San Jose to design, permit, and construct improvements required of the project within the respective jurisdictions.
4. SUBDIVIDER agrees that it will construct said improvements in accordance with the requirements set forth in said "Improvement Plans and Specifications" referred to above, all applicable local, state, and federal codes, ordinances, resolutions and orders of CITY enacted or adopted by said City Council as amended or revised as of the date hereof, and governing statutes of the State of California or of the United States of America.
5. SUBDIVIDER agrees that it will carry out and shall cause its contractors to carry out construction of the said improvements in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. To the extent applicable, SUBDIVIDER and its contractors, subcontractors and agents shall comply with California Labor Code Section 1720 et seq. and regulations adopted pursuant thereto ("Prevailing Wage Laws") and shall be responsible for carrying out the requirements of such provisions.

SUBDIVIDER shall, and hereby agrees to indemnify, defend (with counsel approved by City/Agency), protect and hold harmless the Indemnitees from and against any and all Claims whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Agency, City or Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency of any of the insurance policies described in this Agreement.

6. All said improvements shall be completed and ready for final inspection by the CITY within 48 months of the date of execution of this Agreement. If SUBDIVIDER shall fail to complete the work required by this Agreement within same time, CITY may, at its option, and after giving ten (10) days written notice thereof to SUBDIVIDER, complete the same and recover the full cost and expense thereof from SUBDIVIDER.
7. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY as obligee in the penal sum of ***One Million, Nine Hundred Thousand Dollars (\$1,900,000)***, conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this Agreement and conditioned upon the full and faithful performance of any and all public improvement work required hereunder.
8. In the event that SUBDIVIDER fails to perform any obligation on its part to be performed hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligation, and if suit be brought by CITY to enforce this Agreement, SUBDIVIDER, agrees to pay costs of suit and reasonable attorney's fees to be fixed by the Court.
9. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY, as obligee, in the penal sum of ***One Million, Nine Hundred Thousand Dollars (\$1,900,000)***, inuring to the benefit of any contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to

them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder.

10. SUBDIVIDER agrees to pay all costs for labor or materials in connection with the work of improvement hereunder.
11. Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.
12. Prior to commencing any work, SUBDIVIDER, agrees to obtain an Encroachment Permit from the City Engineering Division and at SUBDIVIDER's expense, provide CITY with a duplicate public general liability and automobile liability insurance policy with endorsements showing the CITY as additional insured which insures CITY, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1,000,000 for each person and \$1,000,000 for each occurrence and \$1,000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of SUBDIVIDER. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to CITY of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said CITY, its officers and employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said CITY; its officers and employees shall not be precluded from claim against other insured parties thereunder; (g) be maintained in effect until final acceptance of SUBDIVIDER's improvements. If SUBDIVIDER does not comply with the provisions of this paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and SUBDIVIDER shall forthwith repay City the premium therefor.
13. SUBDIVIDER agrees that any general contractor engaged by the SUBDIVIDER for any work of improvement under this Agreement will have:
 - a) In full force and effect, a Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give CITY at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.

or

 - b) In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the SUBDIVIDER or its general contractor shall immediately notify the CITY in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.
14. SUBDIVIDER agrees to indemnify and save harmless CITY, City Council, City Engineer or any other officer or employee of CITY from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons or property heretofore or hereafter arising out of or in any way connected with the act, omission or negligence of SUBDIVIDER, its officers, agents, employees, contractors or subcontractors or any officer, agent or employee thereof.

15. SUBDIVIDER agrees to comply with all special conditions and notes of approval for this development, pay all fees, and costs and expenses incurred by CITY in connection with said subdivision (including, but not limited to: office check of maps and improvement plans, field checking, staking and inspection of street monuments, construction water, wet taps, testing and inspection of improvement). SUBDIVIDER shall maintain Project/Private Job Account No. 2762 for this purpose with additional deposits as required by CITY.

A. Fees to be paid upon execution of this agreement are as follows:

	Type of Fees and Deposits	City Account No.	Calculated Fee
1	Plan Review, Map Review and Inspection Deposit (15% of Engineers Estimate)	PJ2762	\$285,000.00
2	Improvement Reimbursement Fee	310-3614-xx70	N/A
3	Other Fees/Deposits		N/A
		Total =	\$285,000.00

B. Fees to be paid at the time of building permit issuance:

	Type of Fee	City Account No.	Calculated Fee
1	Water Connection Fee: (43 units @ \$1,910 per unit, 91 units @ \$1,164 per unit with a \$14,328 credit for previous use)	402-3715	\$56,236.00
2	Potable Water Meter Fee	400-3662	TBD
3	Water System Capacity Impact Fee (Fee is as of July 2012, and shall be adjusted per ENR Cost Index at time of payment)	402-3718	N/A
4	Recycled Water Meter Fee	406-3622	TBD
5	Sewer Connection Fee (Fee is as of July 2012, and shall be adjusted per ENR Cost Index at time of payment)	452-3715	\$21,868.00
6	Sewage Capacity Impact Fee (Fee is as of July 2012, and shall be adjusted per ENR Cost Index at time of payment)	452-3718	N/A
7	Main Sewage Pumping Station Impact Fee	455-3718	N/A
8	Storm Drain Connection Fee (43 units @ \$1,100 per unit and 6.8 acres @ \$16,771 per acre)	340-3711	\$161,343.00
9	Transit Area Specific Plan Impact Fees (134 units @ \$29,012 per unit)	350-3718	\$3,887,608.00
10	Park site Fee 1. Park Dedication In-Lieu Fee 2. PUD Park Fee	320-3712	N/A
11	Permit Automation Fee (2.5% of B1-B10)	505-3601	\$103,176.00
		Total =	\$4,230,231.00

C. Estimated Credits and/or Reimbursements due to SUBDIVIDER:

	TASP Credits	Initial “Budgeted” Credit
1	Montague Expressway – Post Widening (per DB No. 6 in Table B-1 of Dec. 12, 2012 Updated TASP Fee)	\$68,679.00
2	Sewer 11B and 11C per DB Nos. 11 and 12 in Table B-1	\$1,510,442.00
3	Recycled Water (per DB No. 20 in Table B-1 of Dec. 12, 2012 Updated TASP fee)	\$328,079.00
	Total =	\$1,907,200.00

16. The Parties acknowledge that the Sewer 11B-2 and 11C Improvements identified in section 15(C), line 2, above, will accommodate existing development and/or address existing deficiencies in the City’s sewer system. CITY agrees that upon receipt of SUBDIVIDER’s payment of the fees identified in section 15(B) above, CITY shall set aside \$824,676.00 from the fees paid and place said funds in a separate escrow account to be controlled by the City. The escrow account, including all costs and expenses associated therewith, shall be set up and maintained by SUBDIVIDER at no cost to CITY. Within sixty (60) calendar days of SUBDIVIDER’s completion and CITY’s acceptance of the TASP Sewer Line 11B-2 and 11C Improvements identified in section 15(C), line e, CITY shall reimburse SUBDIVIDER the full \$824,676.00 in consideration for SUBDIVIDER’s construction of the TASP Sewer Line 11B-2 and 11C Improvements.
17. Upon completion of the work and before City Initial Acceptance of the work thereof, SUBDIVIDER shall:
 - a. Provide the City a complete original mylar and CADD files of “Record Drawings” showing all changes and adjustments from the original “approved” plan.
 - b. Be billed for and pay or shall be refunded the difference between the amount of said costs and expenses in each instance and the amount of said remittance.
18. Any easement or right-of-way necessary for the completion of any of the improvements required of SUBDIVIDER shall be acquired by SUBDIVIDER at its sole cost and expense. In the event that eminent domain proceedings are necessary for the acquisition of any easement or right-of-way, SUBDIVIDER agrees that he will pay all engineering fees and costs, legal fees and costs, and other incidental costs sustained by CITY in connection with said eminent domain proceedings and any condemnation award and damages (including all costs awarded in said eminent domain proceedings). SUBDIVIDER further agrees that prior to the institution of any eminent domain proceedings and upon ten (10) days written notice from CITY. SUBDIVIDER will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages.
19. CITY will accept on behalf of the public, the dedication of the streets, and easements offered for dedication, and will supply water for sale to and within said subdivision, provided however, that as a condition precedent to said initial acceptance and to supplying water, SUBDIVIDER shall perform the covenants, terms and conditions of this Agreement.
20. SUBDIVIDER hereby irrevocably offers to convey title of the water mains and lines, and appurtenances constructed in or for said subdivision to CITY. Upon final acceptance of said improvements by CITY, said title will be deemed to be accepted by CITY in the event that title has not previously passed to CITY by operation by law.

21. SUBDIVIDER agrees to comply with all requirements set forth on Exhibit "A" (attached hereto, hereby referred to and made a part hereof).
22. This Agreement shall be deemed to include any final conditions imposed by CITY upon the approval of the tentative and final maps related to public improvements of said subdivision.
23. SUBDIVIDER agrees that, upon ten (10) days written notice from CITY, it will immediately remedy, restore, repair or replace, at its sole expense and to the satisfaction of City Engineer, all defects, damages or imperfections due to or arising from faulty materials or workmanship appearing within a period of one-year after the date of initial acceptance of all said improvements. If SUBDIVIDER shall fail to remedy, restore, repair, or replace said defects, damages or imperfections as herein required, CITY may at its option, do so and recover the full cost and expense thereof from SUBDIVIDER.
24. This Agreement shall bind the heirs, administrators, executors, successors, assigns and transferees of SUBDIVIDER. It is agreed and understood that the covenants in this Agreement shall run with the land and are for the benefit of the other lands in the CITY OF MILPITAS, and are made by SUBDIVIDER expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY, its successors and assigns.
25. Nothing contained in this Agreement shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the CITY.
26. Time shall be of the essence of this Agreement. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by SUBDIVIDER hereunder shall be subject to approval of the City Attorney as to form.

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

*Signed and Sealed this _____ day of _____, 2013.

CITY OF MILPITAS

By: _____
Thomas C. Williams, City Manager

SUBDIVIDER:

Contour Trade Zone, LLC, a Delaware Limited Liability Company

By: Trade Zone Investors LLC, A Delaware limited liability company
Its Managing Member

By: _____
Name: Gregg A. Nelson
Title: Manager

APPROVED AS TO FORM THIS

_____ day of _____, 2013

By: _____
Michael J. Ogaz, City Attorney

APPROVED AS TO SUFFICIENCY THIS

_____ day of _____, 2013

By: _____
Kathleen Phalen, Acting Public Works Director/City Engineer

- * Date should be same as date on Page 1 of 6.
- ** Except signatures as to Form and Sufficiency, it is essential that the signatures be acknowledged before a California Notary Public and attach proper acknowledgment.

EXHIBIT "A"

1. The Subdivider agrees to complete necessary Water Service Agreements, and pay the connection fees prior to Building Permit issuance.
2. The Subdivider agrees to complete the construction of all public improvements and settings of all Survey Monuments before the City issuance of the Occupancy Permit/Final Inspection of the last residential building.
3. The Subdivider agrees to execute a petition to annex and establish, with respect to the property, the Special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services, upon execution of this Agreement.
4. The subdivider agrees to pay the City 2.5% Permit Automation Fee for the applicable fees.
5. The Subdivider agrees to comply with the special conditions and notes of approval for this Subdivision.

**CITY OF MILPITAS
FAITHFUL PERFORMANCE BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit: _____

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force an effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and _____, as surety, are held and firmly bound unto the City of Milpitas, California, in the penal sum of ***One Million, Nine Hundred Thousand Dollars (\$1,900,000.00)***, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, it heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on _____, 2013.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: _____

SURETY: _____

BY: _____
(write name)

BY: _____
(write name)

BY: _____
(type name and office)

BY: _____
(type name and office)

Address of Surety: _____

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 2013.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 2013.)
)
)
)
)
)

**THIS JURAT MUST BE COMPLETED
BY A NOTARY IF THE VERIFICATION
IS EXECUTED OUTSIDE OF CALIFORNIA**

(Sign)

(Type)

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.
A power of attorney is not enough.

Form Approved:

**CITY OF MILPITAS
LABOR AND MATERIALS BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit:

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, said Principal and the undersigned as corporate surety, their heirs, successors, executors and administrators, are held firmly bound, jointly and severally, unto the City of Milpitas California, and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the aforesaid agreement in the sum of ***One Million, Nine Hundred Thousand Dollars (\$1,900,000.00)***, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the fact amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on _____, 2013.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: _____

SURETY: _____

BY: _____
(write name)

BY: _____
(write name)

BY: _____
(type name and office)

BY: _____
(type name and office)

Address of Surety: _____

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 2013.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 2013.)
)
)
)
)
)
)

**THIS JURAT MUST BE COMPLETED
BY A NOTARY IF THE VERIFICATION
IS EXECUTED OUTSIDE OF CALIFORNIA**

(Sign)

(Type)

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.
A power of attorney is not enough.

Form Approved:

Principal: Contour Trade Zone, LLC, a Delaware Limited Liability Company
Project Name: "PACE"

Project No. PJ 2762
Bond No. _____

**CITY OF MILPITAS
SURVEY MONUMENTATION BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to install and complete certain designated public improvements, including setting of survey monuments by an engineer or surveyor prior to a certain date.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force an effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and _____, as surety, are held and firmly bound unto the City of Milpitas, California, and that Engineer or Surveyor, who set said survey monuments in the penal sum of ***Ten Thousand, Five Hundred Dollars (\$10,500.00)***, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, it heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on _____, 2013.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: _____

SURETY: _____

BY: _____
(write name)

BY: _____
(write name)

BY: _____
(type name and office)

BY: _____
(type name and office)

Address of Surety: _____

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 2013.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 2013.)

THIS JURAT MUST BE COMPLETED
BY A NOTARY IF THE VERIFICATION
IS EXECUTED OUTSIDE OF CALIFORNIA

(Sign))

(Type))

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.
A power of attorney is not enough.

Form Approved:

CITY OF MILPITAS

**CERTIFICATE RELATING TO WORKER'S COMPENSATION
INSURANCE PURSUANT TO LABOR CODE SECTION 3800**

(Subdivision)

I, THE UNDERSIGNED, HEREBY CERTIFY that at all times during the performance of any work of improvement under agreement with the City of Milpitas. (Check one of the following):

_____ Any general contractor engaged by me for said work will have in full force and effect Worker's Compensation Insurance pursuant to the attached certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least ten days advance notice of the cancellation of the policy (an exact copy or duplicate of the Certificate of Worker's Compensation Insurance certified by the Director of Industrial Relations or the insurer may be attached).

_____ Or has in full force and effect and have attached hereto a Certificate of Consent to Self-insure issued by the Director of Industrial Relations or the insurer may be attached).

I declare under penalty of perjury that the foregoing is true and correct and executed on _____
at _____
(Date) (City)

By: _____

Official Title

On behalf of: _____
Contractor

NOTE: YOUR CERTIFICATE OF WORKER'S COMPENSATION INSURANCE MUST BE ATTACHED AND MUST MEET THE REQUIREMENTS SET FORTH ABOVE.

PLEASE NOTE THAT IF YOU HAVE ANYONE WORKING FOR OR WITH YOU, YOU MAY BE REQUIRED TO HAVE WORKER'S COMPENSATION INSURANCE. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE DIRECTOR OF INDUSTRIAL RELATIONS.

Principal: Contour Trade Zone, LLC, a Delaware Limited Liability Company
Project Name: "Pace"

Project No. PJ 2762
Bond No. _____

CITY OF MILPITAS
CERTIFICATE OF WORKER'S COMPENSATION INSURANCE

Pursuant to California Labor Code Section 3800, the undersigned Insurer certifies that it is an admitted Worker's Compensation Insurer, that it has issued a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner (bearing policy number _____) to _____ in connection with the above project, title and subdivider. Said policy is now in full force and effect and the full deposit premium has been paid. At least 10 days advance notice of the cancellation of said policy will be given to the City of Milpitas. The expiration date on said policy is _____.

Dated: _____

INSURANCE COMPANY

AUTHORIZED REPRESENTATIVE (Signature)

Address: _____

AUTHORIZED REPRESENTATIVE (Type Name)

Address: _____

VERIFICATION

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer. Executed at _____, California, on the _____ day of _____, 2013. **

Authorized Signatory (Sign)

(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public, this _____ day of
_____, 2013.

(Sign)

(Type Name)

CERTIFICATE OF GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE

The undersigned insurance company certifies to the City of Milpitas, California, that it has issued a general public liability insurance policy, policy number _____ to _____ in connection with a work of improvement generally described as Street and underground improvement on _____. The policy names the City of Milpitas, its officers and employees (as additional insured) and insures said City, officers and employees against liability arising out of activities, including but not limited to, coverage for all work performed by or on behalf of permittee, products and completed operations of the permittee; the premises owned, occupied or used by the permittee; or automobiles owned, leased, hired or borrowed by the permittee in the following minimum amounts and for the following periods:

<u>COVERAGE</u>	<u>POLICY NUMBER</u>	<u>POLICY PERIOD</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Bodily Injury			\$1,000,000 each person)
			\$1,000,000 each occurrence)
)*
(2) Property Damage			\$1,000,000 each occurrence)
			\$1,000,000 aggregate)

This policy provides: (1) primary coverage for additional insured parties; if said additional insured have other insurance against loss covered by this policy, the other insurance shall be excess insurance only; (2) that said additional insured parties are not precluded from claim under this policy against other insured parties; and (3) each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City Clerk.

_____	Address of Signatory:
Insurance Company	
_____	_____
Authorized Signature (Sign)	
_____	_____
Authorized Signature (Type)	

* If project involves less than \$50,000, City will accept \$300,000/\$50,000

VERIFICATION

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer. Executed at _____, California, on the _____ day of _____, 2013. **

 Authorized Signatory (Sign)

 (Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a
 Notary Public, this _____ day of _____,
 _____, 2013.

 (Sign)

** If this certificate is executed outside of California, it must be sworn to before a Notary Public.

FORM APPROVED: _____, 2013, by _____

**CITY OF MILPITAS
ACQUISITION AND REIMBURSEMENT AGREEMENT
FOR PUBLIC FACILITIES**

This Acquisition and Reimbursement Agreement for Public Facilities (“Agreement”), dated as of _____, 2013, is by and between the City of Milpitas, a municipal corporation ("City"), and Contour Trade Zone, LLC, a Delaware limited liability company ("Developer"). City and Developer are at times collectively referred to herein as the “Parties.”

RECITALS

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, identified as Tract No. 10138 ("Project").

WHEREAS, pursuant to conditions of approval for the development of the Project set forth in the Milpitas City Council Resolution No. 8136, approving Major Tentative Map No. MT11-0003, Site Development Permit No. SD11-0012, and Conditional Use Permit No. UP11-0033, adopted on November 15, 2012, the Developer is required to pay Transit Area Specific Plan developer impact fees to defray all or a portion of the cost of sewer facilities to mitigate the impacts of the Project.

WHEREAS, 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 improvement program. These provisions and sections 66485-66487 of the Subdivision Map Act further authorize 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 that needed for the impacts of that development, and when such construction is necessary to ensure efficient and timely construction of the facilities network). In such instances, a reimbursement agreement with the developer and a credit against the fee, which would otherwise be charged, pursuant to the Milpitas Municipal Code and its implementing resolutions, shall be offered. Such reimbursement amount shall not include the portion of the improvement needed to provide services or mitigate the need for the facility or the burdens created by the Project.

WHEREAS, Developer wishes to construct certain eligible sewer improvements and related facilities that would otherwise be financed by (i) the Transit Area developer impact fee program and (ii) the capital component of the City’s sewer connection fee program.

WHEREAS, such sewer improvements and related facilities must be built in excess of the strict needs of the Project in order to efficiently provide supporting public infrastructure for the Project and for the benefit of other new development projects in the area for purposes of orderly community planning. Accordingly, Developer is requesting and is entitled to receive Transit Area Specific Plan developer impact fee and sewer fund payments for the oversizing of the sewer improvements, including amounts attributable to interest, as allowed by law and as set forth in this Agreement. The sewer improvements are included in the City adopted financing plan for Transit Area Specific Plan improvements (“Financing Plan”). In addition, the sewer improvements provide benefit to existing development in the City, so the City will participate in the cost of the sewer improvements for the share of costs not attributable to new development as more particularly set forth herein.

WHEREAS, the sewer improvements to be provided by Developer pursuant to this Agreement contain supplemental size and capacity relative to the demand generated by the development of the Project.

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

AGREEMENT

1. **Project Scope.** Subject to the terms of this Agreement, the City agrees to provide reimbursement of funds and/or fee credits to the Developer for the acquisition and installation of the improvements depicted and described in Exhibit A ("Sewer 11B-2 and 11C Improvements"), attached hereto and incorporated herein by reference.

2. **Allowable Credit/Reimbursement.** Pursuant to the terms and conditions herein, Developer shall be entitled to a combined partial credit and reimbursement of ***\$1,510,442.00***, to be assigned as set forth in Exhibit B attached hereto, for costs and expenses incurred for the design, permitting and construction of the Sewer 11B-2 and 11C Improvements, including design fees and costs, bond costs, legal costs, third party construction management 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 are incurred for the permitting, plan check, inspection and construction of the Sewer 11B-2 and 11C Improvements, including any changes to the Sewer 11B-2 and 11C Improvements mandated by requirements of, or conditions imposed by, any governmental authority or public utility which were not reflected in the approved plans ("Sewer Improvement Costs"). The Developer shall be reimbursed for the Sewer Improvement Costs as set forth in greater detail in this section through a combination of (i) the City's issuance of Transit Area Impact fee credits for fees ("Fee Credits"); and (ii) cash reimbursement from City's sewer fund. The total combined reimbursement set forth below shall not exceed \$1,510,442.00 for actually incurred costs and expenses and shall be subject to the documentation and invoicing requirements of Section 3.
 - a. **Fee Credit.** The Developer shall be entitled to a ***\$685,766.00*** Transit Area Impact Fee credit. The City acknowledges that Developer is a party to an agreement ("Cost Sharing Agreement") pursuant to which specific, named benefitting property owners ("Other Benefitting Landowners") will share in the cost of the Sewer 11B-2 and 11C Improvements. Notwithstanding the foregoing, the Developer acknowledges that no provision of this Agreement shall constitute an allocation, freezing or setting of impact fees owed by any Other Benefitting Landowner under the development agreement provisions of Government Code section 65864 *et seq.*, or the Mitigation Fee Act provisions of Government Code section 66000, *et seq.* The Other Benefitting Landowners shall merely receive Fee Credits as set forth in Exhibit B attached hereto, such that those benefitting projects shall receive a Fee Credit against Transit Area Impact fees imposed on their projects at the time of building permit. The City makes no representation that the credits assigned to specific properties constitute a proportional or fair allocation of Sewer 11B-2 and 11C Improvement costs attributable to the developments contemplated by the Other Benefitting Landowners. Transit Area Impact fees may be increased at any time by the City, in accordance with applicable state law. All credits assigned under this Agreement shall be limited to a ten (10) year life span and may not be conveyed or transferred to parcels other than those listed in Exhibit B, unless approved or extended by the City at its sole discretion. All credits shall run with the land and may be used by successor property owners within the time limitations and other restrictions set forth herein.

such dedication shall be made before the issuance of the first certificates of completion for the Project. Within ten (10) business days or as mutually agreed following the date of receipt of the Developer's written notice of completion of the Sewer 11B-2 and 11C Improvements, the City shall conduct a final inspection of the Sewer 11B-2 and 11C Improvements. If, during the final inspection, the City determines that the Sewer 11B-2 and 11C 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 Sewer 11B-2 and 11C Improvements within thirty (30) calendar days thereafter City shall not unreasonably withhold, delay or condition acceptance of the Sewer Improvements.

8. **Conveyance of the Sewer 11B-2 and 11C Improvements.** Once the Sewer 11B-2 and 11C Improvements are accepted by the City and no liens have been filed with respect to the Sewer 11B-2 and 11C Improvements within ninety (90) days following the date of filing the Notice of Completion (or if valid liens were filed during such period, such liens have been bonded around or removed prior to acceptance), the Sewer 11B-2 and 11C Improvements 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 Sewer 11B-2 and 11C Improvements through the City's initial and final acceptance procedures.
9. **Delivery of Plans and Specifications.** Prior to acceptance of the Sewer 11B-2 and 11C 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 Sewer 11B-2 and 11C Improvements. Plans shall be submitted in CAD format, GIS format and PDF format as acceptable to the City.
10. **Liens, Claims, and Encumbrances.** Prior to acceptance of the Sewer 11B-2 and 11C 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 Sewer 11B-2 and 11C 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 reimbursement is requested under this Agreement for the Sewer 11B-2 and 11C Improvements. Notwithstanding any other provision or term of this Agreement, the City shall have no obligation to issue any Fee Credits until the Developer has cleared any and all liens, claims and monetary encumbrances from the Sewer 11B-2 and 11C Improvements and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.
11. **Performance Bond.** Upon the execution of this Agreement, Developer shall file and submit a performance bond to City, as obligee, in the penal sum of *two-million two-hundred thousand*

dollars (\$2,200,000.00), conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this Agreement and conditioned upon the full and faithful performance of any and all improvement work required hereunder. Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.

12. **Warranty and Repair.** The Developer hereby warrants the Sewer 11B-2 and 11C Improvements as to materials and workmanship and, should failure of such improvement occur within a period of one (1) year after final acceptance of such improvement by the City, the Developer shall promptly cause the needed repairs to be made without cost to the City ("Warranty Period"). Nothing herein shall be construed to limit any other warranties the City may have from the manufacturer or any materials used in the Sewer 11B-2 and 11C Improvements, but the warranty contained in this Section 13 shall be the exclusive warranty of Developer and all other express or implied warranties of Developer are expressly disclaimed. Notwithstanding the foregoing, Developer's warranty excludes remedy for damage and defect caused by modifications not performed by Developer or its contractors or agents or the active negligence of City, its agents and employees.
13. **Repair.** The City is hereby authorized to make such repairs if the Developer fails to make or undertake with due diligence the aforesaid repairs within twenty (20) calendar days after the City has given written notice of such failure. In case of emergency where, in the sole opinion of the City Engineer, delay would cause serious hazard to the public, the necessary repairs may be made or lights, signs and barricades erected, without prior notice to the Developer. In all cases of failure of the Sewer 11B-2 and 11C Improvements within the Warranty Period where the City has taken action in accordance with this paragraph, the Developer shall reimburse the City as appropriate for all reasonable costs, direct and indirect, incurred by the City.
14. **Insurance.** Prior to commencing any work, Developer, agrees to obtain an encroachment permit from the Engineering Division and at Developer's expense, provide City with a duplicate public general liability insurance policy with endorsements showing the City as additional insured which insures City, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1,000,000 for each person and \$1,000,000 for each occurrence and \$1,000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of Developer. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to City of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said City, its officers and employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said City; its officers and employees shall not be precluded from claim against other insured parties thereunder; (g) be maintained in effect until final acceptance of Developer's improvements. If Developer does not comply with the provisions of this paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and Developer shall forthwith repay City the premium therefor.
15. **Workers Compensation Insurance.** Developer agrees that any general contractor engaged by the Developer for any work of improvement under this Agreement will have:

- a. In full force and effect, a Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.

or

- b. In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the Developer or its general contractor shall immediately notify the City in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.

16. **Indemnity.** The Developer, by execution of this Agreement, specifically agrees to assume the defense of, indemnify, and hold harmless the City and its officers, employees, consultants, and agents from and against all liabilities, actions, damages, claims, losses or expenses of every type and description, including attorneys' and consultants' fees and expenses, the payment or requirement of payment of prevailing wages, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, or any act or omission of the City related to this Agreement with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such claims (collectively "Liabilities"), to which they may be subjected or put, by reason of, or resulting from, the acquisition or installation of the Sewer 11B-2 and 11C Improvements, except Liabilities arising from the sole negligence, active negligence, errors, omissions, or willful misconduct of the City. It is further agreed that City does not, and shall not, waive any rights against the Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. The indemnity provided hereunder shall terminate at the expiration of the Warranty Period.

17. **No Third Party Beneficiaries Except for Other Benefitting Landowners.** The City and the Developer enter into no contract or agreement with any general contractor, subcontractor, or other party by entering into this Agreement; nor is any general contractor, subcontractor, or other party a third party beneficiary of this Agreement; and the 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 Sewer 11B-2 and 11C. Notwithstanding the foregoing, the Other Benefitting Landowners shall constitute third party beneficiaries solely to the extent that those landowners are entitled to impact fee credits as set forth in Exhibit B and that those landowners have completion rights under Section _26 of this Agreement.

18. **Notice.** Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City: City Engineer
Milpitas City Hall
455 East Calaveras Boulevard
Milpitas, CA 95035

Phone: 408-586-3240; Fax: 408-586-3056

Developer: Contour Trade Zone, LLC
A Delaware limited liability company
4185 Blackhawk Plaza Circle
Suite 200
Danville, CA 94506

19. **Term.** The term of this Agreement shall start as of the date first written above and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied.
20. **Severability.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.
21. **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.
22. **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 both Parties.
23. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one instrument.
24. **Allocation of Fee Credits.** Other than the allocation of Fee Credits hereunder to the projects identified in Exhibit B, Fee Credits shall not be further assignable except that the Fee Credits shall run with the land and specifically with each project identified in Exhibit B.
25. **Assignment.** Developer shall not assign the obligations under this Agreement to any non-Other Benefitting Landowner without the prior written consent of the City Manager, provided however, in the event Developer is in default of any obligations to construct the Sewer Improvements, and any party identified on Exhibit B steps in to cure such default and takes over construction of the Sewer Improvements, upon the written assumption of all obligations hereunder (including bonding, insurance and indemnity obligations), such party shall be substituted as the “Developer” hereunder. The Other Benefitting Landowners listed in Exhibit B shall be considered pre-approved for assignment in the event of a construction default of this Agreement and shall require no further action by the City to accept assignment of this Agreement other than the City’s acceptance of a written notice of assignment from the Other Benefitting

Landowner. By accepting the assignment of this Agreement in the event of a construction default, the Other Benefitting Landowner hereby specifically agrees to assume the defense of, indemnify, and hold harmless the City and its officers, employees, consultants, and agents from and against all liabilities, actions, damages, claims, losses or expenses of every type and description, arising from the Other Benefitting Landowner's acceptance of the assignment and performance of obligations under this Agreement.

28. **Expiration of Credits.** The Fee Credits issued hereunder shall expire ten (10) years from the date Developer files a Notice of Completion for the Sewer 11B-2/11C Improvements, unless such Fee Credits are extended in the City's sole discretion.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and the year first written above.

CITY OF MILPITAS:

By: _____

Developer:
Contour Trade Zone LLC
A Delaware limited liability company
By: Trade Zone Investors LLC,
A Delaware limited liability company
Its Managing Member

By: _____
Name: Gregg A. Nelson
Title: Manager

EXHIBIT A

Sewer 11-B and 11C Improvements

EXHIBIT B

REIMBURSEMENTS AND CREDITS TO DEVELOPER

Landowner	Sewer Fund Reimbursement (34%)	TASP Credit (56%)	Assessor parcel Numbers of Other Benefitting Landowners Receiving TASP Credit Running with Land
Contour Trade Zone LLC	\$824,676.00	\$685,766.00	086-36-043

Total Credits and Reimbursements: \$1,510,442.00

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ANNEXING
CERTAIN REAL PROPERTY COMMONLY KNOWN AS TRACT 10138 (PACE PROJECT)
INTO CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO. 2008-1
ANNEXATION NO. 2**

WHEREAS, Contour Trade Zone, LLC, a Delaware Limited Liability Company, is the owner of certain real property commonly known as Tract 10138, (APN No. 086-36-043), more specifically described in the annexation map attached as Exhibit 1.A. to this Resolution; and

WHEREAS, on November 15, 2011, the City Council approved the Tentative Map, Site Development Permit, and Conditional Use Permit for Tract 10138 (“PACE Project”), a residential subdivision with 43 single-family detached units, 91 condominium units, private streets and associated common area improvements located on 9.2 acres at the easterly side of Montague Expressway; and

WHEREAS, on January 6, 2009 the City Council created by Resolutions 7815 and 7816, and on January 29, 2009 the City Council created by Ordinance 278 the City of Milpitas Community Facilities District No. 2008-1 (“CFD 2008-1”) pursuant to the Mello-Roos Community Facilities Act of 1982, California Government Code Section 53311 *et seq.* Each fiscal year, a special tax is levied on all assessor’s parcels of residential property in CFD 2008-1 in an amount determined by the Council, as described in the attached Exhibit 1.B. to this Resolution; and

WHEREAS, pursuant to the Mello-Roos Community Facilities Act, the City Council also established a procedure to allow and provide for the annexation of parcels within the boundaries of CFD 2008-1 in the future without additional hearings, upon the unanimous approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, pursuant to Government Code Section 53339.7; and

WHEREAS, Contour Trade Zone, LLC, now voluntarily seeks to annex its property to CFD 2008-1 and to be subject to the levy of a special tax thereunder.

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. Legally valid and unanimous consent to the annexation of real property identified as Assessor’s Parcel No. 086-36-043 into CFD 2008-1 has been given, as set forth in the Consent and Election to Annex Real Property to an Existing Community Facilities District, attached hereto as Exhibit 1. All prior proceedings and actions taken by the City Council pursuant to the Mello-Roos Community Facilities Act and this Resolution were and are valid and in conformity with State and local law.
3. The City Council hereby declares and determines that the territory comprising Annexation No. 2, as described in Exhibit 1.A., is now added to and becomes a part of CFD 2008-1. City staff is hereby directed to include the property in the annual assessment. In no event shall the annual per-lot assessment exceed the maximum amount authorized by the engineer’s report for the CFD 2008-1 in any given fiscal year. Exhibit 2 attached hereto is provided to show all parcels that have been annexed to the CFD 2008-1.

4. The City Clerk is hereby directed to record an amendment to the Notice of Special Tax Lien within fifteen (15) days of the adoption of this Resolution in the Office of the County Recorder. The City Clerk is further directed to file a certified copy of the map, attached hereto as Exhibit 1.A. and Exhibit 2, within fifteen (15) days of the adoption of this Resolution in the Office of the County Recorder.
5. The City Clerk shall certify the adoption of this Resolution.
6. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this _____ day of _____, 2013 by the City Council 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

EXHIBIT 1

CONSENT AND ELECTION TO ANNEX REAL PROPERTY TO AN EXISTING COMMUNITY FACILITIES DISTRICT CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES)

TO: CITY COUNCIL OF THE CITY OF MILPITAS IN ITS CAPACITY AS THE LEGISLATIVE BODY OF THE ABOVE ENTITLED COMMUNITY FACILITIES DISTRICT:

1. The undersigned is the owner (the "Owner"), or the duly authorized representative of the Owner, of the real property as described in **Exhibit 1.A.** attached hereto and incorporated herein by reference (the "Property"), and in such capacity, possesses all legal authority necessary to execute this Consent and Election as and on behalf of the Owner in connection with the annexation of the Property to the District (as defined below).

The Owner is: Contour Trade Zone, LLC, a Delaware Limited Liability Company

2. The Owner is aware of and understands the following:
 - A. The City of Milpitas has conducted proceedings pursuant to the "Mello-Roos Community Facilities Act of 1982", (Government Code Section 53311 and following) (the "Act") to form a community facilities district known and designated as COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES) (the "District") to finance the increased demand for public services (the "Services") resulting from new development within the District. The services to be financed by the CFD comprise services ("Services") authorized to be financed pursuant to Section 53313 and 53313.5 of the Government Code. CFD 2008-01 shall finance Services only to the extent they are in addition to those provided in the territory of CFD 2008-1 before the CFD was created and such Services may not supplant services already available within CFD 2008-1 when the CFD was created. For a full and complete description of the public services, reference is made to the final CFD Report, a copy of which is on file in the Office of the City Clerk. For all particulars, reference is made to said CFD Report.
 - B. The City has also undertaken proceedings pursuant to Article 3.5 of the Act to provide for the future annexation of certain territory, including the Property, to the District. On January 6, 2009, the City held a public hearing as required by the Act, to consider the future annexation of such territory, including the Property, to the District. Notice of such hearing was given in the form and manner as required by law. A protest to such future annexation was not received from 50% or more of the registered voters, or six registered voters, whichever is more, residing in the territory proposed to be annexed in the future or the owners of one-half or more of the area of land in the territory proposed to be annexed in the future. At the conclusion of such public hearing, the legislative body of the City did approve and provide for the annexation in the future upon the unanimous approval of the owner or owners of each parcel or parcels at the time that such parcel or parcels are annexed, without additional hearings.

THE UNDERSIGNED DOES HEREBY CERTIFY UNDER PENALTY OF PERJURY AS FOLLOWS:

3. The Owner consents and elects to and expressly approves annexation of the Property to the District and the authorization for the levy of the Special Tax within the Property without further public hearing and without an election conducted pursuant to the provisions of Government Code Section 53339.7 and Article 2 of the Act and the Elections Code of the State of California. Owner agrees and intends that such consent and approval constitutes Owner's election to annex the Property to the District and to approve the authorization for the levy of the Special Tax within the Property.
4. The Owner waives any right, which the Owner may have to make any protest or complaint or undertake any legal action challenging the validity of the proceedings of the City or the District to authorize the future annexation of the Property to the District or the authorization for the levy of the Special Tax within the Property, any necessity, requirement, right or entitlement for further public hearing or election pertaining to the annexation of the Property to the District and the levy of the Special Tax within the Property.
5. The Owner specifically authorizes the levy of the Special Tax on the Property pursuant to the rate and method of apportionment set forth in **Exhibit 1.B.** to pay for the authorized Public Services.

EXECUTED this ____ day of _____, 2013, in _____, California.

Contour Trade Zone, LLC, a Delaware limited liability company
Trade Zone Investors, LLC, a Delaware limited liability company,
its Managing Member

By: _____
Name: Gregg A. Nelson
Title: Manager

Note:

1. Signatures of property owner(s) or representatives must be notarized.
2. Proof of Authorization to sign is required for corporations, partnerships, limited liability companies, trusts, etc.

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA) COUNTY OF
SANTA CLARA) ss.

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

WITNESS my hand and official seal.

Notary Public (This area for official notaries seal)

EXHIBIT 1.A.

**CONSENT AND ELECTION TO ANNEX REAL PROPERTY
TO AN EXISTING COMMUNITY FACILITIES DISTRICT
CITY OF MILPITAS COMMUNITY FACILITIES
DISTRICT NO. 2008-1 (PUBLIC SERVICES)**

ANNEXATION NO. 2

Assessor's Parcel No.

Name of the Owner

086-36-043

Contour Trade Zone, LLC



EXHIBIT 1.B.

**CONSENT AND ELECTION TO ANNEX REAL PROPERTY TO
AN EXISTING COMMUNITY FACILITIES DISTRICT
CITY OF MILPITAS COMMUNITY FACILITIES
DISTRICT NO. 2008-1 (PUBLIC SERVICES)**

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax as hereinafter defined shall be levied on all Assessor's Parcels of Residential Property in City of Milpitas Community Facilities District No. 2008-1 (Public Services) ("CFD No. 2008-1"), and collected each Fiscal Year commencing after adoption of CFD 2008-1, in an amount determined by the Council through the application of the appropriate Special Tax, as described below. All of the real property in CFD No. 2008-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 2008-1: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or any designee thereof or both); the costs of collecting the Special Taxes (whether by the City or otherwise); the costs to the City, CFD No. 2008-1 or any designee thereof of complying with City, CFD No. 2008-1 or obligated persons disclosure requirements associated with the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 2008-1 or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 2008-1 for any other administrative purposes of CFD No. 2008-1, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Affordable Housing" means any Dwelling Units located on Residential Property that are subject to deed restrictions, resale restrictions and/or regulatory agreements recorded on the property that provide housing for persons that meet the Low, Very Low, and/or Extremely Very Low income levels pursuant to, as applicable, California Health & Safety Code Sections 50093, 50079.5, 50105, or 50106. The Fiscal Year after the January 1 following the termination of the agreement containing covenants or similar instrument, a Dwelling Unit shall no longer be considered Affordable Housing.

"Annexation Parcel" means any parcel that is annexed to the CFD after it is formed.

"Annual Costs" means for each Fiscal Year, the total of 1) Authorized Services 2) Administrative Expenses; and 3) any amounts needed to cure actual or estimated delinquencies in Special Taxes for the current or previous Fiscal Year.

“Authorized Services” mean those services, as listed in the resolution forming the CFD.

"Assessor's Parcel" means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel number.

“Base Year” means the Fiscal Year beginning July 1, 2009 and ending June 30, 2010.

“Certificate of Occupancy” means a certificate issued by the City that authorizing the occupancy of a Dwelling Unit.

"CFD Administrator" means an official of the City, or any designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

"CFD" means City of Milpitas Community Facilities District No. 2008-1 (Public Services) of the City.

"City" means the City of Milpitas.

“Consumer Price Index” means, for each Fiscal Year, the Consumer Price Index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco-Oakland-San Jose Area, measured as of the month of February in the calendar year that ends in the previous Fiscal Year. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for the San Francisco-Oakland-San Jose Area.

"Council" means the City Council of the City, acting as the legislative body of CFD No. 2008-1.

“County” means the County of Santa Clara.

“County Median Income” means the current median income for the County of Santa Clara as determined by the U.S. Department of Housing and Urban Development.

"Developed Property" means, for each Fiscal Year, all Assessor’s Parcels of Residential and Non-Residential Property for which a Certificate of Occupancy, or equivalent certificate, was issued before February 1 of the prior Fiscal Year, but not earlier than January 1, 2009.

"Dwelling Unit" means a building or portion thereof designed for and occupied in whole or part as a residence or sleeping place, either permanently or temporarily, by one family and its guests, with sanitary facilities and one kitchen provided within the unit. Boarding or lodging houses, dormitories, and hotels shall not be defined as Dwelling Units unless the land use permit specifies a residential use.

“Extremely Low-Income Affordable Housing” means Affordable Housing suitable for households with incomes at or below 30% of the County Median Income.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

“Land Use Class” means the land use class into which an Assessor’s Parcel of Residential Property has been assigned.

“Low-Income Affordable Housing” means Affordable Housing suitable for households with incomes at or below 80% of the County Median Income.

"Maximum Special Tax" means, for each Fiscal Year, the maximum Special Tax, determined in accordance with Section C, below, that can be levied on any Assessor’s Parcel of Residential Property.

“Market-Priced Residential Property” means Residential Property not classified as Affordable Housing.

"Non-Residential Property" means, for each Fiscal Year, any Assessor’s Parcel of Developed Property which is not a Residential Property.

"Property Owner Association Property" means, for each Fiscal Year, any Assessor’s Parcel within the boundaries of CFD No. 2008-1 that is owned by or irrevocably offered for dedication to a property owner association, including any master or sub-association.

"Proportionately" means that the ratio of the actual annual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Residential Property.

"Public Property" means, for each Fiscal Year, (i) any property within the boundaries of CFD No. 2008-1 that is owned by or irrevocably offered for dedication to the federal government, the State, the City or any other public agency; provided however that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act, as such section may be amended or replaced, shall be taxed and classified in accordance with its use; or (ii) any property within the boundaries of CFD No. 2008-1 that is encumbered by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

"Residential Property" means, for each Fiscal Year, any Assessor’s Parcel of Developed Property for which a Certificate of Occupancy has been issued for purposes of allowing residents to inhabit one or more residential Dwelling Units.

“Second Family Unit” means an attached or detached additional residential dwelling unit on a single-family residential Developed Parcel. The Second-Family Unit is not considered a Dwelling Unit in terms of assigning the Maximum Annual Special Tax.

“Services” means services that CFD No. 2008-1 is authorized to fund. These services may include: a) police protection services, criminal justice services-jails, detention facilities and juvenile halls, b) fire protection & suppression services and ambulance & paramedic services, c) maintenance and lighting of parks, parkways, streets, roads, street landscaping and open space, d) flood and storm protection services-operation and maintenance of storm drainage systems, and e) services related to removal and remedial action for cleanup of any hazardous environmental substances.

"Special Tax" means the special tax to be levied in each Fiscal Year on each Assessor’s Parcel of Residential Property to fund the Special Tax Requirement.

"Special Tax Requirement" means that amount to be collected in any Fiscal Year for CFD No. 2008-1 to pay for certain costs as required to meet the needs of CFD No. 2008-1 in that Fiscal Year. The costs to be covered shall be the costs of (i) Services, and (ii) Administrative Expenses; less (iii) a credit for funds available to reduce the annual Special Tax levy, if any, as determined by the CFD Administrator.

"State" means the State of California.

"Tax Category" means the four categories of housing Dwelling Units shown in Table 1.

"Tax Collection Schedule" means the document prepared by the Administrator for the County Auditor-Controller to use in levying and collecting the Special Taxes each Fiscal Year.

"Tax Escalation Factor" means an annual percentage increase in the Maximum Annual Special Tax Rate per Unit based upon the Consumer Price Index (CPI) (as of February, San Francisco, All Urban Consumers (CPI-U) Index), the CPI (prior calendar year annual average, San Francisco, All Urban Wage Earners and Clerical Workers), or 2 percent, whichever is greater. The Tax Escalation Factor is applied each Fiscal Year following the Base Year.

"Taxable Parcel" means any Parcel that is not a Tax-Exempt Parcel

"Tax-Exempt Parcel" means a Parcel not subject to the Special Tax. Tax-Exempt Parcels are Public Parcels (subject to the limitations set forth below), Undeveloped Parcels, and nonresidential use parcels, such as commercial, office, industrial, etc.

"Undeveloped Property" means, for each Fiscal Year, all property not classified as Residential Property, Non-Residential Property, Public Property, or Property Owner Association Property.

"Very Low-Income Affordable Housing" means Affordable Housing suitable for households with incomes at or below 50% of the County Median Income.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, all Assessor's Parcels, as applicable within CFD No. 2008-1, shall be classified as Residential Property, Non-Residential Property, Undeveloped Property, Public Property, or Property Owner Association Property. However, only Residential Property shall be subject to annual Special Taxes in accordance with the rate and method of apportionment determined pursuant to Sections C and D below. Residential Property shall be assigned to Land Use Classes 1-4, as listed in Table 1, below.

C. MAXIMUM SPECIAL TAX RATE

1. Developed Property

a. Maximum Special Tax

The Maximum Special Taxes for Residential Property are shown below in Table 1, based on the Land Use Class in which such Residential Property has been assigned. Under no circumstances shall a Special Tax be levied on Non-Residential Property, or for renovations to an existing Dwelling Unit located on Residential Property.

TABLE 1

**Maximum Special Taxes for Developed Property
For Base Year 2009-10
Community Facilities District No. 2008-1**

Land Use Class	Land Use Type	Maximum Special Tax Per Dwelling Unit
1	Market-Priced Residential Property	\$510.00
2	Low- Income Affordable Housing (80% of Market)	\$408.00
3	Very Low-Income Affordable Housing (50% of Market)	\$255.00
4	Extremely Low-Income Affordable Housing	\$0.00

b. Increase in the Maximum Special Tax

On each July 1, commencing on July 1, 2010, the Maximum Special Taxes set forth above shall be increased annually by the greater of the change in the San Francisco-Oakland-San Jose Area Urban Consumer Price Index during the twelve months prior to February of the previous Fiscal Year, or two percent (2%).

2. Undeveloped Property, Non-Residential Property, Public Property or Property Owner Association Property

No Special Taxes shall be levied on Undeveloped Property, Non-Residential Property, Property Owner Association Property, Public Property or Residential Property assigned to Land Use Class 4.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2010-11 and for each following Fiscal Year, the Council or its designee shall levy the annual Special Tax Proportionately for each Assessor's Parcel of Residential Property at up to 100% of the applicable Maximum Special Tax, until the amount of Special Taxes equals the Special Tax Requirement.

E. EXEMPTIONS

No Special Tax shall be levied on Undeveloped Property, Non-Residential Property, Public Property, Property Owner Association Property or Residential Property assigned to Land Use Class 4. However, should an Assessor's Parcel no longer be classified as Non-Residential Property, Public Property, Property Owner Association Property, or Residential Property assigned to Land Use Class 4, such Assessor's Parcel, if reclassified as Residential Property assigned to Land Use Classes 1, 2 or 3, shall be subject to the Special Tax. Furthermore, an Assessor's Parcel of Residential Property assigned to Land Use Classes 1, 2 or 3, if reclassified as belonging

to a different Land Use Class, shall be subject to the Special Tax associated with its new Land Use Class.

F. APPEALS AND INTERPRETATIONS

Any landowner or resident may file a written appeal of the Special Tax on his/her property with the CFD Administrator, provided that the appellant is current in his/her payments of Special Taxes. During the pendency of an appeal, all Special Taxes previously levied must be paid on or before the payment date established when the levy was made. The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination. If the CFD Administrator agrees with the appellant, the CFD Administrator shall eliminate or reduce the Special Tax on the appellant's property and/or provide a refund to the appellant. If the CFD Administrator disagrees with the appellant and the appellant is dissatisfied with the determination, the appellant then has 30 days in which to appeal to the Council by filing a written notice of appeal with the City Clerk, provided that the appellant is current in his/her payments of Special Taxes. The second appeal must specify the reasons for the appellant's disagreement with the CFD Administrator's determination. The decision by the Council shall be final. The CFD Administrator may charge the appellant a reasonable fee for processing the appeal.

Interpretations may be made by the Council by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment.

G. MANNER OF COLLECTION

The annual Special Tax shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 2008-1 may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations. In particular, the Special Tax for Affordable Housing may be collected off of the tax roll, to facilitate payment of the Special Tax by a party other than the property owner.

H. TERM OF SPECIAL TAX

The Special Tax shall be levied in perpetuity as necessary to meet the Special Tax Requirement.

**CERTIFICATION OF ADEQUACY OF CONSENT AND ELECTION TO ANNEX REAL
PROPERTY TO AN EXISTING COMMUNITY FACILITIES DISTRICT**

**CITY OF MILPITAS
COMMUNITY FACILITIES DISTRICT No. 2008-1
(PUBLIC SERVICES)**

ANNEXATION No. 2

The undersigned is the duly appointed CITY CLERK for the proceedings relating to the annexation of property to the District.

On the _____ day of _____, 2013, at MILPITAS, California.

CITY CLERK
CITY OF MILPITAS
STATE OF CALIFORNIA

SHEET 1 OF 1

Filed in the office of the City Clerk of the City of Milpitas this ___ day of _____, 2013.

City Clerk, City of Milpitas

I hereby certify Annexation Map No.1 as shown within the boundaries of City of Milpitas Community Facilities District No. 2008-1 (Public Services) as originally recorded of maps of assessment and community Book 44 Page 30 Facilities District, O.R. , County of Santa Clara, State of California, was approved by the City Council of the City of Milpitas at a regular meeting thereof, held on the ___ day of _____, 2013, by its Resolution No. _____.

City Clerk, City of Milpitas

Filed this ___ day of _____, 2013, at the hour of ___ o'clock __m., in Book ___ of Maps of Assessment and Community Facilities Districts at Page ___ in the office of the County Recorder in the County of Santa Clara, State of California.

County Recorder,
County of Santa Clara

The boundary of Community Facilities District No. 2008-1 is co-terminous with the boundary of the City of Milpitas in _____, 2013.

Reference is hereby made to the Assessor maps of the County of Santa Clara for an exact description of the lines and dimensions of each lot and parcel.

The territory included in the Community Facilities District shall include only Santa Clara County Assessor's for the following Annexation Maps :

Initial formation CFD 2008-1 : 08632033, 08632034, 08632035, 0832036

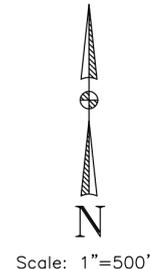
Map No. 1: 08641020, 08641021, 08641022

Map No. 2: 08636043

and all publicly owned areas in the City of Milpitas landscaped or capable of being landscaped, such as parks, parkways, street medians, interchange areas, light rail areas, open space and all similar areas. All other areas depicted on this map indicate territory that may be annexed to the Community Facilities District in the future.

Legend

-  Location of Initial Formation (Assessor Parcel No. 08632033,08632034, 08632035,08632036)
-  Boundary of CFD 2008-1
-  Annexation No.



**CITY OF MILPITAS
ENGINEERING DIVISION**

Approved: _____
Acting Public Works Director/City Engineer
Kathleen Phalen, P.E. Date

Recommended for approval: _____
Chief Building Official
Keyvan Irannejad, P.E. Date

Drawn By: F.H. File No. CFD 2008-1 Sheet 1 of 1

EXHIBIT 2

ANNEXATION MAP NO. 2 AND UPDATE OF ANNEXATION MAP NO.1 OF CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES), COUNTY OF SANTA CLARA STATE OF CALIFORNIA AS RECORDED IN BOOK 44 PAGE 30 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, O.R., SANTA CLARA COUNTY

TRACT 10138

PAGE

CONSISTING OF 7 SHEETS

BEING A SUBDIVISION FOR CONDOMINIUM PURPOSES OF PARCEL 2 OF PARCEL MAP FILED FOR RECORD ON JULY 3, 1978 IN BOOK 421 OF MAPS, PAGE 48 EXCEPTING THAT PORTION AS DESCRIBED IN THAT GRANT DEED RECORDED ON DECEMBER 5, 1983 IN BOOK 1 123 OFFICIAL RECORDS, PAGE 85, SANTA CLARA COUNTY RECORDS, AND LYING WITHIN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

JANUARY, 2013



1570 Oakland Road San Jose, CA 95131

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE. WE HEREBY OFFER FOR DEDICATION TO CITY OF MILPITAS FOR PUBLIC USE FOR OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:
(1) LOTS "C", "E" AND "F" FOR STREET AND PUBLIC UTILITY PURPOSES.
(2) EASEMENTS "PSUE" FOR PUBLIC SERVICE, UTILITY EASEMENT PURPOSES.
(3) EASEMENTS "SWE" FOR SIDEWALK EASEMENT PURPOSES (SWE).
(4) EASEMENT "EAE" FOR EMERGENCY VEHICLE ACCESS PURPOSES.
(5) RELINQUISHMENT OF ALL VEHICULAR ACCESS RIGHTS TO MONTAGUE EXPRESSWAY, EXCEPT FOR EMERGENCY VEHICLE ACCESS AT THE EMERGENCY VEHICLE ACCESS EASEMENT SHOWN, DESIGNATED AS //.
(6) EASEMENT "SDE" FOR STORM DRAIN EASEMENT FOR ABOVE/UNDER GROUND FLOW PURPOSES.
THE ABOVE MENTIONED EASEMENTS (PSUE, SWE, EAE, SDE) SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE AND PUBLIC UTILITY STRUCTURES AND THEIR APPURTENANCES, IRRIGATION SYSTEMS AND THEIR APPURTENANCES AND LAWFUL FENCES. UNOBSTRUCTED CONTINUOUS ACCESS SHALL BE MAINTAINED AT ALL TIMES.

WE ALSO HEREBY RETAIN FOR THE PRIVATE USE OF THE LOT OWNERS WITHIN THIS SUBDIVISION, THEIR LICENSES, VISITORS AND TENANTS WITH MAINTENANCE THEREOF BY THEIR LOT OWNERS THE FOLLOWING:
1. LOT "A" FOR PRIVATE STREET (IEE), PARKING (PRKGE) AND PRIVATE UTILITY (PUE) PURPOSES.
2. LOTS "B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-8, B-9, B-10 AND B-11" FOR PRIVATE OPEN SPACE PURPOSES.
3. 5' PRIVATE SIDEWALK EASEMENT OVER, AND ACROSS LOTS 36 AND 37 AS SHOWN HEREON.
THE DESIGNATED PRIVATE STREETS ON THIS MAP ARE NOT PART OF THE CITY OF MILPITAS STREET SYSTEM AND ARE NOT ACCEPTED FOR PUBLIC MAINTENANCE.

OWNER: CONTOUR TRADE ZONE LLC,
A DELAWARE LIMITED LIABILITY COMPANY

BY: TRADE ZONE INVESTORS LLC,
A DELAWARE LIMITED LIABILITY COMPANY
ITS MANAGING MEMBER

BY: _____
NAME: GREGG A. NELSON
TITLE: MANAGER

TRUSTEE

UNIONBANCAL MORTGAGE CORPORATION, A CALIFORNIA CORPORATION

NAME: _____
TITLE: _____

ACKNOWLEDGMENT

STATE OF _____ SS.
COUNTY OF _____
ON _____, 20____, BEFORE ME, _____, A NOTARY PUBLIC,

PERSONALLY APPEARED _____ WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

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

WITNESS MY HAND
NOTARY'S SIGNATURE _____
PRINTED NOTARY'S NAME _____
COUNTY OF NOTARY'S PRINCIPAL PLACE OF BUSINESS _____
EXPIRATION DATE OF NOTARY'S COMMISSION _____
NOTARY'S COMMISSION NUMBER, IF ANY _____

ACKNOWLEDGMENT

STATE OF _____ SS.
COUNTY OF _____
ON _____, 20____, BEFORE ME, _____, A NOTARY PUBLIC,

PERSONALLY APPEARED _____ WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

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

WITNESS MY HAND
NOTARY'S SIGNATURE _____
PRINTED NOTARY'S NAME _____
COUNTY OF NOTARY'S PRINCIPAL PLACE OF BUSINESS _____
EXPIRATION DATE OF NOTARY'S COMMISSION _____
NOTARY'S COMMISSION NUMBER, IF ANY _____

CITY SURVEYOR'S STATEMENT

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

DATE: _____
ROBERT S. GULETZ, P.E.
ACTING CITY SURVEYOR, CITY OF MILPITAS
HARRIS & ASSOCIATES
R.C.E. NO. 24184
EXPIRATION DATE: DECEMBER 31, 2013

CITY ENGINEER'S STATEMENT

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

DATE: _____
KATHLEEN PHALEN, P.E.
ACTING CITY ENGINEER, CITY OF MILPITAS
R.C.E. NO. 56001, EXPIRATION DATE DECEMBER 31, 2014

SOILS AND GEOLOGICAL REPORT

A SOILS AND/OR GEOLOGICAL REPORT ON THIS PROPERTY HAS BEEN PREPARED BY CORNERSTONE EARTH GROUP, DATED MAY 31, 2012, A COPY OF WHICH HAS BEEN FILED WITH THE CITY OF MILPITAS.

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF CONTOUR TRADE ZONE LLC IN DECEMBER, 2011. I HEREBY STATE THAT THIS FINAL MAP COMPLIES WITH FINAL MAP PROCEDURES OF THE CITY OF MILPITAS AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED TENTATIVE MAP, AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE REQUIRED TO BE FULFILLED PRIOR TO THE FILING OF THE FINAL MAP, AND IT IS TECHNICALLY CORRECT; THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN; THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE DECEMBER 2015; THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATE: _____
DAVID M. TULLY, L.S. 7422
LICENSE EXPIRES: 12-31-2013

CITY CLERK'S CERTIFICATE

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

- APPROVED THIS TRACT MAP NO. 10138.
- ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC THOSE PARCELS OF LAND OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF OFFER OF DEDICATION TO WIT:
(1) LOTS "C", "E" AND "F" FOR STREET AND PUBLIC UTILITY PURPOSES.
(2) EASEMENTS "PSUE" FOR PUBLIC SERVICE, UTILITY EASEMENT PURPOSES.
(3) EASEMENTS "SWE" FOR SIDEWALK PURPOSES (SWE).
(4) EASEMENT "EAE" FOR EMERGENCY VEHICLE ACCESS PURPOSES.
(5) ALL VEHICULAR ACCESS RIGHTS TO MONTAGUE EXPRESSWAY, EXCEPT FOR EMERGENCY VEHICLE ACCESS AT THE EMERGENCY VEHICLE ACCESS EASEMENT SHOWN, DESIGNATED AS //.
(6) EASEMENT "SDE" FOR STORM DRAIN EASEMENT FOR ABOVE/UNDER GROUND FLOW PURPOSES.

DATE: _____
MARY LAVELLE
CITY CLERK, CITY OF MILPITAS

RECORDER'S STATEMENT

FILE NO. _____ FEE \$ _____ PAID. ACCEPTED FOR RECORD AND FILED THIS _____ DAY OF _____, 20____, AT _____M. IN BOOK _____ OF MAPS AT PAGE(S) _____, SANTA CLARA COUNTY RECORDS, AT THE REQUEST OF CONTOUR TRADE ZONE LLC.
REGINA ALCOMENDRAS, COUNTY RECORDER
SANTA CLARA COUNTY, CALIFORNIA

BY: _____
DEPUTY

PACE

PUBLIC IMPROVEMENT PLANS

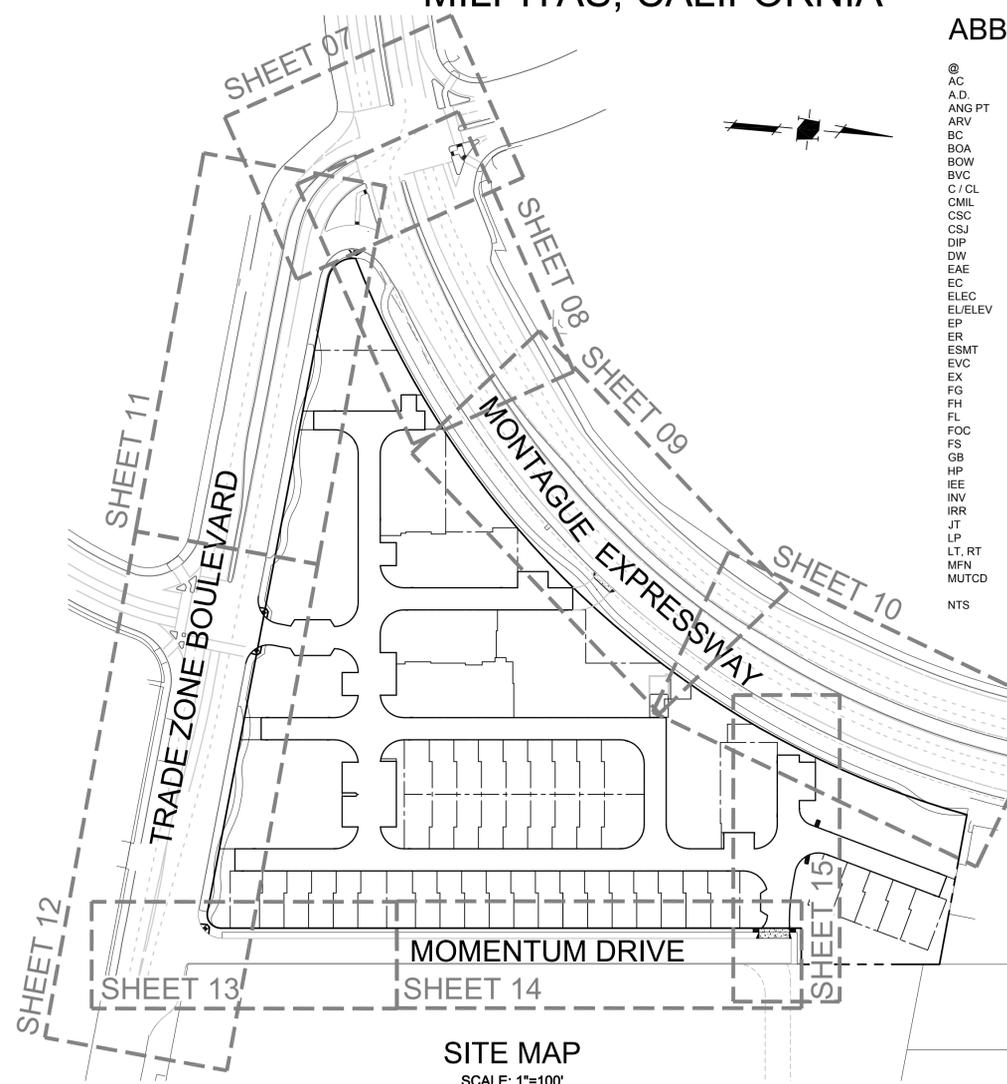
TRACT 10138

MILPITAS, CALIFORNIA

IMPROVEMENT PLANS GENERAL NOTES:

GENERAL

- ALL WORK AND MATERIALS SHALL COMPLY WITH STANDARD SPECIFICATIONS, CONSTRUCTION DETAILS, AND STANDARD DRAWINGS (LISTED ON THIS SHEET) OF THE CITY OF MILPITAS AVAILABLE IN THE CITY ENGINEER'S OFFICE. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN PERMITS NECESSARY TO PERFORM THE IMPROVEMENTS IN THESE PLANS FROM THE APPROPRIATE AGENCIES AND TO COMPLY WITH THE AGENCIES' REQUIREMENTS. ALL PLANS SHALL BE PREPARED ON CITY'S IMPROVEMENTS TITLE BLOCK. THE CONTRACTOR MUST COMPLY WITH ALL APPLICABLE NATIONAL, STATE AND LOCAL LAWS.
- PLANS USED FOR CONSTRUCTION OF PUBLIC FACILITIES PURPOSES MUST BE SIGNED BY THE CITY ENGINEER OR HIS REPRESENTATIVE. ANY SUBSEQUENT CHANGES SHALL BE APPROVED BY THE CITY ENGINEER OR HIS REPRESENTATIVE PRIOR TO THEIR CONSTRUCTION.
- THE OFFICIAL COPY OF THESE PLANS ARE ON FILE IN THE OFFICE OF THE CITY ENGINEER IN MILPITAS.
- THIS PLAN IS SUBJECT TO REVIEW AND SUBSEQUENT APPROVAL IN THE EVENT THE WORK HAS NOT COMMENCED WITHIN SIX (6) MONTHS OF THE DATE OF PLAN APPROVAL.
- ALL UTILITIES AND IMPROVEMENTS THAT BECOME DAMAGED DURING CONSTRUCTION SHALL BE COMPLETELY RESTORED TO THE SATISFACTION OF THE CITY ENGINEER.
- A \$2,000 DEPOSIT SHALL BE MADE TO THE CITY OF MILPITAS AND A CONSTRUCTION WATER METER SHALL BE OBTAINED FOR INCIDENTAL WATER USED DURING GRADING AND ROADWAY CONSTRUCTION. WATER METERS(S) SHALL BE INSTALLED FOR INCIDENTAL WATER USE DURING BUILDING(S) CONSTRUCTION AND PRESSURE TEST OF WATER LINE WITHIN THE BUILDING(S).
- THE CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT (U.S.A.) AT (800) 642-2444 48 HOURS PRIOR TO ANY CONSTRUCTION ACTIVITIES, AND OBTAIN A REFERENCE NUMBER.
- PRIOR TO ANY CONSTRUCTION OR INSTALLATION OF PUBLIC FACILITIES, THE DEVELOPER'S ENGINEER SHALL ARRANGE A PRE-CONSTRUCTION CONFERENCE BETWEEN THE CONTRACTORS AND THE CITY PUBLIC WORKS INSPECTOR. THIS SHALL TAKE PLACE A MINIMUM OF 7 DAYS PRIOR TO THE SCHEDULED START OF WORK. AT THE CONFERENCE, THE DEVELOPER'S ENGINEER SHALL PRESENT THE PUBLIC WORKS INSPECTOR WITH A CERTIFIED COPY OF A MATERIAL LIST AND SPECIFICATIONS FOR INSTALLATION. PRIOR TO THE INSTALLATION, APPROVAL BY THE CITY ENGINEER IS REQUIRED OF ANY NON-STANDARD MATERIALS. ANY NON-STANDARD MATERIALS SHALL BE DEMONSTRATED BY THE DEVELOPER'S ENGINEER AND CONTRACTOR TO EQUAL OR EXCEED CITY STANDARDS.
- THE CONTRACTOR SHALL CALL CITY OF MILPITAS PUBLIC WORKS FACILITIES INSPECTION AT (408) 586-2884 TO SCHEDULE INSPECTIONS, 48 HOURS PRIOR TO START OF CONSTRUCTION.
- PRIOR TO ANY WORK, THE CONTRACTOR SHALL OBTAIN A CITY BUSINESS LICENSE AND A PUBLIC WORKS CONSTRUCTION OR ENCROACHMENT PERMIT.
- THE CONTRACTOR IS RESPONSIBLE FOR THE PRESERVATION AND OR PERPETUATION OF ALL EXISTING MONUMENTS AND STAKES WITHIN THE CONTRACTOR'S AREA OF WORK. THE CONTRACTOR SHALL NOT DISTURB OR REMOVE ANY MONUMENTS OR STAKES WITHOUT THE PERMISSION OF THE CITY ENGINEER, AND HE SHALL BEAR THE EXPENSE OF RESETTLEMENTS OR STAKES WHICH MAY BE DISTURBED OR REMOVED WITH OR WITHOUT PERMISSION. THE CONTRACTOR SHALL PROVIDE A MINIMUM OF 15 WORKING DAYS NOTICE TO THE CITY ENGINEER PRIOR TO DISTURBANCE OR REMOVAL OF EXISTING MONUMENTS OR STAKES. THE CONTRACTOR SHALL UTILIZE THE SERVICES OF A CALIFORNIA LICENSED LAND SURVEYOR TO RESET ALL DISTURBED OR REMOVED MONUMENTS AND STAKES OR PROVIDE WITNESS MONUMENTS, AND FILE THE REQUIRED DOCUMENTATION WITH THE COUNTY SURVEYOR PURSUANT TO THE BUSINESS AND PROFESSIONS CODE SECTION 8771.
- WHEN IT IS FOUND THAT FIELD CONDITIONS ARE NOT AS SHOWN ON THE PLANS, THE CONSULTING ENGINEER SHALL MAKE REVISIONS AND/OR ADJUSTMENTS TO THE SATISFACTION OF THE CITY ENGINEER PRIOR TO FURTHER CONSTRUCTION.
- UPON COMPLETION OF IMPROVEMENTS, THE DEVELOPER'S ENGINEER SHALL SUBMIT A LETTER TO THE CITY ENGINEER CERTIFYING THAT THOSE PRIVATELY MAINTAINED IMPROVEMENTS (STREET, LIGHTING, UTILITIES, ETC.) HAVE BEEN CONSTRUCTED PER THE IMPROVEMENT PLANS.
- DEVELOPER SHALL COORDINATE WITH PACIFIC GAS AND ELECTRIC COMPANY FOR THE DESIGN AND INSTALLATION OF ALL GAS AND ELECTRIC FACILITIES.
- DEVELOPER SHALL COORDINATE WITH AT&T FOR THE DESIGN AND INSTALLATION OF ALL TELEPHONE FACILITIES.
- CONSTRUCTION SHALL NOT BEGIN UNTIL 7 AM AND SHALL END BY 7 PM, WEEKDAYS AND WEEKENDS, EXCEPT HOLIDAYS.
- A NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT (NPDES CONSTRUCTION PERMIT) IS REQUIRED PRIOR TO COMMENCEMENT OF CONSTRUCTION ACTIVITY RELATED TO THIS SITE AND SHALL BE OBTAINED BY THE OWNER AND/OR OWNER'S CONTRACTOR AS APPROPRIATE. ANY DISCHARGE (DURING CONSTRUCTION) OF GROUNDWATER INTO THE DOWNSTREAM STORM SYSTEM MUST BE UNCONTAMINATED. THE CONTRACTOR SHALL MAKE THIS DETERMINATION PRIOR TO ANY DISCHARGE.
- IF ARCHAEOLOGICAL MATERIALS ARE UNCOVERED DURING GRADING, TRENCHING OR OTHER EXCAVATION, EARTHWORK WITHIN 100' OF THIS AREA SHALL BE STOPPED UNTIL A PROFESSIONAL ARCHAEOLOGIST WHO IS CERTIFIED BY THE SOCIETY OF CALIFORNIA ARCHAEOLOGIST (SCA) OR THE SOCIETY OF PROFESSIONAL ARCHAEOLOGIST (SOPA) HAS HAD AN OPPORTUNITY TO EVALUATE THE SIGNIFICANCE OF THE FIND AND SUGGEST APPROPRIATE MITIGATION MEASURES, IF THEY ARE DEEMED NECESSARY.
- RECORD DRAWINGS ORIGINAL PLANS, INCLUDING A COPY OF THE AUTOCAD FILES (DIGITAL FORMAT) SHALL BE FURNISHED TO THE CITY ENGINEER WITHIN 60 DAYS OF THE COMPLETION OF CONSTRUCTION AND PRIOR TO INITIAL ACCEPTANCE OF PUBLIC IMPROVEMENTS.
- ALL GRADING SHALL COMPLY WITH CITY OF MILPITAS GRADING ORDINANCE, THIS PLAN, AND THE PRELIMINARY SOILS REPORT PREPARED BY CORNERSTONE EARTH GROUP DATED MAY 31, 2012 AND ALL SUBSEQUENT ADDENDUMS.
- CITY APPROVAL OF PLANS DOES NOT RELIEVE THE DEVELOPER FROM HIS/HER RESPONSIBILITY TO CORRECT ERRORS AND OMISSIONS DISCOVERED DURING CONSTRUCTION. UPON REQUEST, ANY REQUIRED PLAN REVISIONS SHALL BE PROMPTLY SUBMITTED TO THE CITY ENGINEER FOR APPROVAL.
- A WATER VALVE SHALL BE INSTALLED FOR EACH RESIDENTIAL UNIT AFTER THE METER AND PRIOR TO ENTRY OF THE BUILDING SUCH THAT IT IS ACCESSIBLE TO HOMEOWNER AND CITY METER READER.



ABBREVIATIONS

@	AT	PCC	POINT OF COMPOUND CURVATURE
AC	ASPHALTIC CONCRETE	P / PL	PROPERTY LINE
A.D.	ALGEBRAIC DIFFERENCE	POC	POINT ON CURVE
ANG PT	ANGLE POINT	PRC	POINT OF REVERSE CURVE
ARV	AIR RELEASE VALVE	PRKGE	PARKING EASEMENT
BC	BEGIN CURVE	PSDE	PRIVATE STORM DRAIN EASEMENT
BOA	BLOW OFF ASSEMBLY	PSUE	PUBLIC SERVICE UTILITY EASEMENT
BOW	BACK OF WALK	PUE	PUBLIC UTILITY EASEMENT
BVC	BEGIN VERTICAL CURVE	PVI	POINT OF VERTICAL INTERSECTION
C / CL	CENTER LINE	PVMT	PAVEMENT
CML	CITY OF MILPITAS	RAD PT	RADIUS POINT
CSC	COUNTY OF SANTA CLARA	RCP	REINFORCED CONCRETE PIPE
CSJ	CITY OF SAN JOSE	RW	RECLAIM WATER
DIP	DUCTILE IRON PIPE	RW	RIGHT OF WAY
DW	DRIVEWAY	S	SLOPE
EAE	EMERGENCY ACCESS EASEMENT	SD	STORM DRAIN
EC	END CURVE	SDBC	STORM DRAIN CATCH BASIN
ELEC	ELECTRIC	SDCI	STORM DRAIN CURB INLET
ELEV	ELEVATION	SDE	STORM DRAIN EASEMENT
EP	EDGE OF PAVEMENT	SDFI	STORM DRAIN FIELD INLET
ER	END OF RETURN	SDJB	STORM DRAIN JUNCTION BOX
ESMT	EASEMENT	SDMH	STORM DRAIN MANHOLE
EVC	END VERTICAL CURVE	SDRE	STORM DRAIN RELEASE EASEMENT
EX	EXISTING	SL	STREET LIGHT
FG	FINISHED GRADE	SS	SANITARY SEWER
FH	FIRE HYDRANT	SSCO	SANITARY SEWER CLEANOUT
FL	FLOW LINE	SSFI	SANITARY SEWER FLUSHING INLET
FOC	FACE OF CURB	SSMH	SANITARY SEWER MANHOLE
FS	FINISHED SURFACE	STA	STATION
GB	GRADE BREAK	STD	STANDARD
HP	HIGH POINT	SW	SIDEWALK
IEE	INGRESS & EGRESS EASEMENT	SWE	SIDEWALK EASEMENT
INW	INVERT	TC	TOP OF CURB
IRR	IRRIGATION	TVC	TOP OF VERTICAL CURB
JT	JOINT TRENCH	VC	VERTICAL CURVE
LP	LOW POINT	VCP	VITRIFIED CLAY PIPE
LT, RT	LEFT, RIGHT	W	POTABLE WATER
MFN	METROMEDIA FIBER NETWORK	WM	WATER METER
MUTCD	CALIFORNIA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES	WSP	WATER STEEL PIPE
NTS	NOT TO SCALE	WV	WATER VALVE
		XO	XO COMMUNICATIONS

FACILITIES

CURB AND GUTTER	No. 410
RAMP	No. 419
CURB RAMP & ISLAND PASSAGEWAY DETAILS	No. 420
RESIDENTIAL SIDEWALK	No. 427
DRIVEWAY	No. 430
CURB STORM DRAIN INLET	No. 462
FLAT GRATE STORM INLET	No. 464
WATER VALVE	No. 702
2" WATER SERVICE	No. 726
8" WATER SERVICE	No. 728
1" OR 2" BLOW OFF, AIR & VACUUM RELEASE VALVE	No. 738
FIRE HYDRANT ASSEMBLY	No. 742
SANITARY AND STORM MANHOLE	No. 230

CITY STANDARD DRAWINGS/DETAILS

DEPARTMENT OF PUBLIC WORKS
CITY OF SAN JOSE

DATE _____

NOTE: SHEET C12, C16, E1, E2 AND E3 HAS BEEN REVIEWED AND APPROVED FOR CONSTRUCTION OF IMPROVEMENTS WITHIN CITY OF SAN JOSE LIMIT.

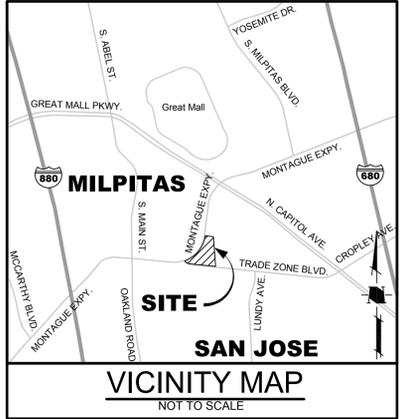
PROJECT BASIS OF BEARING

THE BEARING NORTH 84°10'36" WEST OF THE CENTER LINE OF TRADE ZONE BLVD (FORMERLY TRIMBLE) FROM LUNDY TO RINGWOOD AVENUES AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN BOOK 388 OF MAPS, PAGE 16, SANTA CLARA COUNTY RECORDS, AND CALCULATED FROM THE FOUND INTERSECTION MONUMENT AT LUNDY AND THE FOUND 13 FOOT OFFSET MONUMENT ON THE CENTERLINE OF RINGWOOD, WAS ADOPTED AS THE BASIS OF BEARINGS.

PROJECT BENCHMARK (NAVD88)

ELEV DATUM: SANTA CLARA VALLEY WATER DISTRICT BM 059 BD, ELEVATION = 39.69', NAVD 88 (SCWVD2009). CONCRETE HEADWALL, NORTHEAST CORNER OF MONTAGUE EXPRESSWAY BRIDGE OVER PENITENCIA CREEK; 30' EAST FROM SOUTHERN PACIFIC RAILROAD TRACKS, PER SCWVD VERTICAL CONTROL DATABASE AS OF 4-14-2011, TIED TO PROJECT TBM PT. NO. 2 BY LEVEL LOOP.

TO CONVERT PROJECT TO CITY OF MILPITAS DATUM (BASED ON BM MAI-MON, ELEVATION = 37.87', NAVD 88), SUBTRACT 0.09' FROM PROJECT ELEVATIONS.)



SHEET INDEX

SHEET NO.	SHEET NAME	TITLE
CIVIL		
1	C01	COVER SHEET
2	C02	NOTES AND LEGEND
3 - 4	C03 - C04	SECTIONS AND DETAILS
5	C05	STORMWATER CONTROL PLAN
6	C06	STORMWATER CONTROL DETAILS
7	C07	PLAN AND PROFILE - INTERSECTION OF MONTAGUE EXPY. AND TRADE ZONE BLVD.
8 - 10	C08 - C10	PLAN AND PROFILE - MONTAGUE EXPY.
11 - 12	C11 - C12	PLAN AND PROFILE - TRADE ZONE BLVD.
13 - 14	C13 - C14	PLAN AND PROFILE - MOMENTUM DR.
15	C15	PLAN AND PROFILE - SEWER CONNECTION ON-SITE
16	C16	SIGNING AND STRIPING PLAN
17	C17	SYSTEM MAP
18 - 21	C18 - C21	EROSION CONTROL PLAN AND DETAILS
LANDSCAPE		
22	L01	COVER SHEET
23	L02	WATER CONSERVATION COVER SHEET
24 - 29	L1.0 - L1.5	CONSTRUCTION PLAN
30	L1.6	CONSTRUCTION DETAILS
31	L1.7	CONSTRUCTION DETAILS NOTES AND MATERIALS LIST
32 - 37	L2.0 - L2.5	IRRIGATION PLAN
38	L2.6	IRRIGATION LEGEND AND NOTES
39	L2.7	RECYCLED WATER NOTES AND DETAILS
40 - 41	L2.8 - L2.9	IRRIGATION DETAILS
42 - 47	L3.0 - L3.5	PLANTING PLAN
48	L3.6	PLANTING LEGEND, NOTES AND DETAILS
49	L3.7	PLANTING DETAILS
TRAFFIC		
50	E-1	TRAFFIC SIGNAL MODIFICATION - RINGWOOD AVE. AND TRADE ZONE BLVD.
51	E-2	TRAFFIC SIGNAL NOTES AND SCHEDULES - RINGWOOD AVE. AND TRADE ZONE BLVD.
52	E-3	ST. NAME SIGN SPECIFICATIONS AND DETAILS - RINGWOOD AVE. AND TRADE ZONE BLVD.
53	E-4	TRAFFIC SIGNAL MODIFICATION - MONTAGUE EXPY. AT McCANDLESS DRIVE / TRADE ZONE BLVD.
54	E-5	CONDUCTOR AND POLE SCHEDULE - MONTAGUE EXPY. AT McCANDLESS DRIVE / TRADE ZONE BLVD.
FIRE		
55	F-1	FIRE HYDRANT LOCATION AND FIRE ACCESS PLAN

PROJECT TEAM

OWNER/BUILDER: TRUMARK COMPANIES
CONTACT: GARRETT HINDS
4185 BLACKHAWK PLAZA CIRCLE, #200
DANVILLE, CA 94506
925 - 648 - 3130

CIVIL ENGINEER: HMH
CONTACT: ALAN LE
1570 OAKLAND ROAD
SAN JOSE, CA 95131
408 - 487 - 2200

LANDSCAPE ARCHITECT: HMH
CONTACT: BRIAN GLICK
1570 OAKLAND ROAD
SAN JOSE, CA 95131
408 - 487 - 2200

ENGINEER'S STATEMENT

THESE IMPROVEMENT PLANS HAVE BEEN PREPARED BY ME OR UNDER MY DIRECTION IN ACCORDANCE WITH STANDARD ENGINEERING PRACTICE.

NAME: ALAN TUAN LE
TITLE: SENIOR CIVIL ENGINEER
COMPANY: HMH
P.E. No. 72243

DATE _____

NAME: STEPHAN KUEHN
TITLE: PRINCIPAL ENGINEER
COMPANY: HMH
P.E. No. 57808

DATE _____



23. THE FOLLOWING ENTITIES SHALL BE RESPONSIBLE FOR INSPECTION AND MAINTENANCE / OWNERSHIP OF THE LISTED FACILITIES AND COMPLETION CERTIFICATE BY DESIGN ENGINEER (STATE OWNERSHIP'S NAME AND INSPECTION BY P.W. INSPECTION OR BUILD. DIV.):

FACILITIES	OWNERSHIP	INSPECTION	DESIGN ENGINEER
WATER	*	**	
SEWER	*	**	
STORM	*	**	
STREET LIGHT	*	**	
COMMON AREA	*	**	

* "CITY OF MILPITAS"
** "P.W. INSPECTION" OR "BUILD. DIVISION"
*** DESIGN ENGINEER COMPLETION CERTIFICATE "REQUIRED" IF INSPECTION BY BUILD. DIV., "NOT REQUIRED" IF INSPECTION BY P.W. INSPECTION.

24. EACH PARCEL SHALL HAVE SEPARATE SOLID WASTE ENCLOSURE AND BFI SERVICE. UNLESS NECESSARY AGREEMENTS HAVE BEEN RECORDED TO PROVIDE FOR JOINT USE OF ENCLOSURE AND OR BFI SERVICES FOR MORE THAN ONE PARCEL.

UNAUTHORIZED CHANGES & USES: THE ENGINEER PREPARING THESE PLANS WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR, UNAUTHORIZED CHANGES TO OR USES OF THESE PLANS. ALL CHANGES TO THE PLANS MUST BE IN WRITING AND MUST BE APPROVED BY THE PREPARER OF THESE PLANS.



Land Planning
Landscape Architecture
Civil Engineering
Utility Design
Land Surveying
Stormwater Compliance

1570 Oakland Road
San Jose, CA 95131
(408) 487-2200

www.HMHca.com

CITY OF MILPITAS
ENGINEERING DIVISION

PUBLIC IMPROVEMENT PLANS
PACE - TRACT 10138

COVER SHEET

Drawn By: _____ Date: 01-24-2013

Checked By: _____ Date: 01-24-2013

Designed By: _____ Date: 01-24-2013

Record Drawings

To be completed prior to acceptance of work by the City

Signature + Seal Date
P.E. No. Exp.

Public Works Inspector: _____

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

CITY OF MILPITAS
ENGINEERING DIVISION

Approved: _____ Project No. 2762

City Engineer Date File No. _____

Any changes to public improvements shall be approved by the City engineer. Drawing No. 2-1161

Recommended for approval: _____ Scale: AS SHOWN

Fire Dept. Date _____

Engineering Date: _____ Sheet _C01_ of _55_

ELEVATION DATUM:

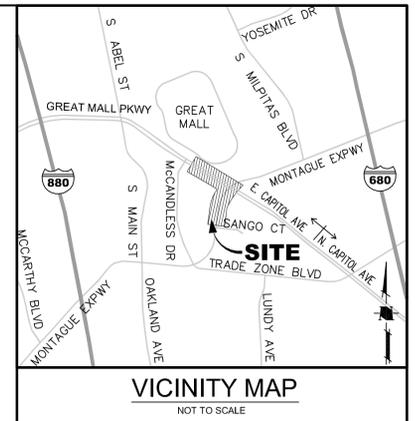
ELEV DATUM: SANTA CLARA VALLEY WATER DISTRICT BM 059 BD, ELEVATION = 39.69', NAVD 88 (SCVWD2009), BRASS DISK ON TOP OF CONCRETE HEADWALL; NORTHEAST CORNER OF MONTAGUE EXPRESSWAY BRIDGE OVER PENITENCIA CREEK; 30 FEET EAST FROM SOUTHERN PACIFIC RAILROAD TRACK, PER SCVWD VERTICAL CONTROL DATABASE AS OF 6/22/2012. TIED TO PROJECT TBM PT. NO. 2 BY LEVEL LOOP.

DATUM CONVERSION:
 NAVD 88 (SCVWD2009) - 0.09' = NAVD 88 (COM).
 NAVD 88 (COM) - 2.74' = NGVD29.

HORIZONTAL DATUM:

CCS83, ZONE 3, EPOCH 2007.00 IN U.S. SURVEY FEET, BASED ON NGS POINTS AA1872 (SAN PEDRO) AND HS2787 (QQ 453).

PACE OFF-SITE SEWER REPLACEMENT PORTION OF 11B AND 11C CITY OF MILPITAS CALIFORNIA



LEGEND

EXISTING	PROPOSED	DESCRIPTION
4		TRAFFIC SIGN
□		UTILITY BOX
⊕		FIRE HYDRANT
⊕		OVERHEAD TRAFFIC LIGHT W/ SIGNAL HEAD
⊕		TRAFFIC LIGHT
○	●	SS MANHOLE
○	○	SD MANHOLE
○	○	PB MANHOLE
○	○	PB VALVE
○	○	VALVE
○	○	CATCH BASIN
○	○	WATER METER
○	○	UTILITY POLE
○	○	CONSTRUCTION NOTE
— D — D —	— S — S —	STORM DRAIN
— S — S —	— S — S —	SANITARY SEWER
— H — H —	— H — H —	SANITARY SEWER TO BE ABANDON
— W — W —	— W — W —	WATER MAIN
— G — G —	— G — G —	GAS MAIN
— FO — FO —	— FO — FO —	FIBER OPTICS
— T — T —	— T — T —	TELEPHONE
— OH(E) —	— OH(E) —	OVERHEAD POWER
— — — —	— — — —	RIGHT-OF-WAY
— — — —	— — — —	PSUE, TCE, SSE, SDE, EASEMENT
□	□	TRAFFIC SIGNAL CABINET
⊕	⊕	STREET MONUMENT

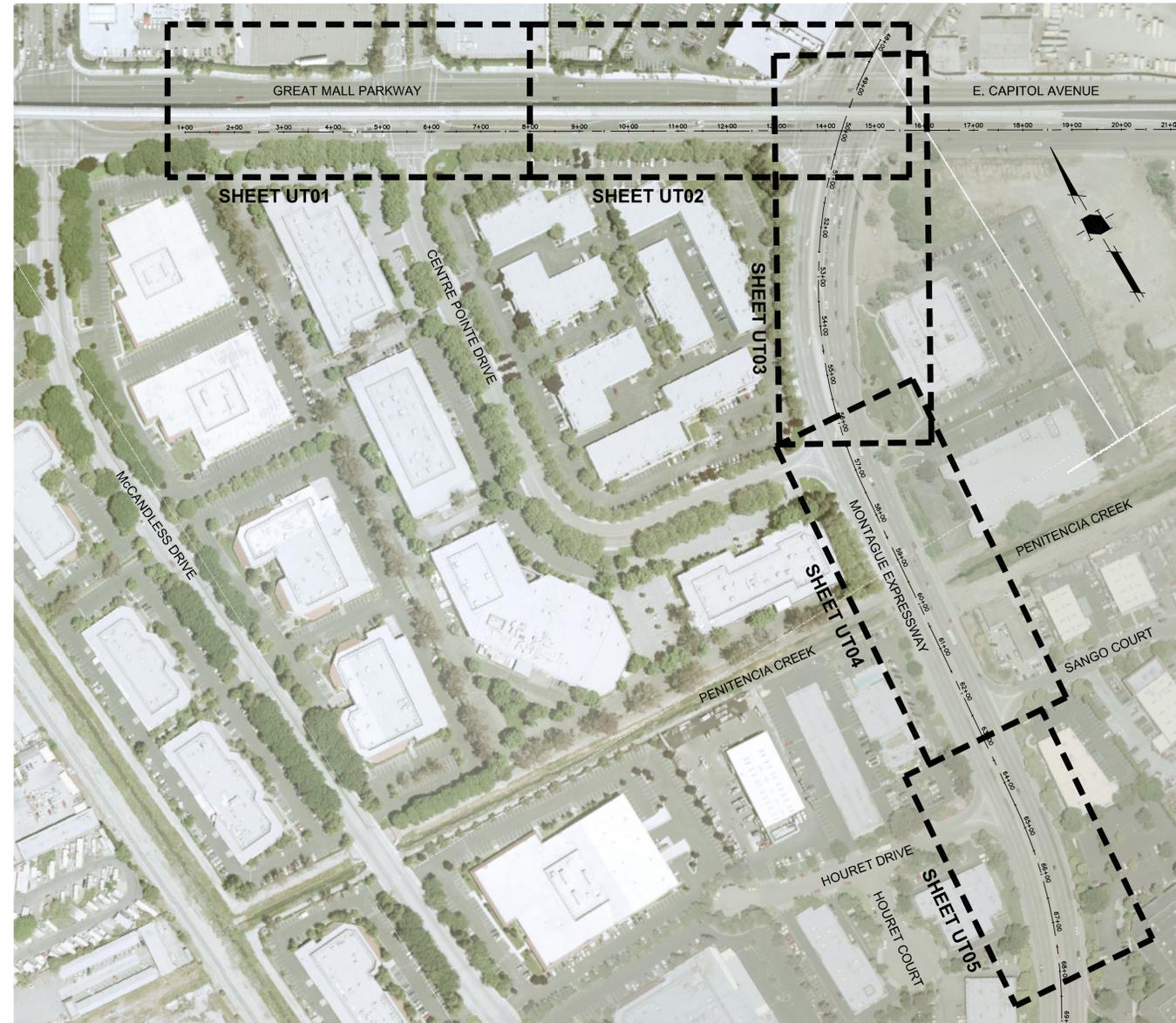
BID SET

CITY OF MILPITAS STANDARD DETAILS

DETAIL NO.	CITY OF MILPITAS DESIGN STANDARD
202	LOCATION OF IMPROVEMENTS
220	TRENCH CONSTRUCTION
222	PAVEMENT RESTORATION
223	UTILITY CROSSING CASING
230	SANITARY & STORM MANHOLES
410	CURB AND GUTTER

COUNTY OF SANTA CLARA DETAILS

DETAIL NO.	SCC ROADS AND AIRPORTS DEPARTMENT STANDARD DETAILS
U/3A	TYPICAL UTILITY TRENCH CONSTRUCTION



LOCATION MAP
 SCALE 1" = 150'

SHEET INDEX

DRAWING No.	SHEET No.	SHEET TITLE
TS01	1	TITLE / INDEX SHEET
NT01	2	NOTES
UT01	3	GREAT MALL PARKWAY 1+00 TO 8+00
UT02	4	GREAT MALL PARKWAY 8+00 TO 16+00
UT03	5	MONTAGUE EXPRESSWAY 50+00 TO 56+00
UT04	6	MONTAGUE EXPRESSWAY 56+00 TO 63+00
UT05	7	MONTAGUE EXPRESSWAY 63+00 TO 68+00
PD01	8	PAVEMENT DELINEATION PLAN
CB01	9	BEST MANAGEMENT PRACTICES
CB02	10	WATER POLLUTION CONTROL PLAN
TC01-TC20	11-30	TRAFFIC CONTROL PLAN

ABBREVIATIONS

AB - AGGREGATE BASE	MAX - MAXIMUM
ABN - ABANDONED	MH - MANHOLE
AC - ASPHALT CONCRETE	MIN - MINIMUM
APN - ASSESSOR'S PARCEL NUMBER	N - NORTH
CB - CATCH BASIN	NW - NORTH WEST
C&G - CURB AND GUTTER	NE - NORTH EAST
CI, CIP - CAST IRON PIPE	NB - NORTHBOUND
CL - CENTERLINE	NTS, N.T.S. - NOT TO SCALE
CL - CLASS	OC - ON CENTER
CO - CLEAN OUT	OG - ORIGINAL GROUND
COM - CITY OF MILPITAS	PB - PULL BOX
CONC - CONCRETE	PIL - PROPERTY LINE
CONST - CONSTRUCTION	PSUE - PUBLIC SERVICE UTILITY EASEMENT
DI - DROP INLET, DRAINAGE INLET	PUE - PRIVATE UTILITY EASEMENT
DIP - DUCTILE IRON PIPE	PVC - POLYVINYLCHLORIDE
DWG - DRAWING	PVMT - PAVEMENT
EXIST - EXISTING	R/W - RIGHT-OF-WAY
E - EAST	RCP - REINFORCED CONCRETE PIPE
EG - EXISTING GROUND	RT - RIGHT
ELEV - ELEVATION	S - SOUTH
EP - EDGE OF PAVEMENT	SCC - SANTA CLARA COUNTY
ESMT - EASEMENT	SW - SOUTH WEST
FG - FACE OF CURB	SE - SOUTH EAST
FG - FINISH GRADE	SCVWD - SANTA CLARA VALLEY WATER DISTRICT
FH - FIRE HYDRANT	SD - STORM DRAIN
FL - FLOWLINE	SDMH - STORM DRAIN MANHOLE
FO - FIBER OPTICS	SS - SANITARY SEWER
G - GAS	SSCO - SANITARY SEWER CLEAN OUT
HMA - HOT MIX ASPHALT CONCRETE	SSMH - SANITARY SEWER MANHOLE
HPG - HIGH PRESSURE GAS	SDE - STORM DRAIN EASEMENT
HOR - HORIZONTAL	SSE - SANITARY SEWER EASEMENT
INV - INVERT	T.O.P - TOP OF PIPE
JT - JOINT TRENCH, JOINT	WI - WITH
LT - LEFT	W - WATER, WEST

COUNTY OF SANTA CLARA DEPT. OF ROADS AND AIRPORTS

ISSUED BY: _____ DATE: _____

ENCROACHMENT PERMIT NO. _____

MARCH 11, 2013



KNOW WHAT'S BELOW.
 CALL BEFORE YOU DIG.

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

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



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

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

Record Drawings

To be completed prior to acceptance of work by the City

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

Revisions

Num.	Date	By	Description	City Engr.	Aprv	Date

CITY OF MILPITAS ENGINEERING DIVISION

Approved: _____ Project No. PJ 2782
 City Engineer Date File No. 2-1159
 Any changes to public improvements shall be approved by the City engineer Drawing No. TS01
 Recommended for approval: _____ E.P. No. _____
 Fire Dept. Date _____
 Engineering Date _____ Sheet 1 of 30

Control No 2013-

RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:

City of Milpitas
455 East Calaveras Blvd
Milpitas CA 95035
Attn: Land Development Section

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

APN 086-36-043

**AGREEMENT AFFECTING REAL PROPERTY RELATED TO COVENANT
AND RESTRICTION OF ON-SITE PRIVATE UTILITIES**

This Agreement Affecting Real Property Related to Covenant and Restriction of On-Site Private Utilities (“Agreement”) is entered into and effective _____ (date) by and between *Contour Trade Zone, LLC, a Delaware Limited Liability Company* (Developer) and the City of Milpitas (“City”).

RECITALS:

A. Pursuant to the Conditions and Notes of Approval for the subject development to have on-site private utilities, the Developer shall ensure that the Developer’s private utilities shall be operated in a manner to the City’s satisfaction for the purposes of compliance with local codes, regional and state requirements.

B. This Agreement is intended to satisfy the aforementioned requirement.

NOW, THEREFORE, in consideration of the recitals and mutual obligations expressed herein, the Parties (City and Developer) agree as follows:

STATEMENT OF AGREEMENT

1. Contour Trade Zone, LLC, a Delaware Limited Liability Company, the owner of the property located at the southwest corner of Montague Expressway/Trade Zone Blvd (APN 086-36-043) (the “Project”), agrees to provide on-site private utilities consistent with the requirements of the City, region and state.
2. The Developer obtained tentative map approval of the City Council on November 15, 2011, (Resolution No. 8136) for the Project. The recordation of

Control No. 2013-

Recording requested by
And When recorded mail to:

City of Milpitas
455 East Calaveras Blvd
Milpitas CA 95035
Attn: Land Development Engineer

Record without fee under
Section 6103 Government Code
State of California

Covenant and Permit for Encroachment Upon City Right-of-Way

This authorization (“Permit”) is entered into between the City of Milpitas, a municipal corporation (“City”) and **Contour Trade Zone, LLC, a Delaware Limited Liability Company**, (“Permittee”).

RECITALS

- A. Permittee has requested permission from the City to enter upon, use, and construct improvements within and adjacent to certain portions of the City’s right-of-way along the frontage of Montague Expressway and Trade Zone Blvd, in front of Tract # 10138 as shown on Exhibit “A” (the Encroachment Area)
- B. Permittee’s use of this “Encroachment Area” will be undertaken for the benefit of the Permittee’s property (the “Benefitted Property”) as shown on Exhibit “A” as Tract #10138.
- C. Permittee desires to enter upon the Encroachment Area in order to construct, install, maintain and replace certain surface improvements (“the Improvements”), described with greater particularity and as shown in Exhibit “A” and improvement plans 2-1161. Those Improvements are the project’s site amenities including landscaping & related irrigation, concrete flatwork and project entry signs to be located at the City’s right of way for the Permittee.
- D. Replacement, operation and maintenance responsibilities of the sewer system (within Tract #10138 to sanitary sewer manhole 12 on sheet 20 and 23 of the private improvement plan) belongs to the Permittee.
- E. Replacement, operation and maintenance responsibilities of storm drain system (up to storm drain manhole 9 on Sheet 8 and 29 of the private improvement plan) belongs to the Permittee.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE PURCHASE OF VIDEO IMAGING DETECTOR SYSTEMS BY PIGGYBACKING THE CITY OF SAN JOSE CONTRACT WITH ITERIS, INC.

WHEREAS, Section I-2-3.07 of the Milpitas Municipal Code authorizes the City Council to enter into contracts without competitive bid when the Purchasing Agent determines that a piggyback purchase is in the City’s best interest; and

WHEREAS, the City of San Jose’s solicitation that resulted in the contract with Iteris, Inc. was obtained and reviewed for compliance with the City’s Purchasing Ordinance by the Purchasing Agent; and

WHEREAS, there are no local suppliers or contractors who could provide the same video imaging detection systems at competitive rates; and

WHEREAS, all of the City’s legacy video imaging detection systems were made by Iteris, Inc., and the City’s specifications for video imaging detection systems are exactly the same as those listed in San Jose’s solicitation; and

WHEREAS, the price for Iteris, Inc. video imaging detection systems under the San Jose contract is estimated to be lower than if the City made the purchase pursuant to the City’s Purchasing Ordinance; and

WHEREAS, the price the City will pay for video imaging detection systems from Iteris, Inc., will be the same price as in the San Jose contract.

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 Manager is authorized to execute a separate contract with Iteris, Inc., for video imaging detection systems, which references the solicitation by the City of San Jose, and incorporates, by reference the terms, conditions and prices in the San Jose contract, for a not-to-exceed amount of \$73,600.00.

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



CITY OF MILPITAS CONTRACT

Project: **On-Call Pavement Striping and Marking at Various City of Milpitas Sites**

Bid No: **IFB 2042**

Annual Not-To-Exceed Amount of Contract: \$100,000.00

THIS CONTRACT, made this 20th day of March, 2013, by and between the City of Milpitas, hereinafter referred to as "the City of Milpitas" and **Chrisp Company**, hereinafter referred to as "Contractor",

WITNESSETH:

A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and

B. WHEREAS, said Specifications include:

- Part A – Invitation For Bids
- Part B – Scope of Work
- Part C – Minimum Basic Requirements
- Part D – General Conditions and Instructions To Bidders
- Part E – Special Conditions
- Part F – Technical Specifications
- Part G - Schedule
- Part H – Terms and Conditions for Receipt of Bid
- Part I – Addenda
- Part J – Bid Form
- Part K – Experience Statement
- Part L – Sample Contract
- Part M - Sub-Contractors List
- Part N – Non-Collusion Affidavit
- Part O - Payment Bond
- Part P - Apprentice Standards
- Part Q – Bidder's Statement Regarding Insurance Coverage
- Part R – Worker's Compensation Insurance Certificate
- Part S – Contractor's Nondiscriminatory Employment Certificate
- Part T – Certificate of Compliance
- Part U – Local Purchasing Preference Certificate
- Part V - Insurance Requirements – General
- Part W - Acceptance & Release Form
- Part X - Attachments/Drawings

C. WHEREAS, Contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the Contractor's Bid;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and Contractor's Bid, which are made a part hereof as though fully set forth, Contractor hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and the City of Milpitas hereby employs the Contractor and agrees to pay the Contractor the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

CITY OF MILPITAS
A Municipal Corporation

CHRISP COMPANY

Thomas C. Williams, City Manager

Contractor's Signature and Title

Approved As To Form:

Michael J. Ogaz, City Attorney

Approved As To Content:

Steve Chan, Traffic Engineer

Attest By:

Mary Lavelle, City Clerk

Business Tax Compliance: Certificate No. _____



***13**

CITY OF MILPITAS CONTRACT

Project: **On-Call Sidewalk Repair, Curbs & Gutters at Various City of Milpitas Sites**

Bid No: **IFB 2043**

Annual Not-To-Exceed Amount of Contract: \$150,000.00

THIS CONTRACT, made this 20th day of March, 2013, by and between the City of Milpitas, hereinafter referred to as "the City of Milpitas" and **JJR Construction, Inc.**, hereinafter referred to as "Contractor",

WITNESSETH:

A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and

B. WHEREAS, said Specifications include:

- Part A – Invitation For Bids
- Part B – Scope of Work
- Part C – Minimum Basic Requirements
- Part D – General Conditions and Instructions To Bidders
- Part E – Special Conditions
- Part F – Technical Specifications
- Part G - Schedule
- Part H – Terms and Conditions for Receipt of Bid
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- Part S – Contractor's Nondiscriminatory Employment Certificate
- Part T - Certificate of Compliance
- Part U – Local Purchasing Preference Certificate
- Part V - Insurance Requirements – General
- Part W - Acceptance & Release Form
- Part X – Attachments/Drawings

C. WHEREAS, Contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the Contractor's Bid;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and Contractor's Bid, which are made a part hereof as though fully set forth, Contractor hereby agrees to complete the work at the

prices and on the terms and conditions therein contained, and the City of Milpitas hereby employs the Contractor and agrees to pay the Contractor the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

CITY OF MILPITAS
A Municipal Corporation

JJR CONSTRUCTION, INC

Thomas C. Williams, City Manager

Contractor's Signature and Title

Approved As To Form:

Michael J. Ogaz, City Attorney

Approved As To Content:

Steve Chan, Project Manager

Attest By:

Mary Lavelle, City Clerk

Business Tax Compliance: Certificate No. 28311

**CITY OF MILPITAS
ACQUISITION AND REIMBURSEMENT AGREEMENT
FOR PUBLIC FACILITIES**

This Acquisition and Reimbursement Agreement for Public Facilities ("Agreement"), dated as of _____, 2013, is by and between the City of Milpitas, a municipal corporation ("City"), and Contour Trade Zone, LLC, a Delaware limited liability company ("Developer"). City and Developer are at times collectively referred to herein as the "Parties."

RECITALS

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, identified as Tract No. 10138 ("Project").

WHEREAS, pursuant to conditions of approval for the development of the Project set forth in the Milpitas City Council Resolution No. 8136, approving Major Tentative Map No. MT11-0003, Site Development Permit No. SD11-0012, and Conditional Use Permit No. UP11-0033, adopted on November 15, 2012, the Developer is required to pay Transit Area Specific Plan developer impact fees to defray all or a portion of the cost of sewer facilities to mitigate the impacts of the Project.

WHEREAS, 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 improvement program. These provisions and sections 66485-66487 of the Subdivision Map Act further authorize 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 that needed for the impacts of that development, and when such construction is necessary to ensure efficient and timely construction of the facilities network). In such instances, a reimbursement agreement with the developer and a credit against the fee, which would otherwise be charged, pursuant to the Milpitas Municipal Code and its implementing resolutions, shall be offered. Such reimbursement amount shall not include the portion of the improvement needed to provide services or mitigate the need for the facility or the burdens created by the Project.

WHEREAS, Developer wishes to construct certain eligible sewer improvements and related facilities that would otherwise be financed by (i) the Transit Area developer impact fee program and (ii) the capital component of the City's sewer connection fee program.

WHEREAS, such sewer improvements and related facilities must be built in excess of the strict needs of the Project in order to efficiently provide supporting public infrastructure for the Project and for the benefit of other new development projects in the area for purposes of orderly community planning. Accordingly, Developer is requesting and is entitled to receive Transit Area Specific Plan developer impact fee and sewer fund payments for the oversizing of the sewer improvements, including amounts attributable to interest, as allowed by law and as set forth in this Agreement. The sewer improvements are included in the City adopted financing plan for Transit Area Specific Plan improvements ("Financing Plan"). In addition, the sewer improvements provide benefit to existing development in the City, so the City will participate in the cost of the sewer improvements for the share of costs not attributable to new development as more particularly set forth herein.

WHEREAS, the sewer improvements to be provided by Developer pursuant to this Agreement contain supplemental size and capacity relative to the demand generated by the development of the Project.

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

AGREEMENT

1. **Project Scope.** Subject to the terms of this Agreement, the City agrees to provide reimbursement of funds and/or fee credits to the Developer for the acquisition and installation of the improvements depicted and described in Exhibit A ("Sewer 11B-2 and 11C Improvements"), attached hereto and incorporated herein by reference.

2. **Allowable Credit/Reimbursement.** Pursuant to the terms and conditions herein, Developer shall be entitled to a combined partial credit and reimbursement of **\$1,510,442.00**, to be assigned as set forth in Exhibit B attached hereto, for costs and expenses incurred for the design, permitting and construction of the Sewer 11B-2 and 11C Improvements, including design fees and costs, bond costs, legal costs, third party construction management 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 are incurred for the permitting, plan check, inspection and construction of the Sewer 11B-2 and 11C Improvements, including any changes to the Sewer 11B-2 and 11C Improvements mandated by requirements of, or conditions imposed by, any governmental authority or public utility which were not reflected in the approved plans ("Sewer Improvement Costs"). The Developer shall be reimbursed for the Sewer Improvement Costs as set forth in greater detail in this section through a combination of (i) the City's issuance of Transit Area Impact fee credits for fees ("Fee Credits"); and (ii) cash reimbursement from City's sewer fund. The total combined reimbursement set forth below shall not exceed \$1,510,442.00 for actually incurred costs and expenses and shall be subject to the documentation and invoicing requirements of Section 3.
 - a. **Fee Credit.** The Developer shall be entitled to a **\$685,766.00** Transit Area Impact Fee credit. The City acknowledges that Developer is a party to an agreement ("Cost Sharing Agreement") pursuant to which specific, named benefitting property owners ("Other Benefitting Landowners") will share in the cost of the Sewer 11B-2 and 11C Improvements. Notwithstanding the foregoing, the Developer acknowledges that no provision of this Agreement shall constitute an allocation, freezing or setting of impact fees owed by any Other Benefitting Landowner under the development agreement provisions of Government Code section 65864 *et seq.*, or the Mitigation Fee Act provisions of Government Code section 66000, *et seq.* The Other Benefitting Landowners shall merely receive Fee Credits as set forth in Exhibit B attached hereto, such that those benefitting projects shall receive a Fee Credit against Transit Area Impact fees imposed on their projects at the time of building permit. The City makes no representation that the credits assigned to specific properties constitute a proportional or fair allocation of Sewer 11B-2 and 11C Improvement costs attributable to the developments contemplated by the Other Benefitting Landowners. Transit Area Impact fees may be increased at any time by the City, in accordance with applicable state law. All credits assigned under this Agreement shall be limited to a ten (10) year life span and may not be conveyed or transferred to parcels other than those listed in Exhibit B, unless approved or extended by the City at its sole discretion. All credits shall run with the land and may be used by successor property owners within the time limitations and other restrictions set forth herein.

such dedication shall be made before the issuance of the first certificates of completion for the Project. Within ten (10) business days or as mutually agreed following the date of receipt of the Developer's written notice of completion of the Sewer 11B-2 and 11C Improvements, the City shall conduct a final inspection of the Sewer 11B-2 and 11C Improvements. If, during the final inspection, the City determines that the Sewer 11B-2 and 11C 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 Sewer 11B-2 and 11C Improvements within thirty (30) calendar days thereafter City shall not unreasonably withhold, delay or condition acceptance of the Sewer Improvements.

8. **Conveyance of the Sewer 11B-2 and 11C Improvements.** Once the Sewer 11B-2 and 11C Improvements are accepted by the City and no liens have been filed with respect to the Sewer 11B-2 and 11C Improvements within ninety (90) days following the date of filing the Notice of Completion (or if valid liens were filed during such period, such liens have been bonded around or removed prior to acceptance), the Sewer 11B-2 and 11C Improvements 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 Sewer 11B-2 and 11C Improvements through the City's initial and final acceptance procedures.
9. **Delivery of Plans and Specifications.** Prior to acceptance of the Sewer 11B-2 and 11C 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 Sewer 11B-2 and 11C Improvements. Plans shall be submitted in CAD format, GIS format and PDF format as acceptable to the City.
10. **Liens, Claims, and Encumbrances.** Prior to acceptance of the Sewer 11B-2 and 11C 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 Sewer 11B-2 and 11C 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 reimbursement is requested under this Agreement for the Sewer 11B-2 and 11C Improvements. Notwithstanding any other provision or term of this Agreement, the City shall have no obligation to issue any Fee Credits until the Developer has cleared any and all liens, claims and monetary encumbrances from the Sewer 11B-2 and 11C Improvements and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.
11. **Performance Bond.** Upon the execution of this Agreement, Developer shall file and submit a performance bond to City, as obligee, in the penal sum of *two-million two-hundred dollars*

(\$2,200,000.00), conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this Agreement and conditioned upon the full and faithful performance of any and all improvement work required hereunder. Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.

12. **Warranty and Repair.** The Developer hereby warrants the Sewer 11B-2 and 11C Improvements as to materials and workmanship and, should failure of such improvement occur within a period of one (1) year after final acceptance of such improvement by the City, the Developer shall promptly cause the needed repairs to be made without cost to the City ("Warranty Period"). Nothing herein shall be construed to limit any other warranties the City may have from the manufacturer or any materials used in the Sewer 11B-2 and 11C Improvements, but the warranty contained in this Section 13 shall be the exclusive warranty of Developer and all other express or implied warranties of Developer are expressly disclaimed. Notwithstanding the foregoing, Developer's warranty excludes remedy for damage and defect caused by modifications not performed by Developer or its contractors or agents or the active negligence of City, its agents and employees.
13. **Repair.** The City is hereby authorized to make such repairs if the Developer fails to make or undertake with due diligence the aforesaid repairs within twenty (20) calendar days after the City has given written notice of such failure. In case of emergency where, in the sole opinion of the City Engineer, delay would cause serious hazard to the public, the necessary repairs may be made or lights, signs and barricades erected, without prior notice to the Developer. In all cases of failure of the Sewer 11B-2 and 11C Improvements within the Warranty Period where the City has taken action in accordance with this paragraph, the Developer shall reimburse the City as appropriate for all reasonable costs, direct and indirect, incurred by the City.
14. **Insurance.** Prior to commencing any work, Developer, agrees to obtain an encroachment permit from the Engineering Division and at Developer's expense, provide City with a duplicate public general liability insurance policy with endorsements showing the City as additional insured which insures City, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1,000,000 for each person and \$1,000,000 for each occurrence and \$1,000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of Developer. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to City of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said City, its officers and employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said City, its officers and employees shall not be precluded from claim against other insured parties thereunder; (g) be maintained in effect until final acceptance of Developer's improvements. If Developer does not comply with the provisions of this paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and Developer shall forthwith repay City the premium therefor.
15. **Workers Compensation Insurance.** Developer agrees that any general contractor engaged by the Developer for any work of improvement under this Agreement will have:

- a. In full force and effect, a Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.

or

- b. In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the Developer or its general contractor shall immediately notify the City in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.

16. **Indemnity.** The Developer, by execution of this Agreement, specifically agrees to assume the defense of, indemnify, and hold harmless the City and its officers, employees, consultants, and agents from and against all liabilities, actions, damages, claims, losses or expenses of every type and description, including attorneys' and consultants' fees and expenses, the payment or requirement of payment of prevailing wages, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, or any act or omission of the City related to this Agreement with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such claims (collectively "Liabilities"), to which they may be subjected or put, by reason of, or resulting from, the acquisition or installation of the Sewer 11B-2 and 11C Improvements, except Liabilities arising from the sole negligence, active negligence, errors, omissions, or willful misconduct of the City. It is further agreed that City does not, and shall not, waive any rights against the Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. The indemnity provided hereunder shall terminate at the expiration of the Warranty Period.
17. **No Third Party Beneficiaries Except for Other Benefitting Landowners.** The City and the Developer enter into no contract or agreement with any general contractor, subcontractor, or other party by entering into this Agreement; nor is any general contractor, subcontractor, or other party a third party beneficiary of this Agreement; and the 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 Sewer 11B-2 and 11C. Notwithstanding the foregoing, the Other Benefitting Landowners shall constitute third party beneficiaries solely to the extent that those landowners are entitled to impact fee credits as set forth in Exhibit B and that those landowners have completion rights under Section 26 of this Agreement.
18. **Notice.** Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City: City Engineer
Milpitas City Hall
455 East Calaveras Boulevard
Milpitas, CA 95035

Phone: 408-586-3240; Fax: 408-586-3056

Developer: Contour Trade Zone, LLC
A Delaware limited liability company
4185 Blackhawk Plaza Circle
Suite 200
Danville, CA 94506

19. **Term.** The term of this Agreement shall start as of the date first written above and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied.
20. **Severability.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.
21. **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.
22. **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 both Parties.
23. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one instrument.
24. **Allocation of Fee Credits.** Other than the allocation of Fee Credits hereunder to the projects identified in Exhibit B, Fee Credits shall not be further assignable except that the Fee Credits shall run with the land and specifically with each project identified in Exhibit B.
25. **Assignment.** Developer shall not assign the obligations under this Agreement to any non-Other Benefitting Landowner without the prior written consent of the City Manager, provided however, in the event Developer is in default of any obligations to construct the Sewer Improvements, and any party identified on Exhibit B steps in to cure such default and takes over construction of the Sewer Improvements, upon the written assumption of all obligations hereunder (including bonding, insurance and indemnity obligations), such party shall be substituted as the "Developer" hereunder. The Other Benefitting Landowners listed in Exhibit B shall be considered pre-approved for assignment in the event of a construction default of this Agreement and shall require no further action by the City to accept assignment of this Agreement other than the City's acceptance of a written notice of assignment from the Other Benefitting

Landowner. By accepting the assignment of this Agreement in the event of a construction default, the Other Benefitting Landowner hereby specifically agrees to assume the defense of, indemnify, and hold harmless the City and its officers, employees, consultants, and agents from and against all liabilities, actions, damages, claims, losses or expenses of every type and description, arising from the Other Benefitting Landowner's acceptance of the assignment and performance of obligations under this Agreement.

28. **Expiration of Credits.** The Fee Credits issued hereunder shall expire ten (10) years from the date Developer files a Notice of Completion for the Sewer 11B-2/11C Improvements, unless such Fee Credits are extended in the City's sole discretion.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and the year first written above.

CITY OF MILPITAS:

By: _____

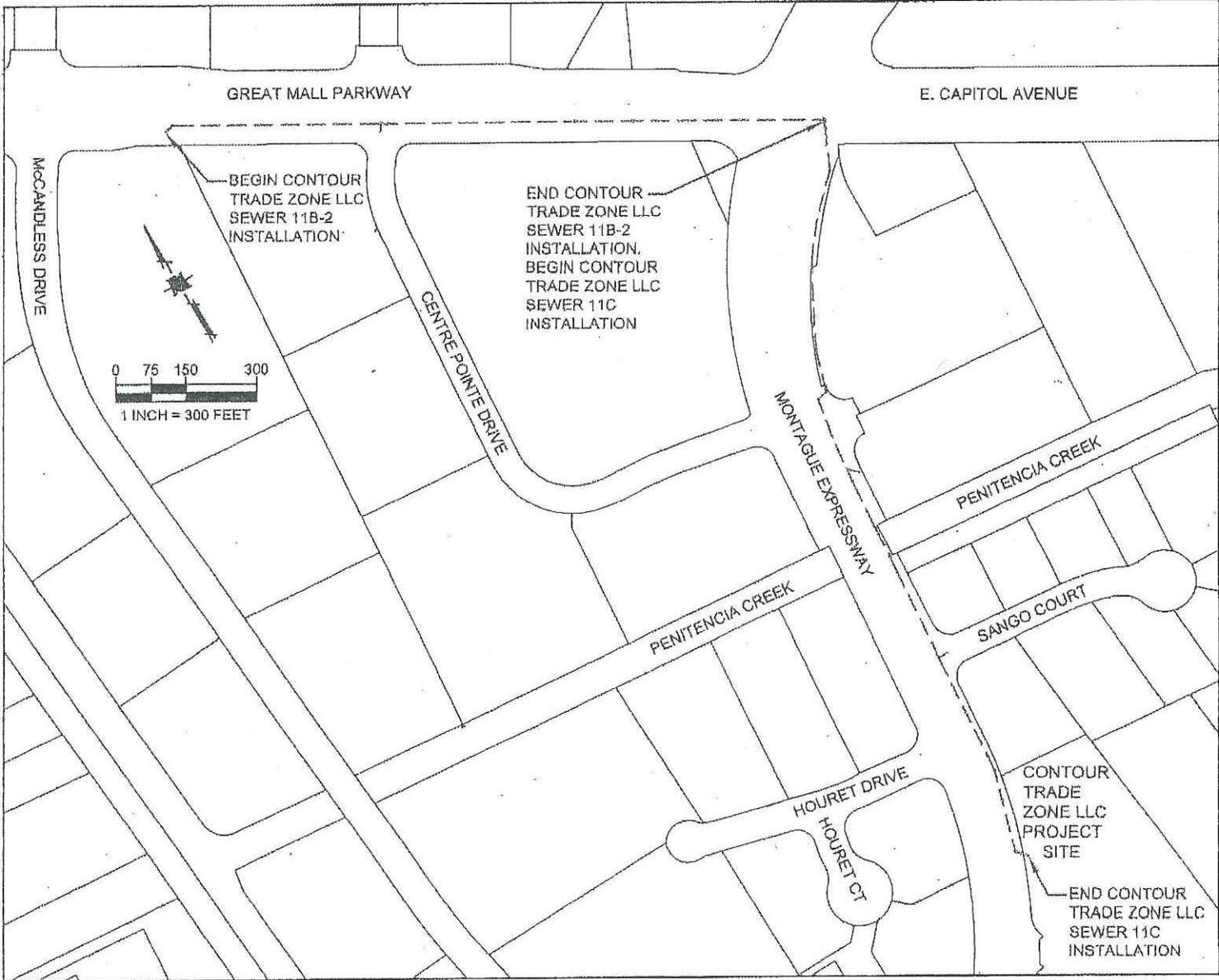
Developer:
Contour Trade Zone LLC
A Delaware limited liability company
By: Trade Zone Investors LLC,
A Delaware limited liability company
Its Managing Member

By: _____
Name: Gregg A. Nelson
Title: Manager

EXHIBIT A

Sewer 11-B and 11C Improvements

EXHIBIT A



SITE MAP

SCALE 1" = 300'

EXHIBIT B

REIMBURSEMENTS AND CREDITS TO DEVELOPER

Landowner	Sewer Fund Reimbursement (54.5%)	TASP Credit (45.5%)	Assessor parcel Numbers of Other Benefitting Landowners Receiving TASP Credit Running with Land
Contour Trade Zone LLC	\$824,676.00	\$685,766.00	086-36-043

Total Credits and Reimbursements: \$1,510,442.00

Developer	Contour Trade Zone LLC
Project	PACE
Address	324 Montague Expressway
Date	March 12, 2013

Subdivision Improvement Agreement Fee Credit and Reimbursement Summary

Notes:

1. Refer to HMH cost estimate dated 2/26/2013
2. Refer to SanCo cost estimate dated 1/29/2013 for PACE - Tract 10138
3. DB Numbers refer to categories in Table B-1 of the 12/12/12 TASP update
4. Refer to SanCo Cost estimate dated 1/29/2013 for Off-Site Sewer Replacement 11b and 11c

Montague Expressway Widening and Streetscape Improvements (DB No. 6)	Cost Estimate	Calculated TASP Impact %	Fee Credit
Surface Improvements (HMH Est.)	\$ 148,371.00	27%	\$ 40,060.17
Storm Drain System (HMH Est.)	\$ 9,788.00	27%	\$ 2,642.76
Traffic Signal Modification (HMH Est.)	\$ 46,208.00	27%	\$ 12,476.16
Design (HMH Est.)	\$ 50,000.00	27%	\$ 13,500.00
Subtotal	\$ 254,367.00	27%	\$ 68,679.09
Sewer 11B and 11C (DB Nos. 11 and 12)	\$ 1,510,442.00	100%	\$ 1,510,442.00
Subtotal (Sanco Est.)	\$ 1,510,442.00	100%	\$ 1,510,442.00
Recycled Water System (DB No. 20)			
Trade Zone (Sanco Est.)	\$ 120,696.00	100%	\$ 120,696.00
Montague Expressway (Sanco Est.)	\$ 125,800.00	100%	\$ 125,800.00
Momentum Drive (Sanco Est.)	\$ 71,583.00	100%	\$ 71,583.00
System Design Costs (HMH Est.)	\$ 10,000.00	100%	\$ 10,000.00
Subtotal	\$ 328,079.00	100%	\$ 328,079.00

Total Fee Credit / Reimbursement Estimate **\$ 1,907,200.09**

REVISION 2

Bid Date: 1/29/2013

Time: 5:00PM

**Proposal for:
Offsite Sewer Replacement 11B And 11C**



CA STATE LICENSE NO. 160382 : TYPE- GENERAL ENGINEERING
727 University Avenue, Los Gatos, CA 95032
PHONE: (408) 377-2793 - FAX: (408) 377-7405

Trumark Companies
4185 Blackhawk Plaza Circle Suite 200
Danville, CA 94506

Project No. 10-5TRU(B) / 49 / 4028-2

Item	Description	Quantity	Unit	Unit Price	Total Price
SS	Sanitary Sewer Sta. 1+00 To MH #6				
01	Std. Sanitary Manhole	6.00	EA	13,925.0000	83,550.00
02	Connect To Ex. Manhole & Rechannelize	2.00	EA	3,050.0000	6,100.00
03	18" PVC SDR 26	1,003.00	LF	456.0000	457,368.00
04	15" PVC SDR 26	388.00	LF	606.0000	235,128.00
05	8" PVC SDR 26	18.00	LF	434.0000	7,812.00
06	Abandon Existing SS Pipe	1,400.00	LF	11.0000	15,400.00
07	Abandon Existing Manholes	4.00	EA	5,950.0000	23,800.00
08	Replace Monuments	1.00	EA	1,650.0000	1,650.00
				Total:	830,808.00
SSU	Sanitary Sewer MH #6To MH #18				
01	Std. Sanitary Manholes	10.00	EA	13,100.0000	131,000.00
02	12" PVC SDR 26	1,615.00	LF	424.0000	684,760.00
03	12" HDPE Siphon	110.00	LF	487.0000	53,570.00
04	8" PVC SDR 26	51.00	LF	283.0000	14,433.00
05	6" PVC SDR 26	27.00	LF	330.0000	8,910.00
06	Abandon Existing SS Pipe	1,210.00	LF	11.0000	13,310.00
07	Abandon Existing Manholes	4.00	EA	5,950.0000	23,800.00
				Total:	929,783.00
ADDS	Added Items				
01	Curb Inlet Sediment Barriers	11.00	EA	350.0000	3,850.00
02	Fiber Roll Per Sheet 10	1.00	LS	2,500.0000	2,500.00
03	Signalization & Loop Replacement (Allowance)	1.00	LS	30,000.0000	30,000.00
04	Design	1.00	LS	83,000.0000	83,000.00
				Total:	119,350.00
ALT	ALTERNATES				
01	Rock Foundation Stabilization	1.00	LF	9.0000	9.00

Subtotal: \$ 1,879,941.00
 15% Contingency: \$ 281,991.00
GRAND TOTAL (excluding alternate) \$ 2,161,932.00

ATTACHED NOTES TO BID OUTLINE THE CONDITIONS OF THIS QUOTATION AND MUST BE CONSIDERED AS AN INTEGRAL PART OF THIS PROPOSAL.

REVISION 1

Bid Date: 1/29/2013

Time: 5:00PM

**Proposal for:
Pace - Tract 10138**



CA STATE LICENSE NO. 160882 : TYPE- GENERAL ENGINEERING
727 University Avenue, Los Gatos, CA 95032
PHONE: (408) 377-2793 - FAX: (408) 377-7405

Trumark Companies
4185 Blackhawk Plaza Circle Suite 200
Danville, CA 94506

Project No: 11-16TRU(A) / 75 / 4085-1

Item	Description	Quantity	Unit	Unit Price	Total Price
PUBRV Public Recycled Water					
01	8" Bore And Jack	200.00	LF	629.0000	125,800.00
02	8" Recycled Main	670.00	LF	30.5000	20,435.00
02A	8" Recycled Main In Existing Street	930.00	LF	161.0000	149,730.00
03	8" Gate Valves	2.00	EA	1,700.0000	3,400.00
04	2" Recycled Service	2.00	EA	3,375.0000	6,750.00
05	Connect To Ex Tbo	1.00	EA	3,750.0000	3,750.00
Total:					309,865.00
PSS Private Sanitary Sewer					
01	Std. Sanitary Manholes	17.00	EA	3,300.0000	56,100.00
02	8" PVC SDR 35	1,053.00	LF	28.0000	29,484.00
03	6" PVC SDR 35	1,145.00	LF	26.0000	29,770.00
04	4" PVC Lats W/ Risers To 3' BGS	134.00	EA	450.0000	60,300.00
05	Sanitary Cleanout	2.00	EA	1,025.0000	2,050.00
06	4" PVC Lateral W/ Trash Drain	1.00	EA	1,710.0000	1,710.00
Total:					179,414.00
PSD Private Storm Drainage					
01	Storm Drain Manholes	22.00	EA	2,850.0000	62,700.00
02	15" RCP CI 3	2,034.00	LF	36.0000	73,224.00
03	12" RCP CI 4	585.00	LF	34.0000	19,890.00
04	12" PVC SDR 35	146.00	LF	31.0000	4,526.00
05	Curb Inlet City Of Milpitas	28.00	EA	1,800.0000	50,400.00
06	Flat Grate Storm Inlets 24" X 24"	34.00	EA	1,300.0000	44,200.00
07	Drain Inlet 18" X 18"	5.00	EA	925.0000	4,625.00
08	48" Up-Flo Filter Manhole	4.00	EA	20,650.0000	82,600.00
Total:					342,165.00
PRVTWTF Private Water					
01	8" Pvc C900 Dr18	2,414.00	LF	33.0000	79,662.00
02	8" Gate Valves	7.00	EA	1,475.0000	10,325.00
03	Fire Hydrant Assembly W/ Break Check	8.00	EA	5,500.0000	44,000.00

Run by: Kimberly Franks Estimator: Scott Schultz
For Job: Pace - Tract 10138

HMH

Job No: 4107.00
Date: 02/26/2013

Trumark Companies
Engineer's Preliminary Opinion of Probable Construction Cost

PACE

PUBLIC IMPROVEMENTS

DESCRIPTION	QTY	UNIT	UNIT COST (\$)	COST (\$)
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SURFACE IMPROVEMENTS

MONTAGUE EXPRESSWAY

3.5" AC	0	SF	3	-
AC OVERLAY (2")	242	SF	2	380
7.5" AC	0	SF	6	-
12" Deep Lift AC	0	SF	8	-
14.5" Deep Lift AC	644	SF	12	7,728
12" AB	0	SF	6	-
13" AB	0	SF	7	-
Vertical Curb	181	LF	31	5,611
Curb & Gutter	226	LF	45	10,170
Valley Gutter	0	LF	21	-
Sidewalk (Including Base)	8,264	SF	9	74,376
Driveway (Including Base)	854	SF	14	11,956
Electrolier	5	EA	3,600	18,000
Remove Curb and Gutter	160	LF	11	1,760
Remove Vertical Curb	120	LF	7	840
Remove Traffic Island	1,180	SF	10	11,800
Sawcut	250	LF	3	750
Wheelchair Ramp	1	EA	5,000	5,000
			SubTotal \$	148,371

TRADE ZONE BOULEVARD

3.5" AC	0	SF	3	-
AC OVERLAY (2")	29,853	SF	2	46,869
7.5" AC	1,803	SF	6	10,818
12" Deep Lift AC	144	SF	8	1,152
14.5" Deep Lift AC	0	SF	12	-
12" AB	1,803	SF	6	10,818
13" AB	0	SF	7	-
Vertical Curb	0	LF	31	-
Curb & Gutter	95	LF	45	4,275
Valley Gutter	150	LF	21	3,150
Sidewalk (Including Base)	6,480	SF	9	58,320
Driveway (Including Base)	541	SF	14	7,574
Electrolier	5	EA	3,600	18,000
Remove Curb and Gutter	131	LF	11	1,441
Remove Vertical Curb	0	LF	7	-
Remove Traffic Island	0	SF	10	-
Sawcut	270	LF	3	810
Wheelchair Ramp	3	EA	5,000	15,000
			SubTotal \$	178,228

MOMENTUM DRIVE

3.5" AC	19,491	SF	3	62,371
AC OVERLAY (2")	0	SF	2	-
7.5" AC	0	SF	6	-
12" Deep Lift AC	0	SF	8	-
14.5" Deep Lift AC	0	SF	12	-

Trumark Companies
Engineer's Preliminary Opinion of Probable Construction Cost

PACE

PUBLIC IMPROVEMENTS

DESCRIPTION	QTY	UNIT	UNIT COST (\$)	COST (\$)
13" AB	19,491	SF	7	136,437
Vertical Curb	745	LF	31	23,095
Curb & Gutter	720	LF	45	32,400
Valley Gutter	0	LF	21	-
Sidewalk (Including Base)	3,390	SF	9	30,510
Driveway (Including Base)	432	SF	14	6,048
Electrolier	4	EA	3,600	14,400
Remove Curb and Gutter	0	LF	11	-
Remove Vertical Curb	0	LF	7	-
Remove Traffic Island	0	SF	10	-
Sawcut	0	LF	3	-
Wheelchair Ramp	2	EA	5,000	10,000
			SubTotal \$	315,262

STORM DRAIN SYSTEM

MONTAGUE EXPRESSWAY

Storm Drain Manhole	0	EA	2,950	-
Standard Curb Inlet	1	EA	2,000	2,000
Field Inlet	3	EA	1,500	4,500
12" RCP	44	LF	42	1,848
15" RCP	32	LF	45	1,440
Tree Filter 4x8	0	EA	9,700	-
Tree Filter 6x8	0	EA	13,400	-
			SubTotal \$	9,788

TRADE ZONE BOULEVARD

Storm Drain Manhole	0	EA	2,950	-
Standard Curb Inlet	1	EA	2,000	2,000
Field Inlet	0	EA	1,500	-
12" RCP	0	LF	42	-
15" RCP	62	LF	45	2,790
Tree Filter 4x8	0	EA	9,700	-
Tree Filter 6x8	0	EA	13,400	-
			SubTotal \$	4,790

MOMENTUM DRIVE

Storm Drain Manhole	4	EA	2,950	11,800
Standard Curb Inlet	3	EA	200	600
Field Inlet	0	EA	1,500	-
12" RCP	74	LF	42	3,108
15" RCP	743	LF	45	33,435
Tree Filter 4x8	1	EA	9,700	9,700
Tree Filter 6x8	2	EA	13,400	26,800
			SubTotal \$	85,443

HMH

Job No: 4107.00
Date: 02/26/2013

Trumark Companies
Engineer's Preliminary Opinion of Probable Construction Cost

PACE

PUBLIC IMPROVEMENTS

DESCRIPTION	QTY	UNIT	UNIT COST (\$)	COST (\$)
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TRAFFIC SIGNAL

MONTAGUE EXPY & TRADE ZONE BLVD

Pedestrian Signals and Push Buttons

Ped Signal LED Module	3	EA	290	870
Ped. Push button (Type B) and Sign	2	SF	240	480
Ped Signal and Mounting (SP-1 & TP-1)	3	EA	480	1,440
Passive Ped Sensor System (1crosswalk)	1	SF	5,000	5,000
			SubTotal \$	7,790.00

Pull Box

#5 Pull Box with Cover	1	EA	360	360
			SubTotal \$	360.00

Detection

6' Type E Loop	4	EA	600	2,400
Detector Hand Hole	2	SF	200	400
			SubTotal \$	2,800.00

Conduit

2" PVC Sch.40	15	LF	17.95	269
			SubTotal \$	269.25

Conductors and Cables

#14 - #8 Conductors	18,600	EA	0.85	15,810
#6 - #1 Conductors	1,500	SF	2.15	3,225
Loop Cables	20	EA	2.20	44
Remove Conductors & Clean Conduit	530	SF	2.00	1,060
			SubTotal \$	20,139.00

Salvage

Salvage Ped Signal Head	1	EA	110.00	110
			SubTotal \$	110.00

Miscellaneous

Adjust Pull Boxes to New Grade	2	EA	200.00	400
			SubTotal \$	400.00

Total Materials & Labor Cost \$ 31,868.25

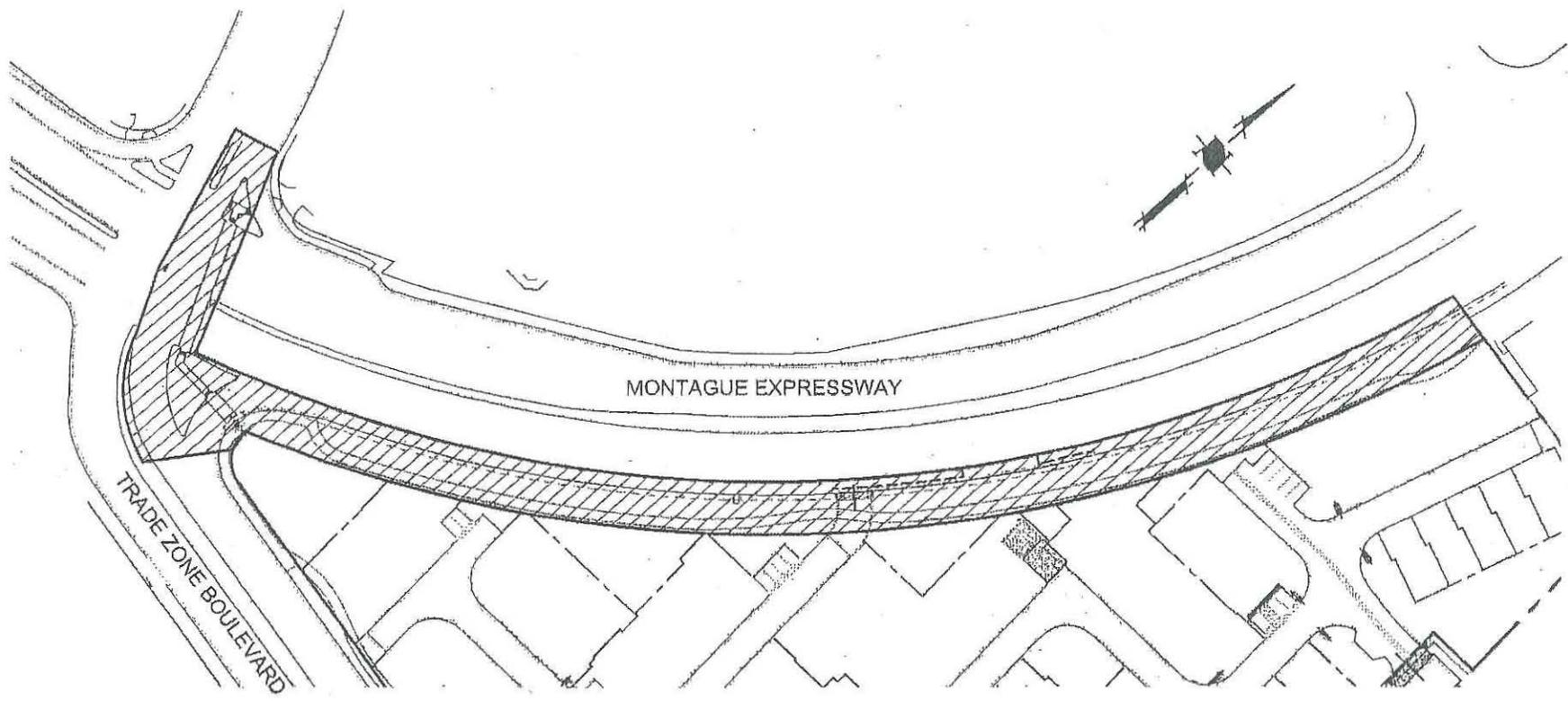
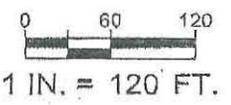
Other Costs

Mobilization	1	EA	10% of Materials	3,186.83
Construction Staging, Traffic Control, Signs	1	SF	20% of Materials	6,373.65
Contingency, Engineering and Admin Costs	1	EA	15% of Materials	4,780.24
			SubTotal \$	14,340.71

Total \$ 46,208.96

LEGEND

IMPROVEMENT
AREA 



4185 BLACKHAWK PLAZA
CIRCLE, SUITE 200
DANVILLE, CA 94506

PACE
MONTAGUE EXPRESSWAY IMPROVEMENT AREA EXHIBIT
HMM#44107.01 | Drawn: JZ | Review: AL | Scale: 1" = 120' | Date: 2013.02.26



**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
BELLINGER FOSTER STEINMETZ LANDSCAPE ARCHITECTURE**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas referred to herein as the ("City"), and Bellinger Foster Steinmetz Landscape Architecture ("Consultant") as of March 19, 2013.

AGREEMENT

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2014, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

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

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

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed Two hundred and Fifty Thousand Dollars (\$250,000) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:
- Serial identification of bills;
 - The beginning and ending dates of the billing period;
 - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
 - At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
 - The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

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

- The Consultant's signature.

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

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

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

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

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

2.6 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed Ten Thousand dollars (\$10,000.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

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

completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

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

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

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

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

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

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

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

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

4.2 **Commercial General and Automobile Liability Insurance.**

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

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

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

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

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

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

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.

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

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

4.4 Requirements for All Policies.

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

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers,

employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

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

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

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

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

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

injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

Section 6. STATUS OF CONSULTANT.

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

Section 7. LEGAL REQUIREMENTS.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

10.9 **Contract Administration.** This Agreement shall be administered by Michael Boitnott who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.**

Any written notice to Consultant shall be sent to:
Mike Bellinger, Principal
425 Pacific St. Suite 201
Monterey, CA 93940

Any written notice to City shall be sent to:
Kathleen Phalen, Acting City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

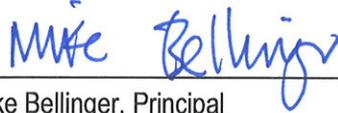
10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Bellinger Foster Steinmetz Landscape Architecture
CONSULTANT

Thomas C Williams, City Manager


Mike Bellinger, Principal

APPROVED AS TO FORM:

Taxpayer Identification Number

30-0427864

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Kathleen Phalen, Acting Public Works Director/City Engineer

APPROVED:

Emma Karlen, Finance Director/Risk Manager

EXHIBIT A

SCOPE OF SERVICES FOR PINEWOOD PARK RENOVATION

General:

Pinewood Park is approximately 9.88 acres and was originally constructed in the mid 1960's with the Starlite Pines Development and was expanded to add the athletic courts segment in the late 1970's. The facility is used as a large neighborhood park with athletic courts, (tennis & basketball) a large turf area for non specified use, three play structures areas, a public restroom, small picnic area, and landscaping surrounding the park.

The renovation project is intended to correct deficiencies at the park to comply with current ADA and play structure requirements. Create a new large and small picnic area to be updated to current standards, addition of small and large group picnic areas, with the group picnic area available for rental use, rehabilitate the irrigation and lighting systems, trim trees and remove any dangerous trees, and install new landscaping. Refer to the Parks Master Plan for vision of park setting.

Within the park is pinewood well and control building, this facility supplies water to the City's distribution system. Vehicular access to the control building for maintenance will needed to maintain without destruction to improvements installed at the park.

CONSULTANT and the CITY recognize the importance of the need to maintain the CONSULTANT's key personnel throughout the entire duration of services, and therefore will conduct their business in a professional manner to schedule and support their personnel to provide the scope of services in a timely and professional manner.

Maintenance for the park is provided by a contractual services agreement, City staff do not provide park maintenance at this site.

Task 1 - Concept Design:

1. Initial Project Design Meeting – CONSULTANT shall meet with CITY staff to review concept design and scope. Review project goals, budget, scope and schedule. Verify regulatory items, approval process and administrative procedures. Clarify CITY preferred materials, equipment and available maintenance resources.
2. Condition assessment of park improvements and landscaping at the park.
3. Prepare preliminary design plans including:
 - a. Preliminary layout of improvements in relation to existing features.
 - b. Preliminary grading plans/strategy for storm water and ADA compliance
 - c. Preliminary planting plans.

- d. Sketches of/ images of proposed site features, lighting and materials.
 - e. Prepare outline of technical specification.
 - f. Incorporate storm water treatment measures consistent with C-3, City of Milpitas NPDES permit, and Milpitas Landscape Ordinance 238.
 - g. Evaluate to determine if the renovation project would fall outside the requirements of a categorical exemption.
 - h. Comply with any and Environmental requirements for the project.
 - i. City Heritage Tree Policy.
 - j. Security and safety lighting.
 - k. The use of cost effective design, materials that require minimal maintenance.
 - l. Identify permits and project approvals that will need to be obtained for each concept.
4. Using program elements and findings from field and information gathering prepare 2 concept plans for the improvements to the park. Each concept plan shall address all regulatory compliant improvements then the balance of the improvements budget can be applied toward betterments to the park.
 5. CONSULTANT shall meet with CITY staff to review issues associated with each of the proposed concepts and identify a preferred alternate.
 6. CONSULTANT shall develop final concept plan graphic and preliminary cost plan for the park within the City's Not to Exceed construction budget of \$1.35 million for Pinewood park improvements. The budget is intended to cover the following improvements
 - Evaluate all existing park trees and perform necessary trimming or removal
 - Correct any park deficiencies for compliance with ADA
 - Evaluate and repair playground equipment to comply with current standards.
 - Large picnic area(s) with shade structures and lighting (for rentals) near Curtis Well
 - Small picnic area(s) with shade structure near Curtis Well
 - Small picnic area
 - Revamp existing turf irrigation
 - Revamp existing lighting, add additional lighting were deficient and add new lighting at new picnic areas
 - Correct lack of irrigation pressure and flow at north end of park by tennis courts
 - Replace existing tennis practice wall w/ PCC
 - Bark and add landscaping at perimeter of park
 - Replace existing tennis practice wall at Robert E. Browne Park w/ PCC
Separate budget for this site (\$200k)
 7. CONSULTANT shall assist CITY Staff in the preparation of a power point presentation for presentation to the PRCRC and City Council for approval of the project Conceptual design and attend when requested by the City.

CONSULTANT shall assist the City and be present at the meetings to answer any questions as requested.

8. CONSULTANT shall with the CITY'S input develop a project schedule for the Design and Construction phases of the Project. The CITY wishes to put the project out to bid for construction in **Fall 2013/Winter 2014**.

Task 2: Field and Document Investigation for Design

1. Geotechnical investigation:
 - a. Collect samples of in-place soil for horticultural soils analysis and provide recommendations for ornamental planting of turf, ground cover, shrubs, new and existing trees and; maintenance during establishment period.
 - b. Complete geotechnical investigation and soils report including recommendations for pavement sections and structures proposed for the project.
2. Field investigation and data collection including review of as-builts, utility plat maps, playground inspection report, arborist report, and any other information available for the project site.
 - a. CITY will provide, but can not guarantee the accuracy of:
 - i. Available as-built plans
 - ii. Utility plat maps
 - iii. Tree survey
 - iv. Playground inspection report
 - b. CONSULTANT to perform:
 - i. Field survey
 1. At grade and below grade utilities
 2. Tree trunk locations
 3. Tree canopy and primary root zone
 4. Existing structures
 5. All hardscape
 6. Data to compile one foot contours
 7. Monuments and Property corners
 - c. CONSULTANT to perform record research along with field data collection to provide a record of survey.
 - d. CONSULTANT shall verify locations and inverts of existing underground utilities, and all "as-built" plans provided by the City.
3. Task 1 & 2 will be performed concurrently

Task 3: Final Design

Objective:

Prepare bid documents, including specifications, drawings, and cost estimates within the CITY's cost plan and conceptual design in compliance with Public Contracts Code for a Public Works Project.

1. Prepare and submit construction plans, specifications and estimates (submittals 50%, 98%, and final design (99%) suitable for building department approval for structures and electrical and ADA site compliance work, a building permit shall be obtained for this project. A 100% set of plans which incorporate all comments from the Building Department will be used for bidding the work. For each phase of design the consultant shall respond to and incorporate the CITY's comments. CONSULTANT shall schedule a minimum of three weeks for City review of each submittal. The 50% and 98% submittals shall include one complete hard copy sets of plans, specifications and calculations. The 99% & 100% submittal shall include three complete hard copy sets of plans, specifications, and calculations stamped by a California licensed professional. All submittals shall also be submitted on CD in AutoCAD and PDF formats. Specifications shall be in MS word format, and cost estimate shall be in MS Excel
2. CONSULTANT shall attend Team Meeting: Present 50%, 98%, 99%, 100% (99% submittal set for the Building Department permitting process) & Construction Documents package to CITY for review, (One team meeting is budgeted and the remaining meeting will be teleconferenced)
3. CONSULTANT shall coordinate and manage sub-consultants throughout Final Design phase.
4. These plans shall be at reasonable scales, but not smaller than 1"=20' for site, and Civil, and 1/4" = 1' for structural plans.
5. CONSULTANT shall be responsible for meeting the requirements of the City Building and Planning departments, for review local and state codes for zoning, building, and CEQA submittal and approval requirements.
6. The CONSULTANT shall design the Project in compliance with latest City, State, and Federal Storm Water Pollution Prevention, Stormwater Treatment Requirements "C3" and Erosion Control guidelines. The CONSULTANT shall provide Erosion Control Plan details, guidelines and technical specification section for the Contractor use in preparing the project SWPPP and compliance with the State NOI requirements if the threshold of disturbed area is exceeded.
7. The CONSULTANT shall prepare Project Plans using the CITY's Standard Title Block to be located at the bottom right of each Plan sheet. (City to provide title block in AutoCAD)
8. Project Specifications shall be prepared using the CITY's standard front end document – Sections A, B, C, D. The CITY also has several Technical Specification Sections (E) which are also standard that may be used on the project. If CONSULTANT uses the CITY provided technical sections the CONSULTANT will be required to stand behind the design. All other technical

- specification sections shall be prepared by the CONSULTANT. The specifications shall be created in conformance with the current industry standard, CSI format. The technical specifications shall be coordinated with the plans and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to the applicable: California Building Code, Title 24, ADA, and all other applicable local, State and Federal codes, regulations, permit requirements, and conditions necessary for issuance of a the necessary Permits. The specifications shall include measurement and payment wording. The CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet. The CONSULTANT shall provide estimated construction costs in the form of the contractor bid proposal format. Unit cost items shall be used whenever possible. The construction schedule shall be specified in working days or calendar days as approved by the CITY.
9. CONSULTANT shall assist the CITY in coordination with utility companies including submittal of all necessary service applications. CONSULTANT shall provide all necessary information requested by utility companies. CONSULTANT shall incorporate all utility company comments into the design. CONSULTANT shall incorporate utility company review and approval times into the overall project schedule.
 10. CONSULTANT shall also prepare all submittals for Building Department permit review and approval as required. CONSULTANT shall respond to all Building Department comments. The CONSULTANT is responsible to submit to the Building as many times as necessary to obtain approval at no additional cost to the City. The Building Department submittal process typically takes 15 working days for each submittal review. Each Building Department submittal requires five wet signed hard copies.
 11. PRCRC and City Council Meetings: CONSULTANT shall assist CITY Staff in the preparation of power point presentations for presentation to the PRCRC and City Council for approval of the project design. CONSULTANT shall budget for two such meetings and presentation preparation, but CONSULTANT will not be required to attend the meeting.
 12. Final plans ready for biding shall be submitted wet signed/stamped hard copy and on compact disk (CD) in AutoCAD and PDF formats.

Task 4: Quality Control/Quality Assurance (QC/QA):

CONSULTANT shall prepare plans, specifications, estimates, calculations, and other documents with the highest level of quality. CONSULTANT shall implement and maintain the following minimum quality control procedures during the preparation of plans, specifications, estimates, calculations and all other documents relating to this project:

- Design and calculations are independently checked, corrected and back checked by the CONSULTANT;
- When different disciplines are involved, means to assure that conflicts and misalignments do not exist;
- QC/QA program shall provide for review and assurance of complete coordination and compatibility between the plans, specifications and estimated quantities;
- QC program shall include field reviews and review of all pertinent materials to assure compatibility of design with existing facilities.

CITY reviews of these documents shall not be considered part of the QC/QA program, but only intended to be for review of scope and to coordinate with other departments, QC/QA, compatibility, workable design and constructability of the design is the CONSULTANT's sole responsibility.

Packages submitted for review by the CITY shall be accompanied by a QA/QC statement signed by a principal within the firm that they have reviewed the package and finds that is in compliance with Task 1&3 of this scope of work.

Task 5: Bidding Support Services:

CITY will be responsible for advertisement of the project. CONSULTANT shall assist CITY during bid solicitation process. CONSULTANT shall provide bid phase services, as requested by the CITY through award of the construction contract including the following; response to bidders' inquiries, preparation of addenda, attend and assist at two pre-bid meetings, evaluation of bids. Upon completion of bidding, CONSULTANT shall prepare a "Conformed" package of plans and specifications revised to incorporate all addenda ready to issue for contract award and construction. CONSULTANT shall submit five signed conformed sets of contract documents hard copies and one electronic copy on CD in Auto CAD, MS Word and PDF formats.

Task 6: Construction Administration Support:

1. CONSULTANT's responsibility to provide Construction observation and project administration duties shall commence with the award of the construction contract and shall terminate at the conclusion of the warranty/guarantee periods for the Contractor's work.
2. CONSULTANT shall advise and consult with the CITY in all matters and shall promptly submit all observations, recommendations, and reports to the CITY.
3. CONSULTANT shall provide technical and construction administration services within professional standards to observe and determine if the CONTRACTOR is in compliance with the intent of the contract documents and the timely completion of the Project, to the extent required in this Scope of Work.

4. CONSULTANT shall attend the Project pre-bid and pre-construction conference and other meetings as specified in project specifications.
5. CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become familiar with and to keep the CITY informed about the progress and quality of the portion of the work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the work, and (3) to endeavor to determine if the work is being performed in a manner such that the work, when fully completed, will be in accordance with the Contract Documents. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
6. CONSULTANT shall attend construction meetings, as scheduled, with the Contractor, or as requested by the CITY. CONSULTANT shall provide commentary to the CITY on all material issues. Construction meetings are anticipated to be held once a week for the first month and every other week after that.
7. CONSULTANT shall keep the CITY informed of its observations of the progress of the Project.
8. CONSULTANT shall promptly report in writing to the CITY any known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT's negligent, intentional, or reckless acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.
9. CONSULTANT shall review and respond to Contractor's Requests for Information (RFI's) and submittals including shop drawings, product data, and samples, for conformance with the design concept expressed in the Project Contract Documents. CONSULTANT shall coordinate its review and response to these documents with the CITY and the Contractor as needed to allow for work to proceed, and be cognizant of the Contractor's progress and schedule. In this regard, CONSULTANT shall work in good faith with the Contractor and the CITY to prioritize the processing of critical path RFI's and submittals and other Contractor submitted documents as outlined in this scope of work. CONSULTANT's review and response to RFI's and submittals shall be done in a timely and expeditious manner. So long as Contractor fully complies with the

Project's approved submittal schedule, CONSULTANT shall review and respond to required submittals with such reasonable promptness as to cause no delay in the Work, while allowing sufficient time to provide adequate review. Generally, such review shall take no more than four (4) working days for RFIs and Ten (10) calendar days for all other submittals, so long as such submittals are timely and complete. CONSULTANT and its subconsultants shall review submittals for completeness and issue any rejections of submittals on incompleteness grounds as soon as professionally possible, but in no event later than five (5) working days. If additional time is required to review and respond to RFI's or submittals due to circumstances beyond CONSULTANT's reasonable control, CONSULTANT shall notify the CITY in writing of the grounds for such delay and request additional review and processing time from the CITY, the approval of which shall not be unreasonably withheld, but such determination shall be based upon the critical path of the subject document and the overall impact to the Contractor's progress. In such cases, CONSULTANT shall make good faith efforts to resolve or remedy the delay in an expeditious manner.

In cases where CONSULTANT's late response is due to CONSULTANT's negligence, intentional misconduct, or reckless conduct, CONSULTANT shall be held liable for that portion of delay damages incurred by the CITY arising from the CONSULTANT's conduct.

10. CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.
11. CONSULTANT shall review requests by the CITY for changes in the work, including adjustments to the contract price or time of completion. CONSULTANT shall provide a recommendation to the CITY in writing.
 - a. CONSULTANT shall review and respond to any Contractor-submitted Change Order within five (5) working days of its receipt.
 - b. CONSULTANT shall assist the CITY in the preparation of Change Orders and Construction Change Directives with all supporting documentation and data as necessary, for the CITY's approval and execution in accordance with the contract documents. Professional services for researching and preparing Change Orders or Construction Change Directives to correct errors and omissions caused by CONSULTANT shall be provided at no additional cost to the CITY.
 - c. CONSULTANT shall identify causes for all Change Orders to the CITY in writing for CITY's review.
 - d. CONSULTANT shall maintain all records relative to changes in the Work.

- e. CONSULTANT shall be responsible for those costs associated with any and all Change Orders and/or delays to the extent caused by negligent, intentional, or reckless errors or omissions in the CONSULTANT's design.
12. CONSULTANT may, after receiving approval from the CITY, reject work that does not conform to the contract documents. Whenever CONSULTANT considers it necessary or advisable for implementation of the intent of the contract documents, CONSULTANT will notify the CITY when consultant feels additional inspection or testing of the work in accordance with the provisions of the contract documents is necessary.
13. CONSULTANT shall review, reports, summaries, instruction books, operational manuals, warranties, and other Contractor provided documents to determine in general, whether or not the Contractor is in compliance with the contract documents.
14. As directed by the CITY, CONSULTANT shall assist the CITY in fulfilling the legal requirements and mandates of third-party regulatory agencies.
15. CONSULTANTS certification for payment shall constitute a representation to the CITY, based on the CONSULTANT's evaluation of the work and on the data comprising the Contractor's Application for Payment, that, to the best of the CONSULTANT's knowledge, information and belief, the work has progressed to the point indicated and that the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.
16. CONSULTANT shall respond to CITY's questions in writing when such questions are necessary to provide clarification to the plans and specifications.
17. CONSULTANT shall generate supplemental drawings and clarifications, as necessary, or as may be requested by the CONTRACTOR or the CITY to clarify the design intent at no additional cost to the CITY.
18. CONSULTANT shall review Notices of Potential Claim and render written decisions on all Notices of Potential Claim, claims, disputes or other matters in question between the CITY and Contractor relating to the execution or progress of the work as provided in the contract documents within five (5) working days or as agreed to by CONSULTANT and CITY.

19. CONSULTANT shall prepare a final punch list of any discovered incomplete and/or unaccepted items of the construction work for the CITY's review and approval. CONSULTANT shall make, with the CITY, a final close-out walk-through of the Project when all punch list items have been corrected in accordance with the requirements of the construction documents.
20. CONSULTANT shall perform a final playground inspection at the completion of the installation of improvements at the Park. The task shall include issuing a correction notice for any items not repaired or replaced to standard and issue a final inspection report.
21. The Construction duration of the project is estimated to take 6 months and a plant establishment period of 120 days would follow initial acceptance of the project by the City Council.

Task 7: Record Documents and Project Closeout

1. CONSULTANT shall review all Contractor supplied operation and maintenance manuals, and warranties.
2. CONSULTANT shall maintain up to date record drawings throughout project construction. Prior to acceptance of the Project by the City, CONSULTANT shall review for accuracy and completeness the Contractor's as-built drawings and specifications, and shall return them for Contractor revision if they are not accurate and complete. CONSULTANT shall incorporate all changes shown on the Contractor's As-Built Drawings, executed RFI's, submittals, and Contract Change Orders from the Conformed set into a final Record Drawing set. CONSULTANT shall also draft and initial the official Record Drawings and submit both a hard copy on Mylar and an electronic copy in the latest AutoCAD format, PDF and TIF on digital video disc (DVD) to the CITY within 25 days of receipt of completed Contractor red line drawings.
3. Prior to the expiration of each of the Contractor's warranties and guarantees, CONSULTANT shall perform a careful review of the work subject to each warranty and guarantee. CONSULTANT shall immediately report any discovered defective materials or workmanship to the CITY so that the CITY may make timely demand to the Contractor to repair the defects.
4. CONSULTANT shall meet with the CITY or the CITY's Designated Representative promptly after Substantial Completion to review the need for facility operation services.
5. Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

Task 8: Additional Services

1. The City will provide written direction and authorization prior to beginning any additional services.

EXHIBIT B

COMPENSATION SCHEDULE

Task	BFS	RJA	Aurum	Pacific Geotechnical Engineering	Arborist	Playground Inspection	Environmental
1	\$12,377	\$5,800	\$1,900		\$6,700	\$1,500	\$1,000
2	\$1,496	\$28,810	\$2,500	\$8,505			
3	\$76,497	\$5,000	\$4,500				
4	\$4,290	\$650	\$650				
5	\$3,476	\$1,560	\$650				
6	\$23,540	\$3,120	\$1,900			\$1,500	
7	\$7,062	\$650	\$650				
10% Admin	0	\$4,559	\$1,275	\$851	\$670	\$300	\$100
Total	\$128,738	\$50,149	\$14,025	\$9,356	\$7,370	\$3,300	\$1,100

Sub-total	\$214,038
Reimbursable	\$10,000
SWPPP Allowance	\$10,000
Additional Services	\$15,962
Total	\$250,000

Bellinger Foster Steinmetz Architecture shall receive a 10% markup on services provided by sub consultants and a 10% markup on printing, reproduction, and delivery services.

EXHIBIT C
INSURANCE DOCUMENTS

EXHIBIT E
Project Schedule

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	450-2970	\$ 25,000	450-423-4873	\$ 25,000

Explain the reason for the budget change:

Background: On December 6, 2011, the City Council approved purchase of a new Vactor sewer cleaning truck. Staff received the new Vactor this winter, but now recommends adding a telescoping boom to improve the Vactor's utility and efficiency in accessing sewer manholes and other drainage facilities located off the roadway. Owen Equipment Sales, the sole authorized Vactor dealer in Northern California, has submitted an estimate of \$22,500 to install the telescoping boom, including parts, labor, and sale tax. Staff recommends approving a contingency of \$2,500 for this purchase to allow for payment of any unforeseen parts or labor costs.

Fiscal Impact: A budget appropriation in the amount of \$25,000 from the Sewer Fund (450) into the Public Works Utilities Budget (423) is needed for this purchase.

Recommendations: Approve purchase of telescoping boom for the Vactor sewer truck for the amount not to exceed \$25,000, and approve a budget appropriation.

Check if City Council Approval required.

Meeting Date: March 19, 2013

Requested by:	Kathleen Phalen, Public Works Department	Date: March 8, 2013
Reviewed by:	Finance Director: <i>Horn Zeng for E.K.</i>	Date: <i>3/11/2013</i>
Approved by:	City Manager:	Date:

Date approved by City Council, if required:

Confirmed by: