



# CITY OF MILPITAS

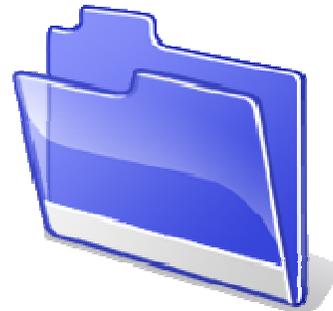
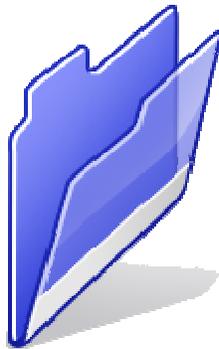
455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479  
GENERAL INFORMATION: 408-586-3000, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)

06/21/2016

Agenda Item No. 1



## ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



June 21, 2016

City Council, City of Milpitas  
455 East Calaveras Blvd.  
Milpitas, CA 95035

Dear Mayor Esteves and Honorable City Council members,

I am writing in regards to the Final/Draft EIR for the proposed mixed-use McCarthy Creekside development project at 625 McCarthy Blvd (**Document No. State Clearinghouse #2008092082**). Specifically, this letter addresses the inadequacies of the *Revisions to the Draft EIR (Section 6.2 Biological Resources Impacts and Mitigation Measures)* (2009).

I am graduate student at San Jose State University working towards my M.S. in Environmental Studies. I have been volunteering for the past three years as a bird bander for the San Francisco Bay Bird Observatory (hereby SFBBO), a non-profit avian scientific organization, at their Coyote Creek Field Station (hereby CCFS) which is situated within the Santa Clara Valley Water District-owned Coyote Creek open space and flood control corridor adjacent to the proposed project's western boundary. The Coyote Creek riparian corridor provides a critical habitat for migratory birds and other wildlife. For my master's thesis I banded and studied Pacific-slope Flycatchers, small neotropical migrant songbirds, and learned that these birds are migrating from regions north of the Canadian Border and stopping over at CCFS every year as they make their way south.

Recently, the State of the North America's Birds 2016 report made an assessment for 1,154 bird species and concluded that more than 1/3 of all species are in need of conservation action due to population loss, range reduction, and threats to habitat (Cornell Lab of Ornithology, 2016). Many birds rely on the habitat surrounding Coyote Creek as refuge during migration stopover. The proposed project did not properly evaluate the potential negative impacts to migratory birds and other wildlife.

Because the Final EIR did not include any revisions to the Draft EIR within *Section 6.2 Biological Resources- Impacts and Mitigation Measures*, I list the following comments referencing the Draft EIR:

**6.1.3 Onsite Biotic Habitats (b) Wildlife (page 6-2):**

- The Draft EIR describes the use of the agricultural habitat within the Master Plan project sites as limited, and describes a small list of species that could occupy the site. SFBBO has collected data that demonstrates the occupation of surrounding habitats by a species lists of almost 250 bird species protected by the Migratory Bird Treaty Act, many of which include listed species. The California Natural Diversity Database (CNDDDB) lists the project site to be directly within the species ranges of California Tiger Salamanders (*state listing: threatened*), Western Pond Turtles (*state listing: species of special concern*), and California Red-legged Frogs (*state listing: threatened*) among other species (California Department of Fish and Wildlife "CNDDDB Bios 5 Tool", 2014). The Draft EIR's Onsite Biotic Habitats description is inadequate as the approximate surrounding species densities were not included, and at the very least data from the SFBBO and CNDDDB should be included in this evaluation. This inadequate description establishes a site description in which minimal impacts can be found, and must be re-evaluated more thoroughly.

**6.1.5 Special Status Species (p 6-2: 6-4):**

- The Draft EIR states that riparian habitats are not present within the McCarthy Ranch Master Plan area. Although the Coyote Creek Corridor is located adjacent to the proposed project locations, I would stress that the planners re-evaluate this statement and consider riparian buffers within their project design. The Natural Resources Conservation Service program defines riparian buffers as between 10 and 300 feet, and the minimum buffer width in the Riparian Forest Buffer Standard as 35 feet (NRCS, 2011). Although the proposed project addresses other requirements by implementing a 15 foot buffer from the creek and levee, I would urge this buffer to be re-evaluated given the proximity to the adjacent sensitive habitat.
- Surveys in 2000 concluded that Burrowing Owls (a special status species) did not occupy the project site at the time, and the Draft EIR only defined potential project impacts on Burrowing Owls. As stated above, the California Natural Diversity Database (CNDDDB) lists the project site to be directly within the species ranges of California Tiger Salamanders (*state listing: threatened*), Western Pond Turtles (*state listing: species of special concern*), and California Red-legged Frogs (*state listing: threatened*) among other species (California Department of Fish and Wildlife “CNDDDB Bios 5 Tool”, 2014). The conclusion that Burrowing Owls are the only species that could be potentially impacted is inadequate.

#### 6.2.1 Significance Criteria:

- Several CEQA Significance Criteria were not included in the Draft/Final EIR:

(d) The proposed project may have adverse effects on the movement of wildlife species. The location of the proposed project is bordered by the Diablo Mountain Range on the East and the Santa Cruz Mountain Ranges on the West, areas which have been defined by the California Department of Fish and Wildlife as Essential Habitat Connectivity Areas and these areas are to be maintained as corridors for wildlife (California Department of Fish and Wildlife, “California Essential Habitat Connectivity Project,” 2010). The Draft EIR failed to mention the project site’s proximity to these Essential Habitat areas, or the potential impact of animals moving between the two areas. The Pacific Flyway, the major north-south migration flyway for birds, falls directly along areas of where the proposed project would occur, and the Draft EIR failed to mention the flyway. As previously mentioned, SFBBO has data which lists the species that rely on this flyway and stopover habitat and such species could be impacted with the development.

(f) The Santa Clara Valley Habitat Conservation Plan, adopted in 2013, was not mentioned in any of the proposed project planning documents. Although the proposed project site and the city of Milpitas may not be currently a partner in the plan, the location of the proposed project falls directly adjacent to a clearly defined Santa Clara Valley Habitat Agency Ranchlands and Natural Lands fee zone, a Mixed Riparian Forest and Woodland fee zone, a Tricolored Blackbird survey area, and a streams and setbacks category area (Santa Clara Valley Habitat Agency Geobrowser, 2012). At a minimum the Draft EIR should be revised to mention the proximity the Santa Clara Valley Habitat Agency Permit Plan area, and the Habitat Agency should be consulted to confirm that the proposed project does not lie within the permit area.

#### Impact 6-2, Mitigation 6-2 (page 6-8):

- The proposed defines potentially significant project impacts to raptors. The Migratory Bird Treaty Act of 1918 states that it is against the law to pursue, hunt, take capture, kill, or sell birds listed as migratory birds. The Draft EIR lists potentially significant project impacts to raptors, but no other migratory birds. As previously mentioned, SFBBO has data that shows a list of 250 species of birds, many of which are covered under the Migratory Bird Treaty Act. Proposed development could impact nesting migratory birds by removing habitat in which nests are located such as trees, ground, or existing structures. Additionally, because the proposed project is located in area that is used by birds migrating through the Pacific Flyway, many birds could be attracted to glass windows in the proposed buildings and die from collisions. Construction lighting could attract birds to the project site and increase mortality as well. One of the developers at the planning meeting in May of 2016 stated that construction could begin as early as this summer. If this is the case, biological surveys for nesting birds, species of special concern, special plants and more should be conducted prior to and during construction activities. The Draft EIR (in section 6.1.2) stated that biological surveys were conducted in 1994. The timing of these surveys is inadequate and a site re-evaluation should be considered. Bird-safe building design should incorporated as a mitigation to migratory birds.

As a concerned member of the public, I truly believe the initial analysis of the potential negative impacts to the Biological Resources at this proposed project site was completely inadequate. It is clear that the project developers are unfamiliar with the ecosystem surrounding Coyote Creek, the wildlife that depend on this area as valuable habitat, or the organizations that conduct scientific research to protect the landscape. I would urge you to reconsider approving the commencement of this project without a supplemental EIR. The Biological Resource section needs to be completely re-evaluated, and proper biological up to date surveys need to be conducted to refresh perspectives.

Sincerely,

A handwritten signature in cursive script that reads "Emily Moffitt".

Emily Moffitt



# CITY OF MILPITAS

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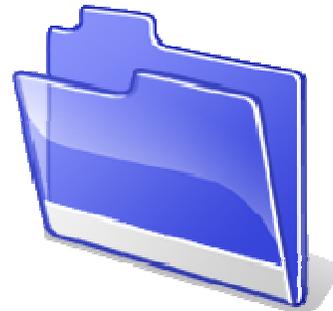
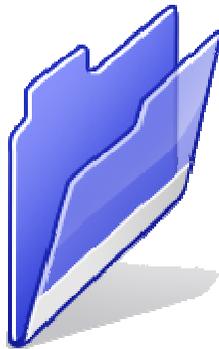
06/21/2016

Agenda Item No. 5

**REVISED**



## ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



| CENTER/FACILITY/EQUIPMENT | DESCRIPTION OF FEE, RATE OR CHARGE |
|---------------------------|------------------------------------|
| Recreation                | Facility Fees                      |

| <b>Community Center</b>  |   |   |   |  |
|--|---|---|---|--|
| Facility / Service   | <i>Milpitas Public Schools,<br/>Chamber, and Gov.,<br/>Agencies<br/>(Priority II)</i> | <i>Resident Non- Profits<br/>(Priority III)</i>                                   | <i>Milpitas Residents<br/>(Priority IV)</i>                                       | <i>Non- Residents<br/>(Priority V)</i> |
| Application Fee (non-refundable)   | \$20.00/application   | \$20.00/application   | \$20.00/application   | \$20.00/application                    |
| Reservations Accepted  | 1 year to proposed date   | 1 year to proposed date   | 1 year to proposed date   | 6 months to proposed date              |
| Rental Deposits: Auditorium  | No fee/per agreement  | <del>\$500</del> 750.00   | <del>\$500</del> 750.00   | <del>\$500</del> 750.00                |
| Rental Deposits: All other rooms   | No fee/per agreement  | <del>\$75</del> 200.00  | <del>\$100</del> 200.00   | <del>\$150</del> 200.00                |
| Auditorium (3 hr minimum)  | No fee/per agreement  | <del>\$50</del> 100.00/hr   | <del>\$115</del> 200.00/hr  | <del>\$145</del> 260.00/hr             |
| Conference Room (2 hr minimum)   | No fee/per agreement  | <del>\$20</del> 35.00/hr  | <del>\$50</del> 70.00/hr  | <del>\$73</del> 130.00/hr              |
| Dance Studio/ Craft Classroom (2 hr minimum)   | No fee/per agreement  | <del>\$14.50</del> 20.00/hr   | <del>\$21.50</del> 40.00/hr   | <del>\$28.00</del> 100.00/hr           |
| Facility Attendant Fees  | \$30.00/hr  | \$30.00/hr  | \$30.00/hr  | \$60.00/hr                             |
| Piano  | No fee/per agreement  | <del>\$17.50</del> 20.00/-day   | <del>\$17.50</del> 20.00/-day   | <del>\$35.00</del> 80.00/-day          |
| Auditorium Screen Deposit  | \$250.00  | \$250.00  | \$250.00  | \$250.00                               |
| Auditorium Sound System (includes staff time)  | \$50.00/hr  | \$50.00/hr  | \$50.00/hr  | \$50.00/hr                             |
| <b>Mobile Stage</b>  |   |   |   |  |
| Reservation  | 1 month to proposed date  | 1 month to proposed date  | 1 month to proposed date  | Not Available                          |
| Deposit  | \$1,000.00  | NA  | \$1,000.00  | Not Available                          |
| Rental (Actual Cost of towing plus 2 hours of staff time each way for 2 staff) (within City of Milpitas city limits, minimum 4 hours of use) | Actual cost of towing, \$400/day plus 2 hours of staff time each way for 2 staff*     | Actual cost of towing, \$400/day plus 2 hours of staff time each way for 2 staff* | Actual cost of towing, \$400/day plus 2 hours of staff time each way for 2 staff* | Not Available                          |

| CENTER/FACILITY/EQUIPMENT | DESCRIPTION OF FEE, RATE OR CHARGE |
|---------------------------|------------------------------------|
| Recreation                | Facility Fees                      |

| <b>McGuire Park Rec Center</b>                |   |   |   |  |
|---|---|---|---|--|
| Facility / Service                            | <i>Milpitas Public Schools, Chamber, and Gov. Agencies</i>            | <i>Resident Non- Profits<br/>(Priority III)</i> | <i>Milpitas Residents<br/>(Priority IV)</i> | <i>Non- Residents<br/>(Priority V)</i> |
| Application Fee (non-refundable)              | \$20.00/application   | \$20.00/application                             | \$20.00/application                         | \$20.00/application                    |
| Reservations Accepted                         | 90 days to proposed date  | 90 days to proposed date                        | 1 year to proposed date                     | 6 months to proposed date              |
| Rental Deposits                               | No Fee/per agreement  | <del>\$500.00</del> <u>\$750.00</u>             | <del>\$500.00</del> <u>\$750.00</u>         | <del>\$500.00</del> <u>\$750.00</u>    |
| <u>Auditorium</u> w/kitchenette (3hr minimum) | No Fee/per agreement  | <del>\$280.00</del> /hr                         | <del>\$50</del> <u>160.00</u> /hr           | <del>\$60</del> <u>220.00</u> /hr      |
| Facility Attendant Fees (per attendant)       | <del>\$30.00</del> /hr  | \$30.00/hr                                      | \$30.00/hr                                  | \$60.00/hr                             |
| <u>Amphitheatre</u>                           | <del>\$120.00</del> /day  | <del>\$120.00</del> /day                        | <del>\$120.00</del> /day                    | <del>\$180.00</del> /day               |
| Meeting Room                                  | No Fee /per agreement   | \$45.00/hr                                      | \$90.00/hr                                  | \$150.00/hr                            |
| <b>Sal Cracolice Building</b>                 |   |   |   |  |
| Facility / Service                            | <i>Milpitas Schools, Chamber, and Gov. Agencies<br/>(Priority II)</i> | <i>Resident Non-Profits<br/>(Priority III)</i>  | <i>Milpitas Residents<br/>(Priority IV)</i> | <i>Non- Residents<br/>(Priority V)</i> |
| Reservations Accepted                         | 9 months to proposed date   | 90 days to proposed date                        | 1 year to proposed date                     | 6 months to proposed date              |
| Rental Deposits: Auditorium                   | No fee/per agreement  | \$500.00  | \$500.00                                    | \$500.00                               |
| Rental Deposits: Classrooms                   | No fee/per agreement  | \$75.00   | \$100.00                                    | \$150.00                               |
| Auditorium (3 hr minimum)                     | No fee/per agreement  | \$28.00/hr                                      | \$70.00/hr                                  | \$120.00/hr                            |
| Small Meeting Room (2 hr. minimum)            | No fee/per agreement  | \$14.50/hr                                      | \$25.00/hr                                  | \$35.00/hr                             |
| Facility Attendant Fees (per attendant)       | \$30.00/hr  | \$30.00/hr                                      | \$30.00/hr                                  | \$60.00/hr                             |
| Application Fee (non-refundable)              | \$20.00 / application   | \$20.00 / application                           | \$20.00 / application                       | \$20.00 / application                  |

| CENTER/FACILITY/EQUIPMENT | DESCRIPTION OF FEE, RATE OR CHARGE |
|---------------------------|------------------------------------|
| Recreation                | Facility Fees                      |

| Barbara Lee Senior Center               |  |   |   |                                    |
|---|--|---|---|------------------------------------|
| Facility / Service                      | <i>Milpitas Schools, Chamber, and Gov Agencies (Priority II)</i> | <i>Resident Non- Profits (Priority III)</i> | <i>Milpitas Residents (Priority IV)</i> | <i>Non- Residents (Priority V)</i> |
| Application Fee (non-refundable)        | \$20.00/application  | \$20.00/application                         | \$20.00/application                     | \$20.00/application                |
| Rental Deposits: Auditorium             | No Fee per agreement   | \$750.00 <del>\$1,000</del>                 | \$750.00 <del>\$1,000</del>             | \$750.00 <del>\$100.00</del>       |
| Rental Deposits: Classrooms             | No Fee per agreement   | <del>\$14090.00</del>                       | <del>\$220.00</del> <u>180.00</u>       | <del>\$320</del> <u>240.00</u>     |
| Reservations Accepted                   | 90 days to proposed date   | 90 days to proposed date                    | 1 year to proposed date                 | 6 months to proposed date          |
| Community Room Auditorium (3 hr min)    | No Fee /per agreement  | \$90.00/hr                                  | \$180.00/hr                             | \$240.00/hr                        |
| Classroom 140 and 141 (Full)            | No Fee /per agreement  | \$45.00/hr                                  | \$90.00/hr                              | \$150.00/hr                        |
| Classroom 140 or 141 (Half)             | No Fee /per agreement  | \$25.00/hr                                  | \$50.00/hr                              | \$110.00/hr                        |
| Facility Attendant Fees (per attendant) | \$30.00/hr   | \$30.00/hr                                  | \$30.00/hr                              | \$60.00/hr                         |
| Dance Studio                            | No Fee /per agreement  | \$20.00/hr                                  | \$40.00/hr                              | \$100.00/hr                        |

| CENTER/FACILITY/EQUIPMENT | DESCRIPTION OF FEE, RATE OR CHARGE |
|---------------------------|------------------------------------|
| Recreation                | Facility Fees                      |

| <b>Sports Gym, Fields, Courts &amp; Pools</b>    |   |  |  |  |
|--|---|--|--|--|
| <i>Facility/Sports Fields / Service</i>          | <i>Milpitas Schools, Chamber, and Gov. Agencies (Priority II)</i> | <i>Resident Non- Profits- (Priority III)</i> | <i>Milpitas Residents -(Priority IV)</i> | <i>Non- Residents -(Priority V)</i>        |
| Reservations Accepted                            | 90 days to proposed date  | 90 days to                                   | 90 days to proposed date                 | 60 days to proposed date                   |
| Application Fee (non-refundable)                 | \$20.00 / application   | NA   | \$20.00/ application                     | \$20.00 / Application                      |
| Rental Deposit                                   | None  | NA   | <del>\$500</del> 750.00                  | <del>\$500</del> 750.00                    |
| Large Gymnasium (3 hr minimum)                   | per agreement   | NA   | <del>\$50</del> 80.00                    | <del>\$100</del> 160.00                    |
| Training Pool (2hr minimum)                      | per agreement   | NA   | \$50.00/hr + 2 guards                    | \$100.00/hr + 2 guards                     |
| Yard Pool (2 hr minimum)                         | per agreement   | NA   | \$60.00/hr + 2 guards                    | \$120.00/hr + 2 guards                     |
| Meter Pool (2 hr minimum)                        | per agreement   | NA   | <del>\$60</del> 70.00/hr + 2 guards      | \$140.00/hr + 2 guards                     |
| Facility Attendant / Scorekeeper (per attendant) | \$30.00/hr  | NA   | \$30.00/hr                               | \$60.00/hr*                                |
| Lifeguard Fees (per Lifeguard)                   | \$15.00/hr  | NA   | \$15.00/hr                               | \$30.00/hr                                 |
| <b>Natural Turf Fields</b>                       |   |  |  |  |
| Application Fee (non-refundable)                 | \$20.00 / application   | NA   | \$20.00/ application                     | \$20.00 / application                      |
| Rental Deposits                                  | None  | NA   | <del>\$500</del> 750.00                  | <del>\$500</del> 750.00                    |
| Soccer Field w/o lights (2 hr min) (grass)       | No fee/per agreement  | NA   | \$30.00/hr                               | <u>        </u> \$60.00/hr*                |
| Soccer Field w/lights (2 hr min) (grass)         | No fee/ per agreement   | NA   | \$40.00/hr                               | <u>        </u> \$80.00/hr <u>        </u> |
| Softball / Baseball Field w/o lights (2hr min)   | No fee /per agreement   | NA   | \$20.00/hr                               | \$40.00/hr*                                |

|  |                               |  |  |  |
|--|-------------------------------|--|--|--|
| Softball / Baseball Field w/ lights (2 hr min)                 | No fee /per agreement         | NA   | \$30.00/hr                                   | \$60.00/hr*                                  |
| <b>Artificial Turf Fields</b>                                  |                               |  |  |  |
| Deposit (Football/Soccer)                                      | <a href="#">per agreement</a> | <a href="#">NA</a>                           | <a href="#">\$1,000.00</a>                   | <a href="#">\$1,000.00</a>                   |
| Deposit (Soccer/Volleyball)                                    | <a href="#">per agreement</a> | <a href="#">NA</a>                           | <a href="#">\$750.00</a>                     | <a href="#">\$750.00</a>                     |
| Artificial Turf <a href="#">Football/Soccer</a> w/o lights     | <a href="#">per agreement</a> | <a href="#">NA</a>                           | <a href="#">\$150.00/hr</a>                  | <a href="#">\$300.00/hr</a>                  |
| Artificial <a href="#">Football/Soccer</a> w/lights            | <a href="#">per agreement</a> | <a href="#">NA</a>                           | <a href="#">\$160.00/hr</a>                  | <a href="#">\$320.00/hr</a>                  |
| <a href="#">Artificial Turf</a> Volleyball / Soccer w/o lights | <a href="#">per agreement</a> | <a href="#">NA</a>                           | <a href="#">\$100.00/hr</a>                  | <a href="#">\$200.00/hr</a>                  |
| Volleyball / Soccer w/lights                                   | <a href="#">per agreement</a> | <a href="#">NA</a>                           | <a href="#">\$110.00/hr</a>                  | <a href="#">\$220.00</a>                     |
| <b>Tennis Courts</b>   |                               |  |  |  |
| Tennis Court Deposit   | No fee/per agreement          | <del>\$500.00</del> <a href="#">\$250.00</a> | <del>\$500.00</del> <a href="#">\$250.00</a> | <del>\$500.00</del> <a href="#">\$250.00</a> |
| Tennis Court Reservations (per court)                          | No fee/per agreement          | \$8.00/hr                                    | \$8.00/hr                                    | \$12.00/hr                                   |
| Tennis Court Lights  | No fee/per agreement          | \$10.00/hr                                   | \$10.00/hr                                   | \$14.00/hr                                   |

| CENTER/FACILITY/EQUIPMENT | DESCRIPTION OF FEE, RATE OR CHARGE |
|---------------------------|------------------------------------|
| Recreation                | Facility Fees                      |

| Picnic Areas  |   |  |  |   |
|---|---|--|--|---|
| Facility/ Service   | <i>Milpitas Schools, Chamber,<br/>and Gov. Agencies<br/>(Priority II)</i> | <i>Resident Non-Profits<br/>(Priority III)</i> | <i>Milpitas Residents<br/>-(Priority IV)</i> | <i>Non- Residents<br/>(Priority V)</i>  |
| Reservations Accepted   | 90 days to proposed date  | 90 days to proposed date                       | 1 year to proposed date                      | 6 months to proposed date               |
| Application Fee (non-refundable)  | \$20.00/application   | \$20.00/application                            | \$20.00/application                          | \$20.00/application                     |
| Rental Deposit: Large Picnic Areas  | \$250.00  | \$250.00                                       | \$250.00                                     | \$250.00                                |
| Small Parks with Restrooms – 50 or less capacity <del>Peak Hours (Friday – Sunday)</del>    | No fee/per agreement  | \$60.00/day/area                               | \$60.00/day/area                             | <del>\$90</del> <u>120.00</u> /day/area |
| Small Parks Without Restrooms – 50 or less capacity   | No fee/per agreement  | \$40.00/day/area                               | \$40.00/day/area                             | <u>100.00</u> /day/area                 |
| <u>Medium Parks – 50 to 100 or less capacity</u>  | No fee/per agreement  | \$120/day/area                                 | \$120/day/area                               | \$180/day/area                          |
| Large Parks – More than <del>50-100+</del> capacity <del>Peak Hours (Friday – Sunday)</del> | No fee/per agreement  | <del>\$300</del> /day/area                     | <del>\$300</del> /day/area                   | <del>\$360</del> /day/area              |

| CENTER/FACILITY/EQUIPMENT | DESCRIPTION OF FEE, RATE OR CHARGE |
|---------------------------|------------------------------------|
| Recreation                | Facility Fees                      |

| Higuera Adobe                           |  |   |                                     |                              |
|---|--|---|-------------------------------------|------------------------------|
| Facility/Fields / Service               | Milpitas Schools, Chamber,<br>-and Gov Agencies<br>(Priority II) | Resident Non- Profits<br>(Priority III) | Milpitas Residents<br>(Priority IV) | Non- Residents (Priority V)  |
| Reservations Accepted                   | 90 days to proposed date   | 90 days to proposed date                | 1 year to proposed date             | 6 months to proposed date    |
| Application Fee (non-refundable)        | No fee/per agreement   | \$20.00/application                     | \$20.00/application                 | \$20.00/application          |
| Rental Deposit                          | No fee/per agreement   | <del>\$500</del> 750.00                 | <del>\$500</del> 750.00             | <del>\$500</del> 750.00      |
| Auditorium                              | No fee/per agreement   | <del>\$15.50</del> 35.00/hr             | <del>\$50.00</del> 70.00/hr         | <del>\$72.50</del> 130.00/hr |
| Facility Attendant Fees (per attendant) | \$30.00/hr   | \$30.00/hr                              | \$30.00/hr                          | \$60.00/hr                   |
| <b>Aviso Adobe Drying Shed</b>          |  |   |                                     |                              |
| Application Fee (non-refundable)        | No fee/per agreement   | \$20.00/application                     | \$20.00/application                 | \$20.00/application          |
| Rental Deposit                          | No fee/per agreement   | \$350.00                                | \$350.00                            | \$350.00                     |
| Rental Fee                              | No fee/per agreement   | \$25.00/hr                              | \$50.00/hr                          | \$100.00/hr                  |
| Facility Attendant Fees (per attendant) | \$30.00/hr   | \$30.00/hr                              | \$30.00/hr                          | \$60.00/hr                   |

| DESCRIPTION OF FEE, RATE OR CHARGE                        | CURRENT FEE<br>and<br>FEE STRUCTURE  |
|---|--|
| Program Fees  |  |
| Fitness Passes – Visits                                   | 5 uses: \$20.00<br>10 uses: \$40.00<br>15 uses: \$60.00<br>20 uses: \$80.00 Drop-in fee: \$7.00<br>Annual Non-resident fee: \$50.00/year* Valid 1 year from date purchased |
| <u>Sports League (full season)</u>                        | \$500.00 per team + \$10.00 per non-resident player per season   |
| Youth Sports Programs – <u>Staff Run</u>                  | Time & Materials (within the policy ranges established by the Council)   |
| Youth Sports User Fee                                     | \$10.00/player per season  |
| Trips   | Actual cost to City<br>+ Trip Admin Fee  |
| Private Contract Admin Fee                                | \$15.00/person   |
| Adult Trip Admin Fee                                      | \$10.00/person   |
| Youth Trip Admin Fee                                      | \$5.00/person  |
| General Non-resident Fees                                 | \$20.00/person/class/month program or trip.  |
| Milpitas Non-resident Senior Citizen Discount (50 years+) | 25% off any Senior class or trip   |
| 4 <sup>th</sup> of July Entrance Fee                      | \$3.00/person age 2 and older Free/person under age 2  |
| Recreation Services Merchandise                           | Actual cost to City<br>+ \$7.00 per item   |
| After-school Program – After the Bell                     |  |
| After-school Program (After the Bell)                     | \$8-\$12.00/day for residents;<br>\$8-\$12.00/day for non-residents with additional \$20.00/year   |
| Late fee for After-School/ <u>Day camp</u> Programs       | \$10.00/10 minutes – <u>1<sup>st</sup> offense &amp; 2<sup>nd</sup> offense</u><br><u>\$25.00/10 minutes – after 3<sup>rd</sup> offense</u>                                |
| <u>Day Camp (Regular Day) – Staff Run</u>                 | \$175.00 - \$195.00/week   |
| Extended Care Day Camp                                    | \$40.00/week   |
| Community Garden Plot                                     |  |
| Senior residents (50+ years of age)                       | Resident   |
| \$15.00/year  | \$60.00/year   |

| DESCRIPTION OF FEE, RATE OR CHARGE | CURRENT FEE<br>and<br>FEE STRUCTURE |
|------------------------------------|-------------------------------------|
|------------------------------------|-------------------------------------|

|   |   |
|---|---|
| Recreational Swim                       | \$2.00 per person   |
| Swimming Lessons Group                  | <del>\$69.75.00</del> -\$85.00 Residents<br><del>\$89.95.00</del> -\$105.00 Non Residents |
| Private Swimming Lessons                | <del>\$3038.00</del> res/\$58.00 non-res/half hour  |
| Parent-tot Drop-in swim pass – 5 visits | <del>\$10.15.00</del> plus \$10-20.00 non-resident fee if applicable                      |
| Monthly Swim Team Fee (Tidal Waves)     | See table below   |

| Family Member              | Resident                | Non-resident                  |
|----------------------------|-------------------------|-------------------------------|
| Developmental Group        | \$68.00 - \$88.00/month | \$108.00 - \$128.00/month-per |
| Juniors/Intermediate Group | \$78.00 - \$98.00/month | \$118.00 - \$138.00/month-per |
| Senior Group               | \$88.00 - \$108/month   | \$128.00 - \$148.00/month-per |

\*Plus yearly \$60 USS registration fee.

\*\* Multiple Child Discount (child must be of the same family):\$10 off 2<sup>nd</sup> child, \$20 off 3<sup>rd</sup> child

|  |              |
|--|--------------|
| Membership Card replacement fee  | \$5.00       |
| Open Gym Drop in Use only (no use of locker, shower or fitness center) | \$7.00/visit |

|   |   |
|---|---|
| Senior Citizen Programs-Classes   | \$2.00-\$5.00/hour                                      |
| Senior Center Membership  | \$12.00 resident<br>\$30.00 non-resident Membership fee |
| Senior Citizen Trip Admin Fee   | \$5.00-10.00/activity (depending upon trip costs)       |
| Senior Citizen Trips  | Actual cost to city +<br>Trip Admin/Transportation Fee  |
| Senior Dances   | Free-\$15.00  |
| Misc. Staff-run Programs (e.g., Holiday Dinner, Tea Parties, Cooking Classes, Misc. Activities) | Free-\$15.00  |
| Non Resident Fee  | \$10.00/class   |
| Senior Center Fitness Room  | \$1.50/visit  |



# CITY OF MILPITAS

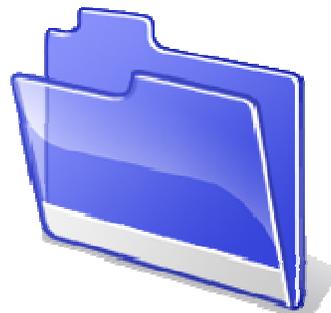
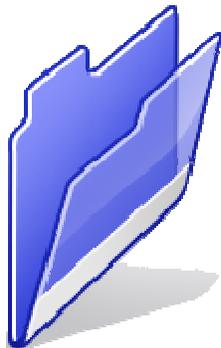
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06/21/2016

Agenda Item No. 7

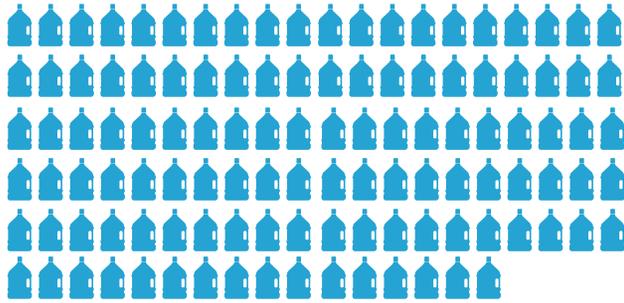


## ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION

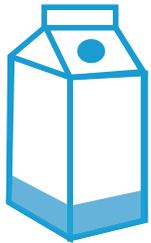


## Your Water \$\$\$

**\$1** buys 116 gallons of water

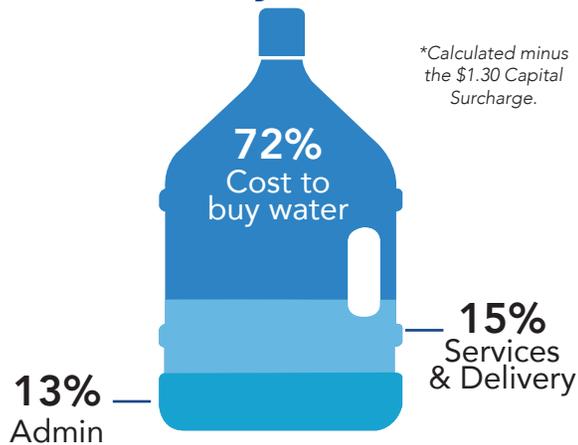


**\$1** buys 1/3 gallon of gas



**\$1** buys 1/4 gallon of milk

## Where Your Water Rate Money Goes...



## How To Pay Your Water Bill

There are three easy ways to pay your water bill.

### Automatic Bill Pay

The Automatic Payment Service (APS) lets you pay your City of Milpitas Municipal Services bill automatically. Download the form from <http://www.ci.milpitas.ca.gov/milpitas/departments/finance/utility-payment-services/>.

### Online

The Utility Bills On-Line Service allows you to view your City of Milpitas Utility Services Bill online and pay your bill automatically through the Internet by credit card. All you need is your account number and your credit card!

### Phone

The City of Milpitas also lets you pay your City of Milpitas Municipal Services bill automatically by phone using your credit card. All you need is your account number and your credit card! To pay by phone call toll free: (408) 586-3100 and select Option 3.

## Water Conservation

On June 16, 2015, the City of Milpitas adopted a water conservation plan in response to the statewide water shortage. Every Milpitas resident and business has been asked to help reduce water consumption. Since July 2015, the City of Milpitas has reduced its overall water consumption by 22% when compared to 2013 water consumption.

Customers can save water outdoors and indoors, by irrigating lawns and landscapes two days a week and turning off water when shaving or brushing teeth. Additional tips and information can be found at the City's website: [www.savewatermilpitas.org](http://www.savewatermilpitas.org). The City also has a water conservation hotline to report any water waste complaints and learn how to conserve water by calling the Water Conservation Hotline at 408-586-2666.

*\*water consumption %'s are based on monthly average savings from July 2015 – May 2016*

# 2016 7 MILPITAS WATER RATES FACT SHEET



For more information visit [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)

## Why Your Water Rate Increased

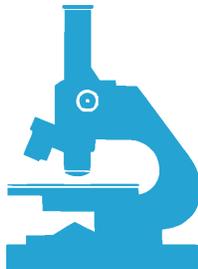
Milpitas Water customers may see an increase in their water bill. Milpitas purchases its water from two wholesalers, the San Francisco Public Utilities Commission (SFPUC) and Santa Clara Water District (SCVWD) for its potable water. Both providers have implemented significant increases in the cost to Milpitas to purchase water. Starting July 1, 2016 SFPUC will again raise their cost by 9.3% and SCVWD will again raise their cost by 17.9%. Infrastructure repairs and improvements to bring your water from the Sierras to Milpitas are also additional costs to us. Locally, revenues are needed and used to continue providing you safe and clean water in a reliable distribution system. There are currently over \$300 million dollars of needed infrastructure improvements to our Water System.

Water rate revenues afford the adequate weekly testing, treatment, and delivery of your water to ensure it is free of lead, other heavy metals such as copper, and harmful bacteria, like E. coli. These important services prevent serious water quality issues similar to what is happening now in Flint, Michigan and Newark, New Jersey.

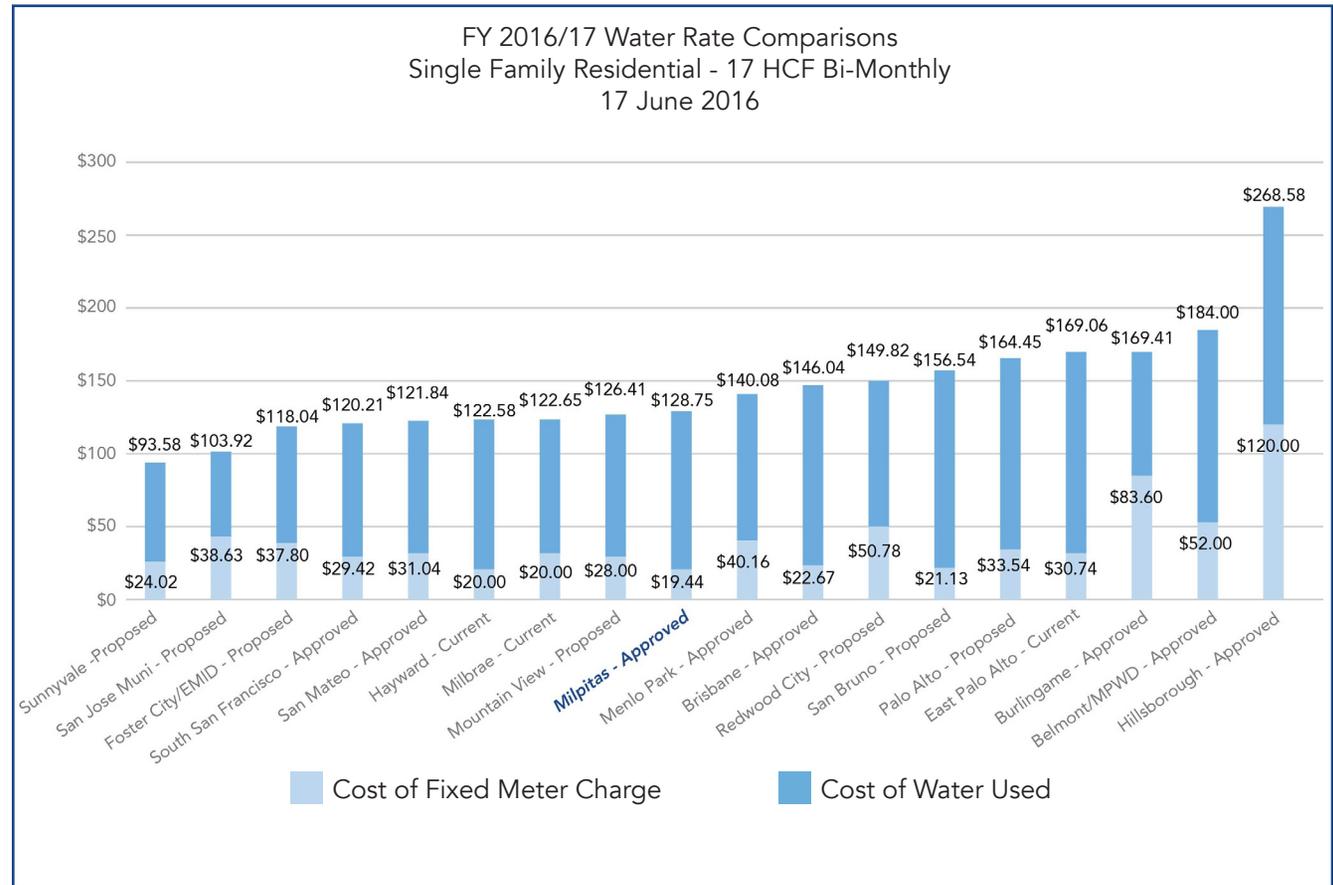
## Water Regulations & Delivery

There are many Federal and State regulations the City must meet to keep your water clean and safe. The City closely follows all water quality testing and reporting requirements.

The City has 203 miles of water pipeline that ensures reliable delivery of water to your tap. This network of pipes also delivers water from to our 5 water tanks and over 1,900 fire hydrants throughout the City, to timely respond during safety incidents.



## City Rate Comparison



Water rates reflect a 2-month billing cycle. A Milpitas household's average monthly water use is approximately 6,358 gallons.

Cities reflected in the above chart primarily use water from wholesaler SFPUC, similar to the City of Milpitas.



# CITY OF MILPITAS

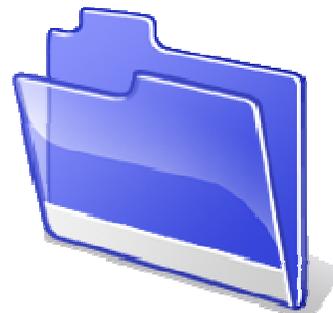
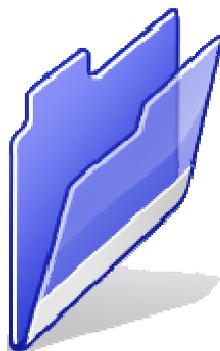
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06/21/2016

Agenda Item No. 8



## ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



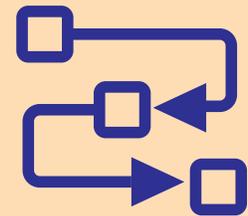
# THE CITY OF MILPITAS NEW DISPOSAL CONTRACT FACT SHEET

8  
DRAFT

Bay Area Air Quality Management District (BAAQMD) has confirmed odor complaints from Newby Island Landfill ([www.baaqmd.gov](http://www.baaqmd.gov)). Newby Island Landfill is located in the City of San Jose, but on the Western border of Milpitas. Republic Services/Allied Waste own and operate Newby Island. The City of Milpitas has a new deal with Waste Management Inc. to be our new garbage disposal vendor. The new disposal site will be at the Guadalupe Landfill, also in San Jose. All regulatory and permitting for both Landfills are done through the City of San Jose not the City of Milpitas. Milpitas has no regulatory authority over odor control at either Guadalupe or Newby Island Landfills.

## THE PROCESS

The City, after a 30 year contract with Republic Services/Allied Waste completed a competitive, open, transparent bid process for a new garbage disposal vendor. Republic Services/Allied Waste, the operator of Newby Island Landfill, did not submit a bid for disposal, and as such, was not considered in the competitive bid process. Waste Management Inc. was selected as the lowest responsible bid.



## SERVICE AND ACCOUNTABILITY

Waste Management Inc., the operator of Guadalupe Landfill, was selected as your garbage disposal vendor. Waste Management presented to the City Council that they are a business in good standing and whose Guadalupe Landfill facility in San Jose does not create odor or nuisance issues to Residents and Property Owners in Milpitas.



## REDUCING ODORS

The City's new deal with Waste Management Inc. means we no longer send Milpitas garbage to Newby Island. Under the new City of Milpitas/Waste Management Inc. contract, Milpitas garbage will now be disposed at Guadalupe Landfill. By selecting Waste Management Inc. as the City of Milpitas garbage disposal vendor, Milpitas garbage will no longer contribute to the odor being investigated by BAAQMD at Newby Island. All environmental and regulatory requirements are in compliance with the new contract.



## REDUCING COSTS

The new Waste Management contract signed by the City is \$2/ton cheaper than what Republic Services/Allied Waste currently charges San Jose. Milpitas will have "dump days" at the Waste Management Transfer Station in Fremont for \$1.



For more information visit [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov).



# CITY OF MILPITAS

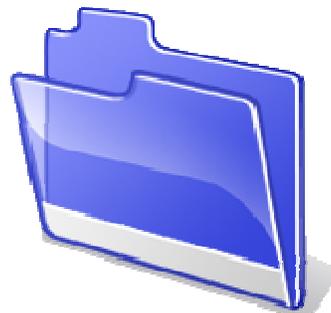
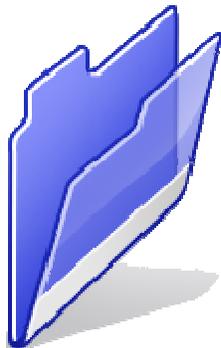
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06/21/2016

Agenda Item No. 12



## ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION





June 21, 2016

Mayor Jose Esteves  
Milpitas City Council

**RE: June 21, 2016 City Council Agenda, Item #12. Consider Request of Councilmember Barbadillo to Study the Issue of Rent Control in Milpitas**

Dear Mayor and Council;

NAIOP Silicon Valley, the Commercial Real Estate Development Association, is very concerned to see the Milpitas City Council agenda item regarding studying rent control on commercial property. NAIOP Silicon Valley strongly recommends that the City Council immediately drop the issue and not spend any more time or resources on studying commercial rent control.

Rent control, or the capping of rents in a specific area at a certain amount by a public entity, is and has been prohibited by California law with regard to commercial property since 1988.

California civil code section 1954.25-1954.31 thoroughly forbids commercial rent control throughout the state by prohibiting its enactment in any jurisdiction because of concern that price controls on commercial rents in any locale would have adverse statewide economic consequences.

Section 1954.25 of the California Civil Code finds that commercial rent control would not encourage a competitive environment for businesses and could give one business an unfair advantage over another:

*1954.25. The Legislature finds that the price charged for commercial real property is a matter of statewide concern. Price controls on commercial rents discourage expansion of commercial development and entrepreneurial enterprise. These controls also discourage competition in the open market by giving artificial price benefits to one enterprise to the disadvantage of another. Because the impact of these controls goes beyond the local boundaries within which the controls are imposed, the adverse economic consequences become statewide.*

Section 154.26 provides a comprehensive definition of "Commercial Rent Control":

*1954.26. (f) "Commercial rental control" includes any action of a public entity taken by statute, charter, ordinance, resolution, administrative regulation, or any other governmental enactment to establish, continue, implement, or enforce any control or system of controls, on the price at which, or the term for which, commercial real property may be offered for rent, or control or system of controls which would select, mandate, dictate, or otherwise designate a specific tenant or specific person or entity with whom the owner must negotiate on the formation, extension, or renewal of a tenancy; or any other enactment which has such a purpose.*

Under Section 1954.27 of the California Civil Code, no public entity is allowed to enact or enforce any type of commercial rent control in the state:

*1954.27. (a) No public entity shall enact any measure constituting commercial rental control, nor shall any public entity enforce any commercial rental control, whether enacted prior to or on or after January 1, 1988.*

Studying, researching, or evaluating any possibility of commercial rent control in the City of Milpitas is a policy dead end and any attempt to enact commercial rent control would be in direct conflict with state laws.

NAIOP Silicon Valley respectfully requests that Council promptly dismiss with deliberation of any effort on studying or devising policy regarding commercial rent control. Consideration of spending precious city resources, staff time, or allowing public hearing of any commercial rent control policy proposal is counterproductive.

Yours truly,

A handwritten signature in black ink, appearing to read "Patricia E. Sausedo", with a stylized flourish extending to the right.

Patricia E. Sausedo, Executive Director  
NAIOP Silicon Valley



# CITY OF MILPITAS

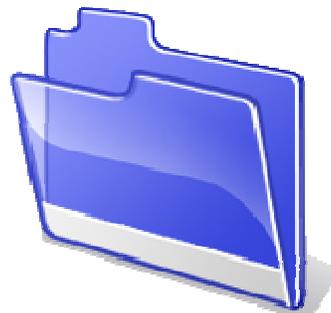
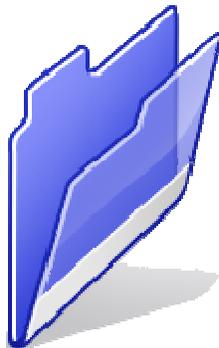
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06/21/2016

Agenda Item No. 15



## ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



**Solid Waste Procurement Process – Milestone Activities, January 2016-Ongoing**

January 12<sup>th</sup> – City Council Disposal Proposer Workshop

January 13- February 29 – Evaluation Committee completes disposal proposer evaluation and develops contract award recommendation to the City Council

January 13- February 29 – City staff and consultant negotiate disposal agreements with both proposers

March 15<sup>th</sup> – City Council Award of Disposal Agreement

March 16<sup>th</sup> – April 29<sup>th</sup> – Execute Disposal Agreement and evaluate referendum petition implications

May 2<sup>nd</sup> – Online and phone surveying of residents regarding future service options

May 2<sup>nd</sup> – Upon execution of disposal agreement, Evaluation Committee begins collection evaluation process

May 2<sup>nd</sup> – Issuance of collection proposer shortlist

May 19<sup>th</sup> – May 26<sup>th</sup> - Evaluation Committee tours facilities and conducts interviews with shortlisted proposers

May 23<sup>rd</sup> – City Council Collection Proposer Workshop

May 25<sup>th</sup> – Meeting of the Recycling and Source Reduction Commission (RSRAC) on collection activities and programs

May 27<sup>th</sup> – June 13<sup>th</sup> - Evaluation Committee completes collection proposal evaluation and develops contract award recommendation to City Council

June 16<sup>th</sup> – Business Workshop discussing collection activities and programs

June 21<sup>st</sup> – City Council Consideration of Evaluation Committee's Collection Proposal Recommendation

June 22<sup>nd</sup> – Begin negotiations with the collection proposers (*pending City Council direction*)

August-September – City Council Consideration of Recommendation to Award Collection Agreement

September – Final Execution of Collection Agreement

September 2016 – September 5, 2017 – Transition Period

September 6, 2017 – Commencement of Services under New Disposal and Collection Agreements



# CITY OF MILPITAS

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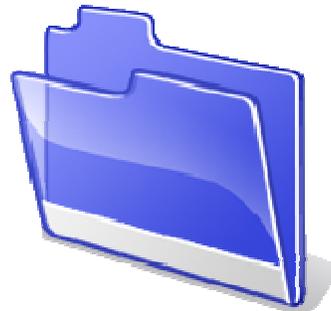
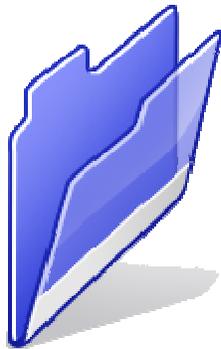
06/21/2016

Agenda Item No. 29

**REVISED**



## ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



Agenda item 29, the Joint Use Agreement with the Milpitas Unified School District has been modified from the version distributed with the agenda packet last week to address two minor issues as follows:

- Section 6 has been modified to delete the final sentence regarding “special events” as the City’s and School District’s intent is to leave the scheduling of such events to the Operations Committee defined in Section 7.
- Section 7.1.2 has been modified to add a provision that allows the Operations Committee to determine the scheduling of “special events.”
- Minor changes were made to the signature page to clarify that the Milpitas Unified School District Board authorized its superintendent to execute the Agreement.

# DRAFT

## JOINT USE AGREEMENT

(Milpitas Unified School District/City of Milpitas)

THIS AGREEMENT ("**Joint Use Agreement**") is effective July 1, 2016 by and between the City of Milpitas, a municipal corporation, ("**City**") and the Milpitas Unified School District, a public school district organized and existing under the laws of the State of California, ("**District**"). District and City may be referred to in this Joint Use Agreement individually as a "**Party**," and collectively as the "**Parties**."

### RECITALS

A. City currently owns approximately 10.9 acres of unimproved real property located at the corner of McCandless Drive and Penitencia Creek East Channel, City of Milpitas, County of Santa Clara, commonly known as the "**McCandless Property**."

B. District is purchasing approximately 6.7 acres of the McCandless Property from City under that Purchase and Sale Agreement between City and District effective October 21, 2014, as amended ("**Purchase Agreement**").

C. Upon the close of escrow, District will own the 6.7 acre portion of the McCandless Property legally described on Exhibit A-1 – Legal Description of District Property ("**District Property**"), to be used for construction and operation of a new elementary school.

D. Upon the close of escrow, City will continue to own the remaining approximately 4.2 acre portion of the McCandless Property adjacent to the District Property, legally described on Exhibit A-2 – Legal Description of City Property ("**City Property**"), to be used as a municipal park. District Property and City Property are depicted on Exhibit B. Exhibits A-1, A-2 and B are attached hereto and by this reference made a part of this Joint Use Agreement.

E. Under this Joint Use Agreement, District and City will share the use of portions of their adjacent properties as delineated on Exhibit B, collectively the "**Joint Use Property**."

F. Sections 10900 *et. seq.* of the Education Code ("**Community Recreation Act**") authorizes cities and school districts to maintain and operate joint use facilities such as basketball courts and outdoor playing fields in order to reduce capital and operational costs to both governmental jurisdictions and provide recreational areas for the community as a whole.

G. Section 10910 of the Education Code provides that the governing body of any school district may use or grant the use of grounds of the school district to any other public authority for the purposes of joint use, whenever such use does not interfere with school uses.

H. It is to the mutual benefit of City and District to contribute jointly to the establishment, operation and maintenance of recreational facilities and shared parking facilities which can serve the needs of both the general public and District.

# DRAFT

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows.

**1. Joint Use Property.** The Joint Use Property consists of the following:

1.1 Field. The 1.2 acre portion of City Property adjacent to the District Property depicted on Exhibit B, along with the 1.2 acre portion of District Property adjacent to City Property on Exhibit B, together totaling 2.4 acres ("**Field**").

1.2 Basketball Courts. The 0.25 acre portion of District Property adjacent to the Field depicted on Exhibit B ("**Basketball Courts**").

1.3 Parking Area. The marked parking spaces along the western border of the McCandless Property ("**West Parking Lot**" or "**Parking**") consisting of 1.17 acres, as designated on Exhibit B. The Field, Basketball Courts and West Parking Lot may be referred to individually as the Field, Basketball Courts or Parking, or collectively as the "**Joint Use Property**," as depicted in its entirety on Exhibit B.

1.4 Access to Joint Use Property. Each Party shall have access to the Joint Use Property according to the terms and conditions of this Joint Use Agreement.

**2. Purchase Price Adjustment.** If the Parties mutually agree to adjust the purchase price of the District Property based on the percentage of District Property subject to this Joint Use Agreement, the Parties will amend the Purchase Agreement to reflect the adjustment prior to the close of escrow.

**3. Term.**

3.1 Term Commencement Date. This Joint Use Agreement shall become effective upon approval by the governing bodies of both Parties and full execution of the Joint Use Agreement ("**Effective Date**"). The term of the Joint Use Agreement shall commence on the completion of construction of the District's elementary school and the City's proposed park and both Parties acceptance of all construction improvements ("**Commencement Date**"). Within thirty (30) days after the Commencement Date, the Parties agree to memorialize the Term Commencement Date and the Expiration Date and attach it to this Joint Use Agreement.

3.2 Term Expiration Date. The initial term of this Joint Use Agreement shall be forty (40) years beginning from the Commencement Date ("**Initial Term**") and ending after forty years, consistent with the forty year time period set forth in Exhibit B of the Purchase Agreement for expiration of the Power of Termination (Civil Code 885.010 et seq.), unless extended by mutual written agreement of the Parties. On or before the Expiration Date the Parties shall meet to determine whether or not to extend the Initial Term and make any other modifications to the Joint Use Agreement. If the Parties fail to extend this Joint Use Agreement in writing by the Expiration Date, the Parties shall continue to operate under the terms of this Joint Use Agreement until such time as this Joint Use Agreement is amended or extended. After the Expiration Date, provided that the Parties fail to extend this Joint Use Agreement, either Party may terminate this Joint Use Agreement by providing the other Party with sixty (60) days' written notice prior to such termination that the Parties mutually agree in writing to terminate. In

# DRAFT

the event one Party seeks to terminate and the other does not, the Parties shall be required to exhaust the Remedies provided for in Section 11.7 of this Agreement.

4. **Use.** The Joint Use Property shall be used by the Parties exclusively for public education, recreation and parking as described below.

5. **District and City Use.**

5.1 **District.**

5.1.1. **Field.** District shall have exclusive use of the Field Monday through Friday, during the time period which begins ninety (90) minutes before the start of the school day and ends ninety (90) minutes after the close of the school day (estimated to be 4:15 p.m.) on every day that school is in session during the school year and summer school. District shall also have exclusive use of the Field for special events scheduled at the meetings described below.

5.1.2. **Basketball Courts.** District shall have exclusive use of the Basketball Courts Monday through Friday, during the time period which begins ninety (90) minutes before the start of the school day and ends ninety (90) minutes after the close of the school day (estimated to be 4:15 p.m.) on every day that school is in session during the school year and summer school. District shall also have exclusive use of the Basketball Courts for special events scheduled at the meetings described below.

5.1.3. **Parking.** The West Parking Lot shall be available for use by both the District and City at all times.

5.2 **City.**

5.2.1. **Field.** City shall have use of the Field for community use at all times the Field is not reserved for District's exclusive use or for previously scheduled District special events. City shall provide to District a schedule for its community use and special events at the meetings described below.

5.2.2. **Basketball Courts.** City shall have use of the Basketball Courts for community use at all times the Basketball Courts are not reserved for District's exclusive use or for previously scheduled District special events. City shall provide to District a schedule for its community use and special events at the meetings described below.

5.2.3. **Parking.** City shall have use of the West Parking Lot for community use at all times.

5.3 **Exclusions.** Restrooms and community rooms on District Property, the marked parking spaces along the southern border of the District Property, and the 0.54 acre portion of District Property adjacent to the Basketball Courts containing an outdoor play area are not included in this Joint Use Agreement.

5.4 **Fitness Course.** In the event the City constructs a Fitness Course ("**Fitness Course**") on a portion of City Property, District students shall have access to the Fitness Course

# DRAFT

under terms and condition mutually agreed upon by the Parties upon completion of the Fitness Course construction.

5.5 Alterations to Joint Use Property. Neither Party may alter the Joint Use Property in a manner that impacts the other Party's use of the Joint Use Property or impacts the other Party's costs associated with the Joint Use Property without the other Party's prior written consent, which may be granted in such Party's reasonable judgment. Should a Party provide written consent, both Parties shall execute an amendment to this Joint Use Agreement to ensure compliance with the Education Code and Community Recreation Act and ensure that the Parties contribute jointly to the establishment, operation and maintenance of the Joint Use Property.

6. Special Events. City and District shall meet annually (at a minimum) prior to the beginning of each school year to schedule use of the Joint Use Property. ~~The Parties shall also meet as needed for special events and changes to the schedule. The Parties shall also meet as needed for special events and changes to the schedule only if those special events and changes to the schedule could not have been included in the Master Schedules (defined in Section 7.2) despite reasonable and good faith efforts. provided that the special events and changes to the schedule could not have been included in the Master Schedules (defined in Section 7.2) despite reasonable and good faith efforts. District's special events shall not be defined to include events organized by parties other than District or District's routine recreational events.~~

## 7. Meetings and Schedules.

7.1 Operations Committee. City and District shall each designate an equal number of representatives to meet as an operations committee ("**Operations Committee**") to establish a written schedule for District and City exclusive and special event use of the Joint Use Property ("**Joint Use Schedule**"), coordinate the preparation and execution of a mutually satisfactory Operations and Maintenance Agreement (defined in Section 9.1), establish an annual maintenance schedule to be included in the Annual Operating Agreement (defined in Section 7.3), and discuss any issue related to the Joint Use Property.

7.1.1 Meetings. The Operations Committee shall meet annually (at a minimum), prior to the beginning of each school year and more often as needed.

7.1.2 Authority. Except where such actions would contradict a term of this Joint Use Agreement or the Operations and Maintenance Agreement (defined in Section 9.1), the Operations Committee shall have the authority to make decisions regarding the day-to-day operations of the Joint Use Property, including scheduling Special Events. Following each Operations Committee Meeting, a summary of actions shall be submitted to the governing boards of each Party.

## 7.2 Scheduling.

7.2.1 At least thirty days prior to each Operations Committee Meeting, City shall provide to District a copy of its master schedule for City scheduled activities for the coming year ("**City Master Schedule**").

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7.2.2 At least thirty days prior to each Operations Committee Meeting, District shall provide to City a copy of its master schedule, including school calendar, bell schedule and school events for the coming year ("**District Master Schedule**").

7.2.3 After each Operations Committee Meeting, a "**Joint Use Schedule**" including applicable information from District Master Schedule and City Master Schedule shall be published. District and City shall distribute copies of the most current Joint Use Schedules to the Parties listed in the notice section of this Joint Use Agreement and, if there are significant updates in between meetings, District and City shall distribute updates throughout the year as necessary. The Joint Use Schedules shall also be available at the District's administration office and Milpitas City Hall.

7.3 Maintenance Discussions. At the Operations Committee Meetings, the Parties will (i) coordinate and develop a maintenance schedule in compliance with the Operations and Maintenance Agreement (defined in Section 9.1); and (ii) do a joint walk-through of the Joint Use Property to review routine maintenance and determine what adjustments need to be made to the maintenance schedule. The maintenance schedule and any other operational decisions made at the annual Joint Use Meeting shall be recorded in an annual operating agreement that shall be consistent with the Operations and Maintenance Agreement ("Operating Agreement for Year \_\_\_\_") and copies maintained by each Party.

7.4 Additional Meetings. During the school year, either Party may request an additional Operations Committee Meeting if there are modifications required for the Joint Use Schedule or Operating Agreement and the Parties shall cooperate to satisfy those requests.

**8. Supervision and Compliance With Law**. Each Party is responsible for supervision of the Joint Use Property during the time of its use. Each Party shall comply with, and shall secure compliance by persons within its control and authority of all state and federal laws and regulations now in force, or which may be in force in the future, pertaining to the Joint Use Property. City and District shall each comply with the other Party's rules and regulations during the time of its use of that portion of the Joint Use Property owned by that Party.

## **9. Maintenance and Repair**

9.1 Operations and Maintenance Agreement. The Operations Committee shall coordinate the preparation and execution of a mutually satisfactory agreement for the maintenance of the Joint Use Property ("**Operations and Maintenance Agreement**"). The Operations and Maintenance Agreement shall define each Party's maintenance obligations for the Field, Basketball Courts, and Parking, and shall provide that the costs of such maintenance shall be equally split between the Parties, except when such costs are otherwise allocated in this Joint Use Agreement.

9.2 Routine Clean-up of Joint Use Property During Exclusive Use. District and City shall each be responsible for the routine clean-up of the Joint Use Property during the time of that Party's use. Such routine clean-up includes maintaining the areas in good order and condition and free of litter ("**Routine Clean-Up**").

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9.3 Annual Monitoring of Soil Contamination. The Department of Toxic Substances Control ("DTSC") requires, as a condition of its approval, that the District perform annual monitoring of soil contamination on portions of the McCandless Property, including the Joint Use Property. The Parties shall cooperate to allow such monitoring activities to be conducted on the locations specified prior to commencement ("**DTSC Monitoring**").

## 9.4 Improvements and Replacement of Equipment.

9.4.1. After construction of the Joint Use Property, no additional improvements shall be installed until costs, plans and specifications for the improvements are reviewed and approved by both Parties.

9.4.2. The Parties shall mutually agree upon replacement of equipment or improvements to the Field and Basketball Courts. The Parties shall share the cost of the improvements or replacements equally unless the other Party caused damage to the equipment, in which case the Party causing the damage shall pay the total replacement cost.

## 10. Utilities.

10.1 Water. City intends to extend recycled water piping to the Joint Use Field. Should City extend recycled water to the Joint Use Field, the Parties shall split the costs of extending recycled water piping to the Joint Use Field equally along with the cost of using such recycled water to maintain the Joint Use Field equally. If City does not extend recycled water to the Joint Use Field, the Parties shall endeavor to split the water costs associated with maintaining the Joint Use Field equally. In all other events each Party shall pay for its own water usage related to the Joint Use Property.

10.2 Electricity, Sewer and Other Utilities. After operation of the Joint Use Property commences, the Operations Committee shall review costs of shared utilities and determine cost allocation. For purposes of this paragraph 10.2 commencement of operation shall mean when construction of both City Property and District Property is complete and the Joint Use Property is available for use.

## 11. General Terms and Conditions.

11.1 Indemnity. During the term of this Joint Use Agreement, the indemnification requirements in this paragraph 11.1 and the insurance requirements in paragraph 11.2 may be satisfied by a program of self-insurance or commercial insurance. City agrees to defend, indemnify and save District, its agents and employees harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of City, its agents, licensees, invitees and employees in connection with the performance of this Joint Use Agreement and the use or maintenance of the Joint Use Property. District agrees to defend, indemnify and save City, its agents, licensees, invitees and employees harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of District, its agents, licensees, invitees and employees in connection with the performance of this Joint Use Agreement and the use or maintenance of the Joint Use Property.

11.2 Insurance. Each Party shall maintain the following programs of insurance coverage:

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11.2.1. General Liability insurance with limits of not less than the following, and naming the other Party as an additional insured:

|                    |             |
|--------------------|-------------|
| General Aggregate: | \$2 million |
| Personal Injury:   | \$1 million |
| Each Occurrence:   | \$1 million |

11.2.2. Workers' Compensation and Employers Liability insurance providing workers' compensation benefits, as required by the State of California.

11.2.3. The insurance coverage requirements in this paragraph 11 shall be subject to review and adjustment to reflect coverage recommended by the Parties' insurance advisors over the term of this Joint Use Agreement. Any such adjustment shall be set forth in a written amendment to the Joint Use Agreement signed by both Parties.

11.3 Entry and Inspection. Each Party reserves, and shall always have the right, to enter upon the Joint Use Property at reasonable times for the purpose of viewing and ascertaining the condition of the property.

11.4 Waiver. The waiver by either Party of any breach or of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other breach, term, covenant, or condition of this Joint Use Agreement.

11.5 Notices. Any notice required or permitted under this Joint Use Agreement shall be in writing, delivered to the Party at the address set forth below, and shall be deemed effectively delivered upon (i) personal delivery or electronic delivery, (ii) one day after deposit for overnight delivery by Federal Express or a comparable national express courier, (iii) two days after deposit in the United States mail, by first-class mail, postage prepaid, or (iv) receipt via facsimile or electronic mail. A Party may designate another address for notice purposes upon written notice pursuant to the provisions of this paragraph. The Parties shall provide each other after-hours emergency contact phone numbers of appropriate supervisory staff, which shall be periodically updated.

## DISTRICT

Milpitas Unified School District  
Attn: Superintendent  
1331 East Calaveras Blvd.  
Milpitas, CA 95035  
Phone: (408) 635-2600  
Fax: (408) 635-2616  
Email: cmatsuoka@musd.org

With a copy to:

Fagen Friedman & Fulfroost, LLP  
Attn: Kelley Owens, Esq.  
1525 Faraday Avenue Suite 300

# DRAFT

Carlsbad, CA 92008  
Phone: (760) 304-6000  
Fax: (760) 304-6011  
Email: kowens@f3law.com

## CITY

City of Milpitas  
Attn: City Manager  
455 East Calaveras Blvd., 3rd Floor  
Milpitas, CA 95035  
Phone: (408) 586-3050  
Email: twilliams@ci.milpitas.ca.gov

With a copy to:  
City of Milpitas  
Attn: City Attorney  
455 East Calaveras Blvd.  
Milpitas, CA 95035  
Phone: (408) 586-3040  
Email: cdiaz@ci.milpitas.ca.gov

11.6 Defaults. Should either Party fail to perform any covenant, condition or agreement contained in this Joint Use Agreement, including but not limited to those listed below, and the default is not cured within thirty (30) days after written notice is served on the defaulting Party by the non-defaulting Party, then the defaulting Party shall be in default under this Joint Use Agreement; provided however, to the extent that more than thirty (30) days are reasonably required to cure any default, the defaulting Party shall not be in default so long as it commences such cure within the thirty (30)-day period and thereafter diligently pursues such cure to completion.

11.6.1. Failure to Pay. The failure of either Party to pay when due any expenses, monies or charges required by this Joint Use Agreement to be paid.

11.6.2. Failure to Act. The failure of either Party to do any act, other than the payment of expenses, monies or charges required by this Joint Use Agreement to be done.

11.6.3. Prohibited Act. Either Party causing, permitting or suffering to be done any act (i) required by this Joint Use Agreement to have prior written consent or mutual consent, unless such consent is so obtained, or (ii) prohibited by this Joint Use Agreement.

11.7 Remedies. In the event of a default under this Joint Use Agreement, the Parties shall follow the dispute resolution procedures below.

11.7.1. Informal Negotiation. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Joint Use Agreement ("**Dispute**") within 30 days after the date that one Party gives written notice of such Dispute to the other Party.

# DRAFT

11.7.2. Non-binding Mediation. If, after informal negotiation, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with the authority to resolve the Dispute shall meet with a mutually agreed upon mediator. If the Parties are unable to agree upon a mediator, then either Party may request the American Arbitration Association to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

11.7.3. Binding Arbitration. If, after non-binding mediation, the Dispute remains unresolved, the Parties agree to submit to binding arbitration pursuant to California Code of Civil Procedure section 1280 *et seq.* The non-prevailing Party shall pay the arbitrator's fee, but in all other respects each Party shall bear its own costs and attorneys' fees.

11.8 Governing Law. The Parties agree that the laws of the State of California shall be used in interpreting this Joint Use Agreement, shall govern all disputes under this Joint Use Agreement and will determine all rights thereunder.

11.9 Complete Agreement. This Joint Use Agreement contains the complete expression of the whole agreement between the Parties and there are no promises, representations, agreements, warranties, or inducements either expressed verbally or implied except as are fully set forth herein. This Joint Use Agreement cannot be amended, enlarged, modified, or changed in any respect except by written agreement between the Parties.

11.10 Nondiscrimination. District, City, and all others who from time to time may use the property and recreational facilities described in this Joint Use Agreement with the permission and on the terms and conditions specified by both Parties shall not discriminate in any manner against any person or persons on account of race, color, gender, creed, national origin, age or mental or physical disability.

11.11 Exhibits.

Exhibit A-1 Legal Description of District Property

Exhibit A-2 Legal Description of City Property

Exhibit B Depiction of Joint Use Property

**[Signatures on following pages]**

**DRAFT**

**Signature Page**  
**for**

**JOINT USE AGREEMENT**

IN WITNESS WHEREOF, this Joint Use Agreement is executed by the City of Milpitas, acting by and through its City Council that has authorized the City Manager to execute, and by the Milpitas Unified School District, acting by and through its ~~superintendent, by and through its Board of Education.~~Board of Education that has authorized the superintendent or his designee to execute.

CITY OF MILPITAS

MILPITAS UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO FORM

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: CITY ATTORNEY

Title: ATTORNEY FOR DISTRICT

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# DRAFT

## EXHIBIT A-1 DISTRICT PROPERTY (ELEMENTARY SCHOOL)

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 2 AND A PORTION OF PARCEL 3, AS SAID PARCELS ARE SHOWN ON THE PARCEL MAP OF "MC CANDLESS TECHNOLOGY", FILED FOR RECORD ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS AT PAGES 41-43, SANTA CLARA COUNTY RECORDS, TOGETHER WITH A PORTION OF HOURET DRIVE AS SAID PORTION IS SHOWN AND DEDICATED ON SAID PARCEL MAP OF "MC CANDLESS TECHNOLOGY", BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 2;

THENCE ALONG THE GENERAL EASTERLY LINES OF PARCEL 2 AND 3, THE FOLLOWING SEVEN (7) COURSES:

- 1.) NORTH 0°08'26" EAST, 546.62 FEET;
- 2.) NORTH 68°44'33" WEST, 26.61 FEET THE BEGINNING OF A TANGENT CURVE TO THE LEFT;
- 3.) ALONG SAID CURVE HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 35°05'48", AN ARC LENGTH OF 12.25 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 13°50'22" EAST;
- 4.) ALONG SAID CURVE HAVING A RADIUS OF 46.00 FEET, THROUGH A CENTRAL ANGLE OF 250°11'37", AN ARC LENGTH OF 200.87 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 56°21'15" WEST;
- 5.) ALONG SAID CURVE HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 35°05'48", AN ARC LENGTH OF 12.25 FEET;
- 6.) SOUTH 68°44'33" EAST, 0.35 FEET;
- 7.) NORTH 0°08'26" EAST, 53.88 FEET;

THENCE LEAVING THE EAST LINE OF SAID PARCEL 3, NORTH 89°51'34" WEST, 544.46 FEET TO THE WEST LINE OF SAID PARCEL 3 AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 81°35'01" WEST;

THENCE SOUTHEASTERLY ALONG THE WESTERLY LINES OF SAID PARCEL 3 AND 2, THE FOLLOWING THREE (3) COURSES:

- 1) ALONG SAID CURVE HAVING A RADIUS OF 1,762.00 FEET, THROUGH A CENTRAL ANGLE OF 17°12'47", AN ARC LENGTH OF 529.35 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE LEFT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 64°22'14" WEST;
- 2) ALONG SAID CURVE HAVING A RADIUS OF 682.00 FEET, THROUGH A CENTRAL ANGLE OF 11°38'05", AN ARC LENGTH OF 138.49 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE LEFT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 52°44'09" WEST;
- 3) ALONG SAID CURVE HAVING A RADIUS OF 400.00 FEET, THROUGH A CENTRAL ANGLE OF 10°03'25", AN ARC LENGTH OF 70.21 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL 2, SOUTH 89°51'34" EAST, 269.11 FEET TO THE POINT OF BEGINNING.

**CONTAINING 291,853 SQUARE FEET OR 6.70 ACRES, MORE OR LESS.**

DRAFT

**EXHIBIT A-2**  
**LEGAL DESCRIPTION OF CITY PROPERTY**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 3, AS SAID PARCEL IS SHOWN ON THE PARCEL MAP OF "MC CANDLESS TECHNOLOGY", FILED FOR RECORD ON DECEMBER 5, 1984, IN BOOK 536 OF MAPS AT PAGES 41-43, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 3;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 3, SOUTH 83°45'38" EAST, 573.71 FEET TO THE NORTHEAST CORNER THERETO;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 3, SOUTH 0°08'26" WEST, 295.38 FEET;

THENCE LEAVING SAID EASTERLY LINE, NORTH 89°51'34" WEST, 544.46 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 3 AND THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 81°35'01" WEST;

THENCE ALONG SAID WESTERLY LINE, ALONG SAID CURVE HAVING A RADIUS OF 1,762.00 FEET, THROUGH A CENTRAL ANGLE OF 5°51'39", AN ARC LENGTH OF 180.24 FEET;

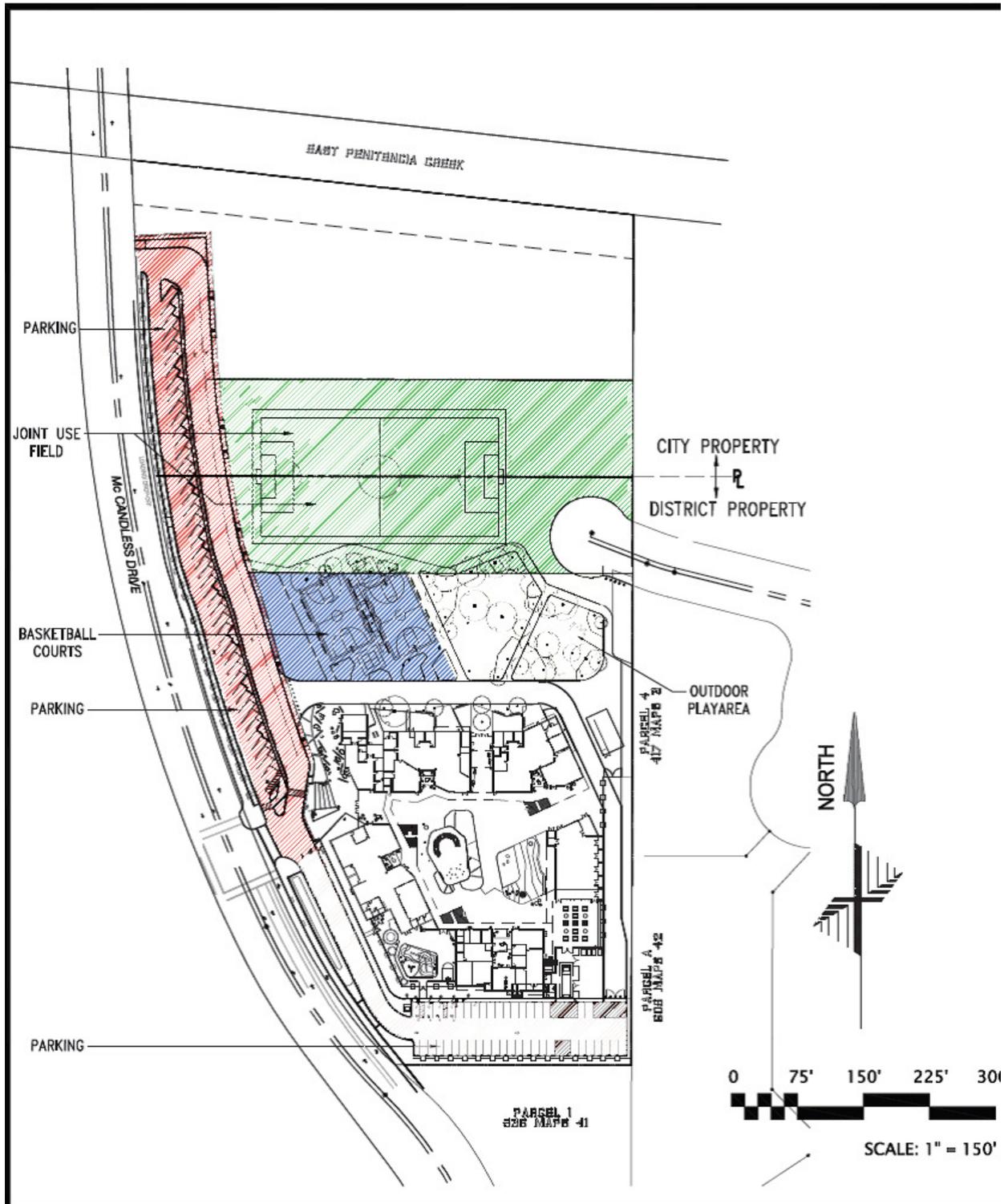
THENCE CONTINUING ALONG SAID WESTERLY LINE, NORTH 2°33'20" WEST, 177.24 FEET TO THE POINT OF BEGINNING.

CONTAINING 182,349 SQUARE FEET OR 4.19 ACRES, MORE OR LESS.

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DRAFT

**EXHIBIT B**  
**DEPICTION OF JOINT USE AREAS**



|          |            |  |   |
|----------|------------|--|---|
| DATE:    | 2016-05-05 | <b>MILPITAS USD</b><br>BOUNDARY EXHIBIT<br>1600 1750 MCANDLESS DRIVE<br>MILPITAS, CA |  <b>HOBACH-LEWIN, INC.</b><br>STRUCTURAL & CIVIL ENGINEERS<br>200 Sheridan Avenue, Suite 100<br>Palo Alto, CA 94306<br>(650) 617-5930, Fax (650) 617-5932 |
| SCALE:   | AS SHOWN   |  |   |
| DRAWN:   | VAB        |  |   |
| CHECKED: | SPP        |  |   |
| JOB NO:  | T0259.36   |  |   |