

Recording Requested by and
When Recorded Mail to:

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

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

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING
INITIAL ACCEPTANCE AND REDUCING PERFORMANCE BOND OF SOUTH MAIN
STREET MEDIAN IMPROVEMENT PROJECT NO. 3204**

WHEREAS, the City of Milpitas has heretofore entered into a subdivision improvement agreement with Western Pacific Housing, Inc. (DR Horton Paragon) for the South Main Street Median Improvements, which agreement was approved by City Council on November 16, 2010; and

WHEREAS, the City Council of the City of Milpitas on February 21, 2012, approved the plans and specifications for the South Main Street Median Improvements, Project No. 3204, (the Project) to be completed by Western Pacific Housing, Inc. (DR Horton Paragon) as part of its residential development on South Main Street; and

WHEREAS, Western Pacific Housing, Inc., as Principal, and RLI Insurance Company, as Surety, executed and posted a certain Performance Bond No. CMS260698 conditioned upon the faithful performance of the provisions of said improvement agreement and upon the faithful performance of all improvement work required thereunder; and

WHEREAS, said public improvements for South Main Street Median Improvements Project have been completed and the improvement agreement provides that the security shall extend for a period of one year after the date of acceptance of said improvements to cover the warranty period of said improvements under said agreement; and

WHEREAS, the City Council is willing to consent to a reduction in the penal sum of said security during said one year warranty period; and

WHEREAS, the City Engineer of the City of Milpitas has made a final inspection of said improvements for the South Main Street Median Improvements Project and recommends that the City Council of the City of Milpitas accept the same as constructed in accordance with the approved plans and specifications.

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. Those certain public improvements constructed as part of the South Main Street Median Improvements Project No. 3204 are hereby accepted as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer of the City of Milpitas.
3. The penal sum of the faithful performance bond securing said improvements may be reduced to the sum of \$51,900, upon request of Principal and Surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of one year of said security. Provided, however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquish by City of any obligations imposed upon the developer or his surety, or sureties, by law or by the above-referenced public improvement agreement, save and except as expressly set forth herein.

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