

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING INITIAL ACCEPTANCE, REDUCING PERFORMANCE BOND AND ACCEPTING FEE TITLE TO CERANO PARK FOR FAIRFIELD (CERANO) PROJECT, PROJECT NO. 3170

WHEREAS, the City Council approved a subdivision improvement agreement on August 18, 2009, and as amended on May 17, 2011, between the City of Milpitas, a municipal corporation of the State of California, and Fairfield Murphy Road LLC, a Delaware limited liability company (“Developer”) for Tract No. 10019, Lot 1, Project No. 3170 (“Cerano Project”); and

WHEREAS, Developer, as Principal, and Bank of America, as Surety, executed certain Letters of Credit Nos. 3124753, 3124754 and 3124755 conditioned upon the faithful performance of the provisions of the improvement agreement and upon the faithful performance of all improvement work required thereunder; and

WHEREAS, the City Engineer of the City of Milpitas has recommended initial acceptance of the improvements as completed in accordance with the approved plans and specifications, and in accordance with the inspection of the City Engineer; and

WHEREAS, the Offer of Dedication for fee title of the Cerano Park site was recorded in the Official Records of Santa Clara County on May 14, 2010, as Document No. 20712597, pursuant to California Government Code Section 7050 and shall be accepted by the City Council by resolution; and

WHEREAS, the park improvements have been completed and fee title of the Cerano Park site is now ready for acceptance by the City Council of the City of Milpitas.

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

1. The City Council 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 the subdivision improvements installed as part of the Cerano Project, Tract No. 10019, Project No. 3170, as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer of the City of Milpitas. The penal sum of the faithful performance letters of credit securing the improvements may be reduced to the sum of \$440,000, upon request of Principal and Surety, with the penal sum as reduced to apply from the date of completion and acceptance of the improvements and to extend for the balance of the term of the bond, provided that the term shall not be less than one year. Nothing herein contained shall in any way be deemed to be a waiver, release or relinquish by City of any obligations imposed upon the Developer or its surety or sureties, by law or by the above-referenced subdivision improvement agreement, save and except as expressly set forth herein.
3. The Offer of Dedication recorded in the Official Records of Santa Clara County on May 14, 2010, as Document No. 20712597, pursuant to California Government Code Section 7050 is hereby accepted by this Resolution and the City of Milpitas shall have fee title of the Cerano Park site as of the date of this Resolution.

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, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	320-2940	\$ 361,776	320-951-4800	\$ 361,776

Explain the reason for the budget change:

Background: City Council on August 18, 2009 approved the subdivision improvement agreement and on May 17, 2011 approved the amendment to the subdivision improvement agreement for the Cerano project located at 501 Murphy Ranch Road. The agreement is for the construction of public improvements related to the subject project consisting of: utility connections to City facilities (potable water, recycled water, sanitary sewer and storm drain), Bellew pump Station improvements-conversion of diesel engines to electric motors and diesel generator, construction of Cerano Park with tennis court, basketball court, restroom, playground equipment, access to Coyote Creek levee trail, and traffic signal improvements at Tasman and McCarthy intersection-installation of new 5 section heads to facilitate southbound right turns, and installation of landscaped median at Murphy Ranch Road. These public improvements valued at approximately \$4, 400,000.00 have been completed by the developer per the approved improvement plans. The work is, therefore, now ready for initial acceptance in accordance with the improvement agreement. The developer's security may be reduced to \$440,000.00, which is 10% of the contract amount. In addition, the offer of fee title and easement for Cerano Park by the developer can now be formalized with the acceptance of the improvements as indicated in the recorded offer of dedication and in the proposed resolution. The developer has also provided the necessary supporting documents for reimbursement of the agreed park improvements. Staff had reviewed and agreed with the independent auditor's report to reimburse the developer in the amount of \$361,776. There is sufficient money in the park in lieu fee fund, which was paid by William Lyon Homes (the subsequent developer for the 2nd phase of the original development by Fairfield) for the budget appropriation to reimburse Fairfield.

Fiscal Impact: A budget appropriation in the amount \$361,776 is required for the reimbursement from the Park In Lieu Fee. The reimbursement amount was previously collected from the adjacent William Lyons development.

Recommendation:

1. Adopt resolution granting initial acceptance and authorizing reduction in penal sum of subdivision improvement security by Fairfield subject to a one-year warranty period and reduction of the faithful performance security to \$440,000
2. Accept the fee title and easement interest by Fairfield for Cerano Park.
3. Authorize budget appropriation in the amount \$361,776 from the park funds for the reimbursement to the developer.

Check if City Council Approval required. Meeting Date: August 6, 2013

Requested by:	Department Head:	Date: July 18, 2013
Reviewed by:	Finance Director: <i>M C Kue</i>	Date: 7/28/13
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by: