



**JOINT MEETING OF THE
MILPITAS CITY COUNCIL AND
MILPITAS HOUSING AUTHORITY
AGENDA
TUESDAY, SEPTEMBER 3, 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**
- CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to California Government Code Section 54957.6. City Negotiator: Carmen Valdez Employee Groups: 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 Montano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – August 20, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – September 2013**
- VIII. PRESENTATIONS**
- Proclaim “*National Preparedness Month*” for the month of September
 - Recognize Milpitas Youth Soccer League 10-Year Anniversary
- IX. PUBLIC FORUM**
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- Members of the audience are invited to address the Council on any subject not on tonight’s agenda. Speakers must come to the podium, state their name and city of residence for the Clerk’s record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.
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- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**
- 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. UNFINISHED BUSINESS

1. **Receive Update on Strategic Plan Effort and Authorize Phases II and III of the Strategic Planning Work Program (Staff Contact: Tom Williams, 408-586-3050)**
- * 2. **Receive the August 2013 Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**

XV. REPORT OF MAYOR

- * 3. **Consider Mayor's Recommendations for Appointments and Re-Appointments to Two Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

XVI. NEW BUSINESS

- * 4. **Approve the Accounts Receivable Write-offs for the Fiscal Year Ended June 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)**
- * 5. **Approve Fiscal Year 2012-13 Year End Budget Adjustments (Staff Contact: Emma Karlen, 408-586-3145)**

XVII. ORDINANCE

6. **Consider Amendment to Bingo Ordinance Increasing Maximum Payout from \$250 to \$500 per Game (Staff Contact: Michael Ogaz, 408-586-3040)**

XVIII. RESOLUTIONS

- * 7. **Adopt a Resolution Rescinding Resolution No. 5305 and Appointing Certain Employees to the Association of Bay Area Governments Pooled Liability Assurance Network ("ABAG PLAN") Board of Directors (Staff Contact: Emma Karlen, 408-586-3145)**
- * 8. **Adopt a Resolution Establishing the Fair Market Value of an Acre of Land for the Purpose of Calculating Park In-Lieu Fees For Areas Outside the Transit Area and Midtown Specific Plans (Staff Contact: Sheldon Ah Sing, 408-586-3278)**
- * 9. **Approve a Site Development Permit to Replace a Concrete Tiled Patio Deck, Install a 397 sq. ft. Patio Cover, Retaining Walls, 6-Foot Wooden/Wire Mesh Fence and Landscaping to a Single-Family Residence at 1800 Pinehurst Court (Staff Contact: Cindy Hom, 408-586-3284)**

XIX. CONTRACTS

- * 10. **Approve an Agreement with BFGC Architects Planners, Inc. for Design of the Milpitas Sports Center Facility Improvements, Project No. 3408 (Staff Contact: Steve Erickson, 408-586-3301)**
- * 11. **Approve an Agreement with Mei Wan doing business as Center Stage Performing Arts (Staff Contact: Dale Flunoy, 408-586-3228)**
- * 12. **Authorize the City Manager to Execute an Agreement with PredPol Inc. for Predictive Policing Software for the Not-To-Exceed Annual Price of \$12,500 for a Total Three Year Contract Value of \$37,500 (Staff Contact: Chris Schroeder, 408-586-3161)**
- * 13. **Approve Request from the Milpitas Chamber of Commerce for a Short Term Loan in the Amount of \$20,000 for the International BBQ and Festival scheduled for September 28-29, 2013 (Staff Contact: Tom Williams, 408-586-3050)**

XX. ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.

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

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

Public Art Committee (Alliance for the Arts member)

Community Advisory Commission (alternate)

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

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at (408) 586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings.

AGENDA REPORTS

XIV. UNFINISHED BUSINESS

1. **Receive Update on Strategic Plan Effort and Authorize Phases II and III of the Strategic Planning Work Program (Staff Contact: Tom Williams, 408-586-3050)**

Background: On June 4, 2013, the City Council received an overview of the citywide Strategic Planning Process from the City Manager, and Mr. Shawn Spano, PhD, President and Senior Consultant with the Public Dialogue Consortium (PDC – www.publicdialogue.com) and a faculty member at San Jose State University. City of Milpitas City Council approved the recommended Strategic Plan work program and the services of Mr. Spano and PDC to start the citywide strategic planning. The planning process was approved in four Phases.

Phase 1 - Getting Started has been completed and staff seeks approval from the City Council to commence with Phases II and III. These two phases are described in the scope of work (in Council's agenda packet) and provide for the main component of the strategic plan effort including community outreach and community participation, employee engagement teams (officially termed "Go Teams") developing Mission, Values, Goals, Objectives as well as the planning elements and metrics for implementation.

The overall Strategic Plan is a necessary process, planning and implementation tool to set a new course for the City and to strengthen and improve the organization its service delivery by identifying what the City collectively wants to accomplish.

The consulting team met with City Councilmembers individually with the purpose of eliciting perspectives, remarks, opinions, and ideas in drawing up the City's Strategic Planning Process. A planning meeting with the executive team also took place on June 28, 2013. The Management Team meeting established purposes to guide them through this strategic planning process. The outcome of these meetings provided the basis for the strategic plan process and baseline elements through a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis.

At the September 3, 2013 City Council meeting, the consulting team will brief the City Council on the outcome of Phase I and discuss both Phase II (Vision, Mission, and Values) and Phase III (Strategic Goals and Objectives) work programs.

This item provides for the overall plan process implementation, whereby the team committed to providing updates after each phase. There will be briefings and "check-in" points with the City Council to keep decision makers and leaders informed of the progress, discuss next steps and seek direction or changes, as this process is fluid and dynamic.

Fiscal Impact: None. Funding for the Strategic Plan was approved and included in the FY 2013-14 City budget from the City Manager's Department.

Recommendations:

1. Receive update report on the strategic planning effort - Phase I.
2. Approve Phases II and III of Strategic Planning to move forward with the various engagement activities in order to develop and draft Strategic Goals and Objectives, which will be presented at a future Council meeting.

* 2. **Receive the August 2013 Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: From July 22 through August 18, 2013, the Bay Area Air Quality Management District (BAAQMD) received twelve odor complaints originating in Milpitas. Nine complaints identified a garbage-related odor, one identified a sewage-related odor, and two did not identify

an odor source. As of the last Council update, the City received twenty-nine reported complaints via City's odor reporting website.

Fiscal Impact: None.

Recommendation: Receive the August odor report.

XV. REPORT OF MAYOR

* **3. Consider Mayor's Recommendations for Appointments and Re-Appointments to Three Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the following residents be appointed or re-appointed to Milpitas Commissions as follows:

Youth Advisory Commission:

Re-appoint Monica La as a regular member to a term that will expire in September 2014.

Re-appoint Cindy Wang as a regular member to a term that will expire in September 2014.

Re-appoint Sabrina Leon as a regular member to a term that will expire in September 2014.

Appoint Sahil Hansalia (current Alternate No. 1) as a regular member to a term that will expire in September 2014.

Appoint Veronica Wang (current Alternate No. 2) as a regular member to a term that will expire in September 2014.

Appoint Arjun Goyal (current Alternate No. 3) as a regular member to a term that will expire in September 2014.

Appoint Raveena Chahal (current Alternate No. 4) as Alternate No. 1 to a term that will expire in September 2014.

Public Art Committee:

Newly appoint Christina Driggers as a general member to a term that will expire in October 2014.

Bicycle Pedestrian Advisory Commission:

Re-appoint Christine Sanchez as a regular member to a term that will expire in August 2016.

Recommendation: Receive Mayor's recommendations and move to approve appointments and re-appointments to three Milpitas Commissions.

XVI. NEW BUSINESS

* **4. Approve the Accounts Receivable Write-offs for the Fiscal Year Ended June 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)**

Background: Two lists of accounts receivable are provided for the City Council's review (in agenda packet): one for utility accounts, and the other for non-utility accounts that have been outstanding for more than 12 months and remain unpaid. When the invoices were first sent to the customers, normal accounting procedures required staff to record accounts receivable and revenues initially as the expectation is that the City would be able to collect the funds within a short period of time. However, when accounts receivable have been outstanding for more than a year and, after all the currently available collection methods have been exhausted, it is necessary to write off these accounts so as not to overstate the City's assets.

The lists provided identify each account by the category of invoice, payee name and amount. It should be noted that during this two year period, from January 2010 through June 30, 2012, the City achieved an overall collection rate of 99.7%. The proposed write-offs total amount of

\$122,084.46 is approximately 0.3% of all the amounts invoiced during the same period. The following table shows the write-off rate by invoice category.

	Invoiced amounts	Proposed write-off amounts	% of invoiced amt
Utility accounts & Backflow Device Testing	\$ 28,606,518	\$ 49,045	0.2%
CIP funding reimbursement	N/A	\$39,970	N/A, isolated incident
Private development jobs	\$2,636,935	\$12,728	0.5%
Fire Annual Permits	\$525,597	\$4,719	0.9%
Police False Alarms	\$86,200	\$5,269	6.1%
Animal Violation regulation	\$26,312	\$1,225	4.7%
Neighborhood Beautification Ordinance Violations	\$38,756	\$956	2.5%
Public Works Cost Recovery	\$165,078	\$3,317	2.0%
Recreation Fees	\$4,415,151	\$4,386	0.1%
Misc. other	0	\$469	N/A
Total	\$ 36,500,547	\$122,084	0.3%

Fiscal Impact: Write-off of \$122,084 from the outstanding accounts receivable will reduce the fund balances of the following funds:

General Fund: \$33,069
 Utility Funds: \$49,045
 Street CIP Fund: \$39,970

Recommendation: Approve the Accounts Receivable Write-off in total of \$122,084.46 for the fiscal year ended June 30, 2013.

* **5. Approve Fiscal Year 2012-13 Year End Budget Adjustments (Staff Contact: Emma Karlen, 408-586-3145)**

Background: Finance staff is in the process of closing the City revenue and expenditures accounts for the fiscal Year 2012-13. To maintain conformity with the City’s budgeting policies and to prepare for the annual external audit, year-end budget adjustments are necessary to address items that were not known at the time the FY 2012-13 budget was developed. All funds, departments and project budgets have been reviewed to determine necessary adjustments.

Detail for each budget adjustment item is described below.

Increase the budget appropriations for **Fire Department** by \$426,602. The Fire Department incurred more overtime expenditure than anticipated in the budget. The source of funding will be from the General Fund.

Increase the budget appropriations for **Planning and Neighborhood Services Department** and **Building Department** by \$121,724 and \$5,366 respectively. The increased budget amounts are related to Community Development Block Grants (CDBG) administration costs and increased CDBG grants provided to the community in FY 2012-13. Actual grants provided to the community were more than anticipated in the budget. These administration costs and grants will be fully reimbursable by the U.S. Department of Housing and Urban Development.

Increase the budget appropriations for **Planning and Neighborhood Services Department** by \$178,840. The increased budget amount is related to increase housing rehab loans provided to

community in FY 2012-13. The housing rehab loans will be fully reimbursable by the U.S. Department of Housing and Urban Development.

Increase the budget appropriations for **Planning and Neighborhood Services and Non-departmental budget** by \$4,681 and \$183,057 respectively. The increased budget amounts are related to Housing Authority administration costs and write down of the sales price of six affordable units owned by the Housing Authority. Three of the housing units were previously authorized by the Agency Board to convert from moderate income housing units to low income housing units.

Increase the budget appropriation of the **Non-departmental budget by \$28,004** due to replacement of a police vehicle that was damaged in an accident. The City received full reimbursement from ABAG PLAN through its property insurance coverage. The funds were received and deposited in the Equipment Replacement Fund in FY 2011-12. The vehicle purchased in FY 2012-13 was omitted from the FY 2012-13 capital outlay budget requests.

Increase the budget appropriations of the **Non-departmental budget by \$39,970**. The budget adjustment is related to Project No. 4047 Dixon Landing Road/ I-880 Interchange. The project budget was about \$12.6 million and was funded by multiple funding sources, including RDA, development fees, grants, and reimbursements. PG&E reimbursements were one of the funding sources. However, during the construction of this project, PG&E filed for bankruptcy and the City was unable to collect a portion of the reimbursements from PG&E. This item was on the Accounts Receivable write off list. Funding is required from the Street Improvement Fund to make up the difference.

Transfer \$171,000 from the **Equipment Replacement Fund to the Information Technology Replacement Fund**. In FY 2012-13, the City replaced its telephone system and other technological equipment. The Information Technology Replacement Fund did not have sufficient funding for these purposes, as the City has not maintained its funding in the last few years. Effective in FY 2013-14, the revised Fiscal Policies authorized an annual funding in the amount of \$300,000 for technological equipment replacement.

Fiscal Impact: Budget adjustments reduce the fund balances of various funds as follows:

\$426,602	General Fund
\$187,738	Housing Authority Fund
\$ 39,970	Street Improvement Fund
\$199,004	Equipment Replacement Fund

Budget adjustments related to the Community Development Block Grants and loans will be reimbursed by the U.S. Department of Housing and Urban Development. A Budget Change Form identifying the appropriations is included with the agenda packet materials.

Recommendation: That the Milpitas City Council and the Milpitas Housing Authority approve Fiscal Year 2012-13 year-end budget appropriations as itemized on the budget change form.

XVII. ORDINANCE

6. Consider Amendment to Bingo Ordinance Increasing Maximum Payout from \$250 to \$500 per Game (Staff Contact: Michael Ogaz, 408-586-3040)

Background: On August 6, 2013, members of the public from a local church requested the City Council consider amending the Milpitas Municipal Code to increase the maximum total value of payout from two hundred fifty dollars (\$250) to five hundred dollars (\$500) per Bingo game. Mayor Esteves directed staff to place this matter on the agenda for City Council consideration at a future Council meeting.

The City of Milpitas allows the operation of Bingo games within the City as long as the games are conducted in accordance with State law (California Penal Code §326.5) and Chapter III-7 of the Milpitas Municipal Code (Bingo Ordinance). State law was recently amended to increase the maximum total value of prizes which may be awarded during the conduct of any one Bingo game, whether in cash or in kind or both, to five hundred dollars (\$500). Under the City's current regulations for Bingo, the City allows a maximum payout of two hundred fifty dollars (\$250) per game. Changes to the City's Bingo Ordinance would make the maximum amount which may be awarded for each Bingo game conducted in Milpitas consistent with the maximum amount permitted under State law.

Fiscal Impact: None.

Recommendation:

1. City Attorney will read aloud the title of Ordinance No. 198.4.
2. Move to waive the first reading beyond the title of Ordinance No. 198.4.
3. Move to introduce Ordinance No. 198.4 amending Section III-7-13.02 of the Milpitas Municipal Code to increase the maximum prize value payout for each Bingo game from \$250 to \$500 as authorized under California Penal Code Section 326.5.

XVIII. RESOLUTIONS

- * **7. Adopt a Resolution Rescinding Resolution No. 5305 and Appointing Certain Employees to the Association of Bay Area Governments Pooled Liability Assurance Network ("ABAG PLAN") Board of Directors (Staff Contact: Emma Karlen, 408-586-3145)**

Background: The City of Milpitas has participated in the ABAG PLAN since 1986. ABAG PLAN is a joint risk sharing insurance program that provides general liability coverage among various member cities. The PLAN is governed by a Board of Directors consisting of one representative from each member agency. Resolution No. 5305 of the City of Milpitas, adopted in 1986, appointed the Assistant City Manager and the Director of Financial Services as the alternate to serve as the City's appointee to the Board of Directors of ABAG PLAN.

Due to personnel changes, staff recommends that City Council rescind Resolution No. 5305 and adopt a new resolution appointing the Director of Financial Services and the Assistant City Attorney as the alternate to serve as City appointees to the Board of Directors of ABAG PLAN.

Fiscal Impact: None.

Recommendation: Adopt a resolution rescinding Resolution No. 5305, and appointing the Director of Financial Services and Assistant City Attorney (alternate) to the Association of Bay Area Government Pooled Liability Assurance Network (ABAG PLAN) Board of Directors.

- * **8. Adopt a Resolution Establishing the Fair Market Value of an Acre of Land for the Purpose of Calculating Park In-Lieu Fees For Areas Outside the Transit Area and Midtown Specific Plans (Staff Contact: Sheldon Ah Sing, 408-586-3278)**

Background: The City requires dedication of parkland, payment of park in-lieu fees, or a combination thereof from developers to help mitigate the impact of new residential development. If the City requires a developer to pay a fee in lieu of parkland dedication, the amount of the in-lieu fee is based, in part, by current Milpitas real estate value that is updated annually based on a fair market value appraisal. Because property values are significantly different outside of the City's two specific plan areas, the City maintains a separate park in-lieu fee for development outside those plan areas. The last valuation for the two specific plan areas were approved by the City Council in December 2012 and the current valuation for areas outside the two specific plan areas was completed in 2011.

The appraisal firm Smith & Associates is under contract to provide an annual evaluation of the average value of land within the City for use in calculating park in-lieu fees for new residential projects. According to the City's Subdivision Ordinance, where City requires payment of a fee in lieu of park dedication, the amount of the fee is based upon the fair market value determined at the time of filing of a final subdivision map. Pursuant to the City's Subdivision Ordinance, the fair market value is determined by the City Council on a fiscal year basis. At any time, the City Council may adjust the fair market value determination for an acre of land in the City in order to more accurately reflect actual real estate market conditions. If a sub-divider objects to the fair market value established by the City Council, the sub-divider may obtain its own appraisal for the City Council review and approval or the City and sub-divider may agree on a fair market value.

According to the Smith & Associates appraisal report dated July 15, 2013, the fair market value of land in the City of Milpitas outside of the two specific plan areas is \$51 per square foot or \$2,221,560 per acre. There is a slight increase from the last valuation of \$47 per square foot and \$2,047,320 per acre. The increase is due to the increase in land value in the City since the past valuation.

Fiscal Impact: None.

Recommendation: Adopt a resolution establishing the fair market value of land in the City of Milpitas outside the Transit Area Specific Plan and Midtown Specific Plan to be \$51 per square foot and \$2,221,560 per acre for the purpose of calculating park in-lieu fees, effective on September 3, 2013.

- * 9. **Approve a Site Development Permit to Replace a Concrete Tiled Patio Deck, Install a 397 sq. ft. Patio Cover, Retaining Walls, 6-Foot Wooden/Wire Mesh Fence and Landscaping to a Single-Family Residence at 1800 Pinehurst Court (Staff Contact: Cindy Hom, 408-586-3284)**

Background: On August 14, 2013, the Planning Commission adopted a resolution recommending the City Council approve a Site Development Permit to allow renovation of an existing patio deck, construction of a new 397 square foot outdoor patio cover, and installation of retaining walls, a 6-foot tall wooden wire mesh fence, and new landscaping to an existing hillside residence at 1800 Pinehurst Ct (APN 29-53-0007). A more detailed description of the project is provided in the Planning Commission staff report (provided in the Council's agenda packet). The project is consistent with the General Plan, Zoning Ordinance and site and architectural design guidelines for hillside development. The project is also categorically exempt from further environmental review pursuant to Section 15303 New Construction or Conversion of Small Structures of the Guidelines for the California Environmental Quality Act (CEQA).

Fiscal Impact: None.

Recommendation: Adopt a resolution approving Site Development Permit No. SD13-0006, subject to conditions of approval, for the renovation of an existing patio deck, construction of a new 397 square foot outdoor patio cover, installation of retaining walls, six (6) foot wooden wire mesh fence, and new landscaping to an existing hillside single family residence located at 1800 Pinehurst Court.

XIX. CONTRACTS

- * 10. **Approve an Agreement with BFGC Architects Planners, Inc. for Design of the Milpitas Sports Center Facility Improvements, Project No. 3408 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The Milpitas Sports Center Facility Improvements, Project No. 3408, is included in the approved Capital Improvement Program. The work involves renovation of the men's and women's locker rooms including: repair of damage caused by leaking showers, reconstruction of the showers to provide for adequate drainage, update ventilation and lighting, replace flooring with a lower maintenance system, patch and paint entire locker room, repair sanitary sewer line, correct deficiencies to provide for compliance with Americans with Disabilities Act (ADA) requirements and other code-related upgrades.

Through the City's consultant selection process, BFGC Architects Planners, Inc. dba IBI Group Architecture Planning has been selected to provide the design services for the Milpitas Sports Center Facility Improvements. The term of the agreement is from September 3, 2013 to December 30, 2015, in the amount not to exceed \$62,000. The consultant will be required to complete the design for the project, environmental clearance, and assist in the construction bidding and management. Staff negotiated a scope and fee for these services not to exceed \$62,000, which is considered reasonable for the work. IBI Group has conducted similar work for the Milpitas Unified School District, City of San Jose, City of Santa Clara, and City of Fremont, and its work product was deemed satisfactory.

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

Recommendation: Approve an agreement with BFGC Architects Planners, Inc. doing business as IBI Group Architecture Planning for a term from September 3, 2013 to December 15, 2015, in the amount of \$62,000 for design and construction management services for the Milpitas Sports Center Facility Improvement, Project No. 3408.

- * 11. **Approve an Agreement with Mei Wan doing business as Center Stage Performing Arts (Staff Contact: Dale Flunoy, 408-586-3228)**

Background: On March 20, 2012, the City Council directed Recreation Services staff to continue to offer a children's theatre program in Milpitas through contract services. Recreation has been working with Mei Wan doing business as Center Stage Performing Arts to provide a quality children's theatre program for the 2013-14 season. Her recent agreement with the City expired on August 26, 2013. The new agreement sets a one year term from August 27, 2013 to August 26, 2014 covering the theatre season, including four productions where approximately 40 to 80 children may be cast in any single production. The proposed agreement is consistent with the terms and conditions of the previous contract.

City staff will continue to help market the children's theatre program and provide space at the Milpitas Community Center at no cost for audition, rehearsal, and performance. Staff also proposes to continue to waive the insurance requirements to help offset costs of the theatre program. Center Stage Performing Arts will be responsible for all ticket and concession sales and all revenues from such sales will go to Center Stage Performing Arts to offset costs of the program. Additionally, Center Stage will receive 90% of the program cast fees collected by City, which is approximately \$26,000 for the current contract.

Fiscal Impact: None.

Recommendation: Approve the agreement with Mei Wan, an individual doing business as Center Stage Performing Arts, for children's theatre program for a one year term from August 27, 2013 to August 26, 2014, with a payment term of 90% of the City-collected program cast fees.

- * 12. **Authorize the City Manager to Execute an Agreement with PredPol Inc. for Predictive Policing Software for the Not-To-Exceed Annual Price of \$12,500 for a Total Three Year Contract Value of \$37,500 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: PredPol Incorporated has developed software that uses historical data to predict the likely locations and time frames of future crimes. This web-based software was developed by mathematicians and social scientists and will predict the likely locations of crimes to an area as small as 500 feet by 500 feet. The Police Department will use the PredPol software as a tool to place officers in areas that may experience crimes, such as burglaries and thefts, so that officers can better deter crime and take enforcement action, when appropriate. The PredPol subscription fee is \$12,500 per year for three years, for a total contract value of \$37,500. The contract can be cancelled at the end of the first year with ninety days notice before the anniversary date, if the City is unsatisfied with the product. The software is proprietary and patent pending, the first of its kind available on the commercial market. Staff therefore requests, pursuant to Municipal Code Section I-2-3.09, that the Council approve PredPol Predictive Policing software as a sole source purchase.

Fiscal Impact: None. The first year subscription fee will be paid using 2013 Citizen Options for Public Safety (COPS) grant funds and the Police Department will seek additional grant funding for future years.

Recommendation: Authorize the City Manager to execute an agreement with PredPol Inc. for Predictive Policing software for the not-to-exceed annual price of \$12,500 for a total three year contract value of \$37,500.

- * 13. **Approve Request from the Milpitas Chamber of Commerce for a Short Term Loan in the Amount of \$20,000 for the International BBQ and Festival scheduled for September 28-29, 2013 (Staff Contact: Tom Williams, 408-586-3050)**

Background: At the City Council meeting of August 6, 2013, the Milpitas Chamber of Commerce (Chamber) requested a waiver of City fees and staffing costs related to its International BBQ and Festival special event. In lieu of the fee waiver, the Chamber solicited interest from the City to co-sponsor the event which would more closely meet the Chamber's request to publicize the event as not only a Chamber of Commerce event but a larger City event. As a co-sponsor, the City agreed to contribute by providing staff for traffic control and event security, permit inspections, fire and EMS functions as well as a waiver of permit and inspection fees. The total amount of the City's participation is estimated in the amount of \$12,450.00. In return for the City co-sponsoring the event, the Chamber agreed to solicit sponsors, coordinate vendors and payments for booth space, provide the entertainment, food vendors, specialty chefs for the BBQ, augment public safety patrols through private means and provide advertising and marketing for the event.

On Monday, August 26, 2013, the Chamber approached the City with a request for a short term loan for the purpose of organizing the event including payment of front end costs necessary for the event. These costs include but are not limited to equipment rental, stage rental, purchase of materials and supplies, insurance, up front payments to entertainment and some specialty vendors. The total up front cost is between \$25,000-\$30,000 and thus far, the Chamber has raised approximately \$10,000. The short term loan requested of the City would ensure the Chamber has sufficient financial capacity to continue with the event and pay up front commitments to host a successful event.

The proposed loan agreement with all terms is included with the Council agenda packet. In summary, the Chamber agrees to repayment of the full amount by October 9, 2013 (ten days after the event) with no interest or penalty. If payment is not received for thirty days after it is due, an annual interest rate of 2% will accrue to the outstanding loan amount.

Fiscal Impact: Short term depletion of \$20,000 from the City's General Fund reserve account.

Recommendation: Approve the request from the Milpitas Chamber of Commerce for a short term loan of \$20,000 to assist with costs of the International BBQ and Festival scheduled on September 28 and 29, 2013, pursuant to the terms and conditions in the loan agreement.

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 17, 2013 AT 7:00 P.M.**

**ANNOUNCEMENT OF
CONFLICT OF INTEREST
AND CAMPAIGN
CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions and the response to both was none.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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

CONSENT CALENDAR

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

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

- * 3. Fil-Am Fee Waiver Approved fee waiver up to \$1,500 maximum covering Fire and Building City fees related to Fil-Am Association Adobo Festival at Milpitas Sports Center field, scheduled on August 31 and September 1, 2013.
- * 4. St. John the Baptist Catholic Church Fee Waiver Approved fee waiver for St. John the Baptist Catholic Church for Fire and Building inspection fees up to \$1,500 maximum for those City fees related to Autumn Festival at the church on the weekend of September 6, 7, and 8, 2013.
- * 5. Resolution of Final Acceptance Project 3204 Adopted Resolution No. 8287 granting final acceptance of and releasing subdivision improvement bond for Paragon Townhomes, Project No. 3204.
- * 6. Resolution Adopted Resolution No. 8288 approving the City's Annual Investment Policy.
- * 7. Resolution approving Agreements with MEA Adopted Resolution No. 8289 approving Memorandum of Understanding with Milpitas Employees Association (MEA) covering January 1, 2013 through December 31, 2013 and authorizing the City Manager to execute a Side Letter Agreement with MEA regarding the LIUNA National Pension Fund.
- * 8. Resolution for Software Maintenance Contract Adopted Resolution No. 8290 authorizing the City Manager to execute the software maintenance contract renewal with Tritech Software Systems, Inc. from September 1, 2013 to August 31, 2014 in the amount of \$97,765.54.00; and, authorized the City Manager to exercise up to four annual options with annual fee increases based on the national CPI, subject to appropriation of funds and without further City Council approval.
- * 9. Resolution for Staff in Planning Department Adopted Resolution No. 8291 authorizing the addition of one Secretary position and eliminating one Office Specialist position in the Planning & Neighborhood Services.
- *10. Amendment No. 4 with CalRecovery Inc. Approved and authorized the City Manager to execute Amendment No. 4 to the contract with CalRecovery Inc. for solid waste consulting services by increasing compensation in the amount of \$20,000, for a total not-to-exceed \$69,000.
- *11. Amendment No. 5 with Gachina Landscape Approved Amendment No. 5 to the Agreement with Gachina Landscape Management, Inc. for the Civic Center, Library Landscape Maintenance Service increasing the contract total to \$38,221 for year two, and \$36,744 for years three through five for a total contract amount not to exceed \$180,392.
- *12. Amendment No. 8 with Jensen Landscape Approved Amendment No. 8 to the Agreement with Jensen Landscape Services, Inc. for McCarthy Ranch Landscape Maintenance Services, increasing the contract total to

\$261,923 from August 30, 2010 to August 29, 2013 and \$72,879 for each of the remaining two years of the contract.

*13. Payment for Emergency Sewer Line Repair Work

Received a report from the Public Works Director for emergency public works repair to the sewer main on Marylinn Drive. Approved a budget appropriation of \$40,000 from the Sewer Fund to the Public Works operating budget, and authorized staff to pay invoices for emergency repair work to Preston Pipelines and Presidio Systems in an amount not to exceed \$40,000.

*14. Payment to Peelle Tech

Approved renewal of the annual Peelle Technologies Software/Hardware Maintenance Agreement for one year from June 28, 2013 to June 28, 2014 for the not-to-exceed amount of \$23,801.

UNFINISHED BUSINESS

1. Report from Santa Clara VTA Staff on BART Project Progress

City Engineer Jeff Moneda introduced Bernice Alaniz and Leyla Hedayat from Santa Clara Valley Transportation Authority (VTA). Staff from the Silicon Valley Rapid Transit (BART Extension) project provided an overview and current status of the BART 10-mile extension being constructed presently in Milpitas and surrounding communities. VTA staff discussed current activity, stakeholder outreach, aesthetics at the Milpitas station, and information on Residential Noise Insulation Project.

Councilmember Giordano inquired how tall the parking garage was and staff replied six stories with 1,200 spaces. Ms. Giordano complimented the VTA staff, on project progress to date, and not impairing traffic flow while construction was ongoing.

Councilmember Gomez inquired whether VTA had finished acquiring right-of-way and talking to property owners, and response was no, not yet.

Vice Mayor Polanski asked how long Montague would be impacted. Through 2016 was the reply from VTA staff. Vice Mayor gave some input on signs within construction areas, where more and larger ones were needed on roadways.

Mayor Esteves said he was member of the SVRT committee, and had been updated on the project. He asked the representatives to announce contact information for the public to be repeated: the hotline phone number 408-93-4662 was available, along with lots of information on the website www.vta.org/bart. Mayor Esteves commented on access to the new BART Milpitas station which would only be available from the sides of the station, not directly from Montague Expressway.

Mayor Esteves asked for any comments from those in the audience.

Robert Marini, Milpitas resident, spoke about Dixon Landing Road, with a trench and trains going by with traffic stops every half hour. BART would impede traffic further.

Ms. Hedayat responded there were several reasons not to do a grade separate at that location, including cost. Those were fully discussed by the City Council and VTA Board before the at-grade plan was determined.

Motion: to receive a report from Santa Clara VTA staff at the Council meeting on the Bay Area Rapid Transit (BART) Extension Project

Motion/Second: Councilmember Giordano/Councilmember Gomez

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

NEW BUSINESS

Two fee waivers were approved on consent calendar.

2. Agreement with SJB for Milpitas Family Resource Center at former Teen Center

Recreation Supervisor Jaime Chew provided history and background of the First 5 program of Santa Clara County and its relationship with subcontractors SBJ and the Health Trust. The group approached the City of Milpitas about possibly using the former Milpitas Teen Center at the Sports Center Building. First 5 determined it was a good location to establish a Family Resource Center operated by SJB. Staff identified terms of a proposed agreement for lease between First 5 and the City, including lease rates. Total fiscal impact to the City was calculated to be a \$35,370 loss of revenue.

Councilmember Gomez wanted to know more about what services would be provided.

Keith Morales, program manager for First 5/SJB, responded those would be early childhood development-related services offered at the Milpitas Family Resource Center. They would help families get children prepared for school. They planned to develop leadership with parent volunteers. Laura Buzo, program director for SJB, said the Centers in Santa Clara County served all families regardless of income, while primarily targeting those in need of information while raising young children.

Councilmember Gomez asked about the \$16,000 per year cost and if it was budgeted. He asked City staff about the Teen Center site, and locating a third party operator. City staff responded there had been no success in that regard last year.

Vice Mayor Polanski asked what would be the hours of operation of the Center, and the reply was Monday through Friday, from 8:00 AM to 5:30 PM.

Mayor Esteves asked about fiscal impact, and which party would be responsible for repairs and maintenance. The City Attorney noted the agreement stated the City was not obligated to do repairs and that janitorial service was the responsibility of the tenant. The Mayor inquired about recognition of the City by First 5 and SJB, and also for explanation of the parking plan, as he did not want parking to be a problem for the Sports Center. He asked about liability and the City Manager replied about the insurance requirements in the contract.

Vice Mayor Polanski asked if First 5/SJB served Milpitas residents presently, and Mr. Morales replied yes, at the site on E. Trimble in San Jose. The Vice Mayor had concerns about safety and for nearby neighbors walking to the site, since crossing Calaveras Blvd. was dangerous. She wanted to know why First 5 was not operating at school sites and was uncertain that Milpitas schools would not work with the group to meet its goals for children and families. Ms. Polanski did not agree with the proposal to rent the facility for only \$1 per year, while lower rent for non-profits in general could be okay.

Mayor Esteves agreed with the Vice Mayor on several points, especially possible coordination with the school district, for reading and other efforts. The Mayor would like to know feedback from MUSD on this proposal for a Family Resource Center in Milpitas. He asked what were specific project goals for this center in Milpitas, after one or two years. First 5/SJB staff stated their goal was to help 750 families in one year.

Councilmember Gomez thanked First 5/SJB staff for attending the Council meeting and for providing good services for children in the community. He would like to waive the fees as requested, especially when it had been so hard to close the Teen Center last year.

Mayor Esteves commented that the City was not ready to give out facilities at low or no cost. The Council had recently set a policy for donations and fee waivers. The recommended rate for renting the facility was not at non-profit rate (only \$1) and so he cared about fairness to other groups, even while the program was tremendously valuable.

Councilmember Giordano would not support the proposed agreement for three reasons: 1) she had heard that First 5 was involved in political campaigns, 2) she agreed with Vice Mayor Polanski that the location was in a very busy area, and near a swimming pool

facility, and 3) she agreed with Mayor Esteves about not setting a precedent subsidizing non-profit groups, when there were so many requests every year for the limited CDBG (Community Development Block Grant) funds.

Motion: to deny an agreement between City of Milpitas and SJB Child Development Centers commencing on August 20, 2013 and expiring June 30, 2015 for the use of the Milpitas Teen Center facility for a Family Resource Center and write down the rent amount of \$1,361.25 per month (\$.55/sq.ft) to \$1.00/year; plus waive building permit and inspections fees up to \$1,500

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 3
NOES: 1 (Gomez)
ABSENT: 1 (Montano)

RESOLUTIONS

Five Resolutions were adopted on consent calendar.

CONTRACTS

Three Amendments to agreements with the City were approved on consent calendar.

DEMANDS

Two demands for payment were approved on consent calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:05 PM.

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

August 2013						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

October 2013						
S	M	T	W	T	F	S
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27	28	29	30	31		

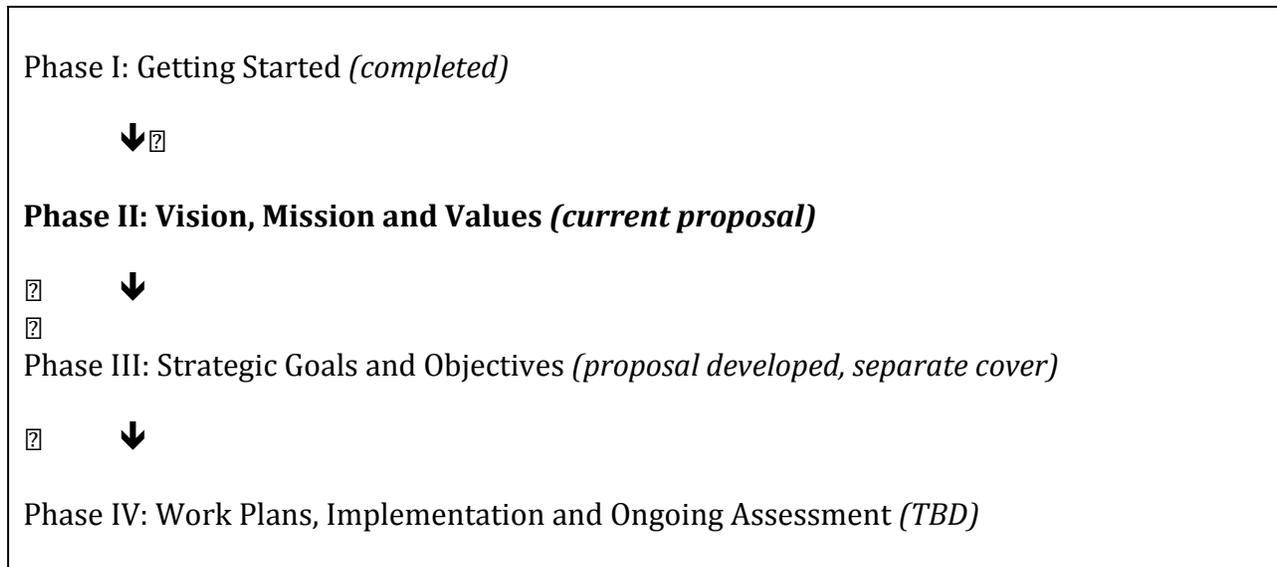
Council Calendar September 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 	3 6:00 PM -Closed Session 7:00 PM -City Council	4 7:30 AM -VTA Northeast Group (JE) 5:30 PM -Veterans Commission Special Meeting (DG) 7:00 PM -Community Advisory Commission (AG)	5 4:30 PM - <u>Special Closed Session meeting of the VTA Board of Directors (JE)</u> 5:30 PM -VTA Board of Directors (JE) 7:00 PM -Bicycle Pedestrian Advisory Commission (AG)	6 8:30 AM -Coyote Flood Protection and Watershed Advisory Committee (CM)	7
8	9 6:00 PM -Economic Development Commission (CM) 7:00 PM -Parks, Recreation & Cultural Resources Commission (AP) <i>(at the Community Center)</i>	10	11 7:00 PM -Planning Commission	12 4:00 PM -Oversight Board (AG) 4:00 PM -VTA Policy Advisory Committee (AG) 4:30 PM -Treatment Plant Advisory Committee (JE) (San Jose) 7:00 PM -Cities Assoc of SCC (JE) 7:00 PM -Youth Advisory Comm. (DG)	13	14
15	16 7:00 PM -Telecommunications Commission (AP) 7:00 PM -Library Advisory Commission (CM)	17 6:00 PM -Closed Session 7:00 PM -City Council	18 5:30 PM -Veterans Commission Special Meeting (DG)	19 12:30 PM -VTA Admin & Finance Committee (JE) 7:00 PM -Bay Area Water Supply Conserv. Agency (AG) (Foster City)	20	21
22	23 6:00 PM -Arts Commission (DG) 7:00 PM -Public Art Committee (DG)	24	25 7:00 PM -Planning Commission	26 7:00 AM -Milpitas Chamber of Commerce Board (DG) 12:00 PM -Terrace Gardens Board of Directors (DG) 6:00 PM -Sister Cities Commission (CM) 7:00 PM -Emergency Preparedness Commission (AP) <i>(at City Hall, 4th Floor Conference Room)</i>	27 9:00 AM -VTA Board of Directors Workshop (JE)	28
29	30					

Proposal for City of Milpitas Strategic Planning Process
Phase II: Vision, Mission and Values

Background

The City of Milpitas secured the services of Shawn Spano, PhD, President and Senior Consultant with the Public Dialogue Consortium (www.publicdialogue.org), to initiate a citywide strategic planning process. As a result, a framework was developed for conducting the strategic planning process in four phases (see diagram below). Phase I: Getting Started was completed in July 2013. The current proposal is for Phase II: Vision, Mission and Values. A separate proposal for Phase III: Strategic Goals and Objectives has also been developed.



Summary of Phase I: Getting Started

This phase was designed to engage City Council and the Executive Management Team in helping to shape the Strategic planning process. Phase I activities included:

- Strategic Plan launch presentations to City employees, City Council and the Executive Management team
- One-on-one interviews with each of the Executive Management Team members
- One-on-one interviews with four City Council members
- An all-day Strategic Planning meeting with the Executive Management Team
- Ten planning meetings with the City Manager and Executive Management Team

Key outcomes accomplished in Phase 1:

- City Council and Executive Management Staff have a shared understanding of the strategic planning process and are, for the most part, invested in it.

- The community groups, organizations and individuals who will be engaged in Phase II were identified
- The employee engagement team members who will convene in Phase II were identified.
- The results of Phase I were used to develop this proposal for Phase II of the project.

Key deliverables from Phase I: Document detailing the four phases of the entire Strategic Planning process; materials (agenda, slides, etc.) and notes for launch presentations; interview protocol for executive Management Team and Council one-on-ones; detailed interview summary from Executive Management Team one-on-ones; materials (agenda, slides, etc.) and summary notes from Executive Management Team detailed; handout describing the Employee Engagement Team process.

Proposal for Phase II: Vision, Mission and Values

The purpose of Phase II is to elicit input from a broad spectrum of Milpitas community members and all of the City employees, and to work with the City Manager, Executive Management Team and City Council to use that input to develop a Vision, Mission and set of underlying Values that will help guide the City and establish a foundation for Phase III: Strategic Goals and Objectives. The primary product of this phase will be a Vision, Mission and Values document that is captured and communicated in a format that is compelling, meaningful and visually appealing (i.e. text and graphics).

A less tangible, though equally important outcome of Phase II results from the process of engaging the community and employees in open and honest communication about the future of Milpitas. Asking stakeholders for their input, while acting authentically to integrate their views into the process, will help create lasting partnerships and trusting relationships. Moreover, we believe that community members and City employees will be more committed to the Strategic Plan and willing to help implement it to the extent that they see themselves involved in developing it.

What follows is an outline of the tasks and activities proposed for Phase II, along with a list of deliverables and a projected timeline.

Task 1: Community Engagement

- Develop engagement questions and format for face-to-face interactions, including template for collecting and uploading data.
- Prepare PDC public dialogue facilitators to conduct face-to face engagements, and collect and upload data.
- Compile contact information for community groups, organizations and individuals; schedule and conduct engagements at their “home” locations.
- Conduct at least “one community forum” at City Hall; open to all members of the public, using the same questions and format for other community engagement events.

- Develop an online tool for eliciting community input, using the same questions as the face-to-face engagements.
- Consultants meet with City Council and Executive Management Staff to provide updates on community engagement activities, and to elicit input on next steps.

Deliverables for Task 1: Community engagement packet (questions, format, data collection template, etc.); raw data from the face-to-face engagements and online tool.

Timeline:

- August - September 2013: Develop materials and schedule face-to-face engagements and community forum.
- October 2013 - February 2014: Conduct community engagement events.

Task 2: Employee Engagement

- Develop employee engagement questions and format for face-to-face interactions, including template for collecting and uploading data.
- Train Employee Engagement Team (EET) to conduct face-to face engagements, and collect and upload data.
- Conduct an all-employee meeting to introduce the EET members to the organization and to prepare employees for the small group discussions.
- EET members partners with PDC senior consultants and associates to conduct employee engagement sessions with all City employees.
- Develop an online tool for eliciting employee input, using the same questions as the face-to-face engagements.
- Consultants meet with City Council and Executive Management Staff to provide updates on employee engagement activities, and to elicit input on next steps.

Deliverables for Task 2: Employee training engagement packet (questions, format, data collection template, etc.); raw data from the face-to-face engagements and online tool; agenda and meeting materials for all-employee meeting.

Timeline:

- August - September 2013: Develop materials and begin scheduling employee engagement sessions
- October 2013 - February 2014: Conduct employee engagements sessions

Task 3: Data Analysis and interpretation

- Conduct qualitative analysis on the raw data collected from the community and employee engagements and online tools.
- This involves coding the data, identifying patterns and themes, and identifying similarities and differences between and among the different groups.

Deliverables for Task 3: Raw data from the community and employee engagements; and preliminary results from the analysis in the form of draft themes and value categories.

Timeline:

- February - March, 2014: Conduct data analysis and produce draft themes, value categories

Task 4: Preparation of Draft Vision, Mission and Values

- Develop text of draft Vision, Mission and Values document
- Meet with City Council and Executive Management Team to review draft and elicit feedback

Deliverable for Task 4: Draft document prepared for Council and Executive Management Team review, with plan for final graphics and layout.

Timeline: April 2014

Task 5: Preparation of Final Vision, Mission and Values Document

- Finalize the draft document, incorporating the feedback and suggestions from Council and the Management Team.

Deliverable for task 5: Final Vision, Mission and Values document

Timeline: May 2014

Professional Rates & Anticipated Fee Proposal

Professional Rates

Hourly	Role	Team Member
\$200	Project Team Lead	<i>Shawn Spano, PDC President & Senior Consultant</i>
\$100	Project Team Assistant	<i>Jennifer Mair, PDC Executive</i>
\$150	Project Team Senior Consultant	<i>Linda Blong, PDC Senior Director</i>
\$50	Public Dialogue Facilitators	

Anticipated Fees per Task/Deliverable

Task 1: Community Engagement Projected Fees \$26,750

Project Team Lead	55 hrs	\$11,000
Project Team Assistant	55 hrs	\$5,500
Project Team Senior Consultant	35 hrs	\$5,250
Public Dialogue Facilitators	100 hrs	\$5,000

Task 2: Employee Engagement Projected Fees \$19,750

Project Team Lead	55 hrs	\$11,000
Project Team Assistant	35 hrs	\$3,500
Project Team Senior Consultant	35 hrs	\$5,250

Task 3: Data Analysis and Interpretation Projected Fees \$15,000

Project Team Lead	50 hrs	\$10,000
Project Team Assistant	20 hrs	\$2,000
Project Team Senior Consultant	20 hrs	\$3,000

Task 4: Draft Vision, Mission and Values Projected Fees \$15,000

Project Team Lead	50 hrs	\$10,000
Project Team Assistant	20 hrs	\$2,000
Project Team Senior Consultant	20 hrs	\$3,000

Task 5: Final Vision, Mission and Values Projected Fees \$15,000

Project Team Lead	50 hrs	\$10,000
Project Team Assistant	20 hrs	\$2,000
Project Team Senior Consultant	20 hrs	\$3,000

TOTAL PROJECTED FEES \$91,500

Key Personnel

The PDC Project Team

All PDC team members have extensive experience relevant to the particular roles in which they will be serving this project.

Shawn Spano, Ph.D. will serve as Project Team Lead. Shawn is President and Senior Consultant with the Public Dialogue Consortium. Shawn has over 16 years of experience working with city government and public organizations, including multi-year projects with three different municipalities. Shawn is a specialist in designing and facilitating public forums, meetings, training workshops and off-site retreats with leaders, executive staff, elected officials, middle managers, commissions and boards, and local residents.

Shawn is a Professor in the Communication Studies Department at San José State University. He teaches courses and conducts research in dialogue facilitation and public communication. He recently served as the principle investigator on a Ford Foundation grant given to SJSU to develop a Difficult Dialogues Initiative on campus. Shawn was selected “SJSU Outstanding Professor” in 2000, and has published numerous articles and chapters, including the book, *Public Dialogue and Participatory Democracy*.

Shawn’s client list includes the City of San José, City of Cupertino, City of Fremont, City of San Carlos, City of Mountain View, Town of Los Gatos, City of Pismo Beach, Joint Venture: Silicon Valley Network, Santa Clara County Registrar of Voters, The Health Trust, Silicon Valley Commonwealth Club, and the Community Coalition for End of Life Care. Shawn also has corporate experience as a consultant with Apple Computer, e-Bay, Yahoo, Network Applications (NetApp) and Printroom.

Jennifer Mair, M.A. will serve as Project Team Assistant. Jennifer is the Executive Director, team consultant and facilitator with Public Dialogue Consortium. She joined PDC in 2009 to assist in organizational planning and development, and to work for quality public engagement in our communities. Jennifer teaches Communication Studies at Skyline College just south of San Francisco, CA where she organizes and hosts student dialogues. In addition to her M.A. in Communication Studies, she completed the award winning Dialogue Deliberation and Public Engagement Certificate Program at Fielding University in January 2011.

Linda Blong, Ph.D. will serve as Project Team Senior Consultant. Linda works with the PDC to design and facilitate training workshops, citizen engagement processes and public meetings with elected officials, administrative staff and local residents. She comes to this position with extensive experience as co-leader and faculty in the Dialogue, Deliberation and Public Engagement Certificate Program at Fielding Graduate University. In that role

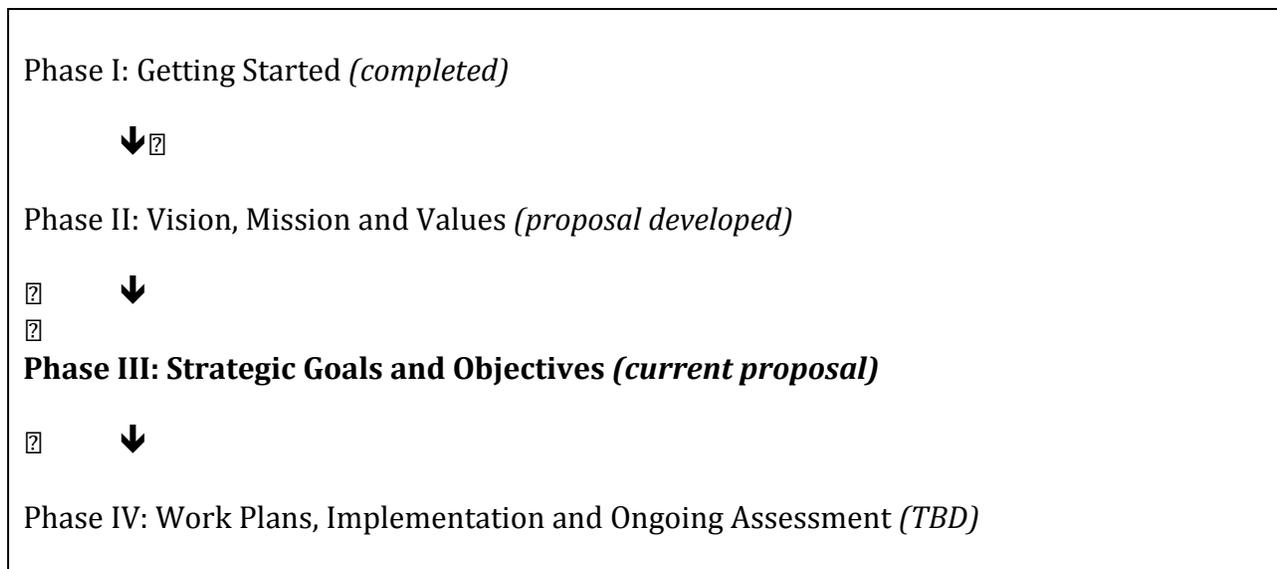
she helps direct and teach the 17 week certificate program aimed at developing the mastery of mid-career specialists in public dialogue and deliberation. Her interests in applied public communication were formed when she was student in the certificate program at Fielding Graduate University, culminating in her doctoral research study, "Making Public Deliberation: A Study of Moderator Episode Work at National Issues Forums."

Linda is also a Senior Project Specialist at the Napa County Office of Education where she provides content and process expertise for California's State Professional Development Grant. She is currently working with a team to advise the California Department of Education on the development of a statewide technical assistance system to address the needs of districts working to improve their policies, procedures, and practices in problem areas related to California's State Performance Plan indicators. Before that, she served for 10 years as the Director of Projects with California Institute on Human Services at Sonoma State University.

Proposal for City of Milpitas Strategic Planning Process
Phase III: Strategic Goals and Objectives

Background

The City of Milpitas secured the services of Shawn Spano, PhD, President and Senior Consultant with the Public Dialogue Consortium (www.publicdialogue.org), to initiate a citywide strategic planning process. As a result, a framework was developed for conducting the strategic planning process in four phases (see diagram below). Phase I: Getting Started was completed in July 2013. A separate proposal for Phase II: Vision, Mission and Values has been developed. This proposal is for Phase III: Strategic Goals and Objectives



Desired Results of Phase II: Vision, Mission and Values

Phase II is designed to elicit input from a broad spectrum of Milpitas community members and all of the City employees, and to work with the City Manager, Executive Management Team and City Council to use that input to develop a Vision, Mission and set of underlying Values. The results of Phase II will be used to establish foundation for Phase III.

Proposal for Phase III: Strategic Goals and Objectives

The purpose of Phase III will be to involve the Executive Management Team and other managers, supervisors and employees in developing *citywide* goals/objectives and strategies. What is envisioned at this point is a relatively small number of goals that emanate from the vision, mission and values. Each of the goals will have multiple objectives that outline the specific parameters of the goals, how they will be achieved and the metrics used to measure success.

What follows is an outline of the tasks and activities proposed for Phase III, along with a list of deliverables and projected timeline. Note that the timeline for Phase II overlaps with Phase III. That is, work on developing the Strategic Goals and Objectives will begin concurrently as the Vision, Mission and Values are being drafted.

Task 1: Engage with Executive Management Staff and Others Managers

- Conduct multiple meetings with executive staff, and other managers and supervisors to develop, review and revise the strategic goals and objectives.
- Develop a matrix for developing and recording the component parts of the goals and objectives document (i.e. owner, sponsor, development team, resources, etc.).
- Develop meeting materials (agendas, format, decision-making structure, etc.) for the Executive Management Staff and Manager’s meetings.

Deliverables for Task 1: Goals and objectives matrix, and meeting materials and meeting notes.

Timeline:

- December 2013: Develop matrix and meeting materials.
- January – April 2014: Conduct Executive Management and manger’s meetings.

Task 2: Preparation of Draft Strategic Goals and Objectives

- Develop text of draft Strategic Goals and Objectives.
- Meet with Executive Management Staff and manger’s to review and revise draft (see Task 1 above).

Deliverable for Task 2: Draft document prepared for review and revision by Executive Management Staff, mangers and City Council.

Timeline: March - April, 2014

Task 3: Updates with City Council

- There will be periodic updates with City Council to inform them about the work that Executive Management Staff and mangers have done on the goals and objectives, and to elicit reactions and feedback to the draft goals and objectives.

Deliverable for Task 3: Meeting materials for Council updates; notes from Council meetings.

Timeline: January - April, 2014.

Task 4: Employee Engagement Meeting(s)

- Utilizing the Employee Engagement Team, all City employees will be informed about the work that Executive Management Staff and mangers have done on the goals and

objectives, and to elicit their reactions and feedback on the proposed goals and objectives document. This will be accomplished at one all-employee meeting, or a series of smaller meetings.

- Train Employee Engagement Team to conduct face-to-face meeting(s), and collect and summarize input on the proposed goals and objectives.

Timeline:

- March 2014: Develop materials for Employee Engagement Team training and all-employee meeting(s).
- March - April 2014: Conduct Employee Engagement meeting(s)

Task 5: Preparation of Final Strategic Goals and Objectives

- Finalize the draft Goals and Objectives document, incorporating the feedback and suggestions from the Executive Management Staff, managers, employees and Council. Integrate the Vision, Mission and Values from Phase II into the Goals and Objectives document, with text and graphics.
- The final Strategic Plan document, with the Vision, Mission, Values, Goals and Objectives all included, will be launched with Council, Managers, employees and community members in a public recognition event.

Deliverables for task 5: Final Vision, Mission and Values document; materials for public recognition event.

Timeline: June 2014

Professional Rates & Anticipated Fee Proposal

Professional Rates

Hourly	Role	Team Member
\$200	Project Team Lead	<i>Shawn Spano, PDC President & Senior Consultant</i>
\$100	Project Team Assistant	<i>Jennifer Mair, PDC Executive</i>
\$150	Project Team Senior Consultant	<i>Linda Blong, PDC Senior Director</i>
\$100	Graphic Design Specialist	

Anticipated Fees per Task/Deliverable

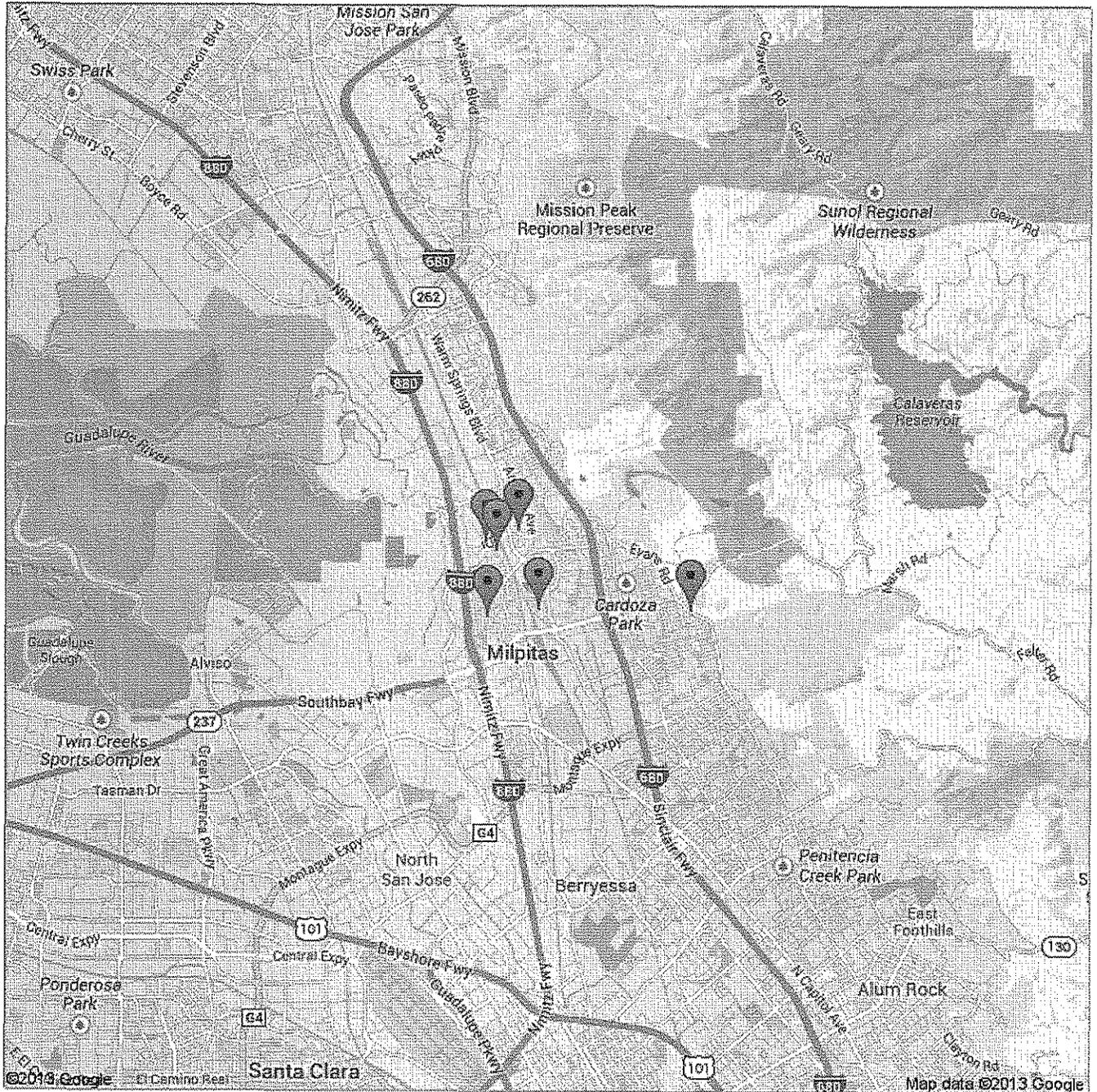
<u>Task 1: Management Staff Engagements</u>		<u>Projected Fees \$15,000</u>
Project Team Lead	50 hrs	\$10,000
Project Team Assistant	20 hrs	\$2,000
Project Team Senior Consultant	20 hrs	\$3,000
<u>Task 2: Draft Strategic Goals and Objectives</u>		<u>Projected Fees \$10,500</u>
Project Team Lead	40 hrs	\$8,000
Project Team Assistant	10 hrs	\$1,000
Project Team Senior Consultant	10 hrs	\$1,500
<u>Task 3: Updates with City Council</u>		<u>Projected Fees \$6,500</u>
Project Team Lead	20 hrs	\$4,000
Project Team Assistant	10 hrs	\$1,000
Project Team Senior Consultant	10 hrs	\$1,500
<u>Task 4: Employee Engagement Meeting(s)</u>		<u>Projected Fees \$6,500</u>
Project Team Lead	20 hrs	\$4,000
Project Team Assistant	10 hrs	\$1,000
Project Team Senior Consultant	10 hrs	\$1,500
<u>Task 5: Final Strategic Plan</u>		<u>Projected Fees \$9,500</u>
Project Team Lead	30 hrs	\$6,000
Project Team Assistant	10 hrs	\$1,000
Project Team Senior Consultant	10 hrs	\$1,500
Graphic Design Specialist	10 hrs	\$1,000
<u>TOTAL PROJECTED FEES</u>		<u>\$48,000</u>

Milpitas Complaints

Received by BAAQMD From 7/1/2013 to 7/31/2013

<u>Complaint#</u>	<u>Received</u>	<u>Occured</u>	<u>Alleged Source</u>	<u>Description</u>	<u>General Location</u>	<u>Status</u>	<u>Attributed Site#</u>	<u>Referral</u>	<u>Comments</u>
214635	7/1/13 20:05	7/1/13 20:00	BFI - The Recyclery	strong garbage	400 TRAMWAY DR	Unconfirmed			
214649	7/3/13 18:43	7/3/13 18:43	BFI - The Recyclery	strong compost	100 BEAUMERE WAY	Unconfirmed			
214653	7/4/13 9:57	7/2/13 9:57	BFI - The Recyclery	bad	2100 AGUILAR CT	Pending			
214676	7/7/13 20:24	7/7/13 20:24	NONE	really bad	200 SILVERLAKE CR	Unconfirmed			
214682	7/8/13 20:32	7/8/13 18:30	BFI - The Recyclery	odor	200 SUMMERWIND DR	Unconfirmed			
214694	7/9/13 21:58	7/9/13 19:30	BFI - The Recyclery	bad garbage	100 BEAUMERE WAY	Unconfirmed			
214707	7/12/13 21:09	7/12/13 21:00	BFI - The Recyclery	strong	1100 KOVANDA WAY	Unconfirmed			
214708	7/12/13 23:30	7/12/13 21:00	BFI - The Recyclery	horrible garbage	300 EDGEWATER DR	Unconfirmed			
214710	7/13/13 15:11	7/13/13 15:00	BFI - The Recyclery	fertilizer	200 SEASIDE DR	Unconfirmed			
214712	7/13/13 11:35	7/13/13 11:00	BFI - The Recyclery	rotten food waste	2100 CONWAY ST	Unconfirmed			
214724	7/16/13 11:59	7/16/13 11:55	NONE	manure	200 SEASIDE DR	Pending			
214754	7/18/13 19:54	7/18/13 18:15	BFI - The Recyclery	garbage	1200 ELKWOOD DR	Unconfirmed			
214755	7/18/13 19:31	7/18/13 19:30	BFI - The Recyclery	landfill	800 BERRYESSA ST	Unconfirmed			
214756	7/18/13 19:49	7/18/13 19:40	BFI - The Recyclery	garbage	2000 SKYLINE DR	Unconfirmed			
214763	7/19/13 17:38	7/19/13 17:38	BFI - The Recyclery	garbage	400 TRAMWAY DR	Unconfirmed			
214765	7/19/13 19:39	7/19/13 19:00	BFI - The Recyclery	stinks	800 BERRYESSA ST	Unconfirmed			
214767	7/20/13 14:52	7/20/13 11:00	BFI - The Recyclery	rotten	100 BEAUMERE WAY	Unconfirmed			
214768	7/21/13 21:09	7/21/13 19:35	BFI - The Recyclery	horrible garbage	1200 ELKWOOD DR	Unconfirmed			
214776	7/22/13 13:39	7/22/13 13:15	NONE	compost	100 BEAUMERE WAY	Confirmed			
214777	7/22/13 13:48	7/22/13 12:00	NONE	garbage	2100 AGUILAR CT	Unconfirmed			
214782	7/22/13 20:24	7/22/13 17:30	BFI - The Recyclery	strong garbage	1200 ELKWOOD DR	Unconfirmed			
214797	7/24/13 7:05	7/24/13 7:04	BFI - The Recyclery	very bad	400 MARYLINN DR	Unconfirmed			
214799	7/23/13 20:49	7/23/13 18:30	BFI - The Recyclery	landfill	1200 ELKWOOD DR	Unconfirmed			
214800	7/23/13 23:20	7/23/13 19:00	BFI - The Recyclery	strg rotten garbage	200 SUMMERLAND	Unconfirmed			
214811	7/24/13 22:25	7/24/13 8:00	BFI - The Recyclery	terrible garbage	1200 ELKWOOD DR	Unconfirmed			
214821	7/25/13 17:56	7/25/13 0:00	BFI - The Recyclery	odor	1200 ELKWOOD DR	Unconfirmed			
214833	7/26/13 20:31	7/26/13 20:30	NONE	strong landfill	xxx xxxxxxx	Unconfirmed			on going for 2 months
214834	7/26/13 22:44	7/26/13 22:40	NONE	strong sewage	200 SILVERLAKE CT	Unconfirmed			
214835	7/27/13 14:49	7/27/13 14:30	BFI - The Recyclery	strong garbage	1200 ELKWOOD DR	Unconfirmed			
Total:	29								

*
2



BAAQMD Odor Complaint Locations (July 22 through August 18, 2013)

Unlisted · 0 views

Created on Aug 19 · By · Updated < 1 minute ago



100 Beaumere Way
Milpitas, CA 95035



2100 Aguilar Ct
Milpitas, CA 95035

**CITY OF MILPITAS
COMMISSION/COMMITTEE APPLICATION**

City Clerk's Office

JUN 3 5 2013

RECEIVED

Arts

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR ↑

Mr.
 Mrs. *Ms.* Christina Maria Driggers
Name: First Middle Last

1616 Mt. Rainier Ave
Address: Number Street (apt. # if needed), Milpitas CA 95035

(Hm) 408-586-8228 (cell) 408-504-4850 Christina.driggers@yahoo.com
Telephone Number(s) e-mail address

Real Mex Restaurants 408-519-2213
Present Employer Business Telephone

477 E. Calaveras Blvd. Regional Recruiter
Address Occupation

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

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
<u>Mission College</u>	<u>Psychology</u>		<u>NO</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>2011-2012</u>	<u>Rancho Middle School PTA</u>	<u>Membership Chair</u>
<u>2012</u>	<u>Every 15 Min - MHS Anti-Drinking/Driving Program</u>	

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

I have not been involved in the Arts much in the past but over the last 5 years or so I've come to really appreciate how important the Arts can be especially when involving our youth and exposing them at a young age

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.

Christina M Driggers
Signature

5-23-13
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
Mail, fax (586-3030), e-mail (mlavelle@ci.milpitas.ca.gov) or drop off your completed application to
City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

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INVOICE #	CUSTOMER_ID	CUSTOMER NAME	DATE	AMOUNT	DESCRIPTION
I000019453	00011509	PACIFIC GAS & ELECTRIC	10/14/2005	\$ 39,969.63	Electrical Relocation work related to Dixon Landing/I880 Project 4047 - PG& E Bankruptcy
TOTAL CIP				\$ 39,969.63	
I000034458	00012225	DIANA H NGUYEN	9/17/2010	\$ 538.74	PJ#2622 returned check
I000035870	00002745	8 DENTAL LABORATORY	9/23/2011	\$ 270.95	Private Job
I000035827	00002745	8 DENTAL LABORATORY	8/26/2011	\$ 79.42	Private Job
I000034026	00002629	AT & T	3/26/2010	\$ 253.90	Private Job
I000034635	00002661	AVENT ELECTRONICS	10/29/2010	\$ 10.08	Private Job
I000035916	00002681	BCI BUILDERS INC	10/21/2011	\$ 165.88	Private Job
I000035439	00002660	BELL & ASSOCIATES	2/25/2011	\$ 136.98	Private Job
I000034631	00002575	GRANADA HOA	10/29/2010	\$ 370.79	Private Job
I000035764	00002706	JERRY BROWN DESIGN	7/29/2011	\$ 405.04	Private Job
I000035660	00002714	LA MESA RV CENTER INC	6/24/2011	\$ 408.51	Private Job
I000035554	00002534	MARIA DE JESUS ZAVALA	4/29/2011	\$ 468.99	Private Job
I000035380	00002534	MARIA DE JESUS ZAVALA	1/28/2011	\$ 2,706.83	Private Job
I000035867	00002732	MCDONALD'S U.S.A LLC	9/23/2011	\$ 190.46	Private Job
I000036870	00002655	PACIFIC PLUMBING	4/20/2012	\$ 580.56	Private Job
I000036819	00002655	PACIFIC PLUMBING	3/23/2012	\$ 497.64	Private Job
I000035557	00002655	PACIFIC PLUMBING	4/29/2011	\$ 248.82	Private Job
I000036871	00002689	STARK MANAGEMENT	4/20/2012	\$ 5,394.00	Private Job
TOTAL PRIVATE JOBS				\$ 12,727.59	
I000035410	00012280	NEW BAMBU SANDWICHES	2/18/2011	\$ 45.00	For backflow device testing at 1756 N Milpitas Blvd. Meter #9504307.
I000035413	00012282	PHAN LLC	2/18/2011	\$ 45.00	For backflow device testing at 777 Montague Expwy. Meter #30031816.
TOTAL ENGINEERING UTILITY MISCELLANEOUS				\$ 90.00	
I000036508	F09-0105	APT. COMPLEX (ALMERIA PROPER)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000035149	F09-0105	APT. COMPLEX (ALMERIA PROPER)	12/1/2010	\$ 214.50	Fire Permit (FAP)
I000036339	F94-0712	APT. COMPLEX (JUDITH DALEY)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000034805	F94-0712	APT. COMPLEX (JUDITH DALEY)	12/1/2010	\$ 214.50	Fire Permit (FAP)
I000036350	F94-0680	APT. COMPLEX (ANNIE NGUYEN)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000036290	F94-0793	APT. COMPLEX (ASHOK NALAMWAR)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000036288	F94-0860	APT. COMPLEX (ASHOK NALAMWAR)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000033003	F94-0769	APT. COMPLEX (BRIAN BRAGER)	12/1/2009	\$ 214.50	Fire Permit (FAP)
I000031696	F94-0769	APT. COMPLEX (BRIAN BRAGER)	12/12/2008	\$ 214.50	Fire Permit (FAP)
I000036504	F09-0098	APT. COMPLEX (EDWIN AQUINO)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000036483	F08-0615	APT. COMPLEX (JEN LE LIU)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000036452	F06-0509	APT. COMPLEX (KAMAL PATHAK)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000036340	F94-0730	APT. COMPLEX (MINH AND THANH-)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000036259	F94-0787	APT. COMPLEX (MONITA MAK)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000036304	F94-0672	APT. COMPLEX (PETER NELSON)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000034768	F94-0672	APT. COMPLEX (PETER NELSON)	12/1/2010	\$ 214.50	Fire Permit (FAP)
I000036482	F08-0591	APT. COMPLEX (PHAT NGUYEN)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000036407	F94-0803	APT. COMPLEX (R. PACLEB)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000035179	F10-0006	APT. COMPLEX (SCOTT SUTTER)	12/1/2010	\$ 214.50	Fire Permit (FAP)
I000036386	F94-0777	APT. COMPLEX (SON TRUNG NGUYE)	12/1/2011	\$ 214.50	Fire Permit (FNP)
I000036044	F87-0059	GREATER LOVE CHURCH	12/1/2011	\$ 429.00	Fire Permit (FAP)
TOTAL FIRE PERMIT				\$ 4,719.00	
I000035578	00012296	AESTHELIC DENTAL	5/13/2011	\$ 50.00	February 2011 False Alarm
I000035369	00011835	AMPHENOL TCS	1/28/2011	\$ 50.00	November 2010 False Alarm
I000036690	00012338	AT&T MOBILITY	1/13/2012	\$ 50.00	August 2011 False Alarm

INVOICE #	CUSTOMER_ID	CUSTOMER NAME	DATE	AMOUNT	DESCRIPTION
I000036952	00010836	FLAMES RESTAURANT	5/25/2012	\$ 50.00	September 2011 False Alarm
I000036972	00012241	HOWARD HILL	5/25/2012	\$ 150.00	Sept & Nov 2011 False Alarm
I000034583	00012241	HOWARD HILL	10/8/2010	\$ 50.00	August 2010 False Alarm
I000037276	00012359	MHD FURNITURE	10/12/2012	\$ 500.00	Sept-Dec 2011 False Alarm
I000036979	00012359	MHD FURNITURE	5/25/2012	\$ 1,650.00	Sept-Nov 2011 False Alarm
I000037258	00010221	ROMANOS MACARONI GRILL	10/12/2012	\$ 150.00	Sept-Dec 2011 False Alarm
I000033916	00010221	ROMANOS MACARONI GRILL	2/19/2010	\$ 250.00	December 2009 False Alarm
I000037268	00011518	SEARS OUTLET	10/12/2012	\$ 250.00	Sept-Dec 2011 False Alarm
I000036958	00011518	SEARS OUTLET	5/25/2012	\$ 350.00	Oct & Nov 2011 False Alarm
I000036670	00011518	SEARS OUTLET	1/13/2012	\$ 50.00	July 2011 False Alarm
I000035363	00011518	SEARS OUTLET	1/28/2011	\$ 750.00	November 2010 False Alarm
I000035480	00012108	TC MICROSYSTEMS	3/11/2011	\$ 100.00	December 2010 False Alarm
I000037275	00012336	UNIVERSAL SPORTS CLUB	10/12/2012	\$ 750.00	September-Dec 2011 False Alarm
I000036688	00012336	UNIVERSAL SPORTS CLUB	1/13/2012	\$ 69.47	August 2011 False Alarm
TOTAL POLICE DEPARTMENT- FALSE ALARM				\$ 5,269.47	
I000033850	00012113	BLANCA GUZMAN	1/22/2010	\$ 75.00	Animal Violation dated 12/03/09
I000034353	00012197	GARY R MORIN	8/6/2010	\$ 100.00	NBO Citation for Overgrown lawn dated June 22, 2010.
I000034284	00012185	JOSEPH C GRAHAM	7/2/2010	\$ 250.00	Animal Violation fees dated May 14, 2008.
I000034035	00012132	JUN & PERCY CLEMENTE	4/2/2010	\$ 50.00	Animal Regulation Violation dated 09/16/09.
I000034355	00012199	PAUL WANG	8/6/2010	\$ 150.00	Animal Regulation Violation 06/19/2010
I000034264	00012181	SEAN MCGIVERN	6/25/2010	\$ 125.00	Animal Reg Fines.
I000033851	00012114	TINA MARIE AYALA	1/22/2010	\$ 475.00	Animal Violation dated 04/04/2009
TOTAL ANIMAL VIOLATIONS				\$ 1,225.00	
I000035235	00012256	200 SERRA WAY LLC	12/3/2010	\$ 50.00	NBO Violation Fees dated 7/2/10 APN# 8607040.
I000034551	00010952	BARBARA HALL	10/1/2010	\$ 300.00	NBO Violation Fees 05/12/10.
I000033777	00011854	ISLAMIC RESEARCH ASSN INC	1/8/2010	\$ 300.00	Zoning Violation Fees on 11/16/09 and 12/14/09.
TOTAL NBO VIOLATIONS				\$ 650.00	
I000037375	00012163	BED BATH & BEYOND	12/14/2012	\$ 20.00	Shopping Cart Retrieval Svc
I000037241	00012163	BED BATH & BEYOND	10/5/2012	\$ 28.00	Shopping Cart Retrieval Svc
I000037188	00012163	BED BATH & BEYOND	9/7/2012	\$ 48.00	Shopping Cart Retrieval Svc
I000037127	00012163	BED BATH & BEYOND	8/10/2012	\$ 20.00	Shopping Cart Retrieval Svc
I000037073	00012163	BED BATH & BEYOND	6/30/2012	\$ 24.00	Shopping Cart Retrieval Svc
I000037021	00012163	BED BATH & BEYOND	6/15/2012	\$ 8.00	Shopping Cart Retrieval Svc
I000036989	00012163	BED BATH & BEYOND	6/1/2012	\$ 20.00	Shopping Cart Retrieval Svc
I000036654	00012163	BED BATH & BEYOND	1/13/2012	\$ 32.00	Shopping Cart Retrieval Svc
I000035789	00012163	BED BATH & BEYOND	8/12/2011	\$ 12.00	Shopping Cart Retrieval Svc
I000037371	00010612	CVS PHARMACY	12/14/2012	\$ 16.00	Shopping Cart Retrieval Svc
I000037181	00010612	CVS PHARMACY	9/7/2012	\$ 20.00	Shopping Cart Retrieval Svc
I000037016	00010612	CVS PHARMACY	6/15/2012	\$ 32.00	Shopping Cart Retrieval Svc
I000034197	00010612	CVS PHARMACY	6/11/2010	\$ 6.00	Shopping Cart Retrieval Svc
I000036814	00011125	WALGREENS-DIXON/MILPITAS BLVD	3/23/2012	\$ 12.00	Shopping Cart Retrieval Svc
I000034395	00011125	WALGREENS-DIXON/MILPITAS BLVD	8/27/2010	\$ 8.00	Shopping Cart Retrieval Svc
TOTAL SHOPPING CART RETRIEVAL				\$ 306.00	
I000034292	00012187	RYAN ALEXANDER YEE	7/16/2010	\$ 3,317.37	Billing for the cost of a damged Street light pole #M2360
TOTAL PUBLIC WORKS COST RECOVERIES				\$ 3,317.37	
I000034215	00012166	BENEDICK CASTILLO	6/18/2010	\$ 60.00	Late fees
I000037132	00012260	BRENDA DUKE	8/17/2012	\$ 440.00	After the Bell fees
I000034194	00012162	DANIELLE WILLIAMS	6/11/2010	\$ 10.00	Late Fees for After the Bell

INVOICE #	CUSTOMER_ID	CUSTOMER NAME	DATE	AMOUNT	DESCRIPTION
I000034498	00012228	DEBORAH GEIS	9/24/2010	\$ 80.00	Late Fees for After the Bell
I000034183	00012151	GONZALO GONZALEZ	6/11/2010	\$ 289.00	Preschool
I000034214	00012027	HEATHER MAHONEY	6/18/2010	\$ 171.80	Camp fees and late charges
I000034227	00012178	IRMA PARADA	6/18/2010	\$ 70.00	After the Bell late fees
I000034543	00012231	JONATHON DAVIS	10/1/2010	\$ 180.00	Camp Winnemucca fees
I000034193	00012161	JULIE FEZZOLARE	6/11/2010	\$ 76.00	Classes
I000034188	00012156	LENINE UMALI	6/11/2010	\$ 25.00	Cast Fees for Chicago-Rainbow theater
I000034221	00012172	LISA DOMINGUEZ	6/18/2010	\$ 10.00	Late Fees for After the Bell
I000034189	00012157	MEREDITH VESS	6/11/2010	\$ 56.25	After School program at Randall
I000034186	00012154	MIRYAM PARDO	6/11/2010	\$ 35.00	Cast fees for Music man
I000034190	00012158	NICOLE HANKTON	6/11/2010	\$ 40.00	Late Fess for After the Bell
I000034219	00012169	OSCAR VILLALPANDO SR.	6/18/2010	\$ 20.00	Late fees for after the Bell
I000034218	00012170	PEDRO PARADA	6/18/2010	\$ 60.00	After the Bell late fees
I000034220	00012171	PHONG THANH HUYNH	6/18/2010	\$ 10.00	Late fees for Preschool
I000037133	00012372	RICARDO WILBOURN	8/17/2012	\$ 420.00	Spring Basketball & non-resident fees.
I000034544	00012232	ROSEMARY CENICEROS	10/1/2010	\$ 450.00	Camp Winnemucca fees
I000034226	00012177	SABRINA MENDOZA	6/18/2010	\$ 168.00	After the Bell at Zanker
I000034182	00012150	YE JING YANG	6/11/2010	\$ 20.00	Late Fees for after the Bell.
I000034147	00012146	ARTHUR M ANDAL	5/28/2010	\$ 100.00	Returned check for High School Musical 2
I000029912	00011919	BARRY PHAN & MELISSA LAM	6/30/2008	\$ 15.00	Returned check for Art Monster Camp
I000034179	00012147	HUE NGUYEN & NGOC TRAN	6/11/2010	\$ 368.75	Returned check for Preschool Classes
I000034085	00012075	LILA SORIANO	4/30/2010	\$ 179.66	Returned check for After the Bell Program
I000035313	00012078	NGOC TRAN	12/24/2010	\$ 226.84	Returned check for Preschool Classes
I000034497	00012227	NICHOLE M DA ROCHA	9/24/2010	\$ 265.00	Returned check for Adult Co-Ed Softball
I000035795	00012224	RACHELE JOHNSON	8/19/2011	\$ 183.00	Returned check for After the Bell Program
I000035325	00012269	VICTOR R & MARIA C AYALA	1/7/2011	\$ 357.00	Returned check for After the Bell Program
TOTAL RECREATION FEES				\$ 4,386.30	
I000034554	00011689	KIRK W ELLIOTT	10/8/2010	\$ 127.21	Subpoena expenses exceeding \$150.00 deposited
I000034205	00012165	OSCAR VASQUEZ	6/15/2010	\$ 342.25	Reimbursement for extraordinary Police services pursuatn to MMC V-213-10.
TOTAL MISCELLANEOUS				\$ 469.46	

TOTAL WRITE OFF AMOUNT \$ 73,129.82

FY2012-2013

Utility Receivable Write Off List

(for account write off > \$25.00)

			TOTAL	48,954.64		
ACCOUNT	LAST NAME	FIRST NAME	DATE	AMT	Reason	TYPE
2037543	LEE	KYUNG	10/10/11	37.64	Closed Account	RES
2037988	WOO	LEO	03/07/11	38.91	Closed Account	RES
2028810	MENDOZA	LORENZ	01/17/11	46.92	Closed Account	RES
2032027	TRT-WESTCORE CALIFORNIA CIRCLE LLC		07/25/11	53.98	Closed Account	COMM
2037571	XUE	CAI	04/25/11	55.63	Closed Account	RES
2036719	CASTRO	ROSALINDA	06/06/11	56.16	Closed Account	RES
2036403	LEWIS	JOE	02/21/11	59.40	Closed Account	RES
2019788	SAN VICENTE	MARY	08/22/11	68.14	Closed Account	RES
2036992	DOSOUQI ENTERPRISE INC		04/11/11	72.34	Closed Account	COMM
2035686	GLOBAL PROPERTY MANAGEMENT		05/09/11	72.80	Closed Account	COMM
2021780	PAVACK	MARY	05/16/11	83.03	Closed Account	RES
2000156	WOO	IN	02/28/11	86.59	Closed Account	RES
2000772	MARTE	JIM	08/22/11	88.14	Closed Account	RES
2027140	NOBLE	ANDREW	04/25/11	96.75	Closed Account	RES
2027491	ESQUIVEL	BETTY	03/07/11	100.29	Closed Account	RES
2025328	TAINA	WASHINGTON	07/11/11	110.23	Closed Account	RES
2035153	PREZA	TERESITA	11/07/11	110.39	Closed Account	RES
2037769	MATTHEWS	PAUL	09/12/11	111.35	Closed Account	RES
2000841	MONDERO	ALEGUAS	03/21/11	113.30	Closed Account	RES
2003753	AQUINO	MAGDALENA	03/14/11	115.92	Closed Account	RES
2036241	ANDIN	MARYGRACE	02/07/11	115.96	Closed Account	RES
2024853	HOU	QING	08/08/11	116.32	Closed Account	RES
2030031	YBARRA	VALERIE	08/22/11	117.86	Closed Account	RES
2038394	OLALIA	ANDRE	08/08/11	120.34	Closed Account	RES
2036307	SANTA CRUZ	CESAR	10/10/11	122.24	Closed Account	RES
2033336	CORDOVA	KATHLEEN	07/18/11	126.78	Closed Account	RES
2031465	CADEMÁS	DANIEL	05/09/11	129.30	Closed Account	RES
2036084	WOJCIK	MALWINA	02/14/11	145.15	Closed Account	RES
2033226	ZODAICAL	BETTY	01/03/11	146.34	Closed Account	RES
2037330	DAVID	MELANY	06/13/11	146.80	Closed Account	RES
2037700	PERALTA	ROMINA	03/07/11	147.30	Closed Account	RES
2022320	SULLIVAN	WILLIAM	02/21/11	148.82	Closed Account	RES
2037790	NGUYENNGO	HUONG	08/15/11	150.88	Closed Account	RES
2035271	BIHAG	RICHE	02/21/11	153.38	Closed Account	RES
2033960	NATHANSON & SON		12/05/11	153.47	Closed Account	COMM
2022627	CHUNG	EUNICE	03/28/11	159.46	Closed Account	RES
2027468	WONG	RONALD	08/01/11	162.21	Closed Account	RES
2036579	MATIAS	KRYSTEL	02/21/11	176.26	Closed Account	RES
2020808	HANSEN	BILL	01/31/11	180.59	Closed Account	RES
2035819	PONCE	SANAE	07/25/11	180.89	Closed Account	RES
2037452	PEREZ	TRICIA	10/10/11	185.31	Closed Account	RES
2014533	SERRANO BALANC	NILDA	05/09/11	192.42	Closed Account	RES
2014156	BARBER	DAVID	11/07/11	193.58	Closed Account	RES
2038139	MSALAM	JAMILEH	07/04/11	195.61	Closed Account	RES
2024376	DEL ROSARIO	IMELDA	02/21/11	197.45	Closed Account	RES
2003246	HENDERSHOT	FRANK	12/26/11	198.36	Closed Account	RES
2036503	MASATAYAN	JANIZZE	05/09/11	200.66	Closed Account	RES
2034402	GIARDINA	RHEANNA	02/14/11	206.17	Closed Account	RES
2035789	QIU	LAURA	08/08/11	212.71	Closed Account	RES

FY2012-2013

Utility Receivable Write Off List

(for account write off > \$25.00)

			TOTAL	48,954.64		
ACCOUNT	LAST NAME	FIRST NAME	DATE	AMT	Reason	TYPE
2038527	LA RUE	RICK	10/10/11	219.66	Closed Account	RES
2029523	JONES	RICK	05/09/11	220.38	Closed Account	RES
2032568	PHAN MONTAGUE	775 EXPRESSWAY LLC	06/20/11	222.36	Closed Account	COMM
2035484	NGO	DARIN	03/28/11	224.58	Closed Account	RES
2004607	YTURRALDE	ALFREDO	05/16/11	225.08	Closed Account	RES
2037172	CHUNG	SUZANNA	10/10/11	227.89	Closed Account	RES
2037779	DEMORAES	RICARDO	06/06/11	228.09	Closed Account	RES
2014032	FERNANDEZ	GENARO	10/10/11	228.98	Closed Account	RES
2035931	LOPEZ	NICOLE	01/17/11	229.02	Closed Account	RES
2030770	SMITH	GENEVA	09/05/11	231.73	Closed Account	RES
2017572	NARVAIZ	AGNES	02/07/11	233.60	Closed Account	RES
2018846	MENON	ELIZABETH	08/08/11	239.10	Closed Account	RES
2037805	SAMBRANO	LAURA	07/11/11	241.37	Closed Account	RES
2036479	ROBERTI	REGINA	05/02/11	243.29	Closed Account	RES
2037783	YANEZ	MARCO	04/11/11	243.38	Closed Account	RES
2014376	WETLESEN	PAMELA	09/19/11	246.26	Closed Account	RES
2028833	GRIJALVA	RICK	06/06/11	251.67	Closed Account	RES
2007264	PIZARRO	PERLITA	05/16/11	252.75	Closed Account	RES
2035945	PHAN	KIM CUC	04/25/11	254.16	Closed Account	RES
2000244	CARRILLO	LUCIA	03/07/11	263.71	Closed Account	RES
2036396	RITTER	AMANDA	11/21/11	273.73	Closed Account	RES
2017456	WILLIAMS	RICHARD	01/24/11	277.93	Closed Account	RES
2007424	LOWE	DEBRA	03/28/11	284.35	Closed Account	RES
2017753	CHAVEZ	SYLVIA	08/08/11	285.37	Closed Account	RES
2034045	DEFEO	JACK	03/14/11	285.48	Closed Account	RES
2003143	FLYNN	PATRICIA	11/14/11	286.44	Closed Account	RES
2036685	MCGIVERN	SEAN	05/02/11	294.96	Closed Account	RES
2037815	TRAN	VU	05/09/11	298.05	Closed Account	RES
2035674	HOANG	TONY	06/27/11	298.96	Closed Account	RES
2034241	HERNANDEZ	HERMINIA	09/26/11	301.09	Closed Account	RES
2037968	TEHRANI	HAMID	05/23/11	305.70	Closed Account	RES
2021033	WOO	GEORGE	01/24/11	305.76	Closed Account	RES
2035195	ANDRES	ANTONIO	01/18/10	306.83	Closed Account	RES
2009089	HETNAR	MARY	09/12/11	308.37	Closed Account	RES
2037486	HA	MY	01/10/11	310.36	Closed Account	RES
2033809	GUIDO	JAVIER	04/11/11	311.36	Closed Account	RES
2037549	HUNG	PHI	11/21/11	314.73	Closed Account	RES
2004647	YBARRA	STELLA	03/07/11	315.55	Closed Account	RES
2010448	MCMURRAY	DAVID	12/12/11	328.19	Closed Account	RES
2013052	CERVANTEZ	ENRIQUE	07/11/11	332.51	Closed Account	RES
2020299	BALLANTYNE	TIMOTHY	05/09/11	337.91	Closed Account	RES
2026839	CASCARO	TITUS	02/14/11	345.28	Closed Account	RES
2002481	PIERCE	JAMES	08/01/11	346.92	Closed Account	RES
2036136	FAULCONER	CHRISTOPHER	01/24/11	349.64	Closed Account	RES
2036363	PHAM	KHA	11/28/11	350.42	Closed Account	RES
2032729	VALENCIA	HECTOR	09/26/11	353.18	Closed Account	RES
2035899	PAGE	ANNA	02/14/11	361.79	Closed Account	RES
2028658	BETTS	SHERIE	05/16/11	363.64	Closed Account	RES
2035734	GLOBAL PROPERTY MANAGEMENT		01/25/10	366.17	Closed Account	COMM

FY2012-2013

Utility Receivable Write Off List

(for account write off > \$25.00)

			TOTAL	48,954.64		
ACCOUNT	LAST NAME	FIRST NAME	DATE	AMT	Reason	TYPE
2038387	ABABAN	REYNALDO	11/14/11	374.70	Closed Account	RES
2019031	MARTINEZ	FELIPE	01/17/11	374.83	Closed Account	RES
2014660	NUNEZ	ERICA	09/19/11	377.50	Closed Account	RES
2036862	WILSON	TANISHA	08/08/11	378.18	Closed Account	RES
2004476	RIGONAN	JOSEPHINE	07/04/11	394.24	Closed Account	RES
2032566	PHAN MONTAGUE	775 EXPRESSWAY LLC	06/20/11	400.23	Closed Account	COMM
2014370	WYMAN	MARK	01/03/11	401.28	Closed Account	RES
2028855	DAVIS	RUTH	04/11/11	401.70	Closed Account	RES
2037830	MARTINES	PAM	05/16/11	415.28	Closed Account	RES
2037104	CAMPOSANO	AILEEN	09/26/11	418.37	Closed Account	RES
2026857	ROSALES	VICENTA	05/16/11	419.25	Closed Account	RES
2030722	KOGA	LEEANN	05/23/11	421.80	Closed Account	RES
2037532	SPAHIC	TAIB	02/21/11	424.13	Closed Account	RES
2037925	NARVAIZ	BARBARA	06/13/11	426.18	Closed Account	RES
2035854	BRACERO	FELICIA	03/21/11	426.86	Closed Account	RES
2016386	ZARZYCKI	THOMAS	06/20/11	453.09	Closed Account	RES
2018821	DINH	HONG-HANH	10/24/11	453.87	Closed Account	RES
2035715	NGUYEN	BANG	12/26/11	457.33	Closed Account	RES
2000642	FLORES	NADINE	09/26/11	466.15	Closed Account	RES
2002869	GABRIELSON	GORDON	01/17/11	470.57	Closed Account	RES
2028357	HOBBS	BRIAN	06/27/11	476.32	Closed Account	RES
2032033	WEATHINGTON	LOUVILLA	10/31/11	478.69	Closed Account	RES
2007631	UMALI	ALLEN	03/14/11	486.61	Closed Account	RES
2036216	NGUYEN	TUNG	12/12/11	486.61	Closed Account	RES
2001247	BALANCIO	EVELYN	12/19/11	500.45	Closed Account	RES
2007297	GUERRA	MARY	11/14/11	508.61	Closed Account	RES
2027965	BAXTER	TAMARRA	01/10/11	515.26	Closed Account	RES
2032054	JHA	SUMANT	12/12/11	516.41	Closed Account	RES
2036691	GARMANY	LORI	10/08/12	516.67	Bankruptcy	RES
2033038	PLACHETA	HAROLD	10/03/11	547.56	Closed Account	RES
2011802	SHANKERLAL	ASHOKKUMAR	02/07/11	586.11	Closed Account	RES
2034565	LEAE	KATHERINE	11/14/11	613.40	Closed Account	RES
2038614	GALAZ	ROBERTA	12/26/11	679.11	Closed Account	RES
2035335	HERITAGE OF INDIA -	RAJINDER SINGH	05/02/11	977.23	Closed Account	COMM
2006888	SUSHI KAI		05/23/11	1,618.66	Closed Account	COMM
2032565	PHAN MONTAGUE	775 EXPRESSWAY LLC	06/20/11	2,749.36	Closed Account	COMM
2037392	TULIP RESTAURANT INC		12/05/11	3,292.34	Closed Account	COMM
2021123	MENESES	JOSE	02/08/10	4,861.44	Closed Account	RES

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	100-2940	\$ 426,602	100-812-4113	\$ 426,602
<input type="checkbox"/> Budget Transfer	250-3559	127,090	250-551-4208	121,724
	251-3559	178,840	250-531-4111	5,366
	295-2938	187,738	251-551-4207	178,840
	500-2970	28,004	295-910-4205	183,057
	310-2931	39,970	295-551-4111	4,681
	500-3999	171,000	500-930-4851	28,004
			310-910-4610	39,970
			505-3899	171,000

Explain the reason for the budget change:

Background: Finance staff is in the process of closing the City revenue and expenditures accounts for the fiscal Year 2012-13. To maintain conformity with the City's budgeting policies and to prepare for the annual external audit, year-end budget adjustments are necessary to address items that were not known at the time the FY 12-13 budget was developed.

All funds, departments and project budgets have been reviewed to determine necessary adjustments. The detail for each budget adjustment item is described below.

- 1) Increase the budget appropriations for Fire Department by \$426,602. The Fire department incurred more overtime expenditure than anticipated in the budget. The source of funding will be from the General Fund.
- 2) Increase the budget appropriations for Planning and Neighborhood Services Department and Building Department by \$121,724 and \$5,366 respectively. The increased budget amounts are related to Community Development Block Grants (CDBG) administration costs and increased CDBG grants provided to the community in FY 12-13. Actual grants provided to the community were more than anticipated in the budget. These administration costs and grants will be fully reimbursable by the U.S. Department of Housing and Urban Development.
- 3) Increase the budget appropriations for Planning and Neighborhood Services Department by \$178,840. The increased budget amount is related to increased housing rehab loans provided to community in FY 12-13. The housing rehab loans will be fully reimbursable by the U.S. Department of Housing and Urban Development.
- 4) Increase the budget appropriations for Planning and Neighborhood Services and Non-departmental budget by \$4,681 and \$183,057 respectively. The increased budget amounts are related to Housing Authority administration costs and write down of the sales price of six affordable units owned by the Housing Authority. Three of the housing units were previously authorized by the Agency Board to convert from moderate income housing units to low income housing units.
- 5) Increase the budget appropriation of the Non-departmental budget by \$28,004 due to replacement of a police vehicle that was damaged in an accident. The City received full reimbursement from ABAG PLAN through its property insurance coverage. The funds were received and deposited in the Equipment Replacement Fund in

FY 11-12. The vehicle purchased in FY 12-13 was omitted from the FY 12-13 capital outlay budget requests.

- 6) Increase the budget appropriations of the Non-departmental budget by \$39,970. The budget adjustment is related to Project No. 4047 Dixon Landing Road/ I-880 Interchange. The project budget was about \$12.6 million and was funded by multiple funding sources, including RDA, development fees, grants, and reimbursements. PG&E reimbursements were one of the funding sources. However, during the construction of this project, PG&E filed for bankruptcy and the City was unable to collect a portion of the reimbursements from PG&E. This item was on the Accounts Receivable write off list. Funding is required from the Street Improvement Fund to make up the difference.
- 7) Transfer \$171,000 from the Equipment Replacement Fund to the Information Technology Replacement Fund. In FY 12-13, the City replaced its telephone system and other technological equipment. The Information Technology Replacement Fund did not have sufficient funding for these purposes, as the City has not maintained its funding in the last few years. Effective in FY 13-14, the revised Fiscal Policies authorized an annual funding in the amount of \$300,000 for technological equipment replacement.

Fiscal Impact: The budget adjustments reduce the fund balances of the various funds as follows:

\$426,602	General Fund
\$187,738	Housing Authority Fund
\$ 39,970	Street Improvement Fund
\$199,004	Equipment Replacement Fund

The budget adjustments related to the CDBG grants and loans will be reimbursed by the U.S. Department of Housing and Urban Development.

Recommendation: Approve the Fiscal Year 2012-13 year-end budget appropriations as itemized in the budget change form which is included in the City Council agenda packet.

Check if City Council Approval required.

Meeting Date: September 3, 2013

Requested by:	Division Head:	Date:
Reviewed by:	Finance Director: <i>W.C. Hall</i>	Date: 8/23/13
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

PLEASE NOTE:

This copy of Ordinance No. 198.4 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 198.4

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION III-7-13.02 OF THE MILPITAS MUNICIPAL CODE TO INCREASE THE TOTAL VALUE OF PRIZES THAT MAY BE AWARDED FOR EACH BINGO GAME FROM TWO HUNDRED AND FIFTY DOLLARS (\$250.00) TO FIVE HUNDRED DOLLARS (\$500.00) AS AUTHORIZED UNDER CALIFORNIA PENAL CODE SECTION 326.5

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, Chapter 7 of Title III of the Milpitas Municipal Code sets forth the requirements for the conduct of Bingo games in the City of Milpitas in accordance with Section 19(c) of Article IV of the California Constitution and Section 326.5 of the California Penal Code; and

WHEREAS, Section 326.5 of the California Penal Code has been amended authorizing an increase in the maximum total value of prizes which may be awarded during the conduct of any one Bingo game, whether in cash or in kind or both, from two hundred and fifty dollars (\$250.00) to five hundred dollars (\$500.00); and

WHEREAS, Section III-7-13.02 of the Milpitas Municipal Code currently authorizes a maximum payout of two hundred and fifty dollars (\$250) per Bingo game and the City Council wishes to increase the maximum amount as permitted under State law.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

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

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE III, CHAPTER 7

Section III-7-13.02 of the Milpitas Municipal Code is hereby amended in its entirety and replaced with the text below to read as follows:

“13.02 Other Licenses: The total value of prizes awarded during the conduct of any Bingo game by other licensees shall not exceed ~~Five Hundred Dollars (\$500.00)~~ in cash or in kind or both, for each separate game that is held. No jackpot of any kind shall exceed ~~Five Hundred Dollars (\$500.00).~~”

Deleted: Two Hundred & Fifty Dollars (\$250)
Deleted: Two Hundred & Fifty Dollars (\$250)

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.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS RESCINDING RESOLUTION NO. 5305 AND APPOINTING CERTAIN CITY EMPLOYEES TO THE ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG) POOLED LIABILITY ASSURANCE NETWORK (PLAN) BOARD OF DIRECTORS

WHEREAS, the City of Milpitas has been a charter member of the ABAG PLAN Corporation since June 2, 1986; and

WHEREAS, ABAG PLAN Corporation is a self-funded insurance pool serving public agencies; and

WHEREAS, the operations of these programs are governed by a Board of Directors consisting of one representative from each member agency; and

WHEREAS, since June 17, 1986, the City of Milpitas designated representatives have been the Assistant City Manager and the Director of Financial Services as an alternate; and

WHEREAS, participation on the Board of Directors has been carried out by City staff as part of its regular duties and does not result in any remuneration to the employee; and

WHEREAS, it is recommended that the City Council update the individuals appointed to the ABAG PLAN Board of Directors.

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 rescinds Resolution No. 5305 effective on September 3, 2013.
3. The City Council hereby designates the following individuals as appointees to the ABAG PLAN Board of Directors:

Title	Designation
Director of Financial Services	Director
Assistant City Attorney	Voting Alternate Director

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

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADOPTING THE FAIR MARKET VALUE FOR AN ACRE OF LAND OUTSIDE THE TRANSIT AREA SPECIFIC PLAN AND MIDTOWN SPECIFIC PLAN AREAS IN THE CITY OF MILPITAS FOR THE PURPOSE OF CALCULATING THE PARK IN-LIEU FEE

WHEREAS, Milpitas Municipal Code Section XI-1-9.07 (“Amount of Fee In Lieu of Land Dedication”) sets forth the method for the City Council to determine the fair market value for an acre of land in the City of Milpitas (“City”) to be paid in lieu of dedication of park land for certain subdivision projects; and

WHEREAS, on July 15, 2013, Smith & Associates in accordance with their contract with the City submitted an appraisal report to determine the fair market value of an acre of land in the City of Milpitas for the purpose of developing a park in-lieu fee; and

WHEREAS, on September 3, 2013, the City Council considered the appraisal report and other evidence presented by City staff and other interested parties.

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 fair market value of one acre of land outside of the Transit Area Specific Plan and Midtown Specific Plan areas in the City of Milpitas for the purpose of determining park in-lieu fee is hereby adopted and determined to be \$51.00 per square foot or \$2,221,560 per acre.

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

APPRAISAL FOR
In-Lieu Park Fees
Outside Midtown and Transit Area Specific Plans
City of Milpitas, California

File Number: T132633

PREPARED FOR:

Mr. Steven G. McHarris
Planning & Neighborhood Services Director
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

PREPARED BY:

William O. Hurd, MAI
AG034899

Terry S. Larson, MAI
AG007041

SMITH & ASSOCIATES, INC.
140 Town and Country Drive, Suite F
Danville, California 94526
Phone (925) 855-4950
Fax (925) 855-4951



July 15, 2013

Mr. Steven G. McHarris
Planning & Neighborhood Services Director
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

RE: Appraisal for In-Lieu Park Fees, Outside the Midtown and Transit Area Specific Plans
City of Milpitas, California

Dear Mr. McHarris:

At your request, we have performed an appraisal for In-Lieu Park Fees. The purpose of the appraisal is to provide an opinion of the Average Market Value of a hypothetical one-acre parcel of land in the City of Milpitas, outside the Midtown and Transit Area Specific Plan areas with the potential of being developed with a park. This report does not consider any individual property, but rather looks at the Average Price per Acre throughout Milpitas, outside the specific plan areas, with residential zoning. The property rights considered are those of the Fee Simple Estate.

The client is the City of Milpitas. The intended user of this appraisal is the City of Milpitas and the intended use is to assist in setting in-lieu park fees to be charged to developers.

Though we looked at all recent land sales in Milpitas, it is residential use that triggers the need for parks and the desire is to have the parks within or adjacent to new residential development. Therefore, we included only land sales intended for residential use in our final analysis. Though we are not evaluating a specific parcel, our primary purpose is to provide an opinion of value of a hypothetical one-acre site therefore, our conclusions are considered an appraisal.

Based on our investigation and analysis, as described in the attached report, it is our opinion that the Average Market Value of the Fee Simple Estate in a potential park site location in the City of Milpitas, outside the Midtown and Transit Area Specific Plan areas, subject to the attached Extraordinary and General Assumptions and Limiting Conditions, and any Hypothetical Condition, as of July 15, 2013, is:

\$51.00 per square foot
or
\$2,221,560 per acre

Mr. Steven G. McHarris
City of Milpitas
Page 2

The attached report contains the factual data and reasoning upon which the appraisal has been predicated. This report has been written in accordance with the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice (USPAP), as well as client guidelines.

Please see the General and Extraordinary Assumptions and Limiting Conditions and Hypothetical Conditions regarding the values presented in this appraisal report, as shown in Section I - Introduction.



William O. Hurd, MAI
Certified General Real Estate Appraiser
State of California #AG034899, exp. date 8-17-2014



Terry S. Larson, MAI
Certified General Real Estate Appraiser
State of California #AG007041, exp. date 11-30-2014

WOH, TSL
Enclosure

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SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Client:	City of Milpitas
Intended User:	City of Milpitas
Property Location:	Milpitas land outside of Midtown & Transit Area Specific Plan Areas
Property Type:	Potential Park Land
Assessor's Parcel Number:	N/A
Land Area:	Hypothetical One-Acre Parcel
Zoning:	Residential
General Plan:	Residential
Flood Hazard Zone:	No
Alquist Priolo Special Study Zone:	No
Present Use:	Residential
Highest and Best Use:	Residential – Suitable for Park Land
Estate Appraised:	Fee Simple
Purpose of the Appraisal:	Determine the Average Price of a Hypothetical one-acre site.
Value Premise:	Vacant and Ready for Development
Appraisal Date:	July 15, 2013
Average Market Value:	\$51.00 per square foot or \$2,221,560 per acre
	Subject to the attached General and Extraordinary Assumptions and Limiting Conditions
Appraisers:	William O. Hurd, MAI Certified General Real Estate Appraiser State of California #AG034899 Exp. date 8-17-2014 Terry S. Larson, MAI Certified General Real Estate Appraiser State of California #AG007041 Exp. date 11-30-2014

CERTIFICATION

We certify that, to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest with respect to the parties involved.
4. We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice*.
8. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
9. No one provided significant real property appraisal assistance to the persons signing this certification.
10. We are not evaluating a specific parcel, but rather providing a mathematical conclusion to be used in the Milpitas Midtown and Transit Area Specific Plan areas. Because the purpose of this assignment is to provide an opinion of value of a Hypothetical one-acre site, this is considered an appraisal. Mr. Terry S. Larson, MAI, has had personal discussions with the City of Milpitas regarding the scope and structure of this appraisal.
11. As of the date of this report, William O. Hurd, MAI and Terry S. Larson, MAI have completed the requirements under the continuing education program of the Appraisal Institute.
12. While not limited to a specific property, Smith & Associates has done a similar appraisal for the City of Milpitas in-lieu park fees within the three-year period immediately preceding acceptance of this assignment.



William O. Hurd, MAI
Certified General Real Estate Appraiser
State of California #AG034899, exp. 8-17-14



Terry S. Larson, MAI
Certified General Real Estate Appraiser
State of California #AG007041, exp.11-30-14

GENERAL ASSUMPTIONS

This appraisal has been made with the following General Assumptions. An Assumption is defined as: "that which is taken to be true".

1. No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
3. Responsible ownership and competent property management are assumed.
4. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
5. All engineering studies are assumed to be correct. The plot plans and illustrative material in this report are included only to help the reader visualize the property.
6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
7. It is assumed that the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
8. It is assumed that the property conforms to all applicable zoning and use regulations and restrictions unless a nonconformity has been identified, described, and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the opinion of value contained in this report is based.
10. It is assumed that the use of the land and improvements is confined within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

GENERAL ASSUMPTIONS - CONTINUED

11. Unless otherwise stated in this report, the existence of hazardous materials, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, and other potentially hazardous materials may affect the value of the property. The value estimated is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for such conditions or for any expertise or engineering knowledge required to discover them. The intended user is urged to retain an expert in this field, if desired.

GENERAL LIMITING CONDITIONS

This appraisal has been made with the following General Limiting Conditions. A Limiting Condition is defined as: "a condition that limits the Use of an Appraisal".

1. Any allocation of the total value estimated in this report between the land and the improvements applies only under the stated program of utilization. The separate values allocated to the land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
2. Any opinions of value provided in the report apply to the entire property, and any proration or division of the total into fractional interests will invalidate the opinion of value, unless such proration or division of interests has been set forth in the report.
3. Possession of this report, or a copy thereof, does not carry with it the right of publication.
4. The appraiser, by reason of this appraisal, is not required to give further consultation or testimony or to be in attendance in court with reference to the property in question unless arrangements have been previously made.
5. Disclosure of the contents of the appraisal report is governed by the Bylaws and Regulations of The Appraisal Institute.
6. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to the property value, the identity of the appraiser, professional designations, reference to any professional appraisal organizations, or the firm with which the appraiser is connected) shall be used for any purposes by anyone but the client specified in the report without the previous written consent of the Appraiser; nor shall it be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser. Any other party who uses or relies upon any information in this report, without the preparer's written consent, does so at their own risk.

EXTRAORDINARY ASSUMPTIONS

This appraisal has been made with the following Extraordinary Assumptions. An Extraordinary Assumption is defined as: "an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions". The use of the Extraordinary Assumptions might have affected the assignment results.

1. This Appraisal is intended to determine the Average Market Value of a hypothetical one-acre parcel of land in the City of Milpitas outside the Midtown and Transit Area Specific Plan areas with the potential of being developed with a park. This report does not consider any individual property, but rather looks at the Average Sales Price per Acre of that land.

HYPOTHETICAL CONDITIONS

This appraisal has been made with the following Hypothetical Conditions. A Hypothetical Condition is defined as: "a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis". The use of the Hypothetical Conditions might have affected the assignment results.

1. None

IDENTIFICATION OF THE PROPERTY

This Appraisal is intended to determine the Average Market Value of a hypothetical one-acre parcel of land in the City of Milpitas, outside the Midtown and Transit Area Specific Plan areas with the potential of being developed with a park. This report does not consider any individual property, but rather looks at the Average Sales Price per Acre for residential land outside the Milpitas Midtown and Transit Area Specific Plan areas.

PURPOSE AND PROPERTY RIGHTS APPRAISED

The purpose of the appraisal is to provide an opinion of the Average Market Value of a hypothetical one-acre parcel of land in the City of Milpitas, outside the Midtown and Transit Area Specific Plan areas with the potential of being developed with a park. The property rights are those of the Fee Simple Estate.

INTENDED USER AND INTENDED USE

The intended user of this appraisal is the City of Milpitas and the intended use is to assist in setting city-wide in-lieu park fees to be charged to developers outside the Midtown and Transit Area Specific Plan areas. It is not to be used by any other entity for any purpose without the written consent of the appraisers. The appraisers are not responsible for unauthorized distribution and/or use of this report.

EFFECTIVE DATE OF THE APPRAISAL

The effective date of the appraisal is July 15, 2013.

COMPETENCY PROVISION

The appraisers possess both the knowledge and required ability to appraise property within the City of Milpitas. It is within the Smith & Associates, Inc. defined service area and the appraisers have the required resources, including zoning information, Assessor's records, Multiple Listing Service, Loopnet, Landvision and CoStar Comps, Inc. The appraisers affiliated with Smith & Associates, Inc. have appraised numerous properties of a similar type in the area and its competing environment. **Please see a copy of the appraiser's qualifications in the Addenda.**

DEFINITIONS

Fee Simple Estate

*"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."*¹

Market Value

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. Buyer and seller are typically motivated;*
- b. Both parties are well informed or well advised, and acting in what they consider their own best interests;*
- c. A reasonable time is allowed for exposure in the open market;*
- d. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and*
- e. The price represents the normal consideration for the property sold unaffected by creative financing or sale concessions granted by anyone associated with the sale."*²

Average or Central Tendency

"The tendency of samples to cluster around a central point, or representative value, in a frequency distribution."

As Is Market Value

*"The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date."*³

Cash Equivalency

*"An analytical process in which the sale price of a transaction with nonmarket financing or financing with unusual conditions or incentives is converted into a price expressed in terms of cash."*⁴

¹ The Dictionary of Real Estate Appraisal, 5th Edition 2010, The Appraisal Institute, Page 78

² Office of the Comptroller of the Currency (OCC), 12 CFR Part 34, The Dictionary of Real Estate Appraisal, 5th Edition, Page 123 and FIRREA

³ The Dictionary of Real Estate Appraisal, 5th Edition 2010, The Appraisal Institute, Page 12

⁴ The Dictionary of Real Estate Appraisal, 5th Edition 2010, The Appraisal Institute, Page 30

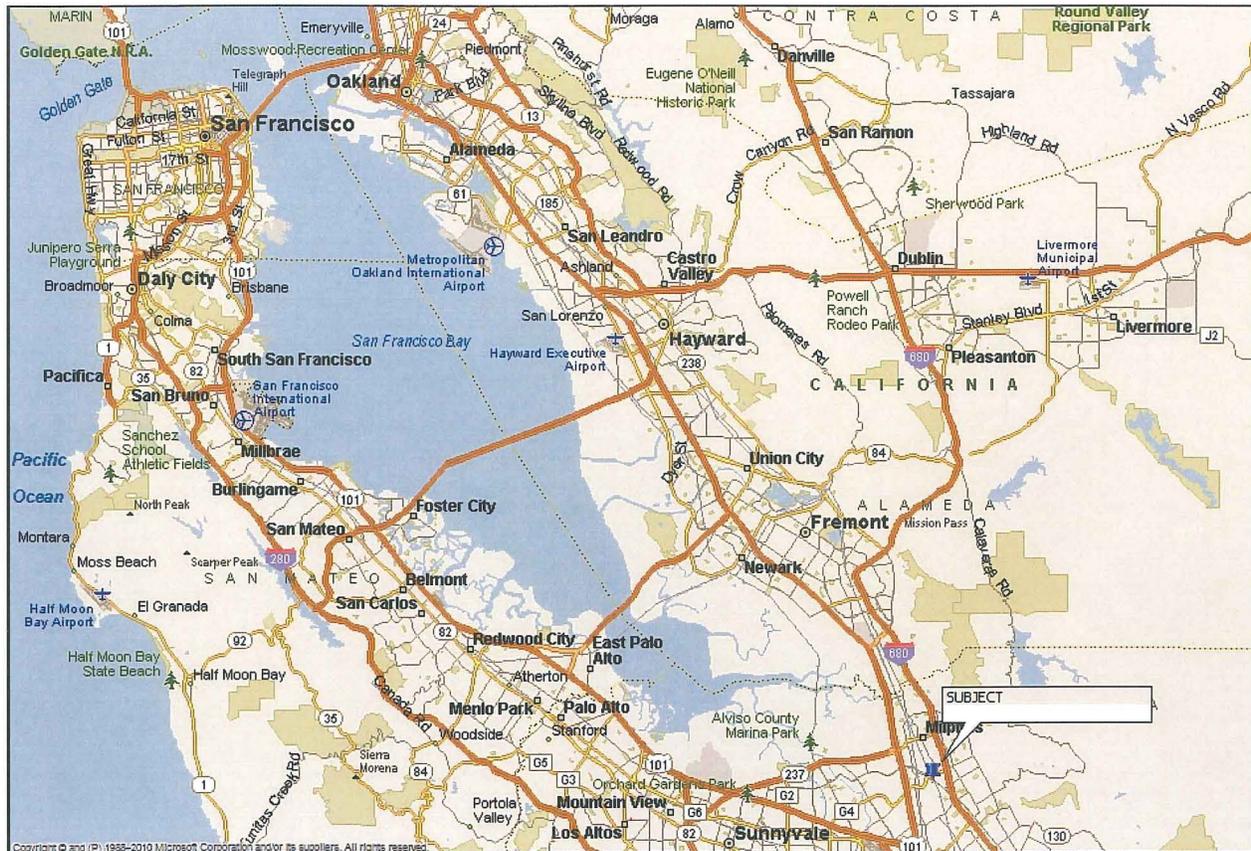
SCOPE OF THE APPRAISAL

Per the client's request, we have performed an appraisal and prepared a **Summary Report**. The methodology section of this report outlines the valuation procedures followed.

The specific steps in the appraisal process include the following:

- Research and analyze all of the applicable land sales within the City of Milpitas, or nearby areas with similar characteristics.
- Confirm details of the comparable sales to the greatest extent possible with the participants of the transaction. These include but are not limited to grantor and grantee, sale price, date, terms and conditions, development potential, number of residential units or square feet of commercial development, etc.
- We investigated land sales that reflect residential land uses of low (3-5 DU/AC) to medium (6-15 DU/AC) densities, typical of those outside the two specific plan areas.
- Once the complete sample of sales was identified and verified, the sales were adjusted for the following characteristics; property rights conveyed, financing, conditions of sale (listings), market conditions (time) and physical condition. A market conditions adjustment is important as the market can change over time and older sales may need to be adjusted to reflect upward or downward trends to the current date of the consultation service.
- Physical conditions are important as parcels are in different stages of improvement and need to be adjusted to a similar base condition. We considered a base value assuming a vacant, level site with all street improvements including curbs, gutters, sidewalks, utilities, and street lights, but no development entitlements. All of the sales have been adjusted to this standard.
- Once the sales were adjusted, we then calculated a mathematical average per acre market value.
- Although we are not considering a specific property, this is an appraisal as the main purpose is to provide an opinion of value. Additionally, we have prepared a Summary Report that provides all of the necessary information to fully document the comparable sales and adjustments and explain the process leading to the final Average Per-Acre Determination of Market Value.

REGIONAL MAP



REGIONAL ANALYSIS – SANTA CLARA COUNTY

Santa Clara County encompasses a total land area of approximately 1,034 square miles and most of the commercial and residential development as well as the county's population reside on the floor of the 225 square mile Santa Clara Valley. Topographical features that generally border Santa Clara County include the San Francisco Bay and its associated tidelands to the north, the Mount Hamilton Range to the east, the Santa Cruz Mountains to the south, and the Cupertino Foothills to the west.

Originally Santa Clara County was an agricultural area. Before 1945 the county consisted of mostly fruit and nut orchards mainly because of the ideal climate and topographical features gave the agricultural crops protection from elements. Following World War II returning GIs and their new families relocated to Santa Clara Valley, as it became an ideal place for living. During the 1950s, 1960s and 1970s, Santa Clara County experienced an unprecedented housing boom. New subdivisions were built for miles, creating an area of suburban sprawl.

Similar growth patterns are still occurring, but the lack of vacant land available for development, as well as the geographical constraints, has created a shortage of new housing. The result was increased pricing above levels ever previously seen or achieved in Santa Clara County.

Transportation

Santa Clara County is well served by an extensive freeway system, major commercial expressways, commercial rail and passenger light rail systems, as well as an International Airport. Interstate 680, 880, and 280 connect with the west and east San Francisco Bay Areas and the rest of the state. US Highway 101 and State Highways 17, 85, 87 and 237 also add additional freeway access to most areas of Santa Clara County. The Lawrence, San Tomas, Capitol, Foothill, Montague and Central Expressways provide cross-valley routes that are superior to surface streets, but are slower than freeways. State Route 85 serves the south valley and results in a fairly complete road system. This addition has been of great benefit to South Valley residents as it links them directly to employment centers in Cupertino, Sunnyvale, Mt. View, and the San Francisco Peninsula. Nevertheless the overall system is taxed by heavy traffic congestion during commute hours.

The Norman Y. Mineta San Jose International Airport is located near the intersection of Interstate 880, US Highway 101, and State Highway 87 (the Guadalupe Expressway), in the northern part of the city. National and International flight availability is considered above average and is expanding. Additional Domestic and International flights are also available from Oakland and San Francisco International Airports. The Reid Hillview Municipal Airport is located along Capitol Expressway but this is a small domestic airport that caters to local businesses and recreation flyers.

Union Pacific Railroad provides commercial rail service that serves the industrial developments throughout the City of San Jose and Santa Clara Valley. These corridors are mostly located along Monterey Highway to the west. The Valley Transportation Authority (VTA) provides Light Rail and bus service countywide and the light rail system connects with Caltrain at the Diridon (downtown San Jose), Tamien, Castro (downtown Mountain View), and Evelyn stations. The original light rail system operated primarily from downtown San Jose to points north, where many residents were employed. However, the light rail lines are now expanding in many directions, becoming more of a full service provider every year. All local transportation improvements have been made in an effort to lighten auto traffic, but to date, success has been moderate. Amtrak provides passenger rail service out of San Jose and Santa Clara, and has a commute line to the south valley, Morgan Hill and Gilroy. A future Light Rail Station is planned to be located along Capitol Expressway, but the timing remains unknown due to funding constraints.

Population

Between 1980 and 1990, the County of Santa Clara grew by 202,506 people. This growth represents a 16% increase in population. Similarly, between 1990 and 2000, the County grew by an additional 185,008, which accounts for a 12% change in population.

It is predicted that the County's population will continue to grow, but at a slower rate. Moderate rates of growth in employment and housing development may account for this slow down in population growth. According to the Association of Bay Area Governments, by 2010, the County of Santa Clara's population is projected to increase by 197,115 people to 1,879,700. From 2010 to 2020, the County of Santa Clara's population is predicted to increase an additional 127,800 people to 2,007,500. The accuracy of that projection depends on how the country and California recover from the recession and how soon the unemployment situation improves.

Employment

In their June 21, 2013 report, the California Employment Development Department (EDD) reported that California's unemployment rate decreased to 8.6 percent in May, and nonfarm payroll jobs increased by 10,800 during the month for a total gain of 767,200 jobs since the recovery began in February 2010. The U.S. unemployment rate increased in May to 7.6 percent.

In April, the state's unemployment rate was 9.0 percent, and in May 2012, the unemployment rate was 10.7 percent. The unemployment rate is derived from a federal survey of 5,500 California households.

Nonfarm jobs in California totaled 14,612,500 in May, an increase of 10,800 jobs over the month of April, according to a survey of businesses that is larger and less variable statistically. The survey of 42,000 California businesses measures jobs in the economy. The year-over-year change (May 2012 to May 2013) shows an increase of 252,100 jobs (up 1.8 percent).

Regional Conclusion

Santa Clara County is known as the high-technology center of the San Francisco Bay Area and the world. It has a diverse economic base with several industrial and office regional employment centers as well as having a large residential base. Physical features attract both businesses and residents.

But while more resilient than many areas of the country, Silicon Valley is not immune from the current economic turmoil. ABAG's 25-year projection remains positive for the San Jose and the greater Bay Area as economists agree that growth in the area should be steady and slower for the long-term. While the Valley was one of the areas hit hardest at the start of the recession due to layoffs and a collapse in home values, it is also recovering at a pace faster than the rest of the state and nation, thanks in part to the booming social media companies. This area is still attractive to businesses for its location, transportation options, highly educated population, and access to capital.

AREA AND NEIGHBORHOOD ANALYSIS

The City of Milpitas is located in the northeastern section of Santa Clara County, and it is bounded to the south by the City of San Jose and to the north by the City of Fremont. It is also part of the eastern portion of Silicon Valley. Land uses within the city are relatively diverse with most of the residential development located in the city's northern and eastern areas, while the industrial, research and development, and commercial uses are located primarily in the southern and western areas.

The City is well served by several transportation systems. Highways 680 and 880 run north-south through Milpitas connecting with the East Bay and Oakland to the north, while Highway 237 runs east-west, connecting with Highway 101 and the lower San Francisco Peninsula to the west. Highway 237 connects Highways 680 and 880. Access to and from Milpitas to all parts of the Bay Area, and beyond, is easy and direct by virtue of these three highways passing through the city. Lastly, the City has two Light rail stations that allow residents and employees to connect easily with the high tech and manufacturing companies in located in the City of San Jose, Silicon Valley, and Santa Clara County.

Between I-880 and Highway 680, commercial development is generally oriented along the major thoroughfares of Calaveras Boulevard, North & South Milpitas Drive, Jacklin Road, Montague Expressway, and Main Street. Just west of I-880 are the developing R&D, Office, and older manufacturing facilities north of Montague Expressway and along McCarthy Boulevard and Tasman Drive. From 2000 to 2007 approximately 1,000,000 Sq.Ft. Office/R&D space was built within the McCarthy Ranch Development. This project extends north from Highway 237 to Dixon Landing Road adjacent to the west side of I-880. We spoke with one of the real estate brokers who stated that there remains approximately 250 vacant acres available for future Office/R&D and Retail development within McCarthy Ranch.

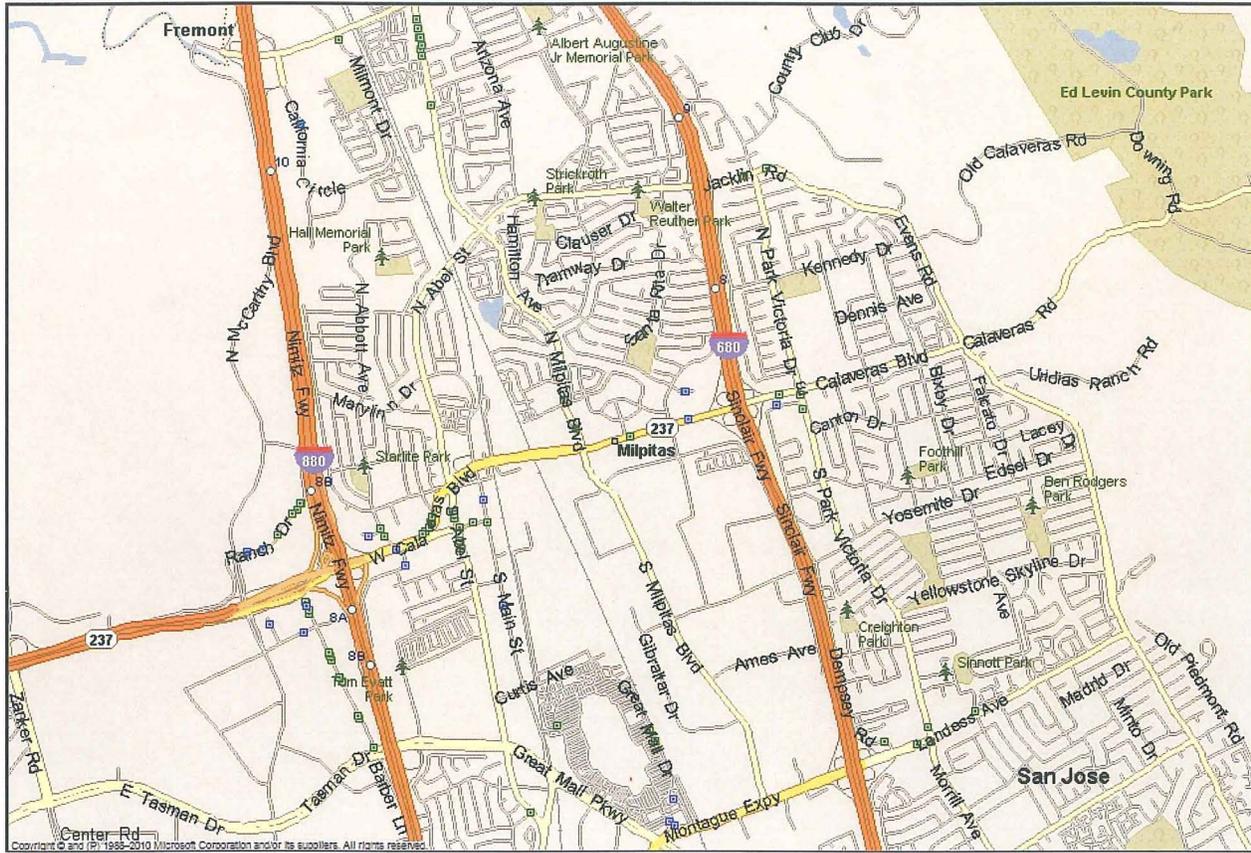
Land uses in Milpitas include commercial, retail, R&D, and industrial to several classifications of residential. These include low density single-family at very low density (less than 1 dwelling unit per acre) to Very High Density Residential with densities that range from 40 dwelling units per acre to as high as 90 dwelling units per acre with a conditional use permit.

Commercial land uses include the Town Center at East Calaveras Blvd. and North Milpitas Blvd. where the City Civic Center is located. Other Commercial uses are General Commercial, Retail Sub-Center, Professional/Administrative Offices, and Highway Service. Industrial land uses consist of Manufacturing and Warehousing, and Industrial Parks. Commercial and Industrial uses are located along the Valley floor with industrial uses centered along the east and west side of Highway 880 corridor as well as along South Milpitas Blvd. Commercial uses are generally found along major traffic arteries such as Main Street, Abel Street and Calaveras Blvd., with the McCarthy Ranch Marketplace at the northwest quadrant of Highways 880 and 237. The Great Mall of Milpitas is along the Montague Expressway.

Conclusion

Although located on the east side of Silicon Valley, Milpitas has become an increasingly desirable location for business, as well as a desirable community in which to live. The high cost of housing and commercial property in the West Valley and lack of available developable land has drawn business and residents to the community. Ease of access to the Bay Area freeway system also helps make this a desirable location.

CITY MAP



NATIONAL AND STATE ECONOMIC CONDITIONS

The UCLA Anderson Forecast for California is the most widely followed and oft-cited in the state and was unique in predicting both the seriousness of the early-1990s downturn, and the strength of the state economy's rebound since 1993. Below is their most recent report, published on June 5, 2013.

National Economy Falls Short of True Recovery - California Employment Growth Remains Steady

The UCLA Anderson Forecast outlook for the United States says that despite "improvement in both GDP and key economic sectors, the overall growth falls short of the rates required for the national economy to truly recover from the most recent recession."

In California, the outlook differs little from last quarter, adjusted only to reflect the most current data. The factors driving California employment and income growth to rates higher than the U.S. remain. As the global economy improves with greater investment in the U.S., the state will again benefit from a disproportionate share of the improvement.

The National Forecast

In the June Forecast report, UCLA Anderson Forecast Director Ed Leamer writes that despite the positive growth in GDP and in key economic sectors, the U.S. economy is not in recovery, as the growth falls far short of the levels needed to bring the economy back to trend. "U.S. real GDP is now 15.4% below the normal 3% trend," Leamer writes. "To get back to that 3% trend, we would need 4% growth for 15 years, or 5% growth for eight years, or 6% growth for five years, not the disappointing 2s and 3s we have been racking up recently, which are moving us farther from trend, not closer to it. It's not a recovery. It's not even normal growth. It's bad."

Leamer's essay, titled "Great Recovery: Wherefore Are Thou," delineates a paradox. Growth in GDP is positive, but not exceptional. Jobs numbers are improving, but not rapidly enough, and the jobs being created are not necessarily jobs that will ensure workers a secure future. Meanwhile, Leamer says, the tepid growth continues to obscure the nation's most fundamental problems; too much government spending funded with too much borrowing, too little national savings to cover late-in-life health care issues and too many workers lacking the skills to compete in the modern economy.

Despite the problems, the current forecast is slightly better than those of the recent past and 2015 is expected to be better than 2014. Real GDP edges up to 3% by 2015. The Fed Funds interest rate will remain near zero, as a continuing dose of monetary medicine. The unemployment rate will fall to 6.6% by 2015, due in part to a growing base of discouraged workers. Leamer also writes that the "genuinely good news is that we are in the early stages of a real recovery in housing. Housing starts, which fell to a historic low of 550,000 in 2009, will climb back to the normal 1.5 million by 2015."

In a companion piece, David Shulman, senior economist with UCLA Anderson Forecast and UCLA Ziman Center for Real Estate, takes a closer look at the housing recovery. "Home prices are rising and housing starts have approximately doubled from their depression lows of a few years ago," Shulman writes.

Shulman's forecast says that housing starts will reach a run rate of 1.6 million units by mid-2015 and home prices will continue to rise. Specifically, housing starts are expected to increase from 782,000 units recorded in 2012 to 1.03 million and 1.35 million units in 2013 and 2014 respectively, reaching 1.56 million by 2015. Multi-family housing starts will continue to rise, with an excess of 400,000 units a year being started in both 2014 and 2015.

The California Forecast

The California forecast report, authored by Senior Economist Jerry Nickelsburg, notes that California continues to lead the measured growth seen in the national economy, a trend consistent over the past four years since the end of the recent recession. The difference at this point lies in the construction sector. "As job gains accumulate, household formation rates increase and the demand for housing, finally, is generating new residential construction," Nickelsburg writes.

Nickelsburg says California has been one of the bright spots in the U.S. employment picture. California's employment growth has been consistently in the Top 10 of states. For the twelve months ending in April 2013, only Utah's employment growth rate grew faster. While the increase in California jobs has been widespread, the economy's strength lies in the state's technology and knowledge-laden sectors, which use technology and information more heavily, accounting for more than half the job growth in the state.

The forecast for 2013 is for total employment growth (payroll, farm and self-employed) of 2.6% and 2.1% in 2014 and 2015. Non-farm employment will grow more slowly at 2% in both 2013 and 2014 and 2.2% in 2015. Real personal income growth is forecast to be 2.3% in 2013; followed by 3.5% and 3.3% in '14 and '15. Unemployment will fall through 2013 and will average approximately 9.1% for this year. In 2014, we expect the unemployment rate to drop to 8.1% and then to 7.1%.

MARKET OVERVIEW

We are developing an estimate of residential land values (the most likely placement of park land) outside the Midtown and Transit Area Specific Plan areas of Milpitas, so we looked at both home re-sale values and new home/apartment development. The densities for residential development tend to be lower outside those plan areas, therefore we see more townhome and single-family home development, compared to higher density condos and apartments within the plan areas. First is information on the overall housing industry from DataQuick, then statistics on new home development in Santa Clara County from The Gregory Group.

Housing Market – Excerpts from most recent DataQuick report

Continued Upward Trend for Bay Area Home Prices; Sales Dip Yr/Yr June 13, 2013

Bay Area home prices continued to rise in May, the result of an improving economy, low mortgage rates, pent-up demand and continued investor interest. Sales remained below average, mainly because the supply of homes for sale remains unusually tight, according to San Diego-based DataQuick.

The median price paid for a home in the nine-county Bay Area last month was \$519,000, up 1.8 percent from \$510,000 in April, and up 29.8 percent from \$400,000 in May 2012. That was the highest median since March 2008, when it was \$536,000.

The Bay Area median peaked at \$665,000 in June and July 2007, and then dropped as low as \$290,000 in March 2009 – a decline of \$375,000, or 56.4 percent. In May the median was still 22.0 percent below the peak but it had made up about 61 percent of its peak-to-trough loss.

Much of the median's ups and downs can be attributed to shifts in the types of homes sold. When adjusting for these shifts, it appears that about three fourths of the 29.8 percent year-over-year rise in the May median sale price reflects an increase in home values, while the rest was market mix.

"In a year or two, we'll probably see in hindsight that a bounce off the bottom was faster and easier than later incremental gains in a more balanced market. As it is, today's market is still re-establishing equilibrium. Among potential buyers there is clearly a sense that favorable factors are lined up right now in a way they may not be in a year, or three or five years," said John Walsh, DataQuick president.

A total of 8,541 new and resale houses and condos were sold in Bay Area in May. That was up 12.1 percent from 7,621 the month before, and down 4.0 percent from 8,899 for May a year ago, DataQuick reported.

Sales increase on average by 7.3 percent from April to May. Since 1988, when DataQuick's statistics begin, May sales have varied from 6,216 in 2008 to 13,567 in 2004. Last month's sales were 11.2 percent below the May average of 9,622.

The number of homes sold in May for less than \$500,000 fell 28.2 percent year-over-year, while the number sold for more rose 17.3 percent.

May's distressed property sales – the combination of foreclosure re-sales and "short sales" – made up about 21 percent of the resale market. That's the lowest since it was about 19 percent in December 2007. Last month's distressed property level was down from about 24 percent in April and about 42 percent a year ago.

Foreclosure re-sales – homes that had been foreclosed on in the prior 12 months – accounted for 7.3 percent of re-sales in May, down from a revised 8.4 percent in April, and down from 21.4 percent a year ago. Last month was the lowest since 6.9 percent in September 2007. Foreclosure re-sales peaked at 52.0 percent in February 2009. The monthly average for foreclosure re-sales over the past 17 years is about 10 percent.

Short sales – transactions where the sale price fell short of what was owed on the property – made up an estimated 13.9 percent of Bay Area re-sales last month. That was down from an estimated 15.0 percent in April and down from 21.2 percent a year earlier.

Jumbo loans, mortgages above the old conforming limit of \$417,000, accounted for 47.7 percent of last month's purchase lending, up from a revised 47.6 percent in April, and up from 37.2 percent a year ago. Last month's jumbo share was the highest since it was 58.6 percent in August 2007, when a credit crunch hit and made jumbo loans harder to get. Jumbo usage dropped to as low as 17.1 percent in January 2009.

Government-insured FHA home purchase loans, a popular choice among first-time buyers, accounted for 12.3 percent of all Bay Area home purchase mortgages in May, up from a revised 12.0 percent in April and down from 17.0 percent a year earlier. In recent months the FHA level has been the lowest since summer 2008, reflecting both tougher qualifying standards and the difficulties first-time buyers have competing with investors and cash buyers.

Buyers who appear to have paid all cash – meaning no sign of a corresponding purchase loan was found in the public record – accounted for 27.6 percent of sales in May. That was down from a revised 28.3 percent the month before and down from the same amount, 28.3 percent, a year earlier. The monthly average going back to 1988 is 13.1 percent.

Indicators of market distress continue to decline. Foreclosure activity remains well below year-ago and peak levels reached several years ago. Financing with multiple mortgages is low and down payment sizes are stable, DataQuick reported.

All homes	Sales Volume			Median Price		
	May-12	May-13	% Chng	May-12	May-13	% Chng
Alameda	1,829	1,637	-10.5%	\$355,000	\$465,000	31.0%
Contra Costa	1,651	1,653	0.1%	\$295,000	\$410,000	39.0%
Marin	322	414	28.6%	\$627,000	\$795,000	26.8%
Napa	149	166	11.4%	\$329,000	\$419,250	27.4%
Santa Clara	2,143	2,064	-3.7%	\$529,000	\$665,000	25.7%
San Francisco	616	530	-14.0%	\$701,000	\$870,000	24.1%
San Mateo	818	764	-6.6%	\$560,000	\$705,000	25.9%
Solano	713	629	-11.8%	\$190,000	\$245,500	29.2%
Sonoma	658	684	4.0%	\$300,250	\$390,000	29.9%
Bay Area	8,899	8,541	-4.0%	\$400,000	\$519,000	29.8%

Source: DataQuick, www.DQNews.com

New Home Sales

The following chart for the San Jose metro area is from The Gregory Group, which tracks new home development and sales. Home prices and sales are up. It is also interesting to note that the average home size is also creeping up, indicating that interest in single family homes is coming back. This is a positive sign for the areas outside of the Midtown and Transit Area specific plans because the outlying areas generally have lower densities and more single family developments. The decreasing inventory also indicates that competition is likely to remain strong for new developments.

THE GREGORY GROUP - NEW HOUSING TRENDS SAN JOSE PMSA

	1st Qtr 2011	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr 2012	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr 2013	Quarter % Change	Year Ago % Change
Average Price	\$608,585	\$645,378	\$687,573	\$671,626	\$636,511	\$642,523	\$676,179	\$693,195	\$742,666	7.1%	16.7%
Median Price	\$580,000	\$594,498	\$588,998	\$563,245	\$570,000	\$571,740	\$589,990	\$666,940	\$696,445	4.4%	22.2%
Average Home Size	1,606	1,702	2,060	2,090	2,002	2,002	2,093	2,192	2,219	1.2%	10.8%
Average Pr/Sq Ft	\$400.19	\$393.14	\$346.91	\$332.91	\$336.21	\$340.05	\$344.97	\$349.75	\$364.99	4.4%	8.6%
Ttl Wkly Sales Rate	0.53	0.54	0.80	0.71	0.91	0.85	0.86	1.17	1.26	--	--
Quarter Sold	92	124	259	221	327	340	259	222	270	21.6%	-17.4%
Qtrr Wkly Sales Rate	0.35	0.45	0.64	0.55	0.84	0.90	0.91	0.85	0.99	--	--
Unsold Inventory	361	272	383	741	334	217	135	105	107	1.9%	-68.0%
Weeks of Inventory	34	24	15	14	12	9	7	5	4	--	--

CONCLUSIONS

When we did the appraisal in 2012 for in-lieu park fees within the Midtown and Transit Area Specific Plan areas, the majority of land sales were for very high density projects – primarily apartments and a few townhome developments. The emphasis was around the future BART station and also reflected an economy that was recovering quite slowly. There was a high demand for apartments from people who had lost their homes to foreclosure or short sales, or who could not qualify for a new home due to more stringent credit requirements.

While the national economy is still not creating enough jobs to satisfy some economists, Silicon Valley has been the exception and will likely continue to lead the recovery. Technology is once again king. The success of social media, alternative energy, and high tech companies has created new sources of wealth and demand for housing. So in this appraisal, we saw a few more sales for medium-density, single-home developments. Most of these are still clustered close to the town center and transportation. But it is a positive sign for Milpitas and the local economy.

APPRAISAL METHODOLOGY – SALES COMPARISON APPROACH

The most common way of estimating land value is the Sales Comparison Approach in which recent sales or offerings of vacant land are gathered and analyzed. Typically, the values indicated by the comparable transactions are reduced to a unit of comparison such as sales price per square foot of land area, price per buildable unit, or price per square foot of developable building area. We should point out that many of these "land" sales have existing buildings on them that must be torn down. Because we are interested in the base land value we must include these demolition costs, since they are part of the cost to the buyer to get vacant land.

The land sales and listings developed for this assignment are displayed on the following **Comparable Land Sales Summary Tables**. Details and comments with respect to each sale are provided in the table, while discussions on adjustments to the unit of comparison are discussed in the following paragraphs. We have also included **Land Sales Adjustment Tables**.

The sales and listings are adjusted for property rights conveyed, financing, conditions of sale, market conditions (time), and physical factors, where necessary. Adjustments for location were not necessary as all sales are in the City of Milpitas. We did adjust for density, since we included some of the Midtown/Transit Area sales for comparison. The following narrative discussion will explain the adjustments for each comparable.

Land Sales Discussion

The following tables identify several sales that we believe are comparable for this appraisal. In the residential market, there have been several sales in the City of Milpitas over the past couple of years.

The appraisal assignment is to render an opinion of the average price for a hypothetical 1-acre parcel of land with the potential of being developed as a park. It is residential use that triggers the need for parks and the desire is to have the parks within or adjacent to new residential development. Therefore, we considered only land sales intended for residential use.

As stated at the beginning of this section, we are estimating the value of vacant land. Therefore, an estimate of demolition costs has been included with each sale that has site improvements, to get the true price paid for the land only.

COMPARABLE RESIDENTIAL LAND SALES							
	ADDRESS APN	BUYER	SALE DATE	LOT SIZE S.F.	PRICE TOTAL	INTENDED USE	COMMENTS
		SELLER	DOC #	ACRES	PER SF	ZONING	
OUTSIDE MIDTOWN / TRANSIT AREA SALES							
1	31 S. Milpitas Blvd. Milpitas 086-28-041 & 086-39-003	DR Horton Limar Realty Corp 2 (041) Topaz RE Investors LLC (003)	Apr-13 22182994 22182993	495,277 11.37	\$37,680,000 \$1,000,000 \$38,680,000 \$78.10	80 SFR 7.08 DU/Ac TC-PUD 19	Approved Tentative Map \$1,000,000 for demo of 2 industrial buildings
2	375 Los Coches St. Milpitas 086-39-002 & 001	San Ramon Land LLC Less Properties LLC Genesis United Methodist Church	May-13 22233879 Dec-12 22006634	115,869 2.66	\$5,650,000 \$125,000 \$5,775,000 \$49.84	33 SFR 12.41 DU/Ac TC-PUD 19	Subject to Entitlements \$125,000 for demo of industrial building
3	245-373 Sinclair Frontage Rd. Milpitas 086-29-061,062,075,076 & 042	Brookfield Homes Mission Peak Homes LLC	Jun-12 21728782	420,791 9.66	\$19,350,000 \$700,000 \$20,050,000 \$47.65	80 SFR 8.2 DU/Ac PD2007-10	Subject to Entitlements \$700,000 for demo of 4 industrial buildings
4	905-980 Los Coches St. Milpitas 086-29-049 & 050	Robson Homes Green Valley Corp.	Aug-11 21280444	230,433 5.29	\$11,900,000 \$300,000 \$12,200,000 \$52.94	83 SFR 16.6 DU/Ac TC-PUD 19	Subject to Entitlements \$300,000 for demo of 2 buildings
5	Murphy Ranch Rd. Milpitas 086-01-046	ORA Murphy Ranch 285 LLC Fairview Murphy Rd. LLC	Jun-11 21196423	567,587 13.03	\$24,811,000 \$43.71	285 TH 22 DU/Ac R-4 PD	Subject to Entitlements 1/2 mile to light rail
MIDTOWN / TRANSIT AREA SALES							
6	1338 S. Main St Milpitas 086-23-004 & 016	Kumar/Sharma WU Cherry & K 1990 Trust	Sep-12 21858173	18,998 0.44	\$775,000 \$40.79	Hold High Density	Potential residential development but more likely commercial/retail
7	1201 S. Main St Milpitas 086-16-100	Shea Properties Matteson Companies	Aug-12 21793603	118,483 2.72	\$7,750,000 \$65.41	204 Apts. R4 w/TOD overlay 75 DU/Ac	Subject to Entitlements
8	1625-1845 McCandless Milpitas 086-41-019,020,021 & 022	DR Horton Mission West Properties	Aug-12 21536587	534,481 12.27	\$22,600,400 \$1,300,000 \$23,900,400 \$44.72	134 Units 16 DU/Ac R-3	Subject to Entitlements \$1,300,000 for demo of three industrial buildings < 1/2 mile to light rail
9	Trade Zone Blvd. & Montague Milpitas 086-36-043	Trumark Companies Mission West Properties	Jul-12 21741832	361,548 8.30	\$18,500,000 \$1,043,000 \$19,543,000 \$54.05	134 Units 16 DU/Ac R-3	Subject to Entitlements \$1,043,000 for demo of three industrial buildings < 1/2 mile to light rail
10	1435-1620 McCandless Dr. Milpitas 086-33-094, 095, 098, 099	Taylor Morrison Mission West Properties LP V	Apr-12 21646463	420,790 9.66	\$19,350,000 \$1,000,000 \$20,350,000 \$48.36	200 Townhomes 20.7 DU/Ac R-3/PD	\$1,000,000 for demo of 4 industrial buildings 1/3 mile to light rail Subject to Entitlements

Adjustments to the Comparables

All of the pertinent information for the comparables is presented in the Summary Tables and only adjustments to the sales will be discussed here. Since we are providing an opinion of the Average Market Value of a hypothetical one-acre parcel of land for the City of Milpitas and not a specific property, the overall adjustments are minor.

Market Conditions

The market conditions indicate new home price and sale increases in 2013, as well as decreasing inventories. While high-density apartments are still in demand, the market for single family homes appears to have strengthened. Therefore, we have made an upward adjustment for market conditions for 2011 and 2012 sales.

Location

As stated earlier, all are Milpitas sales and need no adjustment. We considered land sales in nearby parts of Fremont and San Jose but other factors made them not comparable.

Density

Most new residential development outside the Midtown and Transit Area Specific Plans is in the medium density range of 6-15 DU/Ac. We also used sales from within those plan areas that were close to that density range, except for Sale 7, which is very high density apartments with a TOD overlay. Therefore, that sale warrants a large downward adjustment.

Entitlements

All of the sales except Sale 1 went into escrow "subject to entitlements." This means that during the escrow period, the buyer initiates and pays for all the steps to get an entitled project. If their original expectations cannot be executed, they have the ability to walk away from the deal with only the loss of a deposit in most cases. But this seems to be the typical way that un-entitled land is purchased – it will be entitled by the time escrow closes, but the buyer pays for the entitlement process on top of the price they paid for the un-entitled land. Sale 1 already had an approved tentative map when DR Horton purchased the land (paid for by original developer Braddock & Logan), so that sale warrants a downward adjustment for superior entitlements. The approval process from an industrial use to a mapped residential development can be significant, so this is a larger adjustment.

Conclusion

While we have attempted to adjust the sales to the hypothetical subject property for the differences identified in the adjustment grid, it must be remembered that the adjustment process is not an exact science. It reflects the appraiser's judgment regarding these differences and their magnitude relative to the overall sale price. The table below summarizes these adjustments and then averages the values by various groupings – both outside and inside the specific plan areas, and then Milpitas as a whole. The groupings are quite close because we included only specific plan sales at the low end of the high density range (i.e. near the high end of the medium density range). The exception is Sale 7, a very high density sale we included for bracketing purposes. Sale 1, the highest at \$78.10/s.f. before adjustments, is given less weight because it was entitled at the time of sale. Sale 6, the lowest at \$40.79/s.f. unadjusted, is given less weight because the location makes it more likely that a retail use will be built, rather than residential.

Had they been done at the same time, we might have expected a larger gap between this opinion of value and the one we did in 2012 for the Midtown and Transit Area Specific Plan in-lieu fee. But the market has improved significantly enough in the intervening time that this gap has been reduced.

COMPARABLE LAND SALES - RESIDENTIAL										
ELEMENT OF COMPARISON	OUTSIDE MIDTOWN/TRANSIT AREAS					INSIDE MIDTOWN/TRANSIT AREAS				
	SALE 1	SALE 2	SALE 3	SALE 4	SALE 5	SALE 6	SALE 7	SALE 8	SALE 9	SALE 10
DATE OF SALE	Apr-13	May-13	Jun-12	Aug-11	Jun-11	Sep-12	Aug-12	Aug-12	Jul-12	Apr-12
BASE PRICE PER SF LAND	\$78.10	\$49.84	\$47.65	\$52.94	\$43.71	\$40.79	\$65.41	\$44.72	\$54.05	\$48.36
PROPERTY RIGHTS CONVEYED	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
ADJ. PRICE	\$78.10	\$49.84	\$47.65	\$52.94	\$43.71	\$40.79	\$65.41	\$44.72	\$54.05	\$48.36
FINANCING TERMS	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
ADJ. PRICE	\$78.10	\$49.84	\$47.65	\$52.94	\$43.71	\$40.79	\$65.41	\$44.72	\$54.05	\$48.36
CONDITIONS OF SALE	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
ADJ. PRICE	\$78.10	\$49.84	\$47.65	\$52.94	\$43.71	\$40.79	\$65.41	\$44.72	\$54.05	\$48.36
MARKET CONDITIONS (TIME)	0.0%	0.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
ADJ. PRICE	\$78.10	\$49.84	\$50.03	\$55.59	\$45.90	\$42.83	\$68.68	\$46.95	\$56.76	\$50.78
LOCATION	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
PHYSICAL CHARACTERISTICS										
DENSITY	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	-20.0%	0.0%	0.0%	0.0%
ENTITLEMENTS	-30.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
UTILITY/USE	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
TOTAL ADJUSTMENT	-30.0%	0.0%	0.0%	0.0%	0.0%	0.0%	-20.0%	0.0%	0.0%	0.0%
INDICATED PRICE PER SF LAND	\$54.67	\$49.84	\$50.03	\$55.59	\$45.90	\$42.83	\$54.94	\$46.95	\$56.76	\$50.78
\$51.21						\$50.45				
\$50.83										

FINAL VALUE RECONCILIATION

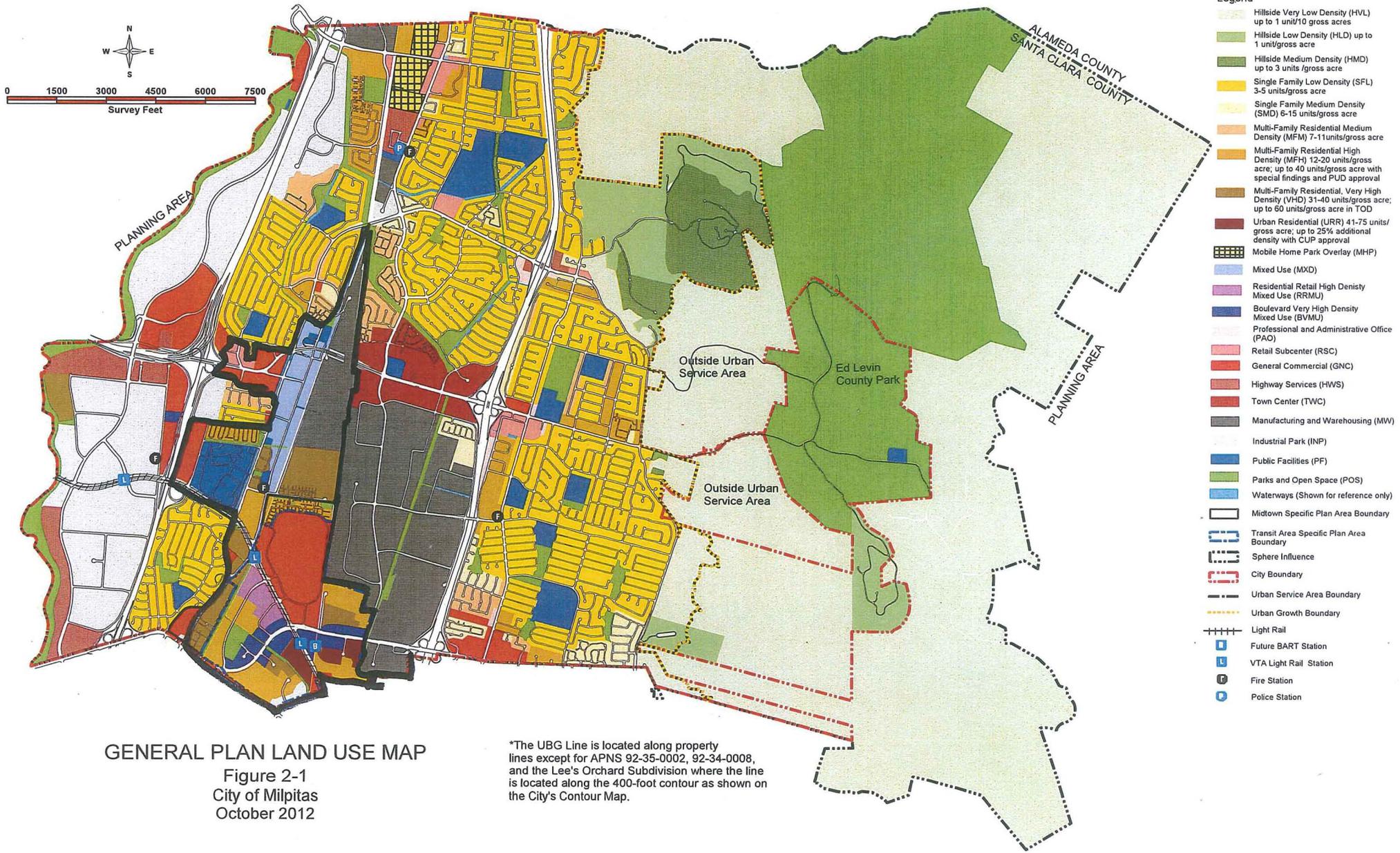
With respect to reconciliation, there is, in this case, only one applicable approach to value, the Sales Comparison Approach. As a result, this is the sole basis for the value conclusion. The Sales Comparison Approach to value is believed to be the most relevant indicator of value, as it is the most likely method of valuation for vacant land.

All sales are fairly close based on location, timing, and density. After only a couple of necessary adjustments, we see a consistent range that makes the average of all sales appropriate given that the in-lieu park fee applies across all of Milpitas outside of the Midtown and Transit Area Specific Plan areas.

Based on our investigation and analysis, it is our opinion that the Average Market Value of the Fee Simple Estate in a potential park site location in the City of Milpitas, outside the Midtown and Transit Area Specific Plan areas, subject to the attached General and Extraordinary Assumptions and Limiting Conditions, and any Hypothetical Conditions, as of July 15, 2013, is:

\$51.00 per square foot
or
\$2,221,560 per acre

ADDENDA



MIDTOWN SPECIFIC PLAN

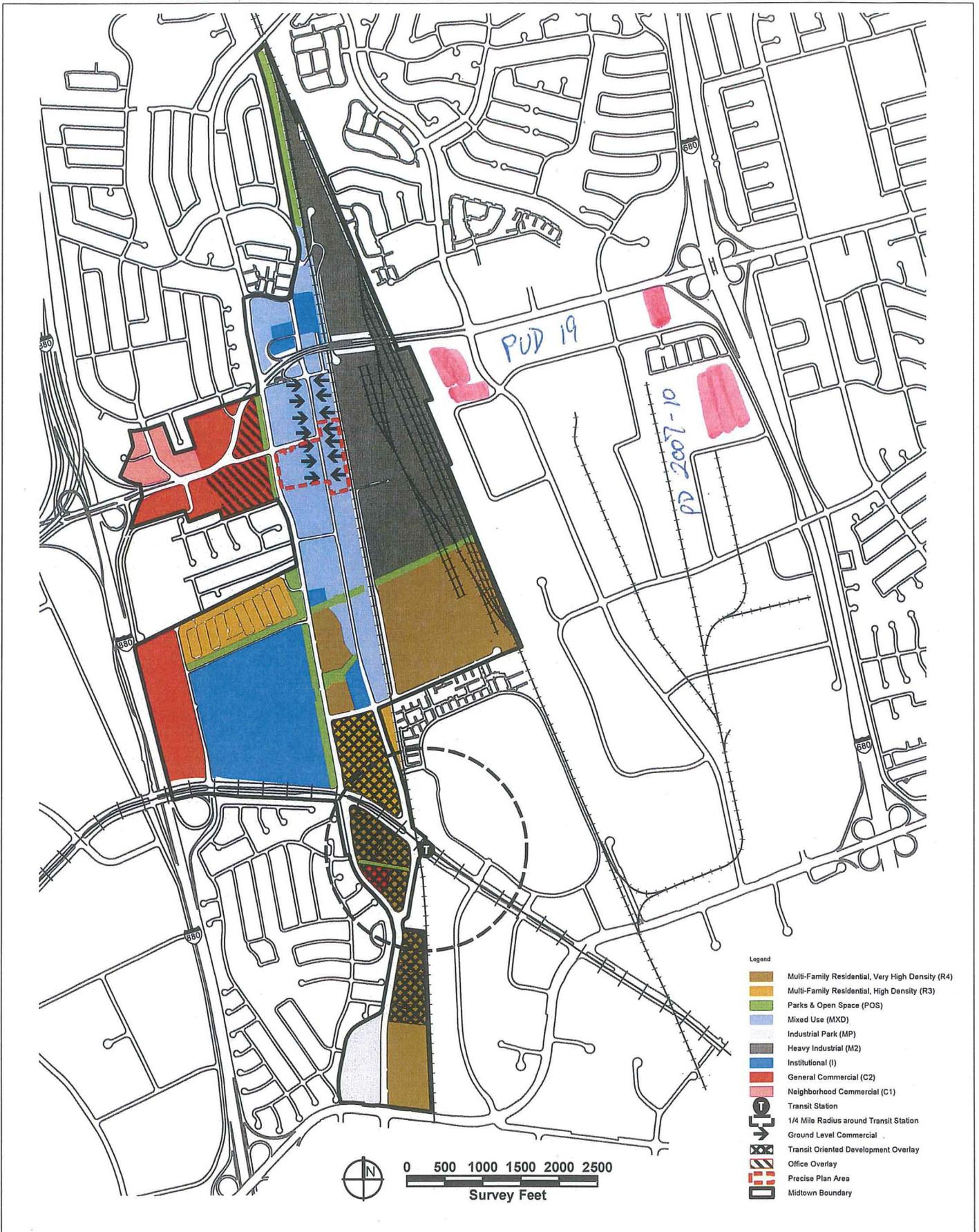


Figure 8.0: Midtown Land Use Map

MILPITAS TRANSIT AREA SPECIFIC PLAN

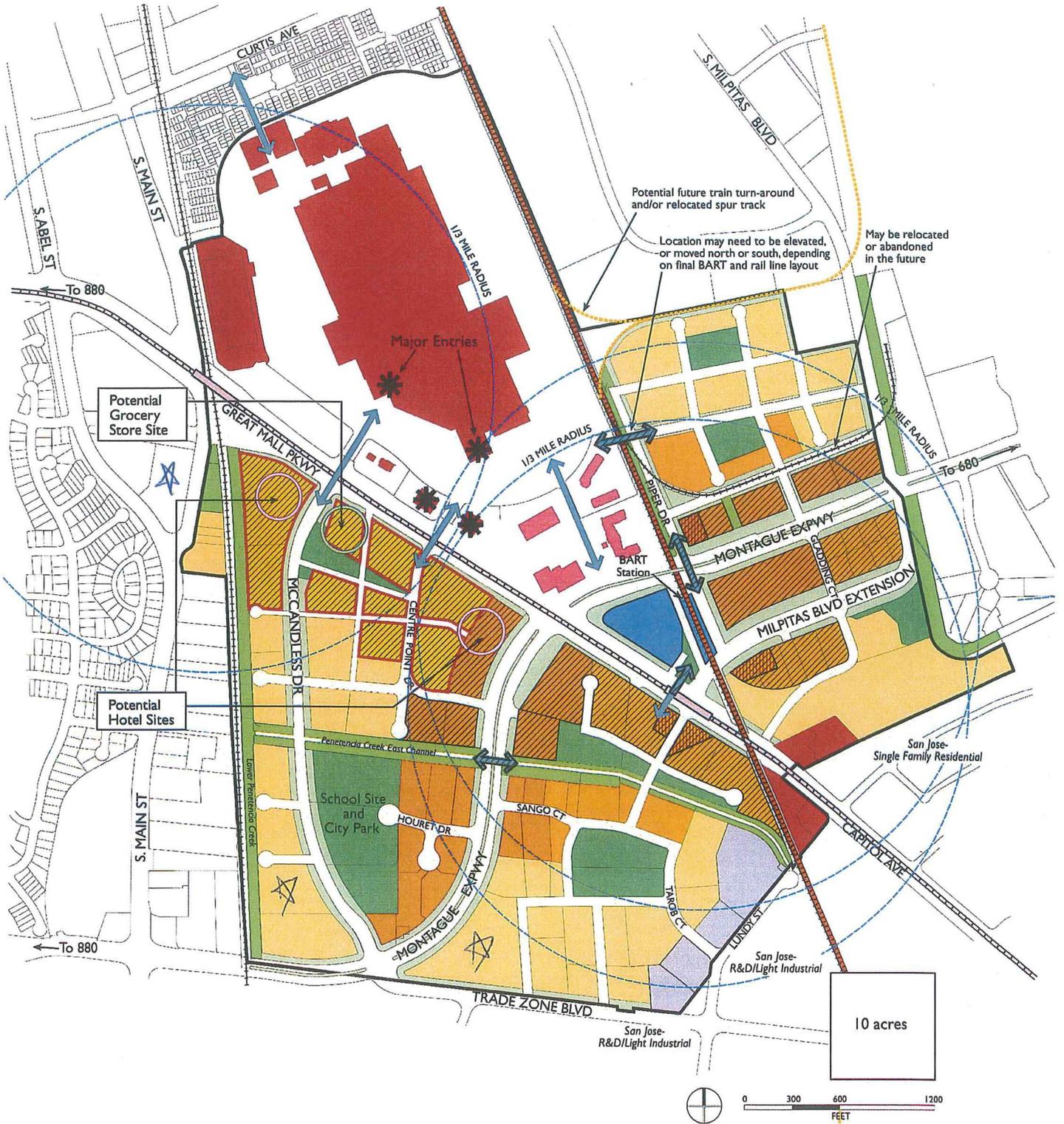


Figure 3-1
Transit Area Plan

LEGEND

-  General Commercial
-  Retail Transit Oriented
Community and Regional Retail; Hotels, Office. Maximum FAR of 2.5.
-  Boulevard Very High Density Mixed Use
Permitted uses include Residential, Office, Commercial and Medical uses up to 1.5 maximum gross FAR, an FAR of 2.5 may be permitted on individual sites. 4-12 stories (20 stories with CUP). Residential use shall have 41 un/ac minimum average gross density; 60 un/ac maximum average gross density.
-  Residential - Retail High Density Mixed Use
Residential, office, and/or hotel uses above ground floor retail and restaurants, 200 sq. ft of retail or restaurant use required for every residential unit. Residential density: 31 du/ac minimum average gross density; 50 un/ac maximum average gross density. 4-12 stories. (20 stories with CUP) Maximum FAR of 1.5; up to 2.5 FAR may be permitted on individual sites.
-  Very High Density Transit Oriented Residential
41 un/ac minimum average gross density; 60 un/ac maximum average gross density; 4-6 stories; (12 stories on arterials, 20 stories with CUP) gross densities of individual projects may be <41 or >60, provided that area development complies with average gross density; small local-serving retail, office, and live/work permitted at ground floor.
-  High Density Transit Oriented Residential
21 un/ac minimum average gross density; 40 un/ac maximum average gross density; 3-5 stories; gross densities of individual projects may be <21 or >40, provided that area development complies with average gross density; residential uses only.
-  Transit Facilities
Underlying zoning to be Boulevard Very High Density Mixed Use if transit facilities are not built on this site.
-  Industrial Park
-  Parks/Plazas/Community Facilities
-  Linear Park and Trails
-  Landscaped Front Yards and Buffers
-  Neighborhood Retail Locations
5000 sq. ft. of local serving retail required on the ground floor.
-  Density Bonus
Increased density permitted on sites closest to BART and light rail. See table for detail about TOD Overlay District and TOD Density Bonus allowed with a CUP.
-  Potential Hotel Sites
-  Potential Grocery Store Site
-  Proposed BART Line
-  VTA Light Rail Transit
-  Union Pacific Railroad and Railroad Spur
-  Potential Future Train Turn-around and/or Relocated Spur Track
-  Study Area
-  Pedestrian Connection
-  Pedestrian Bridge

Figure 3-1
Transit Area Plan

William O. Hurd, MAI

California General Certified Real Estate Appraiser No. AG034899

SUMMARY

After 20+ years in the technology industry, Mr. Hurd has been a professional real estate appraiser and consultant in Northern California since 2004. He is a designated member of the Appraisal Institute, with appraisal experience in the entire San Francisco Bay Area and Sacramento. Mr. Hurd has lived in the Bay Area for over 30 years.

Property types valued and analyzed include the following:

- * *Commercial (Office, Medical, Retail, Restaurant)*
- * *Industrial (Warehouse, Light Industry, Production)*
- * *Vacant Land (Commercial, Industrial, Mixed-Use)*
- * *Specialty (Eminent Domain, Right-of-Way, Arbitration)*
- * *Subdivision (Lots, SFR, Condominiums)*

WORK HISTORY

2004 - Present	Commercial Appraiser	Smith & Associates, Inc.
2003 - 2004	Owner	Twin Oak Properties
2001 - 2003	V.P. Bus. Development	Imperial Technology
1999 - 2001	Dir. Field Services	Provato
1988 - 1998	Dir. Sales Engineering	Sybase
1980 - 1988	Technical Sales	AT&T

ASSIGNMENTS OF INTEREST

- Litigation support for both public agencies and private land owners
- Prepared preliminary budgetary valuation studies for several hundred properties for the proposed BART extension from Fremont to San Jose and Santa Clara
- Appraised land for several redevelopment projects for the Sacramento Housing and Redevelopment Agency
- Completed rent surveys and full appraisals for both regional and international airports
- Prepared Public Land Acquisition Value appraisal for City of Elk Grove
- Appraised over 20 properties and provide ongoing support for Capitol Expressway Light Rail Project in San Jose

EDUCATION

Bachelor of Science, Psychology *University of Dayton, Dayton, Ohio*

Anthony Schools Courses: Basic Real Estate Appraisal; Legal Considerations in Appraisal; Math and Regulations for Appraisers; Uniform Standards of Professional Appraisal Practice

Appraisal Institute Courses: Advanced Income Capitalization; Subdivision Valuation; Advanced Highest and Best Use; Narrative Report Writing; Advanced Sales Comparison & Cost Approaches; Report Writing & Valuation Analysis; Advanced Applications; Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book); Wetlands, Waterways, and Unusual Land Valuation Issues; Condemnation Appraising: Principals and Applications

AFFILIATIONS

State of California Certified General Real Estate Appraiser, No. AG034899
Member of the Appraisal Institute, MAI No. 13343

Terry S. Larson, MAI - Partner
California Certified General Real Estate Appraiser No. AG007041

QUALIFICATIONS

Terry Larson has been a professional real estate appraiser and consultant in Northern California since 1981. He concentrates his work in the San Francisco Bay Area and Sacramento Regions, but has also performed national assignments in over twenty states.

Terry began his career with American Appraisal Associates, the largest full service valuation firm in the world, providing valuation services for real estate, personal property, and intangible business assets. As manager of the Northern California Real Estate Valuation Group, his staff and territory covered California and assignments across the country.

Upon joining Smith & Associates in 1997, Terry expanded the firm's territory into Santa Clara, San Mateo, San Francisco and Marin Counties and built a group of appraisers that emphasize litigation support, eminent domain, partial interest valuations and special purpose properties, including airport appraisals. With over \$2 billion in annual valuations, Smith & Associates has three offices to serve client needs; Danville in the East Bay, San Mateo in Silicon Valley and Folsom in the Sacramento Region.

Terry regularly provides litigation support services for property analysis and valuation, deposition and expert witness testimony, arbitration & mediation services in disputes regarding real estate values and fair rental rates, and related matters.

CLIENTS

Banks and other lenders, developers, attorneys, private property owners, government agencies including cities and counties, the State of California, and the Federal Government. For a client list see our web page at www.SmithAssociatesInc.com.

EXPERT WITNESS TESTIMONY

Testified in dozens of cases including eminent domain representing agencies and private property owners, fire damage, diminution in value, contract fraud, land slide and breach of fiduciary responsibilities in real estate transactions.

Qualified Expert Witness in Superior Court for Santa Clara, Contra Costa, Marin and Sacramento Counties. Testified at San Mateo County Tax Board regarding the Redwood Shores Special Assessment District with an estimated value of \$1 billion. Testified in Santa Clara County Criminal Court as a percipient witness in a real estate fraud case.

SPEAKING ENGAGEMENTS

Southwest Chapter of the American Association of Airport Executives
Appraisals and Lease Negotiations, January 2011

Santa Clara County Brokers Association
Role of the Real Estate Appraiser, June 2008

Appraisal Institute Spring Litigation Conference
Subsurface Easements, May 2013

Terry S. Larson, MAI - Partner

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PROPERTY TYPES APPRAISED

Commercial	Retail, Office, Apartments, Hotels, & Restaurants.
Industrial	Warehouse, Industrial, R&D, Mini-Storage, Manufacturing Plants, Truck Facilities, Cross Docks, & Corporate Campuses.
Vacant Land	Industrial, Commercial, Agricultural, Residential & Mitigation.
Specialty	Golf Courses, Mixed-Use Projects, Food Processing, Jet Hangars, Fixed Base Operations, Sr. Housing, RV Parks, Right-of-Way, Easements, Detrimental Conditions, Partial Interests, Eminent Domain, Residential Subdivisions, Arbitration, Mediation & Appraisal Reviews.

WORK HISTORY

1997 - Present	Partner	Smith & Associates, Inc.
1996 - 1997	Commercial Realtor	Cornish & Carey, Investment Services Group
1988 - 1996	Senior Appraiser	Hulberg & Associates, Inc.
1981 - 1988	Appraisal Manager	American Appraisal Associates, Inc.

EDUCATION

Bachelor of Science, School of Business Finance, University of Oregon, 1980

Appraisal Institute Courses:

Real Estate Appraisal Principles; Basic Valuation Procedures; Capitalization Theory and Techniques; Standards of Professional Practice; Case Studies in Real Estate Valuation; Valuation Analysis and Report Writing; Uniform Standards of Professional Appraisal Practice (USPAP); Case Studies in California Eminent Domain; Federal and State Laws and Regulations; The Appraisers Workfile; Appraisals for Estate Tax Purposes; Valuations of Partial Interests; Fractional Interest and Business; California's Condemnation Process; Appraisal of Nursing Facilities; Right of Way Acquisitions; Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book).

International Right of Way Association Courses:

Appraisal of Partial Acquisitions; Eminent Domain Law, Basics for Right of Way; Issues in Eminent Domain Valuation; Telecommunications and Rights of Way.

PROFESSIONAL AFFILIATIONS

State of California Certified General Real Estate Appraiser, License No. AG007041
Member of the Appraisal Institute, MAI No. 11046
Member of the International Right of Way Association, Member No. 2508

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD13-0006 TO REPLACE A CONCRETE TILE PATIO DECK, INSTALL A 397 SQUARE FEET OUTDOOR PATIO COVER, RETAINING WALLS, 6-FOOT TALL WOODEN/WIRE MESH FENCE AND NEW LANDSCAPING TO AN EXISTING HILLSIDE RESIDENCE LOCATED AT 1800 PINEHURST COURT

WHEREAS, on February 15, 2013, Sunil and Rashimi Saxena submitted an application to allow for site modifications to an existing hillside residence located at 1800 Pinehurst Court (APN 29-53-0007). The proposed site modifications included removal and replacement of existing decking with new concrete pavers, installation of a 285 square foot gravel walk and garden area, construction of a new 397 square foot patio cover, six (6) foot tall wooden/wire mesh fence, and new landscaping. The property is located within the Single Family Residential Zoning District and Hillside Combining District with a Site and Architectural Overlay. The application is submitted pursuant Milpitas Municipal Code Sections XI-10-45-09-2 (Site and Architectural Approval) and XI-10-54.08 (Accessory Buildings and Structures); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA) and recommends the City Council determine that this project is categorically exempt from further environmental review; and

WHEREAS, the proposed improvements are consistent with the General Plan, Zoning Ordinance, and Hillside Combining District development standards in terms of height, size and impervious surface coverage; and

WHEREAS, on August 14, 2013, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the owner or designee, and other interested parties and adopted a resolution recommending the City Council approve a Site Development Permit, subject to conditions; and

WHEREAS, on September 3, 2013 the City Council reviewed the project proposal and considered evidence presented by City staff, the applicant, and other interested parties.

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

Section 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.

Section 2: The proposed project is exempt from further environmental review pursuant to Section 15303 (New Construction or Conversion of small Structures) of the Guidelines for the California Environmental Quality Act (CEQA). The proposed project constitutes a Class 3 installation of small accessory structures and is exempt pursuant to Section 15303 of the CEQA Guidelines. The project proposes to remove and replace existing decking with new concrete pavers, install a 285 square foot gravel walk and garden area, construct a new 397 square foot patio cover, six (6) foot tall wooden/wire mesh fence, and new landscaping.

Section 3: In accordance with Municipal Code Section XI-10-57.04.F (Site Development Permit Findings), the City Council further finds that:

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

The proposed layout of the site and design of the structures and landscaping are compatible and harmonious with the adjacent and surrounding developments in that the location, height, and size of the proposed patio cover will not further obstruct or restrict views of the hillside and valley floor as demonstrated in the story pole study attached to the staff report. The proposed landscaping provides adequate privacy and screening of the proposed outdoor room. As conditioned, the proposed landscaping shall comply with City Council Resolution 6066 for Hillside

Landscaping Water Conservation and Fire Hazard Mitigation. The proposed style, colors, and material match the architecture of the existing residence and will be in keeping with the natural setting and view of the hillside. The concept plan was presented to the SummitPointe Home Owners Association (HOA) and received approval on December 12, 2012.

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

As discussed in the staff report, the proposed project is consistent with the Milpitas Zoning Ordinance in that the project conforms to the Hillside Ordinance regulations and complies with the height requirements and size limitations for accessory structures, the impervious surface coverage limitations, and development standards for fencing. The project will be aesthetic and harmonious with the surrounding development and comply with standards to ensure minimal interference with view and privacy, preserves the natural setting of the hillside, minimizes the perception of excessive bulk, and limits grading to the side and rear deck area only. The proposed building modifications utilize colors, material, and styles that match and complement the existing home.

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

The proposed project is consistent with the General Plan Implementing Policy No. 2.a-I-18, in which the project was reviewed and in conformance with the Hillside Ordinance and is in keeping with the natural character of the hillside and views are protected.

Section 4: Based on the foregoing, the City Council of the City of Milpitas hereby approves Site Development Permit No. SD13-0006 based on the above Findings and subject to the attached Conditions of Approval set forth in **Exhibit 1**.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT 1

CONDITIONS OF APPROVAL FOR SITE DEVELOPMENT PERMIT NO. SD13-0006

General Conditions

1. The owner or designee shall develop the approved project in conformance with the plans approved by the City Council in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the City Council, in accordance with the Zoning Ordinance. (P)

2. Site Development Permit No. SD13-0006 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, an activity permitted by an approved application shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.(P)
3. Pursuant to Section 64.07(1) of the Zoning Ordinance of the City of Milpitas, the owner or designee shall have the right to request an extension of the Site Development Permit No. SD13-0006 if said request is made, filed and approved by the City Council prior to expiration dates set forth herein. (P)
4. The project shall be constructed, operated, use, maintain and repair or replace in accordance with all local, State and federal rules, policies, regulations, and laws. (P)
5. Prior to the building permit issuance, the owner or designee shall include within the first four pages of the working drawings for plan check, a list of all conditions of approval imposed by the final approval of the project. (P)
6. Prior to building permit issuance, the owner or designee shall revise the landscaping plans to demonstrate compliance with City Council Resolution 6066 for Hillside Landscaping Water Conservation and Fire Hazard Mitigation. (P)
7. Prior to final inspection for the building permit, the owner or designee shall ensure that all landscaping and irrigation shall be installed and in working order subject to City review and approval. All plant materials shall be maintained in a viable growth condition throughout the life of this permit and shall be replaced if necessary at permittee's expense. (P)
8. If at any time there is an outstanding project job account balance due to the City relating to this project, all outstanding fees must be paid in full to the City prior to City continuing to process the subject application or project. (P)
9. To the fullest extent permitted by law, the owner or designee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project, including but not limited to, the approval of the discretionary permits,

maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by owner or designee, City, and/or the parties initiating or bringing such proceeding. The owner or designee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The owner or designee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

Note:

(P) - Planning

(E) - Engineering

UNAPPROVED

MILPITAS PLANNING COMMISSION Milpitas City Hall, Council Chambers 455 E. Calaveras Blvd., Milpitas, CA

MEETING MINUTES Wednesday, August 14, 2013

- I. PLEDGE OF ALLEGIANCE** **Chair Mandal** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. ROLL CALL/ SEATING OF ALTERNATE** **Commissioners**
Present: Chair Sudhir Mandal, Vice Chair Larry Ciardella, John Luk, Rajeev Madnawat and Gurdev Sandhu
Absent: Garry Barbadillo and Zeya Mohsin
Alternate
Member: Demetress Morris

Staff: Steve McHarris, Cindy Hom, Johnny Phan, and Mary Lavelle

Alternate Member Morris was seated for voting, due to two regular voting Commissioners' absence.
- III. PUBLIC FORUM** **Chair Mandal** invited members of the audience to address the Commission and there were none.
- IV. APPROVAL OF MEETING MINUTES** **Chair Mandal** called for approval of the July 24, 2013 meeting minutes of the Planning Commission

No changes to the meeting minutes as written were requested.

Motion to approve Planning Commission meeting minutes of July 24, 2013 as submitted

Motion/Second: Commissioner Sandhu/Vice Chair Ciardella
AYES: 6
NOES: 0
- V. ANNOUNCEMENTS** Planning Director Steve McHarris announced the next regular Commission meeting scheduled for August 28 would be cancelled, since there were no agenda items. He also announced a potential special meeting on Saturday, October 26 for a workshop with staff and Cal Poly planning students on the California Circle area of Milpitas. The group would have a site visit to evaluate the area, hear from the students, and eventually staff would present the outcomes for the study area to the Planning Commission in December.

Chair Mandal thanked the Planning Director for cancelling the next meeting, and he was excited about the October special workshop.

VI. CONFLICT OF INTEREST

Assistant City Attorney Johnny Phan asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda. No Commissioners identified a conflict of interest.

VII. APPROVAL OF AGENDA

Chair Mandal asked whether staff or the Commission had any changes to the agenda. Staff noted a request to remove the first public hearing agenda item.

Motion to approve the August 14, 2013 agenda as submitted with No. IX-1 removed

Motion/Second: Vice Chair Ciardella/Commissioner Madnawat

AYES: 6

NOES: 0

IX. PUBLIC HEARINGS

- IX-1. CONDITIONAL USE PERMIT NO. UP13-0008:** request for group instruction within an existing retail space at 100 Dixon Road (APN: 026-06-011) zoned Neighborhood Commercial with Site and Architectural Overlay (C1-S).

Item was removed from the agenda.

- IX-2. SITE DEVELOPMENT PERMIT NO, SD13-0006:** request to replace a concrete patio deck, install 397 square foot outdoor patio cover, retaining walls, 6-foot tall wooden/wire mesh fence, and new landscaping to an existing hillside residence at 1800 Pinehurst Ct. (APN 29-53-0007) zoned Single Family Residential with Hillside Combining District and Architectural Overlay (R1-H-S). Applicants are Sunil and Rashmi Saxena.

Staff planner Cindy Hom reviewed the project, for significant changes to the outside area of a hillside home in the Summitpointe subdivision. She displayed photos of the site and next door neighbor's shielded view of the proposed patio cover.

Vice Chair Ciardella inquired about concrete and whether it would be the same material as on the house. Staff responded yes.

Alternate Member Morris wanted to see the materials board for the project, and staff offered to go and get it from the office. This was done, so she could take a look.

Chair Mandal then opened the public hearing for comments.

Motion to close the public hearing after hearing no comments

Motion/Second: Commissioners Sandhu/Madnawat

AYES: 6

NOES: 0

Planning Commission Minutes

August 14, 2013

Commissioner Madnawat asked Ms. Hom if any comments from neighbors had been received, and she replied no. The Homeowners Association for the neighborhood had reviewed the project and approved it.

Chair Mandal complimented the owner for putting up the mock-up structure (as displayed by staff) and taking a photo to show the Commission at this hearing.

Motion to adopt Resolution No. 13-019 recommending the City Council approve Site Development Permit No. SD13-0006, subject to conditions of approval

Motion/Second: Commissioners Madnawat/Sandhu

AYES: 6

NOES: 0

X. ADJOURNMENT

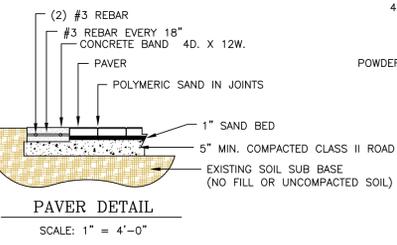
Chair Mandal adjourned the meeting at 7:15 PM to the next regular meeting date of September 11, 2013, noting there would be no meeting at the end of August.

*Meeting Minutes drafted and submitted by
City Clerk Mary Lavelle,
acting as Recording Secretary*

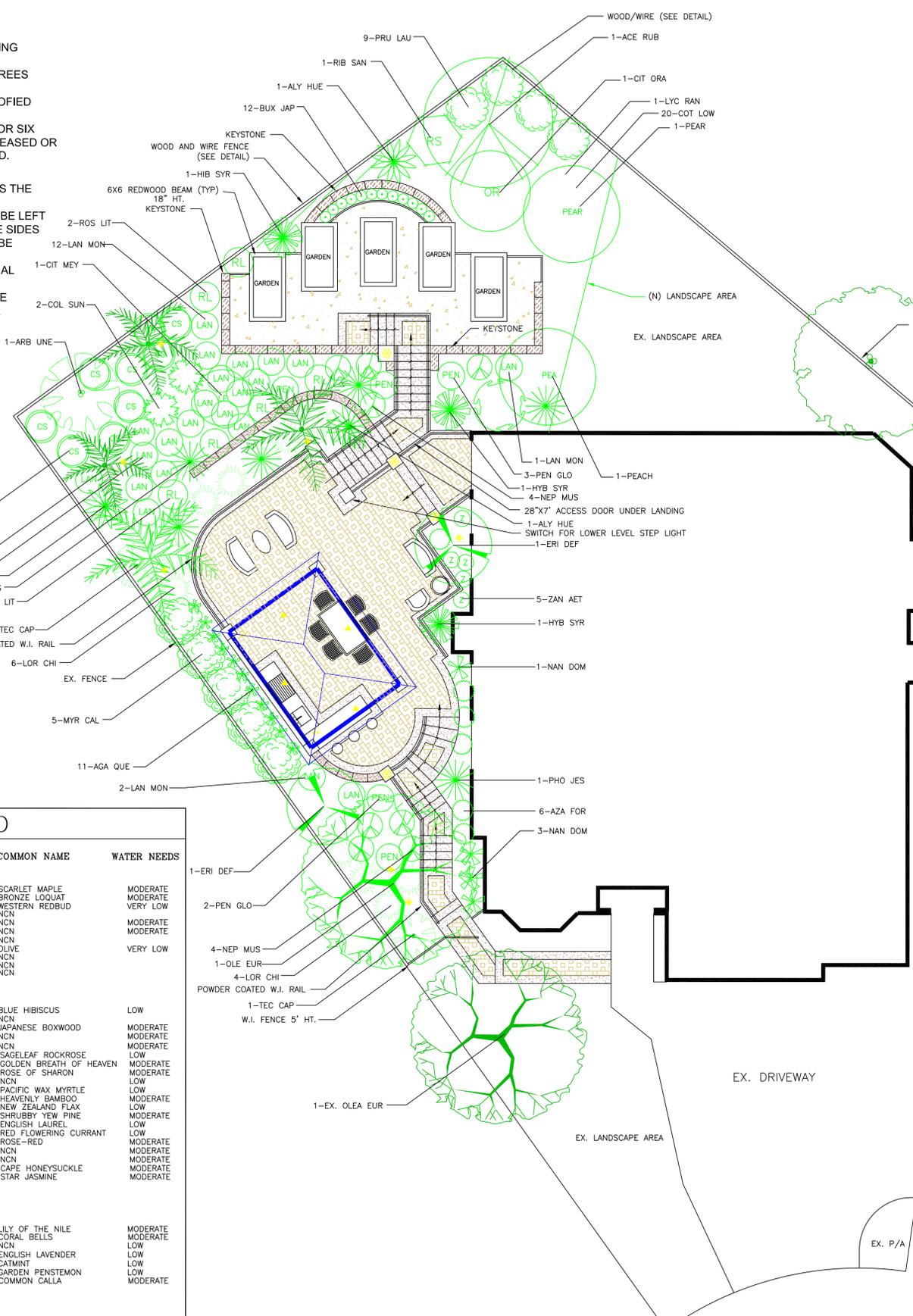
LANDSCAPE NOTES:

- CONTRACTOR SHALL VERIFY PLANT COUNT FOR BIDDING PURPOSES.
- ROOT BARRIERS SHALL BE PROVIDED FOR ALL NEW TREES WITHIN 5' OF HARDSCAPE OR PLANTED IN LAWN.
- ALL PLANTING AREAS SHALL RECEIVE 2" MIN. OF NITROFIED MULCH COVER AS A GROUND COVER.
- CONTRACTOR SHALL GUARANTEE PLANT MATERIAL FOR SIX MONTHS AFTER INSTALLATION AND REPLACE ANY DISEASED OR DAMAGED MATERIAL DURING THAT SIX MONTH PERIOD.
- TREES AND SHRUBS:
 - EXCAVATE PLANTING HOLES TWICE AS WIDE AS THE ROOTBALL DIAMETER.
 - SOIL IMMEDIATELY BELOW THE ROOT BALL TO BE LEFT UNDISTURBED TO PROVIDE SUPPORT, BUT THE SIDES AND THE BOTTOM AROUND THE SIDE SHOULD BE CULTIVATED TO IMPROVE POROSITY.
 - THE ROOTBALL SHALL BE SLIGHTLY ABOVE FINAL GRADE.
 - THE TOP 12" OF BACKFILL MAY CONSIST OF THE ABOVE AMENDED SOIL STABILIZED ORGANIC AMENDMENT OR USE 4 PARTS OF SITE SOIL BLENDED WITH 1 PART NITROGEN STABILIZED ORGANIC AMENDMENT.

NOTE:
LANDSCAPE AREA 3698 SQ. FT.
AB1881 DOES NOT APPLY

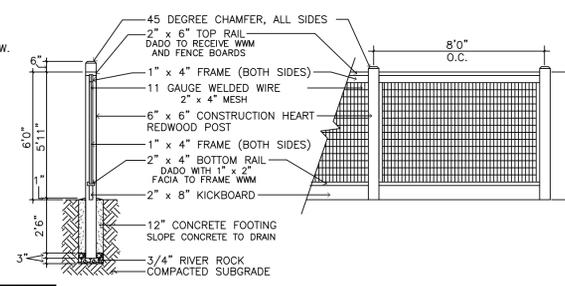
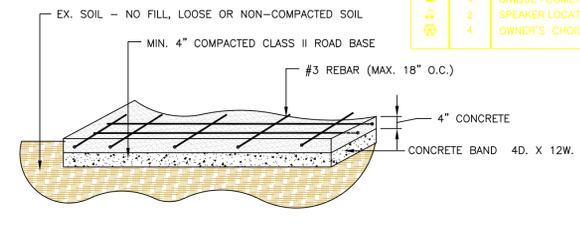


PLANT LEGEND					
SYMBOL	SIZE	QTY.	BOTANICAL NAME	COMMON NAME	WATER NEEDS
TREES					
ACE RUB	15G	2	ACER RUBRUM 'AUTUMN BLAZE'	SCARLET MAPLE	MODERATE
ERI DEF	15G	2	ERIOBOTRYA DEFLEXA 'L.B.'	BRONZE LOQUAT	MODERATE
CER OCC	15G	1	CERCIS OCCIDENTALIS 'L.B.'	WESTERN REDBUD	VERY LOW
CHERRY	15G	1	CHERRY	NCN	NCN
CIT MEY	15G	1	CITRUS 'MEYER LEMON'	NCN	MODERATE
CIT ORA	15G	1	CITRUS 'NAVAL ORANGE'	NCN	MODERATE
NECTARINE	15G	1	NECTARINE	NCN	NCN
OLE EUR	15G	1	OLEA EUROPAEA 'SWAN HILL'	OLIVE	VERY LOW
PEACH	15G	1	PEACH	NCN	NCN
PEAR	15G	1	PEAR	NCN	NCN
PLUM	15G	1	PLUM	NCN	NCN
SHRUBS					
ALY HUE	5G	3	ALYOGYNE 'HUEGELII'	BLUE HIBISCUS	LOW
AZA FOR	5G	3	AZALEA INDICA 'FORMOSA'	NCN	NCN
BUX GRE	1G	12	BUXUS M. JAPONICA 'GREEN BEAUTY'	JAPANESE BOXWOOD	MODERATE
CAM JAP	5G	1	CAMELLIA JAPONICA	NCN	MODERATE
CAM SAS	5G	1	CAMELLIA S. 'YULETIDE' ESP.	NCN	MODERATE
CIS SAL	5G	9	CISTUS SALVIFOLIUS	SAGELEAF ROCKROSE	LOW
COL SUN	5G	4	COLEONEMA P. 'SUNSET GOLD'	GOLDEN BREATH OF HEAVEN	MODERATE
HIB SYR	5G	3	HIBISCUS SYRIACUS	ROSE OF SHARON	MODERATE
LOR CHI	5G	15	LOROPETALUM CHINENSE 'PLUM DELIGHT'	NCN	LOW
MYR CAL	5G	5	MYRTICA CALIFORNICA	PACIFIC WAX MYRTLE	LOW
NAN DOM	5G	6	NANDINA DOMESTICA 'COMPACTA'	HEAVENLY BAMBOO	MODERATE
PHO JES	5G	12	PHORMIUM HYBRID 'JESTER'	NEW ZEALAND FLAX	LOW
POD MAK	5G	3	PODOCARPUS M. 'MAKI'	SHRUBBY 'YEW' FINE	MODERATE
PRU LAU	5G	9	PRUNUS LAURO-CERASUS	ENGLISH LAUREL	LOW
RIB SAN	5G	3	RIBES SANGUINEUM	RED FLOWERING CURRANT	LOW
ROS LIT	5G	6	ROSA 'LITTLE SIZZLER'	ROSE-RED	MODERATE
RHO NOV	5G	1	RHODODENDRON 'NOVA ZEMBLA'	NCN	MODERATE
SAR RUS	5G	1	SARCOCOCCA RUSCIFOLIA	NCN	MODERATE
TEC CAP	5G	2	TECOMARIA CAPENSIS	CAPE HONEYSUCKLE	MODERATE
TRA JAS	5G	5	TRACHELOSPERMUM JASMINOIDES	STAR JASMINE	MODERATE
PERENNIALS					
AGA QUE	1G	23	AGAPANTHUS 'QUEEN ANNE'	LILY OF THE NILE	MODERATE
HEU MIC	1G	13	HELIOPHYLLA MICRANTHA 'PURPLE PALACE'	CORAL BELLS	MODERATE
LAN MON	1G	24	LANTANA MONTEVIDENSIS	NCN	LOW
LAV MUN	1G	14	LAVENDULA A. 'MUNSTEAD'	ENGLISH LAVENDER	LOW
NEP MUS	1G	8	NEPETA MUSSINI 'BLUE WONDER'	CATMINT	LOW
PEN GLO	1G	10	PENSTEMON GLOXINIOIDES	GARDEN PENSTEMON	LOW
ZAN AET	1G	15	ZANTEDESCHIA AETHIOPICA - DWARF	COMMON CALLA	MODERATE
VINES & GROUND COVER					
CLY CAL	5G	5	CLYTOSTOMA CALLISTEGIOIDES	VIOLET TRUMPET VINE	MODERATE
COT LOW	1G	56	COTONEASTER LOWFAST	NCN	MODERATE



LIGHTING/SPEAKER LEGEND							
SYM.	QTY.	DESCRIPTION	MODEL NO.	VOLT.	MAX WATT.	LAMP	FINISH
★	12	UNIQUE - STARBURST	B25-35-WB	12	35	MR-16 FMW	BRASS
●	1	UNIQUE - MERCURY4	B25-20-WB	120	40	ASTRO-BRITE	BRASS
▲	4	UNIQUE - COMET	B25-20-WB	12	20	ASTRO-BRITE	BRASS
⊙	2	SPEAKER LOCATION (OWNER TO FURNISH)					
⊙	4	OWNER'S CHOICE					

TO MATCH HOUSE FIXTURES
ALL LIGHTS TO HAVE APPROPRIATE SHIELDS



NOTE:

TOTAL SITE AREA	11,086 SQ. FT.
TOTAL LANDSCAPE (NEW PROJECT AREA)	2105 SQ. FT.
INCLUDES VEG. GARDEN BOX AREA	
LESS THAN 2500 SQ. FT.	
LANDSCAPE WATER EFFICIENCY ORD. 238	DOES NOT APPLY
NON-PERMEABLE SURFACE AREA	
CONCRETE/POND TO BE REMOVED	1521 SQ. FT.
(N) CONCRETE & PAVERS	1504 SQ. FT.
(N) GARDEN AREA GRAVEL WALK	285 SQ. FT.
(E) CONCRETE	1363 SQ. FT.
(E) HOUSE/GARAGE	3520 SQ. FT.
TOTAL NON-PERMEABLE AREA	6672 SQ. FT.

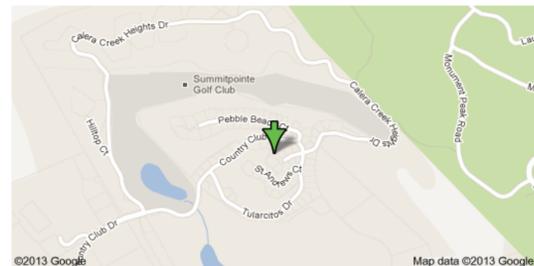
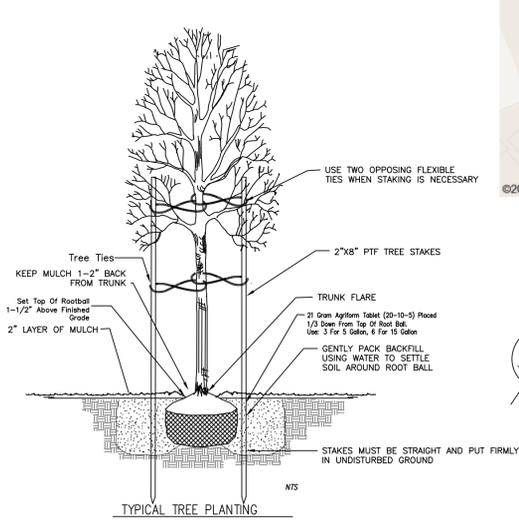
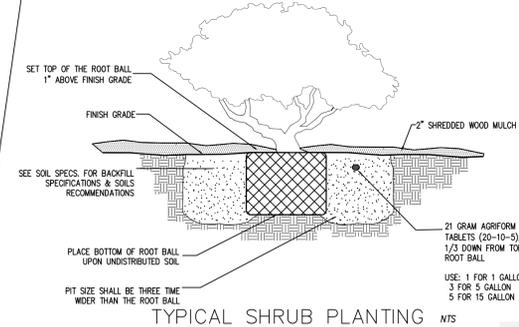
NOTE:
CONCRETE: (BOARDERS, PADS, AND MOW STRIPS)
COLOR: BRICK FORM #615 STONE GRAY COLOR BOARD
FINISH: LIGHT BRUSH

PAVERS:
TYPE: BELGARD-MEGA LATTIF
COLOR: VICTORIAN BLEND - SEE COLOR BOARD

ROOF TILE: MONIER FLAT CONCRETE TILE
COLOR: GREY SEE PHOTO EXHIBIT

ROOF TILE: MONIER FLAT CONCRETE TILE
COLOR: GREY SEE PHOTO EXHIBIT

WALLS:
STUCCO FASCIA TO MATCH THE HOUSE - SEE PHOTO ON COLOR BOARD
ARCHITECTURAL FACADE UNLIMITED PRECAST CAP - STYLE II

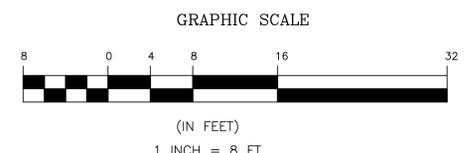


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NOTE:
CUT & FILL APPROX 197 CU YD

SCALE: 1"=8'-0"

④	BL
⑤	BL
⑥	6-03-13
⑦	1-22-13
⑧	BL
⑨	REVISIONS
	BY

DATE: 11-1-12

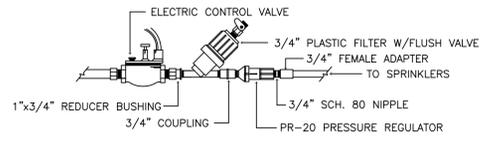
SHEET NO:
L-1
OF 5 SHEETS

PLANTING PLAN

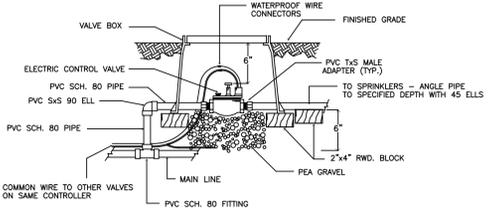
HELPING HAND LANDSCAPE DESIGN, INC.
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1800 PINEHURST CT
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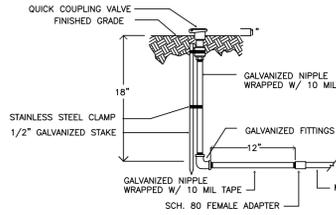
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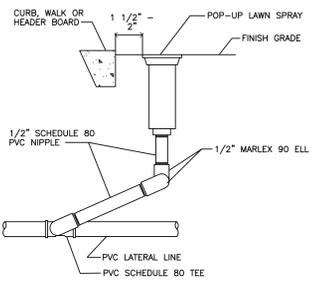
DRIP VALVE ASSEMBLY
NOT TO SCALE



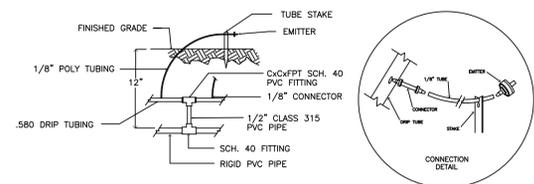
ELECTRIC CONTROL VALVE
NOT TO SCALE



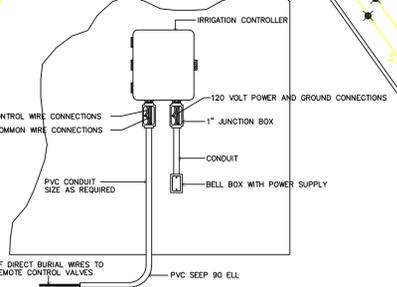
QUICK COUPLING VALVE
NOT TO SCALE



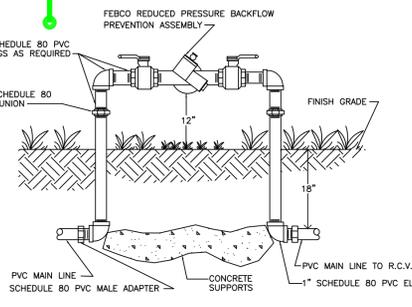
POP-UP SPRAY HEAD
NOT TO SCALE



RISER TO DRIP TUBING DETAIL
NOT TO SCALE



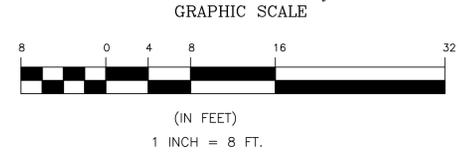
WALL MOUNT AUTOMATIC CONTROLLER
NOT TO SCALE



REDUCED PRESSURE BACKFLOW ASSEMBLY
NOT TO SCALE

IRRIGATION LEGEND

SYMBOL	DESCRIPTION
●	TORO 570Z-4P-PRX-COM POP-UP (ARC & RADIUS NOTED)
□	CONTROLLER: HUNTER PCC-9i WITH ET SYSTEM MODULE
⊕	HUNTER-ET SENSOR
⊖	REMOTE CONTROL VALVE: WEATHERMATIC 21024E-10
⊗	BACKFLOW ASSEMBLY: FEBCO 825Y
⊙	AMIAD FILTER / SENNINGER PRESSURE REGULATOR
⊕	QUICK COUPLER: 3/4" RAINBIRD 33DRC
⊗	DRIP STUB-UP FOR CONNECTION TO POLY PIPE
—	MAIN LINE - P.V.C. SCH 40
—	LATERAL LINE - P.V.C. CLASS 200 (CLASS 315 FOR 1/2")
⊕	6" DRAIN BASIN WITH GRATE
⊕	3" DRAIN BRASS GRATE
⊕	NDS 4" DRAIN BASIN W/ 4" IRONAGE 'LOCUST' DRAIN GRATE
⊕	IN-LINE CHECK VALVE
⊕	1" NIBCO T113-IRR BRASS GATE VALVE
⊕	AUTOMATIC RAIN SHUTOFF:



NOTE:
LANDSCAPE AREA 3698 SQ. FT.
AB1881 DOES NOT APPLY

NOTE:
HHLD RECOMMENDS INSTALLATION OF PERFORATED DRAIN AROUND THE PERIMETER OF THE HOUSE TO HELP MITIGATE ANY POTENTIAL STANDING OR GROUND WATER SEEPAGE THAT MAY CAUSE DAMAGE I.E. BUCKLING FLOORS FOUNDATIONS SETTLING ETC. HOMEOWNER SHOULD CONSULT WITH CONTRACTOR PRIOR TO CONSTRUCTION.

SCALE: 1"=8'-0"

④	BL
③	BL
②	6-03-13 BL
①	1-22-13 BL
REVISIONS	BY

DATE: 11-1-12

SHEET NO:
L-2
OF 5 SHEETS

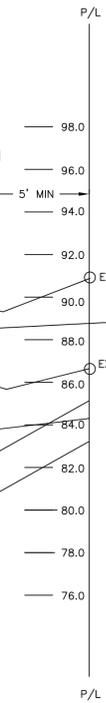
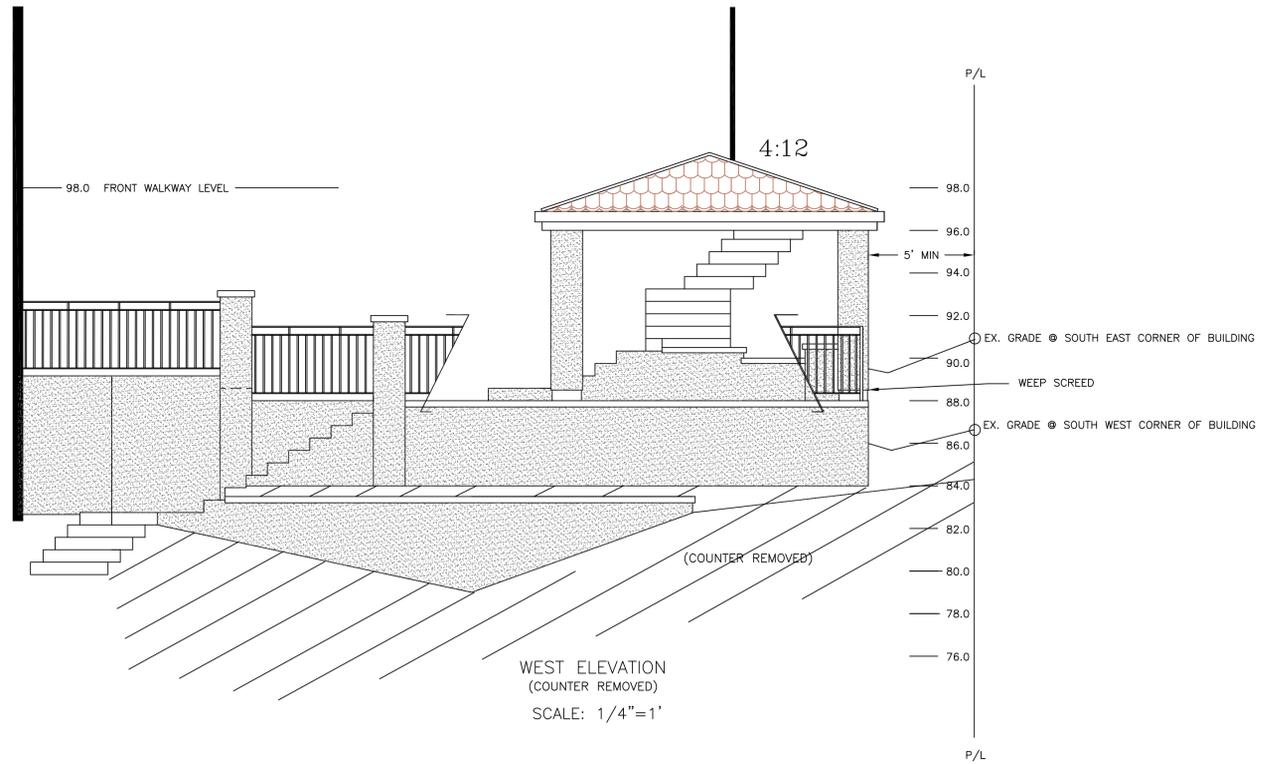
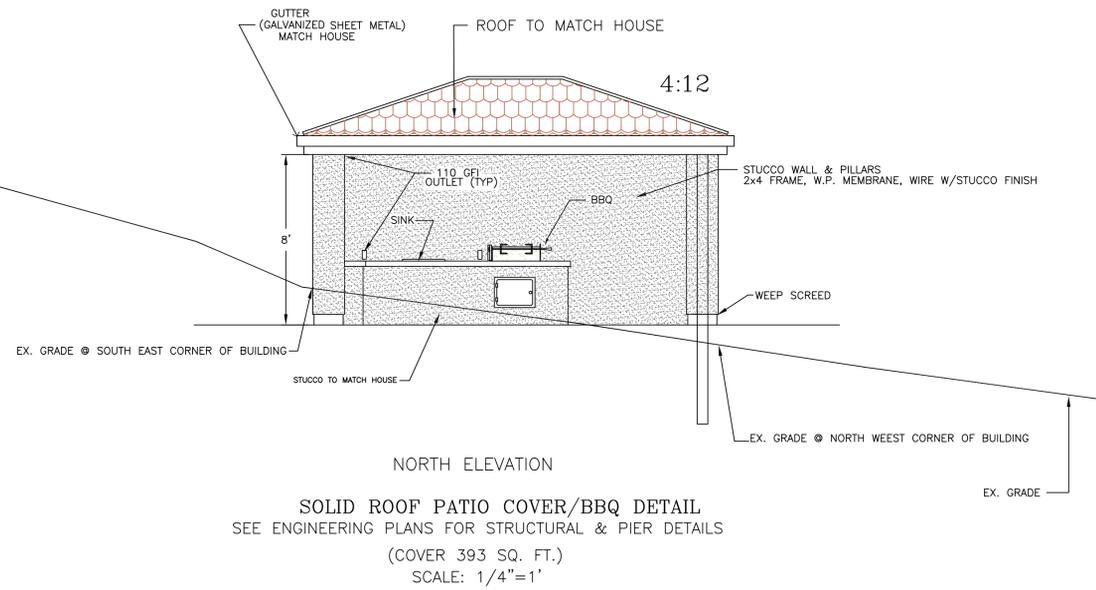
WALL HTS. PLAN
&
IRRIGATION

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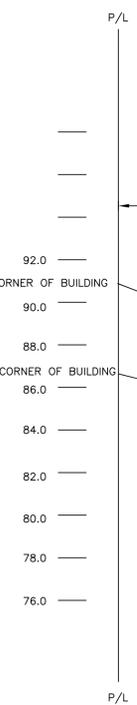
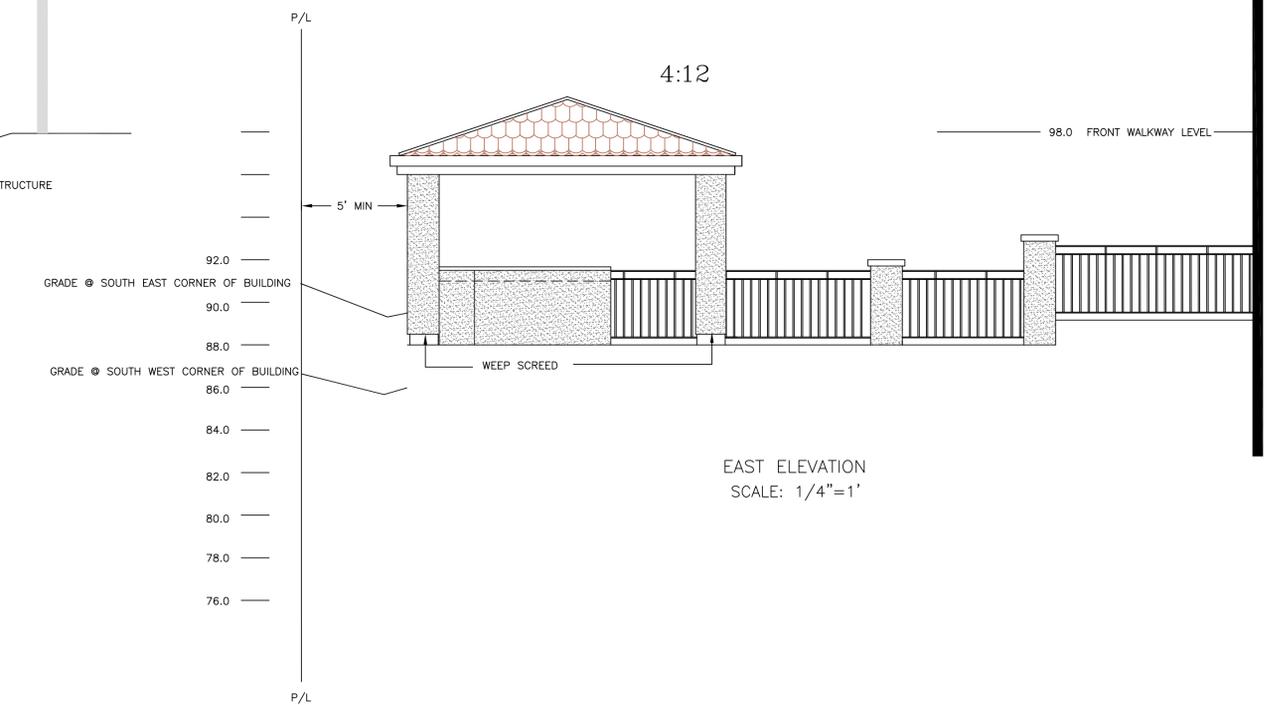
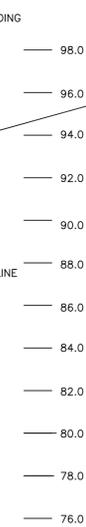
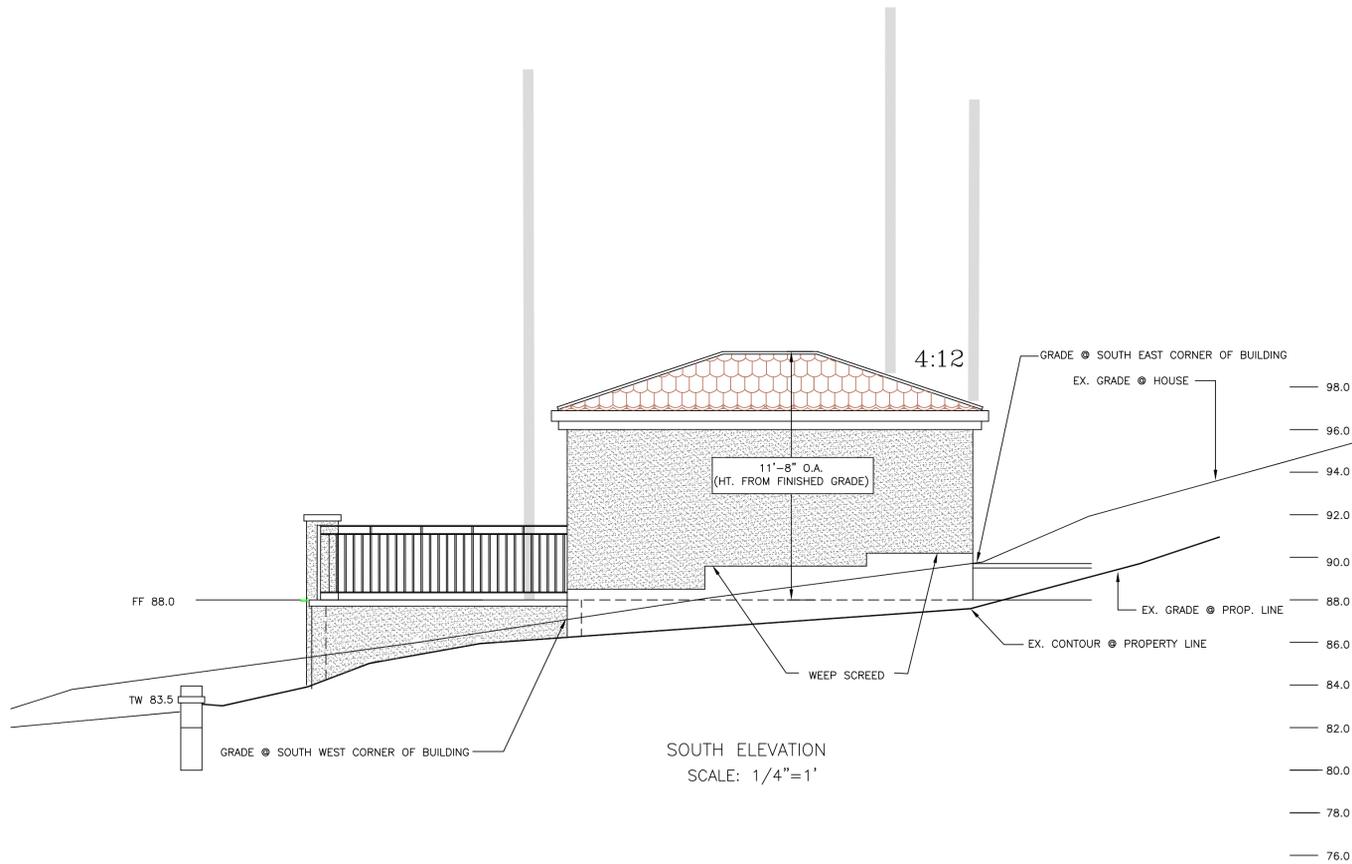
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APPROXIMATE TOTAL YARDS CUT 51.8
 APPROXIMATE TOTAL YARDS FILL 31.9



SCALE: 1"=4'-0"

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③	BL
②	6-03-13 BL
①	1-22-13 BL
REVISIONS	BY

DATE: 11-1-12

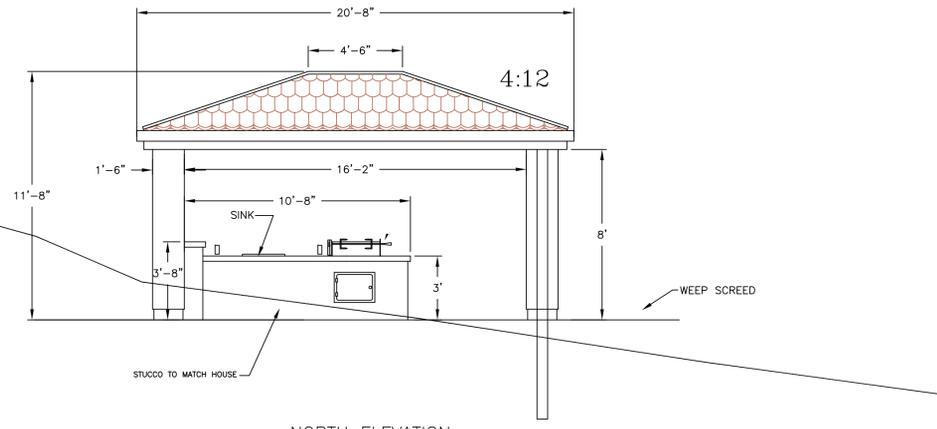
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L-3
OF 5 SHEETS

PAVILLION ELEVATIONS

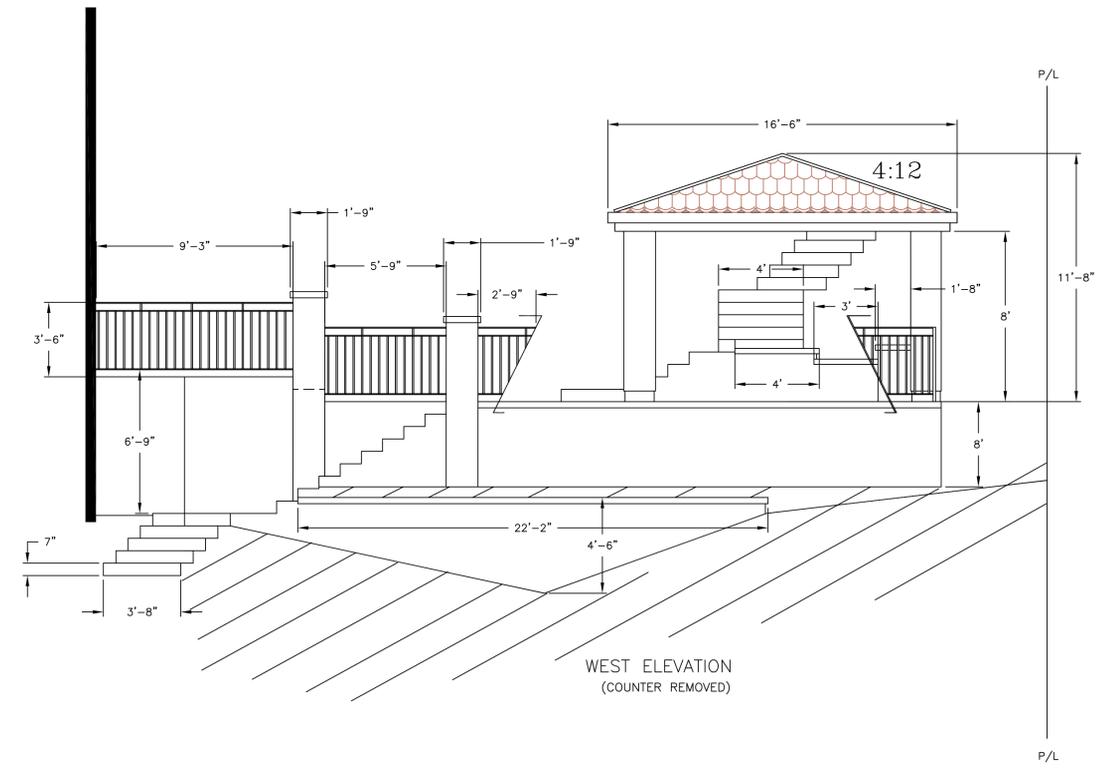
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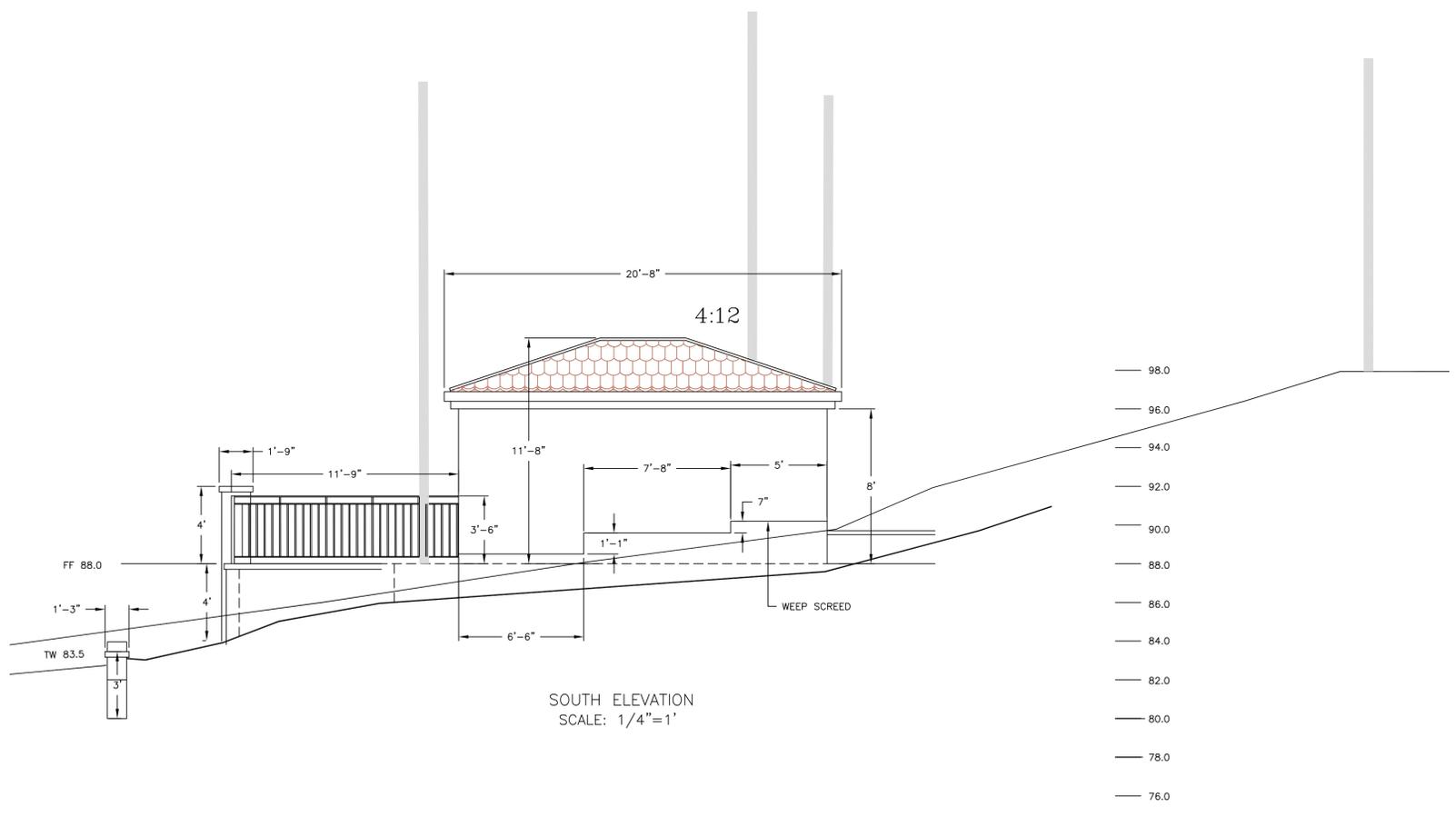
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L-3
OF 5 SHEETS



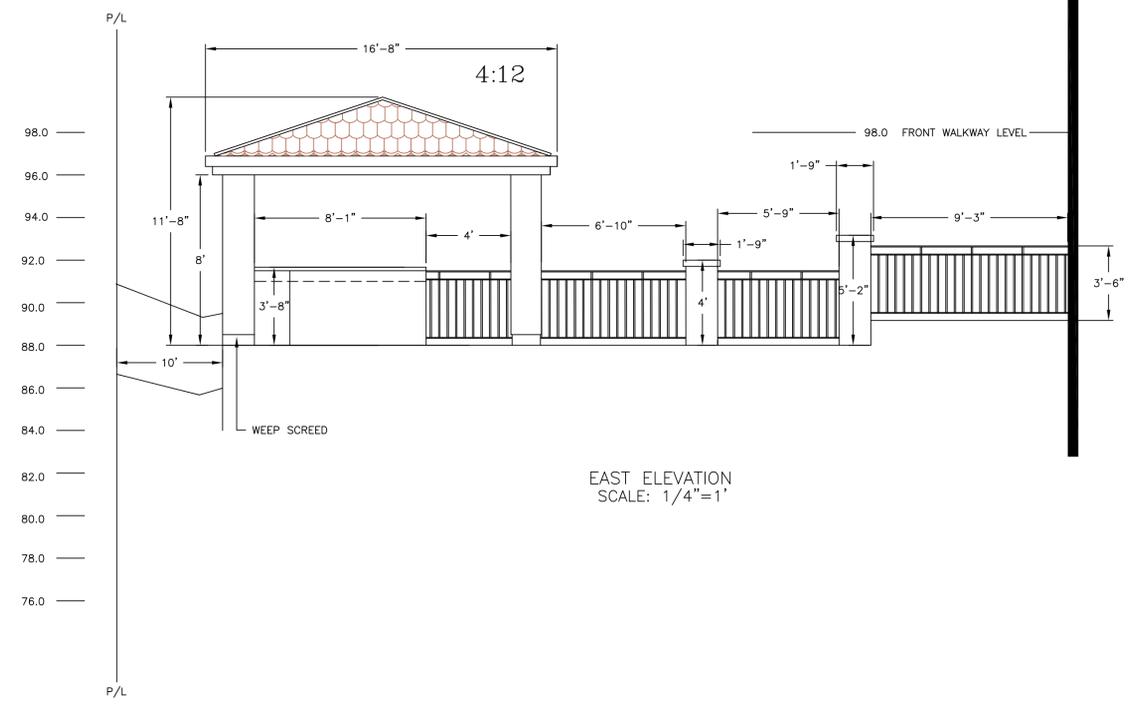
NORTH ELEVATION
SCALE: 1/4"=1'
SOLID ROOF PATIO COVER/BBQ DETAIL
SEE ENGINEERING PLANS FOR STRUCTURAL & PIER DETAILS
(COVER 393 SQ. FT.)



WEST ELEVATION
(COUNTER REMOVED)



SOUTH ELEVATION
SCALE: 1/4"=1'



EAST ELEVATION
SCALE: 1/4"=1'

SCALE: 1"=4'-0"

NO.	DATE	BY
④		BL
③		BL
②	6-03-13	BL
①	1-22-13	BL
REVISIONS		BY

DATE: 11-1-12

SHEET NO:
L-4
OF 5 SHEETS

DIMENSIONS

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MILPITAS, CALIFORNIA
408-956-8680 408-838-8749

SHEET NO:
L-4
OF 5 SHEETS







MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: August 14, 2013

APPLICATION: Site Development Permit No. SD13-0006, Saxena Residence

APPLICATION SUMMARY: A request to replace a concrete patio deck, install 397 square foot outdoor patio cover, retaining walls, 6-foot tall wooden wire mesh fence, and new landscaping to an existing hillside residence

LOCATION: 1800 Pinehurst Ct. (APN 29-53-0007)

APPLICANT: Sunil and Rashmi Saxena, 1900 Pinehurst Ct. Milpitas, CA 95035

OWNER: Same as above.

RECOMMENDATION: Staff recommends that the Planning Commission: Adopt Resolution No. 13-019 recommending the City Council approve Site Development Permit No. SD13-0006, subject to conditions of approval.

PROJECT DATA:
 General Plan/
 Zoning Designation: Hillside Medium Density (HMD)/Single Family Residential (R1) with Hillside Combining District (-H)
 Overlay District: Site and Architectural Overlay (-S)
 CEQA Determination: Categorically Exempt from further environmental review pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the Guidelines for the California Environmental Quality Act (CEQA).

PLANNER: Cindy Hom, Assistant Planner

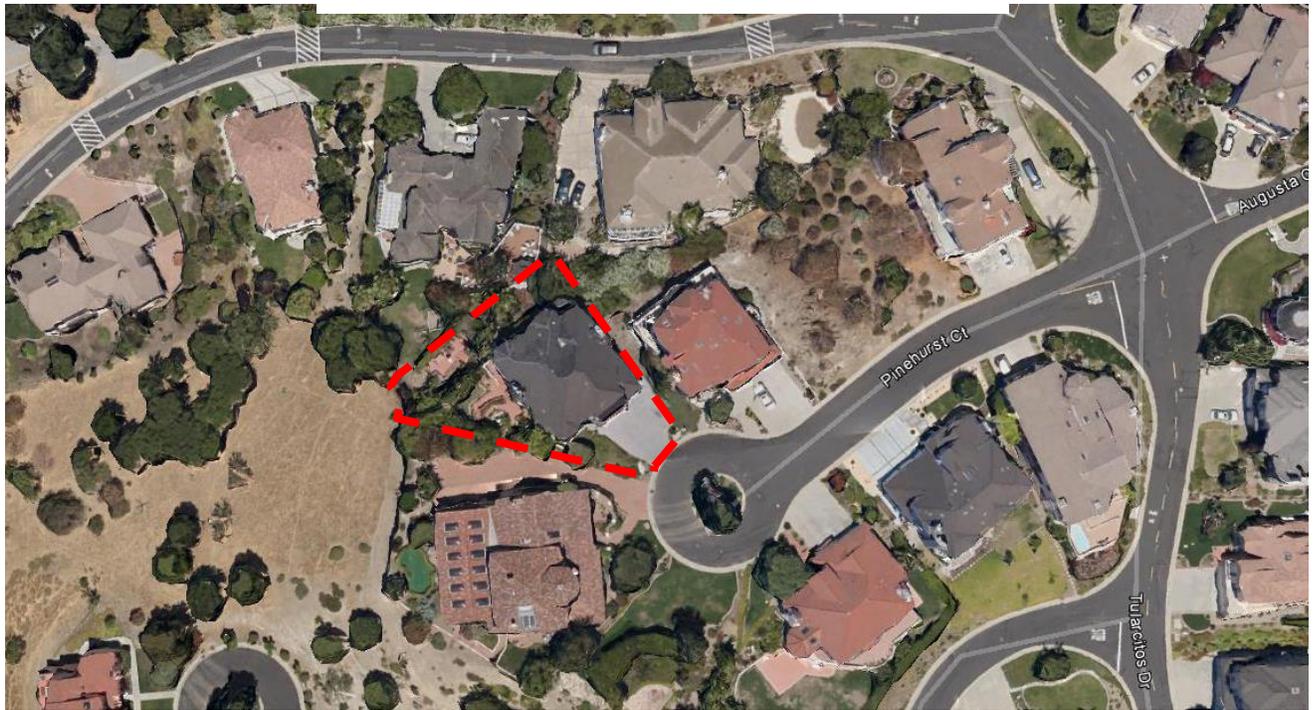
PJ: 2904

ATTACHMENTS:
 A. Resolution No. 13-019
 B. Project Plans
 C. Story Pole Study

PROJECT LOCATION



PROJECT SITE



Not to Scale.

BACKGROUND

On February 15, 2013, Sunil and Rashimi Saxena submitted an application to allow for minor site modifications to an existing hillside residence. The application is submitted pursuant to Milpitas Municipal Code XI-10-54.02 (Hillside Combining District, Site and Architectural Approval, Applicability) and XI-10-54.08 (Accessory Building and Structure), which requires Planning Commission and City Council review and approval for exterior modifications in the Hillside Combining District.

PROJECT DESCRIPTION

The project site is located within the SummitPointe Planned Unit Development (Planned Unit Development (PUD 21)) on an 11,086 square foot residential parcel located at the end of a cul-de-sac on the north side of Pinehurst Court. Currently, the site is developed with a 3,585 square foot, two-story residence and existing decking with pond feature, seat walls, built-in BBQ and landscaping. The project site is zoned Single Family Residential with Hillside Combining District and is surrounded by other hillside residential homes. The project site is located approximately 360 feet east of the crest line zone of protection. An aerial photo of the project site is provided on the previous page.

The applicant requests to permit site modifications to the rear yard that includes replacement of concrete patio decking, installation of a 397 square foot patio cover, 6-foot tall wooden mesh fence, retaining walls, and new landscaping to as described in more detail below:

Deck

Approximately 1,477 square feet of existing concrete tile decking located along the side and rear yard is proposed to be removed and replaced with 1,507 square feet of earthy gray tone concrete pavers and a 285 square foot gravel walk area with five garden beds. The new paving extends from the front yard walkway to the first level patio deck located on the left side yard. The revised patio deck includes a new patio cover and outdoor room amenities such as a built in BBQ unit and patio furniture. The new paving terminates at the lower level deck at the garden area and gravel walk proposed in the rear yard.

Patio Cover

The applicant proposes to construct a new 12-foot tall, 397 square foot patio cover that consists of a solid stucco wall on the south elevation and stucco columns on the north, east, and west elevation. The patio cover proposes a gray concrete flat tile roof that matches the existing roof tiles on the main residence.

Retaining Walls

The project would install new retaining walls with stucco finish around the perimeter of the patio deck. The retaining walls vary from 1-foot to 4-feet in height. The retaining walls on the west and north side would include a new 42-inch decorative wrought iron fence railing.

Fencing

The existing perimeter fencing consists of a wrought iron fence. The applicant proposes to retain the existing wrought iron fence and gate at the front yard and the segment along the west side

yard. The applicant proposes to replace existing fencing with a 6-foot tall wooden fence with a wire mesh screen along rear and east side yard.

Development Standards

The project does not propose any modifications to the existing home and is limited to installation of accessory structures and landscaping. Compliance with Hillside development standards from the Zoning Code are demonstrated in Table 1 below:

Table 1:
Hillside Development Standards

Hillside Development Standard	Proposed Project	Complies?
Accessory Structure Height - 17 feet	Patio Cover = 12'	Yes
Maximum Accessory Structure Size – 1,200 sq. ft.	Patio Cover = 397 sq. ft.	Yes
Impervious Surface Coverage – 8,000 sq. ft.	6,747 sq. ft.	Yes
Roof Material – ceramic or concrete tile metal, tri-laminate asphalt composition	Concrete flat tile	Yes

Site & Architectural Guidelines

Section 45.09-7 of the Zoning Code sets forth guidelines for the Commission and Council to consider in their review of Hillside homes. These guidelines are summarized below along with comments regarding the proposed plan's conformance with them.

Table 2:
Site and Architectural Guidelines

Site & Architectural Guidelines	Comments Regarding Subject Proposal
(a) Avoid Unreasonable Interference with Views and Privacy	<ul style="list-style-type: none"> • Complies with 17' height limit for accessory structures. • The proposed structures outside of the Crestline zone of protection (approximately 360-feet away) and therefore will not visually intrude or extend into the crestline site line. • Based on the story pole study of the proposed patio cover, the height and size of structure will not interfere with views or privacy. • Landscaping provides privacy and screening of the proposed outdoor room from the adjacent neighbors.
(b) Preserve Natural Landscape	<ul style="list-style-type: none"> • Site is already developed. • Installation of the retaining walls and structures will not greatly disturb existing contours (<i>natural & man-made</i>).

Site & Architectural Guidelines	Comments Regarding Subject Proposal
(c) Minimize Perception of Excessive Bulk	<ul style="list-style-type: none"> • The structures will not create excessive bulk or massing since these are detached structures. • The patio cover is well portioned in that it is secondary to the main dwelling.
(d) Impairment of Light & Air	<ul style="list-style-type: none"> • The proposed patio cover is approximately 40-feet from the adjacent residential structure. Based on the distance to other residential structures and the size and height of the proposed structures, the project will not significantly impair light & air.
(e) Grading	<ul style="list-style-type: none"> • The project proposes a minimal amount of grading on the site. Its impact on the natural contours will be minimal since most of the grading is in or around already developed portions of the site.

To ensure compliance with design standard, staff recommends prior to building permit issuance, any proposed new landscaping shall demonstrate compliance with City Council Resolution 6066 for Hillside Landscaping Water Conservation and Fire Hazard Mitigation.

REQUIRED FINDINGS

A finding is a statement of fact relating to the information that the Planning Commission or City Council has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

To recommend approval the Site Development Permit application, the Planning Commission must recommend the City Council make the following findings pursuant to Milpitas Municipal Code Section XI-10-57-03-F:

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

The proposed layout of the site and design of the structures and landscaping is compatible and harmonious with the adjacent and surrounding developments in that the location, height, and size of the proposed patio cover will not further obstruct or restrict views of the hillside and valley floor as demonstrated in the story pole study (Attachment C). The proposed landscaping provides adequate privacy and screening of the proposed outdoor room. As conditioned, the proposed landscaping shall comply with City Council Resolution 6066 for Hillside Landscaping Water Conservation and Fire Hazard Mitigation. The proposed style, colors, and material match the architecture of the existing residence. The concept plan was presented to the SummitPointe Home Owners Association (HOA) and received approval on December 12, 2012.

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

The project is consistent with the Milpitas Zoning Ordinance in that the proposed structures comply with the required development standards as well as site and architectural guidelines for hillside developments as demonstrated in Tables 1 and 2 above. The proposed modifications to

the perimeter fence is in conformance with the Zoning Ordinance and is consistent with MMC XI-10-54.10 (C) in that the fence posts and supporting framework must be wood in order to maintain the rural character of the hillside.

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

The proposed project is consistent with the Milpitas General Plan in that it is in keeping with the natural character of the hillside and views are protected. As conditioned, the materials, and the design of the accessory structures and landscaping will be in keeping with the natural setting and view of the hillside. The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing policies in Table 3.

Table 3
General Plan Consistency

Policy	Consistency Finding
<p><i>Implementing Policy 2.a-I-18</i></p> <p><i>To ensure that development in the foothills is in keeping with the natural character of the hillside, and that views are protected, require city review and approval of all proposed development or major alterations to existing development in the hillside. As part of the review, ensure that:</i></p> <ul style="list-style-type: none"> ▪ <i>Landscaping is of a type indigenous to the area;</i> ▪ <i>Building designs, materials and colors blend with the environment;</i> ▪ <i>Grading is minimized and contoured to preserve the natural terrain quality.</i> 	<p>Consistent. The proposed project is consistent the policy, in that the project was reviewed for site and architectural compliance with the Hillside Ordinance. The project as proposed is keeping with the existing architectural design of the home by utilizing materials and styles that match the existing home. The proposed modification maintains the natural character of the hillside by not expanding beyond the building envelope. As conditioned, the materials, design of the accessory structures, and landscaping will be in keeping with the natural setting and view of the hillside.</p>

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that based on the scope of the project it is categorically exempt from further environmental review pursuant to Section 15303 (New Construction or Conversion of small Structures) of the Guidelines to the California Environmental Quality Act (CEQA).

PERMIT STREAMLINING ACT

The project is subject to the Permit Streamlining Act, requiring the City to deem the application complete or incomplete within 30 calendar days of project submittal.

Project Received: February 15, 2013

Deemed Incomplete: March 27, 2013

Project Resubmittal: June 6, 2013

Deemed Complete: July 9, 2013

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public. Table 4 provides a summary of the City's public noticing for this project.

Table 4
Public Noticing Summary

Notice of Public Hearing	Agenda
<ul style="list-style-type: none"> ▪ Posted on the site (<i>14 days prior to the hearing</i>) ▪ Twenty-nine (29) notices mailed to property owners and residents within 1,000 feet to the project site (<i>10 days prior to the hearing</i>) ▪ Posted on the City's official notice bulletin board (<i>10 days prior to the hearing</i>) 	<ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board (<i>5 days prior to the hearing</i>) ▪ Posted on the City of Milpitas's Web site (<i>one week prior to the hearing</i>)

CITY COUNCIL REVIEW

City Council approval is required for site and architectural for the construction or expansion of a single-family structure or accessory structure in any Hillside Combing District.

CONCLUSION

The proposed accessory structures are consistent with the Zoning Ordinance development standards in terms of height, size and impervious surface coverage. Section 10-45.09-7 of the Zoning Code related to "Site and Architectural" review guidelines, requires the avoidance of unreasonable interference with views and privacy. The height, elevations and placement of the accessory structures on the site, when considered with the location of residential structures on adjacent lots, avoids unreasonable interference with views and privacy. The proposed accessory structures will be placed on a flat area immediately behind the existing residence.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission conduct a public hearing and adopt Resolution No. 13-019 recommending City Council approval of Site Development Permit No. SD13-0006 subject to the attached Conditions of Approval.

Attachments:

- A. Resolution No. 13-019
- B. Project plans
- C. Story pole study

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
BFGC ARCHITECTS PLANNERS, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), and BFGC Architects Planners, Inc., a California corporation DBA "IBI Group Architecture Planning" ("Consultant") as of September 3, 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 30, 2015, 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. Consultant shall not make any changes to the specific personnel assigned under this Agreement without City

written approval. 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 Sixty-Two Thousand dollars (\$62,000.00) 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, if any, 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 Julie Waldron 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:

Dean Aron Tatsuno, AIA
180 West Santa Clara Street, Suite 800
San Jose, CA 95113

Any written notice to City shall be sent to:

Jeff Moneda, Public Works Director/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

CONSULTANT

Thomas C Williams, City Manager

Dean Aron Tatsuno, AIA, Sr. Principal
Architect/associate

David R. Carnal, FAIA, Director

APPROVED AS TO CONTENT:

Alistair Baillie, Operating Director

Jeff Moneda, Public Works Director/City Engineer

Taxpayer Identification Number:

77-0166282

APPROVED AS TO FORM:

Corporate Entity Number:

C1398379

Michael J. Ogaz, City Attorney

EXHIBIT A

SCOPE OF SERVICES FOR MSC LOCKER ROOM RENOVATION

General:

The Milpitas Sports Center Facility Improvements, Project No. 3408, is included in the approved City of Milpitas Capital Improvement Program. The work involves renovation of the men's and women's locker rooms including; repair of damage caused by leaking showers, reconstruction of the showers to provide for adequate drainage, update ventilation and lighting, replace flooring with a lower maintenance system, patch and paint entire locker room, repair sanitary sewer line, correct deficiencies to provide for compliance with Americans with Disabilities Act (ADA) requirements and other code related upgrades.

Through the City's consultant selection process, CONSULTANT has been selected to provide the design services for the Milpitas Sports Center Facility Improvements. CONSULTANT agrees to complete each of the task outlined below in strict accordance with this Agreement and subject to City review and approval.

The Sports Center is equipped with a set of locker rooms for adults and a set for the youth. During the improvements the youth locker rooms would serve as the locker rooms for adults and the youth would not be allowed to use the locker rooms. The locker rooms typically see 100 patrons a day with the lowest levels during the months of November thru February and this is the time frame that City would want to target the improvements during.

CONSULTANT and the CITY recognize the importance of the need to maintain the CONSULTANT's key personnel throughout the entire duration of this Agreement. CONSULTANT shall not make any changes to the assigned personnel listed below without City written approval:

Principal, Patricia Lock
Project Architect, Steve Sowa
Job Captain, Kyle Huynh

Task 1 - Concept Design:

1. Initial Project Design Meeting – CONSULTANT shall meet with CITY staff to (i) review concept design and scope, (ii) review project goals, expectations, budget, scope and schedule, (iii) verify regulatory items, approval process and administrative procedures, and (iv) clarify CITY preferred materials, equipment and available maintenance resources.

DELIVERABLE:

- Attend one (1) meeting in person to discuss concept design and scope.

2. See Task 2 for assessments and investigations.
3. Prepare preliminary design plans that includes each of the following:
 - a. Preliminary layout of improvements.
 - b. Preliminary improvements for ADA compliance and current California Building Code regulations as adopted by the City of Milpitas.
 - c. Preliminary construction estimate.
 - d. Preliminary construction schedule.
 - e. Sketches of/images/cut sheets of proposed materials.
 - f. Prepare outline of technical specification.
 - g. Evaluate to determine if the renovation project would fall outside the requirements of a categorical exemption.
 - h. Comply with environmental requirements for the project. City will provide a separate Consultant to perform material testing for mold and hazardous materials based on recommendations from CONSULTANT and the materials testing Consultant.
 - i. The use of cost effective design, materials that require minimal maintenance.
 - j. Identify permits and project approvals that will need to be obtained.

DELIVERABLE:

- Preliminary design plans for City review and comment.
4. Using program elements and Task 2 findings from the site investigation and information gathering prepare two (2) concept plans for the improvements. Each concept plan shall address all regulatory compliant improvements then the balance of the improvements budget can be applied toward betterments.

DELIVERABLE:

- Two (2) Concept Plans for City review and approval.
5. CONSULTANT shall meet with CITY staff to review issues associated with each of the proposed concepts and identify a preferred alternate.

DELIVERABLE:

- Attend one (1) meeting in person to review concept plans.
6. CONSULTANT shall develop final concept plan within the City's Not to Exceed construction budget of \$350,000 for MSC Locker Room Renovation.

The budget is intended to cover the following improvements:

- Reconstruct shower stalls to prevent water from migrating past the water barrier and provide for low maintenance and operations costs. Looking at man made solid surface or engineered quartz.

- Replace floor with a low maintenance system that will minimize bacteria growth, consider concrete or terrazzo.
- Correct any deficiencies within the Men's & Women's locker rooms and path of travel to the locker rooms for compliance with ADA.
- Update ventilation and lighting within the Men's & Women's locker rooms to current standards.
- Repair any structural and cosmetic damaged caused by the leaking showers.
- Patch and paint the entire Men's & Women's locker rooms.
- Replace all shower stall valve sets and heads and ADA appurtenances.
- Repair SS line issues.

DELIVERABLE:

- Final Concept Plan incorporating all City comments.
7. CONSULTANT shall assist CITY Staff in the preparation of a power point presentation to the Council subcommittee 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.

DELIVERABLE:

- Power Point presentation for City Council and Council subcommittee meetings.
 - Attend Council subcommittee meeting in person as requested by City.
 - Attend City Council meeting in person as requested by City.
8. CONSULTANT shall, with the CITY'S input, develop a project schedule for the Design and Construction phases of the Project. CITY wishes to put the project out to bid for construction in **Fall 2013, with construction to be completed prior to March 2014.**

DELIVERABLE:

- Project Schedule for design and construction phases.

Task 2: Field and Document Investigation for Design

1. Condition assessment and evaluation of MSC locker rooms and surrounding areas to evaluate condition of the structure, mechanical, plumbing, and electrical. This will include but is not limited to opening walls, ceilings, floors, and other finishes to evaluate the structure, MPE, inspecting for water damage and mold. Temporary repairs will need to be made to allow the rooms to continue to be operated normally.
2. Evaluate the locker rooms, surrounding areas, and path of travel to the locker rooms for compliance with the current ADA standards.

3. Field investigation and data collection of existing conditions at the MSC and shall also including review of as-builts, 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 in hard copy and/or CADD.
 - b. CONSULTANT to perform:
 - i. Field survey for
 1. Size and location of improvements
 2. Size and location of existing structures
 3. All hardscape (related to path of travel)
 4. Any other information that is necessary to design the improvements.
 - ii. Preparation of additional As- built CADD drawings not provided by the City must be approved in writing prior to proceeding with the work.
 - c. CONSULTANT shall verify locations and inverts of existing underground piping related to the locker rooms and all “as-built” plans provided by the City.
 - d. Any additional underground utility locating required shall be performed upon receipt of written authorization from the City.
4. Based on the findings of the field investigation and condition assessment additional design scope may be necessary including; structural engineering & sewer line remediation. This additional design scope must be authorized by the City in writing prior to proceeding with the work.

Task 2 Deliverables:

- Memorandum of condition assessment and evaluation to the City.
- Temporary repairs following opening of walls and other improvements to evaluate the existing conditions.
- Field survey report.
- Memorandum of revised design scope as required based on condition assessment.

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%) submitted to the City’s Building Department for review and approval for structures, mechanical, plumbing, 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 and will be used for bidding the work. For each phase of design the consultant shall respond to and incorporate CITY's comments. CONSULTANT shall schedule a minimum of three (3) weeks for City review of each submittal. The 50% and 98% submittals shall include one (1) complete hard copy sets of plans, specifications and calculations. The 99% & 100% submittal shall include three (3) 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.

DELIVERABLE:

- Fifty percent (50%) Construction Plans, Specifications, and Estimates for City review and comment.
 - Ninety-Eight percent (98%) Construction Plans, Specifications, and Estimates for City review and comment.
 - Ninety-nine percent (99%) Construction Plans Specifications, and Estimates for submittal to the City Building Department.
 - One Hundred percent (100%) Construction Plans, Specifications, and Estimates incorporating all City comments.
2. CONSULTANT shall attend Team Meeting: Present 50%, 98%, 99%, 100% (99% submittal set to the Building Department) & Construction Documents package to CITY for review.

DELIVERABLE:

- Attend team meetings in person to present 50%, 98%, 99%, and 100% Plans, Specifications and estimates, as requested by City.

GENERAL REQUIREMENTS

1. CONSULTANT shall coordinate and manage sub-consultants throughout the term of the Agreement.
2. Plans shall be at reasonable scales, but not smaller than 1"=20' for site, and Civil, and 1/4" = 1' for architectural and structural plans. Details shall be of a minimum size to easily read and understand the information that is being conveyed.
3. 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.
4. Where applicable, 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. 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.

5. CONSULTANT shall prepare the 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).
6. Project Specifications shall be prepared using the CITY's standard front end (City to provide in Ms Word). CITY also has several Technical Specification Sections which are also standard that may be used on the project. If CONSULTANT uses 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, Construction Specification Institute "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: Current California Building Codes as adopted by the City of Milpitas, National Fire Protection Association, 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 for construction. The specifications shall include measurement and payment wording. CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet. 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 CITY.
7. Where applicable, 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.
8. CONSULTANT shall also prepare all submittals for Building Department permit review and approval as required. CONSULTANT shall respond to all Building Department comments. 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 fifteen (15) working days for each submittal review. Each Building Department submittal requires five (5) wet signed hard copies.
9. City Council Meetings: CONSULTANT shall assist CITY Staff in the preparation of power point presentations for presentation to a council subcommittee and City

Council for approval of the project design. CONSULTANT shall be present at the meetings to answer any questions as requested. CONSULTANT shall budget for two such meetings and presentation preparation.

10. Final plans ready for bidding 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, free of technical and grammatical errors. 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 Tasks 1 and 3 of this scope of work.

DELIVERABLE:

- Signed QA/QC statement with each submittal in Tasks 1 and 3.

Task 5: Bidding Support Services:

CITY will be responsible for advertisement for bid 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 (2) pre-bid meetings, review and 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 (5) signed conformed sets of contract documents hard copies and one electronic copy on CD in AutoCAD, MS Word and PDF formats.

DELIVERABLE:

- Answer any questions during the bid process
- Attend two (2) Pre-bid meetings in person
- Assist and draft addenda/response to bidder inquiries, if needed
- Assist in bid evaluation as requested by City
- Conformed plans & specifications (5 signed hard copy sets wet signed/stamped by a California licensed professional, set on CD in AutoCAD, MS Word, and PDF formats)

Task 6: Construction Administration Support:

1. CONSULTANT shall provide Construction observation and project administration duties commencing 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.

DELIVERABLE:

- Submit reports of observations.
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-construction conference and other meetings as specified in project specifications.

DELIVERABLE:

- Attend pre-construction meeting in person.
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 construction contract. 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 construction contractor's rights and responsibilities under the contract with City.

DELIVERABLE:

- Perform regular site visits and report deviations/observations.
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.

DELIVERABLE:

- Attend construction meetings in person as requested.
7. CONSULTANT shall keep the CITY informed of its observations of the progress of the Project.

DELIVERABLE:

- Keep the City informed of the progress of the project.
8. CONSULTANT shall promptly report in writing to the CITY any known deviations from the construction contract and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT will not be responsible for the construction contractor's failure to perform the work in accordance with the requirements of the construction contract.

DELIVERABLE:

- Report in writing any deviations from the project schedule.
9. CONSULTANT shall review and respond to construction 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 construction contract. CONSULTANT shall coordinate its review and response to these documents with the CITY and the construction contractor as needed to allow for work to proceed, and be cognizant of the construction 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 construction 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 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 construction 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, omission, 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.

DELIVERABLE:

- Submittal review and response to RFI's.
10. CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the construction contract.

DELIVERABLE:

- Maintain record of and copies of contractor submittals.
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 Consultant's negligent, omission, intentional, or reckless errors.

DELIVERABLE:

- Draft Change Orders and Construction Change Directives, as requested by the City.
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.

DELIVERABLE:

- Notify City when additional testing and/or inspection are necessary.
13. CONSULTANT shall review reports, summaries, instruction books, operational manuals, warranties, and other construction contractor provided documents to determine in general, whether or not the construction contractor is in compliance with the contract documents.

DELIVERABLE:

- Review contractor provided reports, manuals, warranties and other documents.
14. As directed by the CITY, CONSULTANT shall assist the CITY in fulfilling the legal requirements and mandates of third-party regulatory agencies.

DELIVERABLE:

- Assist City in fulfilling legal requirements.
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 construction contract documents. The foregoing representations are subject (1) to an evaluation of the work for conformance with the construction contract documents upon substantial completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the construction contract

documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

DELIVERABLE:

- Review construction contractor progress payments.

16. CONSULTANT shall respond to CITY's questions in writing when such questions are necessary to provide clarification to the plans and specifications.

DELIVERABLE:

- Respond to City questions.

17. CONSULTANT shall generate supplemental drawings and clarifications, as necessary, or as may be requested by the construction contractor or the CITY to clarify the design intent at no additional cost to the CITY.

DELIVERABLE:

- Generate Architectural Supplemental Instruction (ASI), as necessary.

18. CONSULTANT shall review Notices of Potential Claim and render written decisions, subject to City review and approval, on all Notices of Potential Claim, claims, disputes or other matters in question between the CITY and construction 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.

DELIVERABLE:

- Review notices of potential claims, claims, or disputes.

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.

DELIVERABLE:

- Punch list walk and punch list.

Task 7: Record Documents and Project Closeout

1. CONSULTANT shall review all Contractor supplied operation and maintenance manuals, and warranties.

DELIVERABLE:

- Review and provide comments on all operation and maintenance and warranties manuals.
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.

DELIVERABLE:

- Record drawings (1 hard copy on Mylar and 1 electronic copy on DVD in AutoCAD, PDF and TIF formats)
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.

DELIVERABLE:

- Review and report any deficiencies prior to the expiration of the Contractor's warranties and/or guarantees.
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.

DELIVERABLE:

- Attend meeting in person as requested by City.
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.

DELIVERABLE:

- Attend meeting in person as requested by City.

**Exhibit B
Compensation Schedule
Milpitas Sports Center Locker Room Renovation - Project No. 3408**

TASK DESCRIPTION	IBI GROUP PERSONNEL					ATCE PERSONNEL (MEP)					VULCAN PERSONNEL (DEMO & PATCHING)				H-L PERSONNEL (STRUCTURAL)					
	PRINCIPAL	PROJECT ARCHITECT	JOB CAPTAIN	TOTAL	TASK TOTAL	PROJECT MANAGER	ENGINEER	TECHINCAL	TOTAL	TASK TOTAL	PROJECT MANAGER	SUPERIN-TENDENT	CARPENTER	TOTAL	TASK TOTAL	PROJECT MANAGER	ENGINEER	TECHINCAL	TOTAL	TASK TOTAL
Task 1 - Concept Design																				
Project Meetings	2	2	0	4	\$730	2	0	0	2	\$400						0	0	0	0	\$0
Preliminary Design Plans	0	4	8	12	\$1,700	2	2	0	4	\$730						0	0	0	0	\$0
Task 2 - Field and Document Investigation for Design																				
Project Meetings	0	2	0	2	\$330	2	0	0	2	\$400	0	0	0	0	\$0	0	0	0	0	\$0
Conditional Assessment and Evaluation	0	8	8	16	\$2,360	0	4	4	8	\$1,180	2	2	8	12	\$1,320	0	0	0	0	\$0
Task 3 - Final Design																				
Project Meetings	0	4	0	4	\$660	0	4	0	4	\$660						0	0	0	0	\$0
Construction Documents 50%	0	4	40	44	\$5,860	0	4	20	24	\$3,260						0	0	0	0	\$0
Review City Comments	0	2	0	2	\$330	0	2	0	2	\$330						0	0	0	0	\$0
Construction Documents 98%	0	2	16	18	\$2,410	0	2	8	10	\$1,370						0	0	0	0	\$0
Review City Comments	0	2	0	2	\$330	0	2	0	2	\$330						0	0	0	0	\$0
Construction Documents 99% Building Department Submittal	0	2	8	10	\$1,370	0	2	6	8	\$1,110						0	0	0	0	\$0
Review City Comments	0	2	0	2	\$330	0	2	0	2	\$330						0	0	0	0	\$0
Construction Documents 100%	0	2	8	10	\$1,370	0	2	6	8	\$1,110						0	0	0	0	\$0
Task 4 - Quality Control/Quality Assurance																				
Project Meetings	0	0	0	0	\$0	0	0	0	0	\$0						0	0	0	0	\$0
OC/QA Review and Revisions	0	4	4	8	\$1,180	0	4	4	8	\$1,180						0	0	0	0	\$0
Task 5 - Bidding Support																				
Attend two pre-bid meetings	0	2	0	2	\$330	0	0	0	0	\$0						0	0	0	0	\$0
Response to Bidders Inquiries	0	0	4	4	\$520	0	4	0	4	\$660						0	0	0	0	\$0
Preparation of Addenda	0	0	2	2	\$260	0	0	0	0	\$0						0	0	0	0	\$0
Evaluation of Bids	0	2	0	2	\$330	0	2	0	2	\$330						0	0	0	0	\$0
Preparation of Conformed Plans & Specifications	0	0	8	8	\$1,040	0	0	4	4	\$520						0	0	0	0	\$0
Task 6 - Construction Administration Support																				
Three (3) Construction Meetings	0	0	6	6	\$780	0	6	0	6	\$990						0	0	0	0	\$0
Review and respond to Contractor Submittals	0	0	8	8	\$1,040	0	4	0	4	\$660						0	0	0	0	\$0
Task 7 - Record Documents and Project Closeout																				
Create Record Drawings	0	0	8	8	\$1,040	0	0	4	4	\$520						0	0	0	0	\$0
Project Close Out and Field Testing	1	1	1	3	\$495	1	0	0	1	\$200						0	0	0	0	\$0
Subtotal Hours	3	45	129	161		7	46	56	103		2	2	8	12		0	0	0	0	
	\$200	\$165	\$130			\$200	\$165	\$130			\$105	\$95	\$115			\$150	\$125	\$90		
PERSONNEL COST	\$600	\$7,425	\$16,770		\$24,795	\$1,400	\$7,590	\$7,280		\$16,270	\$210	\$190	\$920		\$1,320	\$0	\$0	\$0		\$0

Subtotal: \$24,795 \$16,270 \$1,320 \$0

Total: \$42,385

Potential Additional Scope (To be used only with written approval by the City) :

Potential Structural Engineering: \$5,000 Assumes replacement of 40 feet of wall
 Potential Sewer Line Remediation: \$2,500 Assumes replacement of the sewer line
 Potential Underground Utility Locating: \$1,500 Assumes one day of field work

Contingency: \$10,615

Grand Total: \$62,000

On completion of the Assessment and Evaluation Task, if additional Scope of Work is identified; additional fees will be negotiated and the Agreement amended.

EXHIBIT C
INSURANCE DOCUMENTS

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

*11

Instructor Name: Mei Wan, an individual dba
Center Stage Performing Arts
Address:
2415 San Ramon Valley Blvd. Suite 4393
San Ramon, CA 94538

Phone Number: (408) 707-7158

This Agreement for Recreation Services is made by and between the City of Milpitas, a municipal corporation of the State of California (“City”) and **Mei Wan, an individual dba Center Stage Performing Arts**, (“Contractor”). This Agreement will be in effect from **August 27, 2013 through August 26, 2014** in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor’s services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor 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.
2. Contractor No Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Milpitas Recreation Childrens’ Theatre Program and Annual Tree Lighting ceremony (see attached Exhibit A)**
 - A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor’s sole cost and expense.
4. Compensation and City Cancellation Powers. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of each production as herein indicated:

Payment Rate: **90%** of program cast fees (excluding the individual \$20 non-resident fee) collected by City at the end of the production. City is not responsible for compensating Contractor for participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.

of productions: 4 (three productions and Annual Tree Lighting Ceremony)
Minimum Participants (per production): 20
Maximum Participants (per production): 80

- A. In the event of a rehearsal cancellation by the Contractor resulting in a make-up rehearsal, the Contractor payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up rehearsal.
 - B. If a production does not reach the stated minimum number of participants prior to the first rehearsal, the City may in its sole discretion cancel the production, without compensation to the Contractor. Likewise, in the event the total number of participants drops below the minimum required production size prior to the beginning of the no-refund cancellation period as set forth in the Recreation Customer Satisfaction Policy, then the City may in its sole discretion cancel the remaining production rehearsals. In that event, the City shall pay Contractor a pro-rated amount only for those production rehearsals taught, up to the time of cancellation.
 - C. City will not withhold any amount for federal or state income taxes. All instructors must complete a W-9 form and shall be responsible for payment of any applicable federal or state taxes.
5. Licenses and Permits: Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.
6. Insurance **Insurance requirement waived.**
- The City Attorney jointly with the Risk Manager (Finance Director) of the City has the authority to waive or vary any provision of Section 6. Any such waiver or variation shall not be effective unless made in writing and included in the Scope of Work attached in Exhibit A.
- Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of the Workers' compensation laws of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, the Contractor will therefore not be covered under the City's Worker's Compensation Fund. Additionally, City will not obtain unemployment insurance for the Independent Contractor. Therefore, City's insurance company will not defend or pay out claims brought against an Independent contractor of City. Contractor understands that as an Independent Contractor, he/she are responsible for his/her own insurance and liability coverage. _____ Contractor initials
7. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

8. Publicity and Promotion. Contractor grants full permission to the City for use of his/her name and photographs, videographs, motion pictures or recordings for any publicity and promotional purposes without charge to the City.
9. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to the first class. Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Parks & Recreation Services representative. The Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.
10. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.
11. Indemnification. Contractor hereby indemnifies and holds harmless and releases and discharges the City of Milpitas, its officers, agents, employees, and volunteers from any and all liability for any injuries to persons or property suffered by any persons (including but not limited to contractor, contractor's employees or students) arising from or connected with this Agreement or Contractor's activities pursuant to this Agreement. Therefore, Contractor evaluated the inherent risks involved in operating his/her activity and has sufficient insurance coverage. _____ Contractor initials
12. Governing Law. The laws of the State of California shall govern this Agreement.
13. Compliance with Applicable Laws. Contractor shall comply with all local, state, and federal laws, rules, regulations, policies, and guidelines.
14. Termination. City may terminate this Agreement for convenience with seven (7) days written notice to Contractor.
15. Noncompliance and Equal Opportunity. Contractor 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 participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in 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 Contractor thereby.

 CONTRACTOR SIGNATURE

 RECREATION SERVICES

 REPRESENTATIVE

DATE _____

DATE _____

Center Stage Performing Arts
Season 2013-2014
Scope of Work - Exhibit A

Production Schedule

*Shows and Dates subject to change

Fall 2013 – Seussical, Jr.

Auditions:

Monday & Tuesday, August 26 & 27, 2013

Call Backs:

Wednesday, August 28, 2013

Cast Meeting:

Thursday, August 30, 2013

Rehearsals:

August 30, 2013 – November 7, 2013

Performances:

Friday, November 8, 2013

Saturday, November 9, 2013

Sunday, November 10, 2013

Thursday, November 14, 2013

Friday, November 15, 2013

Saturday, November 16, 2013

School Performances:

Tuesday & Wednesday, November 12 & 13,
2013

Winter 2013 – The Ransom of Emily Jane

Auditions:

Tuesday & Wednesday, November 12 & 13,
2013

Cast Meeting:

Thursday, November 14, 2014

Rehearsals:

November 14 – December 8, 2013

Performances:

Monday, December 9, 2013

Tuesday, December 10, 2013

Wednesday, December 11, 2013

Thursday, December 12, 2013

School Performances:

Tuesday & Wednesday, December 10-11,
2013

Spring 2014 – The Wiz

Auditions:

Monday & Tuesday, January 13 & 14, 2014

Callbacks:

Wednesday, January 15, 2014

Cast Meeting:

Thursday, January 16, 2014

Rehearsals:

January 16 – March 20, 2014

Performances:

Friday, March 21, 2014

Saturday, March 22, 2014

Sunday, March 23, 2014

Thursday, March 27, 2014

Friday, March 28, 2014

Saturday, March 29, 2014

School Performances:

Tuesday & Wednesday, March 25 & 26
2014

Summer 2014 – Chicago

Auditions:

Monday & Tuesday, May 5 & 6, 2014

Callbacks:

Wednesday, May 7, 2014

Cast Meeting:

Thursday, May 8, 2014

Rehearsals:

May 8, 2014 – July 17, 2014

Performances:

Friday, July 18, 2014

Saturday, July 19, 2014

Sunday, July 20, 2014

Friday, July 25, 2014

Saturday, July 26, 2014

Sunday, July 27, 2014

Thursday, July 31, 2014

Friday, August 1, 2014

Saturday, August 2, 2014

Camp Performances:

Wednesday, July 30, 2014

Center Stage Performing Arts
Season 2013-2014
Scope of Work - Exhibit A

Ticket & Concession Sales

Ticket sales are the sole responsibility of Contractor. Ticket prices and Box Office hours and staffing are to be determined by Contractor. Ticket sales will not run through City of Milpitas Recreation offices and are therefore 100% of the proceeds will go to Contractor.

The purchasing and selling of Performance Concession Sales is the sole responsibility of Contractor. Concession prices are to be determined by Contractor. Concession sales will not run through City of Milpitas Recreation offices and are therefore 100% of the proceeds go to Contractor.

Promotional Materials

Marketing

Milpitas Recreation Services will market the Center Stage Performing Arts programs provided for the City of Milpitas through the seasonal activity guide, e-blasts, press releases, flyers, marquee and website. Anything additional, i.e., paid ads, will be at the cost of Contractor.

Printing

Recreation Services will continue to create and print the programs flyers, programs and tickets in the same style and quality that has historically been created. Any promotional printing above and beyond (i.e. full color, glossy print) will be the cost of and responsibility of Contractor.

Information to create flyers, programs and tickets must be reported and communicated to staff in a timely manner and will be determined by Contractor and Milpitas Recreation Marketing Coordinator.

Facility Use

City will provide audition, rehearsal, performance and other program space as needed.

Donations

The City will continue to accept donation on behalf of Contractor should donors wish to donate to the program.

Insurance

General liability Insurance requirements have been waived jointly by the City of Milpitas' Risk Manager and City Attorney.

PredPol Predictive Policing Subscription Agreement

This PredPol Subscription Agreement (the "**Agreement**") is entered into by and between PredPol Inc., a California corporation, with offices at 331 Soquel Avenue, Suite 100, Santa Cruz, CA 95062 ("**PredPol**") and the entity agreeing to these terms (City of Milpitas {**Police Department**} "**Customer**"). This Agreement is effective as of the date the Agreement is countersigned (the "**Effective Date**"). If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. This Agreement governs Customer's access to and use of the Services.

1. Pricing.

Customer shall receive a PredPol Services from October 1, 2013 through October 1, 2014 for a flat fee of \$12,500. PredPol Services shall also be provided for fiscal year 2014-2015 for \$12,500, a discounted fee in recognition of customer's referral of another agency to PredPol, and fiscal year 2015-2016 for \$12,500. The one time installation fee of \$3,000 is waived as a result of the agreement to a multi-year contract. These services include prediction of property, assault and robbery, and such other crimes as Customer and PredPol agree upon.

Payments shall be made in U.S. Dollars by either wire transfer or check. Checks shall be sent to PredPol, Inc., 331 Soquel Avenue, Suite 100, Santa Cruz, California, 95062, USA. If wire transfer is desired, wiring instructions can be obtained by contacting your PredPol point of contact.

2. Term**2.1 Agreement Term.**

This Agreement will remain in effect for the Term set forth above under Pricing. However, Customer may elect to cancel the agreement before year's two and three by giving notice of intent to cancel to PredPol in writing, at least 90 days prior to the one year anniversary of the Effective Date. Cancellation per this section is within the complete discretion of Customer and shall not nullify the waiver set forth in Section 1, above.

2.2 Services Term and Purchases During Services Term.

PredPol will provide the Services, as described in the Scope of Work attached hereto as Exhibit A to this Agreement, to Customer during the Services Term. Unless the parties agree otherwise in writing, new products or services purchased during any Services Term will have a prorated term ending on the last day of that Services Term

3. Additional Customer Obligations.

Customer agrees to provide reasonable information and take reasonable steps requested by PredPol in order to facilitate setup and implementation of the Services.

3.1 PredPol's License to Use Customer's Data.

Customer hereby provides PredPol with an irrevocable, non-exclusive license to use its data for purposes of research, development and testing of PredPol's Services. Customer also provides authority to PredPol to utilize its data for delivering services to Customer and other domestic, U.S.-based law enforcement agencies. Such services may include regional reporting, cross-jurisdiction predictions, among other services.

3.2 Additional Obligations.

- Generally support the beta testing of new features/tools developed by PredPol.
- Contribute to requested case studies, to be developed by PredPol.
- Provide testimonials, as requested by PredPol.
- Provide referrals and facilitate introductions to other agencies who can utilize the PredPol tool.
- Respond to inquiries from other agencies regarding Customer's use of PredPol.
- Host visitors from other agencies regarding PredPol.
- Test new features as developed by PredPol.
- Provide user feedback, as requested by PredPol.
- Engage in joint/integrated marketing, including but not limited to press conferences and media relations, training materials, web marketing, collateral, "Predicted by PredPol," tradeshow, conferences, speaking engagements and research as available.

In the event any of the forgoing would involve costs to the Customer outside of their normal costs for employees performing their normal job duties, PredPol agrees to reimburse Customer for such costs, if PredPol requests Customer take such action. For example, if a Chief is requested to attend and speak at a conference of Police Chiefs to which they are not already traveling, PredPol agrees to reimburse Customer for travel expenses, if requested.

4. Services.

4.1 License to Use.

Customer shall be licensed and authorized to use the Services as provided as a Cloud based system. The scope of the license is non-transferable and non-exclusive and is authorized by PredPol for use by the Customer. The Customer shall have the right to use the Services for

the Term of this Agreement and any extensions or renewals. The Services shall be provided in English.

4.2 Facilities and Data Transfer.

All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where PredPol stores and processes its own information of a similar type and in compliance with all applicable state and federal laws. PredPol has implemented at least industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security or integrity of Customer Data and protect against unauthorized access to or use of Customer Data.

4.3 Modifications To the Services.

PredPol may make commercially reasonable changes to the Services from time to time. If PredPol makes a material change to the Services PredPol will inform Customer. Customer reserves the right to terminate this agreement, at its discretion, upon PredPol making any such material change.

4.4 Retention.

PredPol will have no obligation to retain any archived Customer Data. Customer Data is read from Customer, but PredPol does not provide or function as an archive service for the data.

5. Customer Obligations.

5.1 Compliance.

Customer will use the Services in accordance with this Agreement and all applicable laws. PredPol may make new applications features or functionality for the Services available from time to time the use of which may be contingent upon Customer's agreement to additional terms.

5.2 Login IDs and Passwords.

Customer is solely responsible for monitoring and protecting the confidentiality of all Login IDs and Passwords issued to it and its End Users.

5.3 Customer Administration of the Services.

Customer may specify one or more Administrators who will have the rights to administer the End User Accounts. Customer is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); and (c) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Agreement. Customer agrees that PredPol's responsibilities do not extend to the internal management or administration of the Services for Customer and that PredPol is merely a data-processor.

5.4 Unauthorized Use.

Customer will use commercially reasonable efforts to prevent unauthorized use of the Services and to terminate any unauthorized use. Customer will promptly notify PredPol of any unauthorized use of or access to the Services of which it becomes aware.

5.5 Restrictions on Use.

Unless PredPol specifically agrees in writing, Customer will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease or the functional equivalent, the Services to a third party (unless expressly authorized in this Agreement); (b) attempt to reverse engineer the Services or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Services; (d) use the Services for High Risk Activities; or (e) use the Services to store or transfer any Customer Data that is controlled for export under Export Control Laws or other applicable law. Customer is solely responsible for ensuring that its use of the Services complies with all applicable laws and regulations.

5.6 Third Party Requests.

Customer is responsible for responding to Third Party Requests. PredPol will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify Customer of its receipt of a Third Party Request; (b) comply with Customer's reasonable requests regarding its efforts to oppose a Third Party Request; and (c) provide Customer with the information or tools required for Customer to respond to the Third Party Request. Customer will first seek to obtain the information required to respond to the Third Party Request on its own and will contact PredPol only if it cannot reasonably obtain such information.

6. Payment.

6.1 Payment.

All payments due are in U.S. dollars unless otherwise indicated on the Order Page or invoice. Fees for orders where PredPol issues an invoice are due upon Customer's receipt of the invoice and are considered delinquent sixty days after the date of the applicable invoice.

6.2 Delinquent Payments.

Delinquent payments may bear interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by PredPol in collecting such delinquent amounts except where such delinquent amounts are due to PredPol's billing inaccuracies.

6.3 Taxes.

Customer is responsible for any Taxes and Customer will pay PredPol for the Services without any reduction for Taxes. If PredPol is obligated to collect or pay Taxes, the Taxes will

be invoiced to Customer unless Customer provides PredPol with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to PredPol, Customer must provide PredPol with an official tax receipt or other appropriate documentation to support such payments.

7. Technical Support Services.

7.1 By Customer.

Customer will, at its own expense, respond to questions and complaints from End Users or third parties relating to Customer's or End Users' use of the Services. Customer will use commercially reasonable efforts to resolve support issues before escalating them to PredPol.

7.2 By PredPol.

If Customer cannot resolve a support issue consistent with the above, then Customer may escalate the issue to PredPol. PredPol will provide the support necessary to resolve Customer's issue, to the extent reasonably practicable in PredPol's discretion.

8. Suspension.

8.1 Of End User Accounts by PredPol.

If PredPol becomes aware of an End User's violation of the Agreement, then PredPol may specifically request that Customer Suspend the applicable End User Account. If Customer fails to comply with PredPol's request to Suspend an End User Account, then PredPol may do so. The duration of any Suspension by PredPol will be until the applicable End User has cured the breach which caused the Suspension.

8.2 5.2 Emergency Security Issues.

Notwithstanding the foregoing, if there is an Emergency Security Issue, then PredPol may automatically Suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If PredPol Suspends an End User Account for any reason without prior notice to Customer, at Customer's request, PredPol will provide Customer the reason in writing for the Suspension as soon as is reasonably possible but no later than 24 hours after suspension.

9. Confidential Information.

9.1 Obligations.

Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information except to Affiliates, employees and agents who need to know it and keep it confidential. Each party (and any Affiliates' employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and

fulfill its obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its Affiliates' employees and agents in violation of this Section.

9.2 Exceptions.

Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.

9.3 Required Disclosure.

Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

10. Intellectual Property Rights; Brand Features.

10.1 Intellectual Property Rights.

Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data and PredPol owns all Intellectual Property Rights in the Services. Customer grants to PredPol a non-exclusive license to use Customer's Data for PredPol's legitimate business purposes, including providing products and services to law enforcement agencies.

11. Publicity.

Customer agrees that PredPol may include Customer's name in a list of PredPol customers, online or in promotional materials. Customer also agrees that PredPol may verbally reference Customer as a customer of the PredPol products or services that are the subject of this Agreement.

12. Representations, Warranties and Disclaimers.

12.1 Representations and Warranties.

Each party represents that it has full power and authority to enter into the Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use of the Services, as applicable (including applicable security breach notification law). PredPol warrants that it will provide the Services as provided herein.

12.2 Disclaimers.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR

OTHERWISE INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. PREDPOL MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS INCLUDING EMERGENCY SERVICES CALLS OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

13. Termination.

13.1 Termination for Breach.

Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

13.2 Effects of Termination.

If this Agreement terminates, then: (i) the rights granted by one party to the other will cease immediately (except as set forth in this Section); and (ii) upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party.

13.3 Termination without Cause. Customer may terminate without cause and in its sole discretion in accord with the provisions of Section 2.1 above.

14. Indemnification.

14.1 By Customer.

Customer will indemnify, defend, and hold harmless PredPol from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim: (i) regarding Customer Data; or (ii) regarding Customer's use of the Services in violation of this Agreement or applicable law.

14.2 By PredPol.

PredPol will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim arising from PredPol's activities under this Agreement including that PredPol's technology used to provide the Services or any PredPol Brand Feature infringe or misappropriate any patent, copyright, trade secret or trademark of such third party. Notwithstanding the foregoing, in no event shall PredPol have any obligations or liability under this Section arising from: (i) use of any Services or PredPol Brand Features in a modified form

or in combination with materials not furnished by PredPol, and (ii) any content, information or data provided by Customer, End Users or other third parties.

14.3 Possible Infringement.

- a. Repair, Replace, or Modify.

If PredPol reasonably believes the Services infringe a third party's Intellectual Property Rights, then PredPol will: (a) obtain the right for Customer, at PredPol's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.

- b. Suspension or Termination.

If PredPol does not believe the foregoing options are commercially reasonable, then PredPol may suspend or terminate Customer's use of the impacted Services. If PredPol terminates the impacted Services, then PredPol will provide a pro-rata refund of the unearned Fees actually paid by Customer applicable to the period following termination of such Services.

14.4 General.

The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE A PARTY'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

15. Limitation of Liability.

15.1 Limitation on Indirect Liability.

NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

15.2 Limitation on Amount of Liability.

NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO PREDPOL HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

15.3 Exceptions to Limitations.

These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations. In addition, these limitations do not limit liability under any applicable insurance policy.

16. Miscellaneous.

16.1 Notices.

Unless specified otherwise herein, (a) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.

16.2 Assignment.

Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an Affiliate, but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.

16.3 Change of Control.

Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).

16.4 Force Majeure.

Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

16.5 No Waiver.

Failure to enforce any provision of this Agreement will not constitute a waiver.

16.6 Severability.

If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.

16.7 No Agency.

The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

16.8 No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement.

16.9 Equitable Relief.

Nothing in this Agreement will limit either party's ability to seek equitable relief.

16.10 Governing Law.

This Agreement is governed by California law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN EITHER SANTA CLARA OR SANTA CRUZ COUNTY, CALIFORNIA. The parties explicitly agree that no other laws, treaties or regulations shall control this Agreement.

16.11 Amendments.

Any amendment must be in writing and expressly state that it is amending this Agreement.

16.12 Survival.

The following sections will survive expiration or termination of this Agreement: Section 3, 6, 7.1, 10, 11.2, 12, 13, 14 and 15.

16.13 Entire Agreement.

This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.

16.14 Interpretation of Conflicting Terms.

If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Subscription Terms set forth in any separate quote prepared by PredPol, then the Agreement, and the terms located at any URL. If Customer signs a physical agreement with PredPol to receive the Services, the physical agreement will override any online Agreement.

16.15 Counterparts.

The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

17. Definitions.

17.1 "Account Manager" means the PredPol business person working with Customer regarding Customer's purchase of the Services.

17.2 "Admin Account(s)" means the administrative account(s) provided to Customer by PredPol for the purpose of administering the Services. The use of the Admin Account(s) requires a password, which PredPol will provide to Customer.

17.3 "Administrators" mean the Customer-designated technical personnel who administer the Services to End Users on Customer's behalf.

17.4 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

17.5 "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

17.6 "Confidential Information" means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is Customer's Confidential Information.

17.7 "Customer Data" means data, including crime data, provided, generated, transmitted or displayed via the Services by Customer or End Users.

17.8 "Emergency Security Issue" means either: (a) Customer's use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other customer's use of the Services; or (iii) the PredPol network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

17.9 "End Users" means the individuals Customer permits to use the Services.

17.10 "End User Account" means a PredPol-hosted account established by Customer through the Services for an End User.

17.11 "Export Control Laws" means all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State.

17.12 "Fees" means the amounts invoiced to Customer by PredPol for the Services as described in a Subscription Terms or similar document.

17.13 "High Risk Activities" means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

17.14 "Initial Services Term" means the term for the applicable Services beginning on the Service Commencement Date and continuing for 12 months (or, if different, the duration set forth on the Order Page).

17.15 "Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

17.16 "Subscription Terms" means the order document reflecting the financial terms of the subscription, including: (i) the Services being ordered; (ii) Fees; and (iii) Initial Services Term.

17.17 "Service Commencement Date" is the date upon which PredPol makes the Services available to Customer, and will be within one week of PredPol's receipt of the completed Order Page, unless otherwise agreed by the parties.

17.18 "Service Pages" mean the web pages displaying the Services to End Users.

17.19 "Services" means the applicable PredPol product or service, as described in the Scope of Work attached to this Agreement as Exhibit A.

17.20 "Services Term" means the applicable Initial Services Term and all renewal terms for the applicable Services.

17.21 "Suspend" means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.

17.22 "Taxes" means any duties, customs fees, or taxes (other than PredPol's income tax) associated with the sale of the Services, including any related penalties or interest.

17.23 "Term" means the term of the Agreement, which will begin on the Effective Date and continue until the earlier of (i) the end of the last Services Term or (ii) the Agreement is terminated as set forth herein.

17.24 "Third Party Request" means a request from a third party for records relating to an End User's use of the Services. Third Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, other request requiring a response under law, or written consent from the End User permitting the disclosure.

EXECUTED as a sealed instrument as of the day and year first set forth below by the last counter-signatory.

DATED: _____, 20__ PredPol, Inc.:

_____,
By: Caleb Baskin, its CEO

DATED: _____, 20__ _____:

By: _____,
Milpitas, California

Exhibit A Scope of Work

PredPol » The Technology

Clipped from: <http://www.predpol.com/technology/>



[Home](#) [About](#) [Technology](#) [Proven Results](#) [Gun Violence](#) [Press](#) [Contact](#) [Blog](#)

Looking Ahead, Not in the Rear View Mirror

The LAPD's Captain Sean Malinowski envisions a time when the police will issue crime forecasts the same way the National Weather Service issues storm alerts. With the PredPol tool, that time is now.

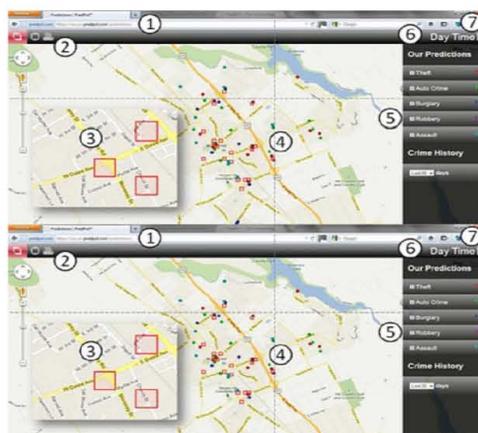
PREDICTIVE POLICING

IS NOT

- mapping of past crimes.
- profiling of individuals.
- a replacement for veterans' intuition and experience.
- new hardware or additional hiring.

IS

- a tool to increase your odds of stopping crime.
- a technology for any jurisdiction of any size.
- a way to bring newer police up to speed more quickly.
- information available immediately where and when it is needed.



1. [https://... secure](https://...)
2. delivery report on paper, to smart phone, or to tablet
3. 500' x 500' place-based prediction boxes
4. crime mapped instantaneously
5. specific to crime type
5. specific to shifts
7. crime mapping & prediction settings

Precise, Intuitive, Secure

"This is the next era of policing... very soon we will be using a predictive policing model where, by studying real-time crime patterns, we can anticipate where a crime is likely to occur."

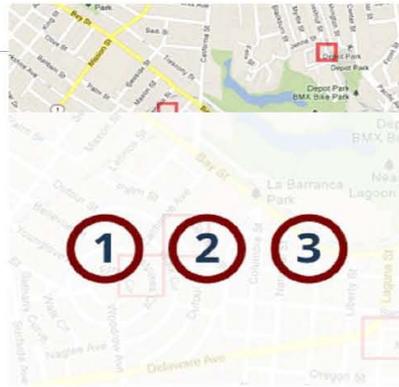
- William Bratton, Former Commissioner of NYPD and Chief of LAPD

Precise

Exhibit A (continued)

Intuitive

- For officers, PredPol's information is accessible from any tech device or on paper.
- For analysts, PredPol's tool can be set up within days and generates its actionable predictions in one click of your mouse.
- For managers, there is no new hardware, no additional technical staff, and no budget-busting installation fees. Training is simple, short, and intuitive. A very competitive annual subscription cost keeps the program running.



Secure & Reliable

- The tool is run on a secure, cloud-based software-as-a-service (SaaS) platform.
- Personal information about victims, offenders, or law enforcement is NOT collected, ever.
- All our data processing facilities employ key card protocols, biometric scanning, and round-the-clock interior and exterior surveillance.



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info@predpol.com

press@predpol.com

design by **Studio Holladay**

Exhibit A (Continued)

Statement of Work/Subscription Summary

Predpol is proud to be working with you on decreasing crime in the City of Milpitas and looks forward to a productive and successful relationship. The proposed terms of the Milpitas Police Department ("Agency") deployment of PredPol are as follows:

1 - Implementation Services				
<u>Description</u>	<u>Qty</u>	<u>List Price</u>	<u>Discount</u>	<u>Price</u>
Initial Setup & Configuration	1	\$3,000	100%	\$0
Total One-Time Costs:				\$0

Initial setup services include the proactive management of the tasks listed below:

- Setup of and integration of the PredPol tool into Agency's existing RMS/CAD/Data system. Timeline for setup dependent upon grant of access by Agency to PredPol's technician for installation of the data pipeline.
- Installation of a data pipe from Agency to the PredPol Cloud. Frequency of data update (daily, hourly, every few minutes) is dependent on the degree of access granted to Predpol to stream data from the Agency.

2 - Annual Subscription				
<u>Description</u>	<u>Qty</u>	<u>List Price</u>	<u>Discount</u>	<u>Price/Yr</u>
PredPol SaaS Year 1	1	\$25,000	50%	\$12,500
PredPol SaaS Year 2	1	\$25,000	50%	\$12,500
PredPol SaaS Year 3	1	\$25,000	50%	\$12,500
Total Annual Subscription Costs:				\$37,500

Subscription covers the following:

- Customized predictions for crime types, shifts and areas identified by Milpitas PD.
- Full Agency access to the tool, including unlimited prediction views, refreshes and report generation.
- Access to 3, 7, 14 and 28-day historical crime mapping for crime types predicted by the tool.
- Inclusion of feature updates as added during the subscription, at no additional charge.

3 - Additional Services

Additional services, such as custom features, are available on both a fixed-price and/or hourly basis. Such additional items will be subject to a separate scope of work.

4 - Non-Financial Agency Commitments

In exchange for the discounts extended above, Agency agrees to the commitment length and financial terms above and the following additional terms, to the extent *reasonable*:

- Deploy and utilize the PredPol tool and the intelligence it generates;
- Generally support the testing of the PredPol tool and any new features/tools, including providing user feedback, as requested by PredPol;
- Provide access to relevant City databases and shared databases to which the County has access, pursuant to all applicable laws and access agreements;
- Contribute to requested case studies and experiments on predictive policing and the use of the PredPol tool, particularly as it relates to predictions along jurisdictional borders with other agencies using PredPol (LAPD: Hollenbeck);
- Provide public testimonials and referrals to other agencies;
- Respond to inquiries and host visitors from other agencies;
- Engage in reasonable joint/integrated marketing, including but not limited to press conferences and media relations, training materials, marketing, tradeshow, conferences, speaking engagements and research. In the event any of the forgoing would involve costs to the City outside of their normal costs for employees performing their normal job duties, PredPol agrees to reimburse City for such costs. For example, if the Chief is requested to attend and speak at a conference of Law Enforcement Officials to which they are not already traveling, PredPol agrees to reimburse the City for travel expenses, if requested.

5 - Invoicing & Related Matters

Commencement of Services

Our provision of the PredPol SaaS, as described above, will begin in July 15, 2013 (the "Effective Date").

Initial Invoice

An initial invoice will be sent as of the date the PredPol SaaS goes live for the Agency, and will include:

- the first year subscription cost of the tool listed above

Payment of this invoice is due within 60 days of its issuance. Subsequent invoices will be issued on the anniversary date of this agreement, and as appropriate from time to time for any additional services requested by the Agency



CITY OF MILPITAS SOLE SOURCE/BRAND REQUEST

THIS FORM MUST BE COMPLETED AND APPROVED PRIOR TO ANY PROCUREMENT

When a request is made for a non-competitive procurement and the specification limits the bidding to one source and/or one brand or trade name, the requesting department must complete the following. Please answer in the space provided, or in an attachment address by specific reference, each question listed below (1-5) in your justification. ***Be sure to answer each part of each question. Failure to respond fully to any of the questions could result in delay or rejection of your request due to inadequate justification.***

1. Using appropriate detail, including brand name and model number, briefly describe the product you wish to procure. In the case of a service use enough detail to clearly describe to someone not familiar with the process what you are procuring.

PredPol Predictive Policing Software

2. Please check one: **Cost: \$ 12,500 / year**
X 3 = \$37,500 Total
 - a) **SOLE SOURCE:** Item is available from one source only. Item is one-of-a kind and is not sold through distributors. Manufacturer is exclusive distributor.
 - b) **SOLE BRAND:** Various sources can supply the specified model and brand; competitive bids will be solicited for the requested brand only. Meets form, fit and function - nothing else will do.
 - c) **STANDARDIZATION REQUEST:** The Department requires the item to standardize parts, design, quality etc. **(This requires further discussion with the Purchasing Agent.)**
3. What are the unique performance features of the product/brand requested that are not available in any other product/brand? (For services: What unique qualifications, rights, degrees, certifications, licenses and/or experience does this vendor possess?)

Police Departments nationwide are facing budget freezes and cuts, requiring them to manage their resources more effectively while still responding to public demand for crime prevention and reduction.

PredPol offers an easy-to-use, secure, SaaS (software as a service) technology that forecasts highest risk times and places for future crimes so that law enforcement can deploy resources more efficiently while lowering crime rates.

Predictive Policing is a tool to increase the odds of stopping crime; a technology for any jurisdiction of any size; a complement to veterans' intuition and experience; an elevating tool for newer officers and analysts; and information available immediately where and when it is needed.

i. **Development Path.** PredPol is the first software of its kind and was developed through more than six years of research by the Los Angeles Police Department and a team of PhDs from the Santa Clara University and UCLA, including two of the PredPol co-founders, Dr. George Mohler and Dr. Jeffrey Brantingham.

ii. **Patent Pending.** The technology is a patent-pending process predicting where and when crime is most likely to occur within micro-places (500' x 500' boxes) in a city or county.

iii. **Already Deployed.** Field deployments in Los Angeles and Santa Cruz, California, proved significantly better than traditional "crime hot spotting" and veteran crime analysts.

iv. **Superior Results.** When matched against existing best practices in crime analysis and technology, PredPol's technology has resulted in predictions twice as accurate.

v. **Scientific & Mathematical Origins.** Uniquely based on models for predicting aftershocks from earthquakes, PredPol's patent-pending, easy-to-use, SaaS (software as a service) technology forecasts highest risk times and places for future crimes.

vi. **Not Crime Mapping.** In contrast to simply mapping past crime data, PredPol applies advanced mathematics, adaptive computer learning, and theories of criminal behavior to past crime data. Traditional mapping tools are calibrated less frequently, rely on humans to recognize patterns, and fail to adjust adequately as new crimes are recorded.

vii. **Cost Effective.** Compared to crime analysis technology, the technology requires no additional hardware or software, no additional staff, and no maintenance contracts. It directly integrates with an agency's existing Records Management System.

viii. **Versatile Delivery to Officers.** PredPol's information is accessible from any technology device, including smart phone and tablets, or on paper.

ix. **Turn Key Implementation.** The technology can be implemented within 24-48 hours of a contract being signed and after a law enforcement agency provides appropriate systems access. It does not require months of data mining and aggregation.

4. What other products/services have been examined and rejected, and why? *(Please provide a specific meaningful explanation, one vendor and one feature at a time. For products be sure to clearly identify the product by name and model number and include the name, address, and telephone number of the company representative who's product you tested.)*

The other two software products we looked at are "Crime Reports", which we also use, and "Crime Mapping". Both products are only able to map crime they have no predictive capabilities. After a thorough search of the market we have not been able to locate any other software that has the same predictive capabilities PredPol has developed.

5. If justification is based on matching and/or intermixing with existing equipment (refer to 2.c.), list the quantity, manufacturer, brand, and model of the existing equipment, and why the matching is required not simply preferred.

I HEREBY CERTIFY THAT:

1. I am an approved department representative, and am aware of the City's requirements for competitive bidding, as well as the criteria for justification for sole source/brand procurements.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment/service.
3. There is validity as to the information contained herein justifying my request for sole source/brand procurement and meeting the City's criteria.
4. A sole source/brand procurement in this case would withstand a possible audit or a vendor's protest.

REQUESTOR _____ DATE: 8/13/2013

DEPT./DIV. HEAD: _____ DATE: 8/13/2013

PURCHASING DIVISION USE ONLY:

APPROVED: _____

PURCHASING AGENT:

NOT APPROVED: _____

DATE: ___/___/___

COMMENTS:

SOLE SOURCE/BRAND REQUEST

A. OVERVIEW

Purchasing recognizes that departments often invest a great deal of time and effort in selecting a source or brand, prior to submitting a requisition to Purchasing. Even though the departmental review process prior to the submittal of a requisition may be sound, the lack of effective communication between the Buyer and the requesting department can lead to lost time in completing the acquisition of a product or service.

Likewise, Purchasing can be an effective partner in a competitive review process given adequate time and involvement in your requirement definition.

In an effort to expedite sole source/brand requisitions through Purchasing, you are directed to review the Sole Source/Brand Request form herein. If you feel your request meets the criteria, follow the instructions in filling out the form and attach it to your requisition. If the sole source/brand justification is accepted by Purchasing, the requisition can be expedited without the normal bidding requirements.

This is an internal City review process. Departments are directed to use discretion in their discussion with vendors so as to not compromise any competitive advantage that Purchasing may utilize; in the event the sole source/brand justification is rejected.

Rather than merely a shift of the review burden, this process acknowledges the significant effort a department may undertake when identifying a vendor or brand, and provides you with the method by which to make your requisitioning efforts more efficient under sole source/brand conditions.

It will also remain our responsibility to advise you when a particular competitive review process may both serve the City better and/or be required by the City's governing ordinance.

In order for Purchasing to accept a request for sole source/sole brand, the certification form referenced herein, must be made a part of your justification and be signed by authorized department representative(s). The form will remain on file for audit purposes.

B. PROCEDURE

Sole source/brand procurements are an exception to the normal procurement function and require a detailed justification. In processing sole source/sole brand requests for supplies, services and/or equipment, Purchasing adheres to and is governed by the principles set forth in City of Milpitas Municipal Code Section I-2-3.09 Sole Source Procurement as approved by the City Council.

If you are requesting a particular vendor, brand or product, you must make this fact clear on your requisition. Your request will then be restrictive and non-competitive, and will fall into a sole source/sole brand category.

Such a request should not be made unless you are confident that your request is reasonable and appropriately justified to meet the City's requirements and withstand any possible audit. The City's requirements and the format for submitting such requests are contained herein. Please make copies of the Sole Source/Brand Request form for your future use.

The following factors **DO NOT** apply to sole source/brand requests and should not be included in your sole source/brand justification. They will not be considered and only tend to confuse the evaluation process.

1. Personal preference for product or vendor.
2. Cost, vendor performance, and local service (these are generally considered award factors in competitive bidding).
3. Features which exceed the minimum department requirements.
4. Explanation of the need and/or basic use for the equipment, unless the information relates to a request for "unique factors" (refer to question 3 from the Sole Source/Brand Request form). In other words don't say you want a tree trimmer so you can trim trees, instead explain why this particular trimmer with these exact performance specifications is the only one that will meet your need.
5. A request for "no substitution" submitted without justification. This is just a sole source/brand request without justification.

**LOAN AGREEMENT
BETWEEN
THE CITY OF MILPITAS
AND
MILPITAS CHAMBER OF COMMERCE**

THIS LOAN AGREEMENT (“**Agreement**”) dated as of September 3, 2013 (the “**Effective Date**”), is entered into by and between the City of Milpitas, a municipal corporation of the State of California (hereinafter “**City**”) and Milpitas Chamber of Commerce, a California 501(c) non-profit corporation (hereinafter “**Chamber**”). City and Chamber are hereafter individually referred to as a “**Party**” and hereafter collectively referred to as the “**Parties**.”

RECITALS

A. WHEREAS, the Chamber has proposed to organize an event called “2013 International BBQ & Festival” scheduled for September 28 and 29, 2013 located on South Milpitas Boulevard between Los Coches and Turquoise Streets.

B. WHEREAS, the event will feature a “friendly” BBQ cook-off for those who wish to participate, with “professional” BBQers featured on Saturday and “backyard” BBQers featured on Sunday, with additional arts and crafts, food, refreshments, and family entertainment taking place on both days.

C. WHEREAS, at the August 6, 2013 City Council meeting, the City Council agreed to be a co-sponsor of the 2013 International BBQ & Festival event with the Chamber.

D. WHEREAS, the proposed event would bring international recognition to the City of Milpitas, feature Milpitas businesses, and unite the general Milpitas community in fun and camaraderie.

E. WHEREAS, the Chamber seeks a short term loan from the City in the amount of Twenty Thousand Dollars (\$20,000.00) to be fully repaid within ten (10) days of the conclusion of the event, as further set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Chamber hereby agree as follows.

ARTICLE I

TERM OF LOAN

1.1 Loan Amount. City agrees to loan the Chamber the sum of Twenty Thousand Dollars (\$20,000.00) (the “Loan Amount”) for the purpose of organizing the

2013 International BBQ & Festival scheduled to take place on September 28 and 29, 2013 in the City of Milpitas, subject to the terms and conditions of this Agreement. City agrees to provide the Chamber the full amount of Twenty Thousand Dollars (\$20,000.00) within five (5) days of full execution of this Agreement.

- 1.2 Promise to Pay Loan Amount. Chamber agrees to pay City the full amount of Twenty Thousand Dollars (\$20,000.00) and all other fees and charges on or before 5:00 p.m. (PST) on October 9, 2013.
- 1.3 Event Revenues. Chamber acknowledges and agrees that any and all “Revenues” generated, arising from, or relating to the 2013 International BBQ & Festival event shall first be allocated and used for the full repayment of the Loan Amount to the City under this Agreement prior to the payment or satisfaction of any other debts, obligations, or otherwise. Revenues as used in this Section 1.3 shall mean any and all proceeds collected by the Chamber in relations to or arising from the International BBQ and Festival event including, but not limited to, the sale of advertising space, sponsorships, food and beverages, payments from vendors, contractors, or other businesses, application fee, business row participant fee, or BBQ contest applicant fee.
- 1.3 Interest. If Chamber fails to fully repay the Loan Amount as required in Section 1.1 above, interest shall begin to accrue on November 08, 2013 at a rate of two percent (2%) per annum on the outstanding Loan Amount until fully paid.

ARTICLE II

GENERAL PROVISIONS

- 2.1 Non-Waiver. Failure to exercise any right the City may have or be entitled to, in the event of any default thereunder, shall not constitute a waiver of such right or any other right in the event of subsequent default.
- 2.2 Collection Costs. If an attorney is engaged by the City to enforce or interpret any provision of this Agreement, or as a consequence of any default or event of default hereunder, with or without the filing of any legal action proceeding, then Chamber shall immediately pay upon demand all attorney’s fees and all other costs incurred by City, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the Loan Amount owing hereunder as if such unpaid attorney’s fees and costs have been added to the Loan Amount.
- 2.3 Notice. Any demand or notice to be made or given under the terms hereof or any instrument now or hereafter securing this Agreement by the City hereof to Chamber shall be effective when personally served on Chamber or when mailed to Chamber, postage prepaid, by Certified Mail, return receipt requested, addressed to Chamber at Chamber’s address of 828 N. Hillview Drive, Milpitas, CA 95035.

- 2.4 Default. Each of the following occurrences shall constitute an event of default hereunder:
- (a) Any breach by Chamber of any term or provision of this Agreement.
 - (b) Any misrepresentation or misstatement of any facts upon which Chamber's eligibility for the loan evidenced hereby is based.
 - (c) Transfer or attempted Transfer of all or any portions of Chamber's right, title and/or interest in and to the Agreement, by any means or method, whether voluntary or involuntary, or by operation of law, without City's prior written approval.
- 2.5. Remedies. In the event that there is a default in payment as scheduled herein or any other event of default under the terms of this Agreement, the City may at its election and without further notice, declare all amounts of the outstanding principal and accrued interest thereon immediately due and payable. In the event that the City elects to declare default as stated herein this Agreement shall bear interest after default at the rate of ten percent (10%) per annum, and City may take such action under the law as City may determine necessary to enforce its rights, and City may take such action under the law securing this Agreement as City may determine necessary to enforce its rights hereunder.
- 2.6 Governing Law and Venue. City and Chamber agree that the law governing this Agreement shall be that of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.
- 2.7 Severability. If any provision of this Note is held by a court of law to be illegal, invalid or unenforceable, (a) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (b) the legality, validity and enforceability of the remaining provisions of this Note shall not be affected or impaired thereby.
- 2.8 Voluntary. Chamber has read each and every part of this Agreement and Chamber freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.
- 2.9 Entire Agreement. This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This

Agreement may be modified only by written amendment duly executed by the parties to this Agreement.

IN WITNESS WHEREOF, Chamber and City have entered into this Loan Agreement as of the Effective Date.

CITY OF MILPITAS

MILPITAS CHAMBER OF COMMERCE

By: _____
Thomas C. Williams, City Manager

By: _____

APPROVED AS TO FORM AND
LEGALITY:

Michael J. Ogaz, City Attorney