

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 GRANTING  
INITIAL ACCEPTANCE OF PUBLIC IMPROVEMENTS AND APPROVING REDUCTION IN  
PERFORMANCE BOND FOR OFFSITE SEWER 11A AND A PORTION OF 11B  
IMPROVEMENTS, PROJECT NO. 2709, TRACTS 10137, 10159**

**WHEREAS**, Public Improvement Plan 2-1153 (Public Improvements) was approved by the City Council of the City of Milpitas (City Council) on June 19, 2012, for Tract Nos. 10137 and 10159, more commonly known as Harmony Subdivision (Offsite Sewer 11A and a portion of 11B) project, Project No 2709, under and pursuant to the provisions of a fee credit agreement (FCA) and a Subdivision Improvement Agreement (SIA) between the City of Milpitas, a municipal corporation of the State of California, and D.R. Horton Bay, Inc., a Delaware corporation (Subdivider); and

**WHEREAS**, D.R. Horton Bay, Inc., a Delaware corporation, as Principal, and Liberty Mutual Insurance Company, as Surety, executed and posted a certain Faithful Performance Bond No. 01605091B conditioned upon the faithful performance of the provisions of the FCA and SIA and upon the faithful performance of all Public Improvements work required thereunder; and

**WHEREAS**, the Public Improvements for the Harmony (Offsite Sewer 11A and a portion of 11B) project have been completed; and

**WHEREAS**, the FCA and SIA provide that the security shall extend for a period of one year after the date of acceptance of Public Improvements to cover the warranty period of said improvements under the FCA; 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 (City Engineer) has made a final inspection of the Public Improvements for the Harmony (Offsite Sewer 11A and a portion of 11B) project and recommends that the City Council accept the Public Improvements as constructed in accordance with the approved plans and specifications.

**NOW, THEREFORE**, the City Council 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 installed with Tract Nos. 10137, 10159, Harmony (Offsite Sewer 11A and a portion of 11B) project, Project No. 2709, are hereby accepted as constructed in accordance with the approved plans and specifications upon recommendation of the City Engineer.
  
3. The penal sum of that certain Security furnished by the above-named Subdivider, as Principal, and the above-named Surety in connection with the FCA for Harmony (Offsite Sewer 11A and a portion of 11B) project may be reduced to the sum of \$225,000, upon request of said principal and surety, 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 Subdivider or his surety, or sureties, by law or by the FCA, save and except as expressly set forth herein.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, 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