

# REQUEST FOR SIGNATURES COVER SHEET

Routing Date to: 2/13/18 CAO: 2/13/18 Finance Dir: \_\_\_\_\_ CMO: \_\_\_\_\_

Approvals: \_\_\_\_\_ Chris D. CD Will F \_\_\_\_\_  
Dept Head (initial) City Attorney (initial) Finance Director (initial) Chief Pangelinan Julie E-M  
Interim City Mgr (initial)

From (Staff Name)/Ext/Dept: Michael Fossati Date back to staff: 5/1/2018

Contractor / Vendor Name: Anton Milpitas 750 LLC and Anton Milpitas 730 LLC

What is the contract for? Parkland Reimbursement Agreement - 730-750 E. Capital Development back to Michael

Project Name / Number Anton Mixed-Use Apartment Development 3/19/2018

Terms of the Contract: Start date: \_\_\_\_\_ End date: \_\_\_\_\_ Extension date: \_\_\_\_\_

Is contract subject to renewal? ☐ YES

☐ NO

# of Years \_\_\_\_\_

Compensation per contract term \_\_\_\_\_

Is RFP process required? ☐ YES

☐ NO

RFP Issue Date \_\_\_\_\_

RFP Award Date \_\_\_\_\_

CITY MANAGER'S OFFICE  
RECEIVED

MAR 08 2018

Total Initial Contract Amount: \$8,910,220.80

Remaining balance from the total contract amount: \$8,910,220.80

Aggregated Amount Spent As of Today: 0.00

If this is an amendment contract amendment amnt: \_\_\_\_\_

Did the Initial Contract go to Council for Approval? ☒ YES ☐ NO

06/21/2016

Council meeting date

Did the Amendment/s go to Council for Approval? ☐ YES ☐ NO

Council meeting date

CITY MANAGER'S OFFICE  
RECEIVED

APR 12 2018

BY: Mc Sam

## SOURCE OF FUNDING

☐ Operating Budget \_\_\_\_\_  
specify budget item line

☐ PJ Reimbursement \_\_\_\_\_  
specify Developer Name / PJ #  
(may still need Budget Appropriation)

☒ Other TASP \_\_\_\_\_  
specify other funding source

☐ CIP \_\_\_\_\_  
specify CIP # / Name

☐ Grant \_\_\_\_\_  
specify Grant Name

Grant Date \_\_\_\_\_  
Council mtg date (Grants require pre-approval from Council)

☐ CDBG \_\_\_\_\_  
specify CDBG Fiscal Year

☐ General Fund

☐ Water Fund

☐ Sewer Fund

☐ Equipment Fund

☐ Housing Fund

☒ TASP

Is Budget Appropriation needed? ☐ YES

☒ NO

Council meeting date

From budget

To budget

9. **JOINT MEETING: CITY COUNCIL & PUBLIC FINANCING AUTHORITY**  
**Adopt Resolutions of the Milpitas City Council and Milpitas Public Financing Authority Board Authorizing Investment of Monies in the Local Agency Investment Fund and Updating Officers Information (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** The City of Milpitas and the Milpitas Public Financing Authority have been participating in the state's Local Agency Investment Fund (LAIF) since 1977. LAIF periodically requests participants to update their investment resolutions. Staff reviewed the existing resolutions of the two entities and determined that these resolutions need to be updated due to administration and personnel changes, namely the hiring of new City Manager, Julie Edmonds-Mares.

**Recommendation:** Adopt Resolutions of the Milpitas City Council and Milpitas Public Financing Authority Board authorizing investment of monies in the Local Agency Investment Fund and updating officers' information.

**Attachments:** City Council Resolution + Public Financing Authority Resolution

10.

**Authorize the City Manager to Execute a Fee Reimbursement Agreement for Public Parkland Associated with a Mixed-Use Development Located at 730-750 E. Capital Avenue by Anton Development (Staff Contact: Michael Fossati, 408-586-3274)**

**Background:** On June 21, 2016, the City Council adopted Resolution No. 8556 approving Environmental Assessment EA16-0002, Site Development Permit SD15-0014 and an Exception to the Milpitas Municipal Code VII-6-5.00 regarding Supplemental Water Use Restrictions for a 583-unit apartment project located at 730-750 E. Capitol Avenue. The project is comprised of two buildings. 730 E. Capital is proposed to have 266 residential apartment units and 1,800 sq. ft. of ground floor retail. 750 E. Capital is proposed to have 317 residential apartment units and 3,200 sq. ft. of ground floor retail. Along with required parking, the project includes a variety of site improvements, including the extension of Milpitas Boulevard and a new public street connection to the adjacent 450 Montague project, a public park with pedestrian and bicycle paths along Penitencia Creek, construction of domestic and recycled water supply lines, and various associated site improvements.

Pursuant to City policy, physical construction improvements that benefit the future development of City infrastructure are permissible for reimbursement. Pursuant to the Transit Area Specific Plan (TASP), fee reimbursements for public parkland and improvements are permissible (TASP Policy 3.41). The project site includes a park dedication requirement (pursuant to TASP Figure 3.6) of 2.12 acres. The developer is entitled to reimbursement of that portion of the TASP fee earmarked for parkland in the actual verifiable amount of all costs associated with constructing the park, including reimbursement for the value of the Public Park Easement. A total of \$77,900 will be reimbursed for the domestic and recycled water line improvements along the Milpitas Boulevard extension. A total of \$5,910,220.80 would be reimbursed for the value of the Public Park Easement and no more than \$3,000,000 would be reimbursed for the estimated value of park improvements.

The Agreement has been reviewed by the City Attorney as to form and content. Any subsequent modifications that may be required shall be reviewed and approved by the City Attorney prior to execution of such agreement. A copy of the proposed fee reimbursement agreement is provided in the Council's agenda packet.

**California Environmental Quality Act:** Execution of the Agreement is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

**Fiscal Impact:** Given that the reimbursement comes from TASP Fees dedicated to purchasing parkland within the TASP area, the proposed reimbursement will not affect the General Fund.

**Recommendation:** Authorize the City Manager to execute a Fee Reimbursement Agreement with Anton Development related to its development of 730–750 East Capital Avenue in a final form as approved by the City Attorney

**Attachment:** Fee Reimbursement Agreement

11. **Receive Report of City Council Subcommittee on Commissions Regarding Considered Changes to Existing Roster of City Commissions, and on Commissioner and Citizen Representative Appointment Recommendations (Council Contacts: Councilmember Nuñez, 408-586-3023 and Councilmember Phan, 408-586-3032; Staff Contact: Renee Lorentzen, 408-586-3409)**

**Background:** The City Council Subcommittee on Commissions was formed on December 19, 2017 to review and recommend applicants to serve as new Commissioners for final approval by the Mayor and Council; and also to recommend any changes to the existing roster of City Commissions. Per the direction of Council, recommendations to the Mayor on the appointments and reappointments of Commissioners will come from one Subcommittee member and the Commission Council Liaison, with exception of the Planning Commission, which will come from the Subcommittee.

Council's Subcommittee on Commissions has held several meetings to review the current list of Commissions, and their scope and function. From these discussions, the Subcommittee has developed and is considering recommendations for future City Council consideration and approval. The Subcommittee's initial report to the Commission is as follows:

**The Subcommittee is considering the following Commissions:**

Economic Development and Trade Commission –

Retain current commission programs; addition of “trade” to include international trade relationships into its work plan and scope

Energy and Environmental Sustainability Commission **\*\*NEW\*\*** -

Sustainability, Climate Action Plan, Recycling, Source reduction, waste diversion

Housing and Community Resource Commission **\*\*NEW\*\*** -

CDBG, Affordable Housing, Below Market Rate Inventory, Community housing needs

Library and Education Commission –

Retain current Commission programs and topics; addition of “education” component, incorporate school partnerships and initiatives into its work plan and scope

Parks, Recreation and Cultural Resources Commission –

Retain current Commission programs and topics; addition of Arts and Culture In-Kind Grants, Phantom Art Gallery programs, Bicycle and trail topics and events, and Sister Cities programs and exchanges into its work plan and scope

Public Safety and Emergency Preparedness Commission –

Retain current Emergency Preparedness Commission topics; addition of “Public Safety” to include Police and Fire community interest items into its work plan and scope

Planning Commission –

Retain current topics; add transportation topics, traffic, streets into its work plan and scope

Restaurant on Friday, April 13 at 6:00 PM. Tickets were available for \$75 from Hon Lien. Finally, he noted a public Town Hall meeting on Wednesday, April 11 from 6–8 PM at Community Center, sponsored by The Milpitas Post and Mercury News.

## ANNOUNCEMENTS

City Manager Julie Edmonds-Mares announced that the City's new Fire Engine was completed (built) and was on its way to Sacramento and would soon be delivered to Milpitas. She displayed a photo of the red vehicle.

Councilmember Phan said he would have gun policy recommendations at upcoming meetings. He'd previously requested a report on gun statistics and had received that so he said thank you to the Police Chief.

## ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

## APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as amended

The City Manager said staff requested to remove agenda item no. 6 (Resolution related to property added into CFD 2005).)

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

## CONSENT CALENDAR

Mayor Tran asked to place these items on the consent calendar (as they were listed in advance on the agenda): no. 1, 2, 4, 5, 7, 9 and 10.

He wanted to hear items No. 3, No. 8 and 11.

Motion: to approve Consent Calendar, including agenda items numbered 1, 2, 4, 5, 7, 9 and 10.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

→ I suppose this is 4 votes of yes

### \* 1. Council Calendar

Accepted City Council calendar for April 2018.

### \* 2. Meeting Minutes

Approved City Council meeting minutes of March 20 and 21, 2018.

### 3. Fee Waiver request – Bark for Life

City Clerk Mary Lavelle presented the request to waive identified City fees for the American Cancer Society's first "Bark for Life" event at Murphy Park on Saturday, April 28, 2018. The group asked for fees up to \$1500 to be waived, per the Council adopted "Donation and Fee Waiver Policy." This local event was in response to the former Relay for Life overnight event, which the Cancer Society no longer planned to offer in Milpitas, after 19 years.

Next, Mayor Tran invited speakers to the podium.

Tam Overacker, resident and member of the team organizing the event, provided some information about the event. She responded to earlier question if the Bark event would be annual, which it might be depending on success this year. The group was reaching out to many local businesses and organizations for support to the event.

MLK, Jr. Assassination Remembrance - April 4, 2018  
 Vietnamese Heritage and Appreciation - April 30, 2018  
 International Workers/Labor Day - May 1, 2018  
 Public Safety Appreciation - May 9, 2018  
 LGBTQ Pride Celebration - June 1-14 and June 16-30, 2018  
 Juneteenth - Tuesday, June 15, 2018

8. Resolution – Amend  
 Classification Plan

Human Resources Director Tina Murphy gave some background on the changes requested to the city's Classification Plan, which would occur by Council adopting a resolution and approving changes to the budget. She described the need for the Housing Authority Administrator position, discussed changes in Building Department and the rationale for adding a Deputy City Manager (leading and evaluating all development-related departments).

Councilmember Phan asked about contract staff for Building & Safety. He wanted to understand how the city would contract for those positions, and whether it was competitive. The H.R. Director said the process would be similar to other departments that contracted out. He inquired as to the qualifications for the Chief Building Official.

Councilmember Nuñez sought more details on the new Housing Authority Administrator position. He wanted to understand the reporting relationship in the City's organizational structure. Ms. Murphy said the new position would report to the Planning Director.

Vice Mayor Grilli asked about the contract staff for Building. Also, she was pleased with the City Manager's recommendation on these staff needs for the City.

Councilmember Phan asked about a timeline. The City Manager knew there was a sense of urgency on Housing issues and the need for the Deputy City Manager position. Human Resources would post those positions this week, if approved by the City Council.

Motion: to adopt Resolution No. 8761 amending the City's Classification Plan to reflect the addition of Deputy City Manager and Housing Authority Administrator, and removal of Permit Center Manager and Building & Safety Director; and approve budget appropriations for the City Manager's Office and Planning & Neighborhood Services Department including authorized funding for Chief Building Official, Associate Civil Engineer and Public Works Inspector, offset by defunding Principal Planner (Housing)

Motion/Second:

Vice Mayor Grilli/Councilmember Phan

Motion carried by a vote of:

AYES: 4  
 NOES: 0  
 ABSENT: 1 (Barbadillo)

The Mayor invited speakers from the audience.

Robert Marini, resident, spoke of hiring contracted workers and that they know the builders. How would there be knowledge of no conflict of interest, he asked? City Attorney Diaz responded stating that would be dealt with in the contract language.

Voltaire Montemayor, resident, wanted to speak in favor of the resolution and to make the city functional, the positions were justified, he said.

\*9. Joint meeting: Council and  
 Public Finance Authority – 2  
 LAIF Resolutions

Adopted Resolution No. 8762 of the Milpitas City Council and Resolution No. PFA22 Milpitas Public Financing Authority Board authorizing investment of monies in the Local Agency Investment Fund and updating officers' information.

\*10. Fee Reimbursement  
 Agreement – 730-750 East  
 Capitol Avenue

Authorized the City Manager to execute a Fee Reimbursement Agreement with Anton Development related to its development of 730-750 East Capitol Avenue in a final form as approved by the City Attorney.

**RESOLUTION NO. 8556**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING ENVIRONMENTAL ASSESSMENT EA16-0002, SITE DEVELOPMENT PERMIT SD15-0014, AND EXCEPTIONS TO THE MILPITAS MUNICIPAL CODE VII-6-5.00 REGARDING SUPPLEMENTAL WATER USE RESTRICTIONS FOR THE PROJECT LOCATED AT 730-750 EAST CAPITOL AVENUE PURSUANT TO CEQA GUIDELINE 15168(c)(2)**

**WHEREAS**, on June 16, 2015 a preliminary application was submitted and on December 16, 2015, a site development application was submitted by Rachel Green, of Anton Development Company LLC, to construct two multi-story mixed use apartment buildings containing a total of 582 apartments and 5,000 square feet of ground floor neighborhood retail space and associated improvements on 9.38 acres located at 730-750 E. Capitol Avenue (the "Project"). The zoning of the property is Urban Residential (R5) with a Transit Oriented Development (TOD) overlay and is located within the Trade Zone/Montague subdistrict of the Transit Area Specific Plan ("TASP") (APN 086-37-015, -026, -027); and

**WHEREAS**, on June 3, 2008, the City Council of the City of Milpitas (the "City"), acting as the lead agency, certified an environmental impact report ("EIR") prepared to study the proposed Transit Area Specific Plan (SCH#2006032091) pursuant to the California Environmental Quality Act ("CEQA", codified at Public Resources Code Sections 21000, *et seq.*, as further governed by the CEQA Guidelines, 14 California Code of Regulations Sections 15000, *et seq.*), and thereafter approved the TASP to guide development in the Transit Area of the City near the future Milpitas BART Station; and

**WHEREAS**, the TASP EIR found the TASP to be self-mitigating, and noted that some potentially significant impacts associated with the TASP could be avoided or reduced to levels that are not significant through implementation of the policies or mitigation measures identified in the Draft EIR; and

**WHEREAS**, an initial environmental assessment of the Project was completed in accordance with CEQA and determined that the Project is exempt from further environmental review pursuant to Section 15168(c)(2) of the CEQA Guidelines because of its consistency with the certified TASP EIR adopted on June 3, 2008, by the City Council, and;

**WHEREAS**, on May 11, 2016, the Planning Commission held a duly-noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties and unanimously recommended approval to the City Council of the Project; and

**WHEREAS**, on June 21, 2016, the City Council held a duly-noticed public hearing on the Project, and considered evidence presented by City staff, the Permittee, and other interested parties.

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

**SECTION 1: Recitals.**

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: CEQA Finding Pursuant to CEQA Guideline 15168(c)(2).**

The Project is covered under the scope of activities approved in the TASP Environmental Impact Report (SCH#2006032091), which was certified by the Milpitas City Council on June 3, 2008. Environmental Assessment EA16-0002 confirms that the Project's proposed 582 dwelling units, 5,000 square feet of retail space, and other site improvements fall within the scope of development studied in the TASP EIR and that it involves no (1) substantial changes in the Project which would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes with respect to the circumstances under which the Project would be undertaken which would require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of a previously identified significant effect; or (3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified as complete and which showed that (a) the Project would have one or more significant effects not discussed in the EIR, (b) significant effects previously examined would be substantially more severe than those shown in the EIR, (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the applicant declined to adopt the mitigation measure or alternative, or (d) mitigation measures or alternatives which would be considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the applicant declined to adopt the mitigation measure or alternative, per CEQA Guidelines Section 15162. The Project is therefore exempt from further environmental review pursuant to Public Resources Code Section 21166 and Section 15168(c)(2) of the CEQA Guidelines because of its consistency with TASP EIR.

## **SECTION 3: Site Development Permit Findings.**

In support of the Site Development Permit for a mixed-use development at 730-750 E. Capitol Avenue, and as required by Milpitas Municipal Code Section XI-10-57.03(F)(1), the City Council hereby 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 proposed buildings, structures, and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development in that the Project meets the density and design requirements of the Transit Area Specific Plan approved by the City Council June 2008, and amended December 2011. Given that the project will be surrounded by other developments that are themselves bound to conform to the Transit Area Specific Plan, the proposed Project will necessarily be compatible with its neighbors. This is illustrated in the Project's adherence to the layout and circulation aspects of the Trade Zone/Montague subdistrict, as well as its provision of streetscape and landscape improvements along Capitol Avenue, the Milpitas Boulevard Extension, and the new public street connection to the nearby Lennar project. In addition, the Project's setbacks meet or exceed the minimum setback requirements set forth in the TASP, particularly along the Penitencia Creek Channel, where a 102' setback is proposed. At roughly 62 dwelling units per acre, the Project is within the 41-75 dwelling unit per acre base density standard for the district, and will fit in with surrounding developments built to similar densities. In addition, the proposed 65' maximum height of the buildings is within the 75' limit for the district and will complement other multi-story residential buildings along Capitol Avenue. Residential units are oriented toward major streets, offering a

lively and interactive streetscape, and neighborhood serving retail uses on the ground floor of the buildings will attract the foot traffic envisioned by the Transit Area Specific Plan. Residential and retail parking will be provided in garages shielded from street view and do not require any reductions or exceptions.

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

The Project site is zoned R5 (Urban Residential) with a Transit-Oriented Development (TOD) Overlay. The proposed residential uses and ground floor commercial uses, are permitted in the zoning district and, in fact, given the Project's location within the Transit Area Specific Plan planning area, this mix of uses is required. The project also conforms to the TOD Overlay by providing density of nearly 62 dwelling units per acre, which is within the 41-75 units/acre range envisioned by the TOD Overlay when combined with the R5 Zoning District. The height of the two mixed-use buildings is below the maximum permitted for properties with Capitol Avenue frontage and the 75-foot height allowed by the standards of the TOD Overlay. In addition, the Project conforms to the requirement that there be no more than 500 feet between publicly accessible paths of travel for a block, with the longest block dimension between such paths of travel along Capitol Avenue being 473 feet, and the longest such dimension along the Milpitas Boulevard Extension measuring some 410 feet. The Project likewise meets the zoning requirement pertaining to a maximum block size of 4 acres, with the two Project blocks being 2.88 acres and 3.55 acres, respectively.

While the Zoning Ordinance does generally prohibit the construction of new swimming pools, Milpitas Municipal Code Section VIII-6-5.08 explicitly grants the City Council the authority to grant an exception to this prohibition. Given that each of the proposed swimming pools will serve hundreds of residents and visitors, the City Council believes that an exception to this prohibition is warranted.

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

The Project site has a General Plan land use designation of Very High Density Transit Oriented Residential. The intent of this designation is to provide high-density housing at a minimum base density of 41 units per acre, and a maximum density of 75 units per acre within close proximity to transit. The Project, offering approximately 62 units per acre, comfortably meets this density requirement, and is situated very near the VTA line and the future BART station. In addition, the General Plan envisions that such properties may include small, local-serving commercial uses on the ground floor level, including retail, restaurants, and personal service uses. The Project offers some 5,000 square feet of neighborhood-serving retail that will fulfill this function. The Project is consistent with the applicable Land Use Element Guiding Principle and Implementing Policies for the Transit Area as follows:

*2.a-G-2: Maintain a relatively compact urban form. Emphasize mixed-use development to the extent feasible, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.*

The Project is an urban infill redevelopment project that redevelops an underutilized site with residential and commercial uses envisioned by the TASP. It is designed as a high density residential development, contributing to a compact, dense urban form. The Project provides both residential and retail elements, providing retail (commercial) opportunities directly adjacent to the residential development.

*2.a-G-3: Provide for a variety of housing types and densities that meet the needs of individuals and families.*

The Project provides a total of 582 rental units ranging from studios to two-bedroom units. The building at 730 E. Capitol provides the following unit types and sizes: 45 studios (514 sq. ft.); 150 1-bedroom units (697 sq. ft.) and 71 2-bedroom units (1,056 sq. ft.). The building at 750 E. Capitol includes: 30 studios (520 sq. ft.); 168 1-bedroom units (709 sq. ft.) and 118 2-bedroom units (1,103 sq. ft.) The Project provides a variety of housing choices for individuals and families in Milpitas.

*2.a 1-31: Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.*

The Project is consistent with this policy as it includes two attractive contemporary multi-story structures with 582 residential units in proximity to the VTA line and future Milpitas BART Station. The Project also includes significant streetscape improvements enabling and encouraging pedestrian and bicycle movement throughout the Trade Zone/Montague subdistrict with connections to the BART and Light Rail transportation hubs, as well as nearby networks in the city of San Jose. The Project is also designed to provide an active interface with public spaces by facing townhome units toward the Project perimeter and includes 2.12 acres of public park space adjacent to Penitencia Creek.

*2.a 1-32: Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.*

As discussed above, the Project is consistent with this policy because it has been designed per the adopted design guidelines/requirements contained in the Transit Area Plan. The Project meets all guidelines and requirements of the Transit Area Plan including building setbacks and height, floor area ratio and density, parking, open space and landscaping. It also meets the requirements for access and circulation.

4. In the case of a project located within a Specific Plan, the following additional finding shall be made: The project is consistent with the Transit Area Specific Plan (TASP).

As described previously in this report, the Project is consistent with the applicable density and block size, building height, setback, building location and auto access and parking standards set forth in Tables 5-1 and 5-3 of Chapter 5, Development Standards and Design Guidelines of the Transit Area Specific Plan, as well as the street design cross sections of Figures 5-9 and 5-11 for local streets and the Capitol Avenue-Milpitas Boulevard Intersection, respectively. In addition, the Project is consistent with Policies 4.43 through 4.45 that address the Trade Zone-Montague subdistrict of the TASP.

**SECTION 4: Exception to Milpitas Municipal Code VIII-6.5.00 Regarding Supplemental Water Use Restrictions.**

Applicant proposes to include two swimming pools, one at each of the two buildings on the site. These pools would be for the use of project residents and their guests. Milpitas Municipal Code (MMC) Section VIII-6.5.00, prohibits the construction of new swimming pools in observance of water conservation efforts and requirements, in the absence of an exception. However, Section VIII-6-5.08 provides that the City Council may grant exceptions to this prohibition. No particular findings are required by MMC Section VIII-6.5.00 in order to grant such an exception. Given that the proposed swimming pools would serve several hundred individuals and would offer an attractive amenity, the City Council hereby finds that an exception is warranted in this instance. As with other projects that have sought and received such exceptions, a condition of approval requiring the applicant to forebear from filling the pools until a later date will be imposed in order to ensure the availability of water for such purposes.

**SECTION 5: City Council Approval.**

Based on the foregoing, the City Council hereby approves Environmental Assessment EA 16-0002, Site Development Permit SD15-0014, and hereby grants an exception to Milpitas Municipal Code VIII-6.5.00 "Supplemental Water Use Restriction" contained at VIII-6.5.00, including Section 5.03 to allow for swimming pools that will provide an attractive amenity to proposed residents subject to the above findings, and the Conditions of Approval attached hereto as Exhibit 1.

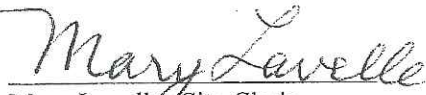
**SECTION 6. Notice.**

Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1).

PASSED AND ADOPTED this 21<sup>st</sup> day of June 2016, by the following vote:

AYES: (4) Mayor Esteves, Vice Mayor Montano, Councilmembers Giordano and Grilli  
NOES: (0) None  
ABSENT: (0) None  
ABSTAIN: (1) Councilmember Barbadillo

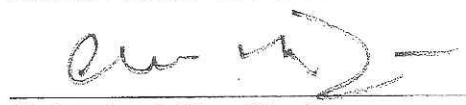
ATTEST:

  
Mary Lavelle, City Clerk

APPROVED:

  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

  
Christopher J. Diaz, City Attorney

## EXHIBIT 1

### CONDITIONS OF APPROVAL

730-750 East Capitol Avenue  
EA16-0002 and SD15-0014

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This SITE DEVELOPMENT PERMIT NO. SD15-0014 and ENVIRONMENTAL ASSESSMENT NO EA16-0002 ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. (P)
2. Conformance with Approved Plans. The Permittee shall develop the approved project in conformance with the approved plans, sample color and materials board approved by the City Council, in accordance with these Conditions of Approval. (P)
3. Modifications to Project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee 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 Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)
4. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. (P)
5. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. (ALL)
6. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the development is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the term of the permits shall coincide with the life of the tentative map. Pursuant to Section XI-10-64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement is defined 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.
7. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. (P)

8. Project Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. (E).
9. Indemnification. The Permittee shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of Site Development Permit No. SD15-0014 and/or Environmental Assessment No. EA16-0002, including the City's finding that this Project is exempt from further environmental review pursuant to CEQA Guideline 15168(c)(2) and 15162. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify Permittee, or if City fails to engage in reasonable efforts to cooperate in the defense, then Permittee's indemnification obligations as set forth in this condition of approval shall thereafter terminate. Permittee shall not be required to pay or perform any settlement unless the settlement is approved by Permittee. (CA)
10. Compliance with Fire Department and California Fire Code. Permittee shall comply with the applicable requirements of the Milpitas Fire Department and the California Fire Code as adopted and amended by the City. Changes to the approved site plan and/or building(s) shall require review and approval by the Fire Department. (F)
11. Fire Access Road Paving. Fire access roads shall be paved (concrete and/or asphalt cement, and concrete turf block). Fire apparatus access roads/lanes and emergency vehicle roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Design criteria shall be based on the City of Milpitas fire apparatus Sutphen S95 Aerial Platform unit. Please contact the Fire Prevention Division if specifications are needed. CFC Section 503.2.3 (F)
12. Fire Hydrant Joint Use Agreement: Permittee shall record a joint use agreement with the developer of the adjacent property to the west at 450 Montague Expressway for perpetual use of a private fire hydrant located on the subject adjacent property. Submit a conformed copy of the recorded agreement for City's file. (F)
13. Compliance with Building Department and Codes. Permittee shall comply with the California Building Code, California Mechanical Code, California Electrical Code, California Plumbing Code, Green Building Standards Code, California Energy Code and Milpitas Municipal Code in effect at the time of building permit submittal. (B)

14. Public Improvement Design Standards: All public improvements shall be designed and constructed in accordance with current Milpitas design guidelines, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>), standard drawings and specifications, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/plans-maps-specifications/>) and Americans with Disabilities Act (ADA) requirements where applicable. (E)
15. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department. (E)

#### PRIOR TO CONSTRUCTION PLAN SUBMITTALS

The following conditions shall be met prior to any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met.

16. Bridge Design: Permittee shall coordinate with the developer to the west and submit the final construction design plans for the East Penitencia Creek Vehicular/Pedestrian Bridge (the "Bridge"), including the landing areas of the subject Bridge, to be approved by the City and by the Santa Clara Valley Water District (SCVWD). Permittee shall incorporate the horizontal and vertical profiles and any constraints of the approved Bridge plan into all building and encroachment permit design plans. (E)
17. PG&E Approval: This Permit is conditionally issued contingent upon Permittee's ability to secure the approval of PG&E as to the proposed Project improvements to be placed within the PG&E easements and over the PG&E gas transmission lines on the Project site (see those certain Transmission Pipeline Easement documents recorded February 7, 2014, as Instrument No. 22514531, and December 23, 2014, as Instrument No. 2280615). Permittee shall design all proposed improvements within the PG&E easements and over the existing gas transmission lines consistent with said Transmission Pipeline Easement documents. Permittee shall ensure all proposed improvements within the PG&E easement limits as shown on the Site Development Plan dated March 3, 2016, are acceptable to PG&E, and shall provide written confirmation from PG&E of the same to the City, subject to the reasonable approval of City. Such written authorization shall be submitted to the City prior to Construction Plan submittals and no building permit or other authorization shall be issued by City until such written confirmation is accepted by City. (E)
18. Solid Waste and Recycling Handling Plan: Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; and procure sufficient service frequency. (E)
19. Stormwater Control Plan: Permittee shall submit third party certified final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.

20. Photometric Analysis: Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along Milpitas Boulevard, public park and public trail area that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines. (E)
21. Recycle Water Cross-Connection Specialist: In order to comply with the California Code of Regulations Title 17 and 22, and for timely plan approval by the California State Water Resources Control Board/Division of Drinking Water as well as by the South Bay Water Recycling, Permittee must hire a certified cross-connection specialist for their consultation as to irrigation water system design and construction phasing. The name and contact information of the certified cross-connection specialist shall be provided on all submittal plans. (E)
22. Utilities: Permittee shall obtain approval of all utility engineering and design to ensure that any proposed public utility relocations on the Project site, as well as within the public right-of-way, are acceptable to the City for perpetual operation/repair/maintenance of City utilities and to optimize utility right-of-way management.
23. Submittal Requirements: Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal. (E)
24. Project Job Account/Fee Deposit: Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The amount shall be at 10% of the public improvement cost estimates as prepared by the Permittee's engineer. (E)

#### PRIOR TO BUILDING PERMIT ISSUANCE

The following conditions shall be addressed during the building permit plan check process and shall be met prior to any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer.

25. Dedications/Abandonments: Permittee shall submit to the City for review and approval by the Engineering Department with recordation of a Lot Line Adjustment and other instruments, including but not limited to the following:
  - a) Offer and acceptance of dedication of South Milpitas Boulevard within the Project property limits. The exact limits of the irrevocable offer of dedication shall be consistent with the approved Bridge plans as conditioned herein.
  - b) Offer and dedication of appropriate strip of land fronting Capitol Avenue in the form of easement for public street and utility purposes to accommodate roadway frontage improvements as required by the Transit Area Specific Plan (TASP).
  - c) Offer and acceptance of dedication of a twenty-six feet (26') Emergency Access Easement (EAE) along private Street 'C' on Lot 1 and private access road on Lot 2;
  - d) Offer and acceptance of dedication of Public Access Easement over the public park, Street C and EVE areas.
  - e) Offer and acceptance of dedication of Bicycle and Pedestrian Trail Easement over the EVE.
  - f) Offer and acceptance of dedication of Public Service and Utility Easement (PSUE) for public utilities where applicable;
  - g) Elimination of any temporary easement(s) or unnecessary private easements;
  - h) Quitclaim deed for the existing PG&E easement in conflict with the proposed building on Lot 1.

- i) Abandonment of existing slope easement and two Public Service Easements along Capital Avenue in accordance with the California Streets and Highways Code.
26. Modifications: The Site Development Plan dated March 3, 2016 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein. (E)
27. Bicycle and Pedestrian Trail Connection: Permittee shall submit design plans for a Class I multi-use trail which adheres to the standards set forth in the Milpitas Bikeway Master Plan and to the satisfaction of the Directors of Planning, Recreation and Engineering. Final bikeway design shall ensure that the trail connects to the Project site to the west and to the Lundy Street spur trail to the southeast.
28. Bicycle and Pedestrian Trail Spur: Permittee shall submit design plans for Class I multi use trail spur which adheres to the standards set forth in the Milpitas Bikeway Master Plan and to the satisfaction of the Directors of Planning, Recreation and Engineering. Final spur trail design shall ensure connection to both Lundy Street to the southeast, and to the public trail directly to the west. City recognizes that construction of trail spur is contingent upon approval and permits/agreements with City of San Jose and SCVWD as needed and as required. Permittee shall be solely responsible for completing all required negotiations with these entities and securing any and all agreements, modifications to existing agreements and required permits for trail construction and operation.
29. Sanitary Sewer Calculations: Permittee shall submit a completed "Sewer Needs Questionnaire" form and sanitary sewer calculations to justify lateral size design and allocation of discharge for each of the lateral. (E)
30. Storm Drain Design: Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department. (E)
31. Stormwater Facility Operation & Maintenance Plan: Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control). (E)
32. Domestic Water and Fire Service Calculations: Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. The project site shall be served by the SCVWD Zone 2. (E)
33. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply. (E)
34. Recycle Water Approval: Permittee shall use recycled water for landscape irrigation purpose, except for the interior courtyard/podium areas within the building footprint where the potable water shall be used for irrigation. Permittee shall comply with California Code of Regulations (CCR), Title 22, Division 4, Chapter 3, titled "Water Recycling Criteria", CCR, Title 17, Division 1, Chapter 5, Subchapter 1 titled "Drinking Water Supply" and all other recycled water regulations as listed under

the publication titled "*California Department of Public Health Regulations Related to Recycled Water June 18, 2014*". Permittee shall obtain approval from the California State Water Resources Control Board/Division of Drinking Water, South Bay Water Recycling and the City for recycled water design, including but not limited to on-site irrigation design, based upon South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. All landscape plants shall be compatible with recycled water. (E)

35. Water Efficient Landscapes: Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 Water Efficient Landscapes for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package. (E)
36. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system. (E)
37. Utility Company Approval: Permittee shall obtain approval letters from utility companies (PG&E, AT&T, AT&T Broadband) for abandonment of existing and dedication of new public service utilities easements. (E)
38. Solid Waste and Recycling Facility Design: Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, staging area, storage area, etc. (E)
39. Recycling Report Prior to Demolition Permit Issuance: Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:
  - a) What materials will be salvaged.
  - b) How materials will be processed during demolition.
  - c) Intended locations or businesses for reuse or recycling.
  - d) Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance. (E)

40. Recycling Report Prior to Building Permit Issuance: Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department. (E)
41. Grease Interceptor: Provide grease interceptors for buildings with food service. Contact SJ/SC WPCP Senior Source Control Inspector at (408)277-3897 for sizing and location requirements for grease interceptor(s). No grease interceptor(s) shall be located in any public right-of-way or public easement areas. (E)

42. Flood Plain Management: This project is in the Flood Zone "AO" with 1' average flood depth, therefore, Permittee shall comply with all applicable flood protection criterion required by the Federal Emergency Management Agency (FEMA) and MMC Title XI, Chapter 15. Permittee shall also submit a Flood Study for the Project demonstrating, to the satisfaction of the City Engineer, that the proposed development has no adverse impact to the surrounding flood plain within the Special Flood Hazard Area (SFHA) and to the flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments demonstrating the combined effects will not increase the water surface elevation of the Base Flood Elevation (BFE) more than one foot at any point. For the AO Flood Zone, the flood study is required to establish the BFE, and set the building elevation accordingly. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. The study shall clearly identify the lowest floor elevation as being either the bottom of garage, bottom of first floor residential units, bottom of elevator pit, etc. and shall be completely elevated out of the SFHA. (E)
43. Horizontal Clearance: Permittee shall maintain a minimum 10' net horizontal clearance between the outside pipes of any City maintained utilities and the outside edge of building foundations/exterior walls. (E)
44. Notice of Covenant: Permittee shall execute and record a "Notice of Covenant for Private Improvements Encroaching into Public Easements" for all encroached private improvements. (E)
45. Annexation to the Community Facilities District: Permittee shall submit an executed petition to annex the subject property to the Community Facilities District (CFD) 2008-1, and agree to pay the special taxes levied by the CFD 2008-1 for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with any building permit issuance. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is nonseverable from the Permit and invalidation or limitation of this condition invalids the Permit. (E)
46. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and ready to be approved by the Engineering Department. (E)
47. Development Fees. Permittee shall pay the following development fees. The information listed in items "a" through "h" are based upon current fee rates; however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.
- a) Transit Area Specific Plan fee at \$32,781/unit for residential and \$22.80/SF for commercial. The total estimated TASP fee for the residential component of 730-750 E. Capitol Avenue is \$19,078,542.00 (582 units X \$32,781.00/residential unit) and \$114,000 (5,000 square feet X \$22.80/square foot) for the commercial component.
  - b) Parkland Dedication fees-in-lieu for any balance of parkland requirements not already met through the payment of TASP fees and/or the provision of public parkland and private recreation space, as to the satisfaction of the Directors of Planning and Engineering. Credit for public parkland dedication or private recreation greater than what is required shall not be given against any other fees or payments. The estimated Parkland Dedication Fee calculation for 730-750 E. Capitol is as follows:
    - Public parkland dedication required from Project (based on the square footage of parkland per person as required by TASP): 5.07 acres

- Amount of required public parkland dedication that is included in and credited to the Project through the payment of Transit Area Specific Plan fees as required in Condition #47a, above: 3.13 acres
- Remaining public parkland dedication required of Project: 1.94 acres (5.07 acres minus 3.13 acres)
- Proposed public parkland dedication for the Project: 2.12 acres

No additional Parkland Dedication fee is required as the 2.12 acres to be dedicated by the Project is more than the 1.94 acre dedication requirement for the Project.

- c) Lot Line Adjustment Fee in the amount of \$615.
- d) Storm water connection fee at \$16,771/acre for residential and \$21,562/acre for commercial.
- e) Water connection fee at \$1,164/unit for residential and \$5.97/gpd for commercial, based upon increased water usage.
- f) Sewer connection fee at \$1,406/unit for residential and \$8.52/gpd for commercial, based upon increased average wastewater flow.
- g) 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
- h) FEMA Flood Zone Designation Letter fee in the amount of \$100.00 each. (E)

#### PRIOR TO ENCROACHMENT PERMIT ISSUANCE

The following conditions shall be addressed as part of the off-site improvement plan review and shall be met prior to encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer.

48. Specific Improvements: In addition to standard public improvements required under Milpitas Municipal Code (MMC) Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit. (E)
  - a) Installation of new public street (Milpitas Boulevard) and associated public utilities and streetscapes. (E)
  - b) Installation of new and/or removal/relocation of existing traffic signal facilities at the southeast and southwest corner of Capital Avenue and Milpitas Boulevard. (E)
  - c) (E)
  - d) Modification at the entry/exist way for Street B on adjacent property to the west based upon an ultimate design plan, if needed based upon previously City approved ultimate design plan at the subject entry/exit way. (E)
  - e) Underground existing overhead facilities along the frontage of Capitol Avenue per MMC Title XI, Chapter 1, Section 7.02-2. (E)
  - f) Installation of concrete pavement and "No Parking, Loading Zone" signs and posts at the duck-out bay areas along Milpitas Boulevard and Street C to City's satisfaction. (E)
  - g) Installation of separate water meter for each of the following services: residential, non-residential, irrigation, and fire. (E)
  - h) Installation of radio-transmitted water meters with a meter antenna, any repeaters or transmitters as needed with dedicated power supplies at no cost to the City at locations acceptable to the City to ensure accurate and timely reception of meter readings. Permittee shall execute a recorded instrument providing dedicated space, access rights and dedicated power supplies to the City for operation/maintenance/repair/replacement of subject radio antenna. (E)
  - i) Installation of Type II slurry seal along the Capitol Avenue frontage to the median islands. (E)
49. Improvement Agreement and Securities: Permittee shall execute an Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other

supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance). (E)

50. Compliance with Other Project Conditions: Permittee shall coordinate with the developer to the west of the project site to comply with applicable provisions stipulated in Milpitas Resolution No. 15-003 Conditions of Approval No. 38 associated with the West Leg of South Milpitas Boulevard Extension, including the East Penitencia Creek Vehicular/Pedestrian Crossing and related utility relocations, including but not limited cost share. (E)
51. Maintenance Agreement: Permittee shall record a Maintenance Agreement for perpetual maintenance of certain public improvements mutually agreed between the City and the Permittee. (E)
52. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service. (E)

#### DURING CONSTRUCTION

The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer.

53. On-site Recycle Water Coordination: Permittee's cross-connection specialist shall coordinate the phasing of the construction; facilitate the cross-connection testing in order to minimize the impact for occupied buildings during cross-connection testing; sign-off before the water meter set; coordinate on-site construction inspection; complete the site inspection; fill out required paperwork/questionnaire; and provide them to the City for forwarding to South Bay Water Recycling. (E)
54. Prohibition of Potable Water Usage: Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council. (E)
55. Construction Staging and Employee Parking: Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements. (E)
56. Elevation Certificates: Permittee's civil engineer shall complete and submit several FEMA Elevation Certificates to the City at different stages of the construction, if applicable. (E)

#### PRIOR TO FIRST OCCUPANCY

The following conditions shall be met **prior to** first building occupancy on either lot, unless otherwise approved the Director of Engineering/City Engineer.

57. Completion of Public Improvements: Permittee shall complete all public improvements, including but not limited to Milpitas Boulevard, frontage improvements along Capitol Avenue, bicycle path, pedestrian and bicycle trail, traffic signal modifications and public park, as shown on City approved plans. (E)
56. Stormwater Management Facilities O&M Agreement: Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department.

57. Landscape Certificate: Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance. (E)
58. Certificate of Cross-Connection: Permittee shall ensure that the cross-connection specialist complete the required recycled water construction inspection checklist, cross connection test results and any special inspection checklist as required by the South Bay Recycling Program <http://www.sanjoseca.gov/index.aspx?NID=1595> and forward them to the City. (E)
59. Record Drawings: Permittee shall submit record drawings in pdf format for City records. (E)
60. Private Job (PJ) Balance: Permittee shall pay for any remaining balance from the Private Job deposit. (E)
61. Unless exceptions thereto are specifically authorized herein, Permittee shall comply with all applicable provisions of the Milpitas General Plan, Transit Area Specific Plan, Milpitas Municipal Code, and all other City standards and regulations.
62. Unless otherwise noted, City ordinances and other applicable laws shall mean the requirements in effect at the time of building permit issuance.
63. Swimming Pools: Pursuant to Milpitas Municipal Code Section VIII-6-5.08, Permittee is granted an exception from the City's prohibition on the construction of swimming pools. By virtue of this exception, Permittee is authorized to construct one swimming pool at each of the two buildings approved for construction through this Permit. Permittee shall not fill any swimming pool at the Project until such time as the state of California officially acts to lift water use limitations due to the on-going drought or the filling of new swimming pools is authorized by the City of Milpitas.
64. CEQA Review (2008 TASP FEIR): The Project shall be subject to all applicable policies and/or mitigation measures as set forth in Attachment "B", "Environmental Checklist Pursuant to CEQA Guidelines Section 15168" of the April 27, 2016 CEQA Exemption Memo for the 730-750 E. Capitol Avenue Project, Milpitas, California by LSA Associates, Inc. and adopted herein by reference. At the time of building permit submittal, Permittee shall submit a written report demonstrating how the Project complies with these TASP policies and/or mitigation measures to the satisfaction of the Planning Director.
65. The Permittee shall make a financial contribution of \$25,000.00 as a public benefit to the City.

**Key:**

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention
- (CA) = City Attorney

### **NOTICE OF RIGHT TO PROTEST**

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

Pursuant to Condition No. 47 contained herein, prior to any building permit issuance, Permittee shall pay the applicable Transit Area Specific Plan Development Impact Fee in effect at that time.

### **AGREEMENT**

*Permittee/Property Owner*

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this Resolution.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Permittee

**CITY OF MILPITAS  
FEE REIMBURSEMENT AGREEMENT  
FOR TRANSIT AREA SPECIFIC PLAN PUBLIC FACILITIES AND  
PUBLIC IMPROVEMENTS**

This Fee Reimbursement Agreement for Public Facilities and Public Improvements (the "Agreement"), dated as of 4/3/2018, is by and between the City of Milpitas, a municipal corporation of the State of California ("City"), and Anton Milpitas 750 LLC, a Delaware Limited Liability Company and Anton Milpitas 730 LLC, a California Limited Liability Company (individually and collectively as the "Developer").

**WITNESSETH:**

WHEREAS, Developer is the owner of that certain real property (APN No's.086-37-039, 086-37-040) located at 730-750 East Capitol Avenue in Milpitas, California; and

WHEREAS, on June 21, 2016, the City Council approved Site Development Permit (SD14-0017), Environmental Assessment (EA16-0002), and Exception to Urgency Ordinance No. 240.2 for a 583-unit residential development project located at 730-750 East Capitol Avenue in Milpitas, California (the "Project"); and

WHEREAS, City has adopted a Transit Area Specific Plan (the "TASP") and a Transit Area Specific Plan Development Impact Fee (the "TASP Fee") to provide funds to finance public facilities and public improvements within the TASP area; and

WHEREAS, City has adopted a Fiscal Mitigation and Services Plan for the TASP (EPS no. 17107) in 2008, as amended in 2014, outlining the public facilities and public improvements that are to be constructed with the TASP fees (the "Financing Plan"); and

WHEREAS, the Project is in the TASP area and the total TASP Fee for the Project is estimated at Nineteen Million Three Hundred and Fifty-Eight Thousand and Thirty Four Dollars and Sixty Cents (\$19,358,034.60) (583 units x \$32,781/unit + 5,000 square feet of commercial x \$22.80/square foot + 3,626 square feet of office x \$36.60/square foot), subject to annual adjustment as provided for in Section 9 of City Council Resolution No. 8344; and

WHEREAS, pursuant to the conditions of approval for the Project set forth in City Council Resolution No. 8556 on June 21, 2016, Developer shall design and construct certain public facilities and improvements in the TASP area such as public parks and public recycled water system and other such public facilities and improvements set forth in the conditions of approval from the Project. (the "**Improvements**"). The **Improvements** are included in the Financing Plan and would otherwise be financed by the TASP Fee, and which **Improvements** will serve more than the Developers' properties within the TASP area; and

WHEREAS, an Easement(s) shall be recorded by Developer that provides public access for future park and other parkland area in the project. (the "**Public Park Easement**"); and

WHEREAS, City and Developer desire to enter into this Agreement to provide for allowable fee reimbursement against the TASP Fee to Developer for the Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Developer hereby agree as follows:

## **SECTION 1. Allowable Fee Reimbursements**

### **1.1 TASP Fee Reimbursement**

Subject to the terms, conditions, and obligations of this Agreement, the City will provide the TASP Fee reimbursement to the Developer in the amount based on verifiable actual costs of the **Improvements (including the design of the improvements and other related costs)** and the estimated value of the **Public Park Easement**.

### **1.2 Parkland Fee**

#### **OVERVIEW**

For development projects in the TASP area, TASP Policy 3.38, that cross references Policy 3.24 in the Midtown Specific Plan, indicates that parks are required at a ratio of 3.5 acres per 1,000 people, with at least 2.0 of those acres publicly accessible. The TASP Fee includes an amount that represents 2.0 acres of publicly accessible parkland. As the Project site includes a park dedication requirement pursuant to TASP Figure 3.6, the Developer is entitled to reimbursement of that portion of the TASP Fee earmarked for parkland in the actual verifiable amount of all costs associated with constructing the park, including reimbursement for the value of the Public Park Easement to be dedicated to the City, and costs for any proposed improvements on the Public Park Easement.

The Developer's obligation to meet the remaining 1.5 acres per 1,000 persons (3.5 acres of parkland per 1,000 persons is required) can be met through private on-site recreational elements consistent with TASP Policy 3.38, that cross references Policy 3.24 in the Midtown Specific Plan.

The Parkland Fee Calculation is based upon the estimated number of persons expected to inhabit the development (per U.S. Census definitions), and the estimated value of parkland in the City of Milpitas (currently \$64 per square foot/\$2,787,840 per acre).

#### **PROJECT DETAILS**

The project has received land use entitlements for 583 multi-family units located in Two Multi-Family Five-Plus buildings (MF5+). The U.S. census estimates that 2.49 persons on average will inhabit each MF5+ unit, resulting in an estimated 1,451.67 persons. Based on this population estimate, the development's parkland obligation totals \$14,164,582.92 (equivalent to 5.08 acres of parkland)

\$15,013.70 of the \$32,781.00 per unit TASP fee is used to meet a portion of the parkland requirement for the development. Based on the unit count and resulting TASP fee required, \$8,752,987.10 of the development's parkland dedication requirements (3.14 acres) will be met through payment of the TASP fee. The remaining delta to be satisfied is \$5,411,595.82 (1.94 acres), which the developer proposes to meet via the provision of private recreation space on site.

The developer has met this obligation as shown in Exhibit A, and as summarized below:

Unit Count/Population Estimate	583
Population Estimate	1,451.67 persons
TASP Parkland Requirement	3.5 acres/1000 people or equivalent fees-in-lieu
Resulting Fees Due/Acreage Equivalent	\$14,164,582.92/5.08 ac
Amount Satisfied Through TASP Fees (Dollars/Acreage)	\$8,752,987.10/3.14 ac
Remaining Delta to be Satisfied (Dollars/Acreage)	\$5,411,595.82/1.94 ac
Additional Recreation Acreage Approved by City	1.94 acres
<b>REMAINING FEES/ACREAGE REQUIREMENT TO BE MET</b>	<b>\$0</b>
Public Access Easement Acreage for Parkland Provided by Development/Dollar Value Equivalent	2.12 acres/\$5.910,220.80
Estimated Value of Built Improvements on Public Acreage (Subject to Compliance with Section 7)	\$3,000,000
<b>TOTAL Estimated Reimbursement Due to Developer</b>	<b>\$8,910,220.80</b>

### 1.3 Water Supply System

Developer has constructed certain domestic and recycled water supply lines located under the South Milpitas Boulevard extension for which Developer is entitled reimbursement as follows:

Recycled Water Supply South Milpitas BLVD	\$32,000
Domestic Water Supply South Milpitas BLVD	\$45,900
<b>Total Estimated Reimbursement Due to Developer for Water Supply System</b>	<b>\$77,900</b>

## SECTION 2. Reimbursement Issuance Timing

- 2.1 Developer shall pay the City the full applicable TASP Fee for each residential unit at the time of each building permit issuance at the rate in effect at that time.
- 2.2 Developer shall receive the TASP Fee Reimbursement for the estimated value of the **Public Park Easement** upon recordation of the Public Park Easement.
- 2.3 Developer shall receive the TASP Fee Reimbursement for the **Improvements** upon completion and City's acceptance of the **Improvements** as stipulated hereinafter, including all supporting documentation for all costs associated with the **Improvements**.
- 2.4 Developer may receive prorated progress reimbursement in phases upon completion and acceptance of any **Improvements** in the amount corresponding to each **Improvement** item and as determined by the City.

### **SECTION 3. Completion of the Improvements**

- 3.1 Developer shall complete construction of the **Improvements** in accordance with the plans and specifications approved by City and in accordance with City standard construction specifications and this Agreement. All **Improvements** shall be completed (determined by filing of a notice of completion) prior to issuance of the certificate of occupancy for the final residential unit or building, unless City determines in its sole discretion to waive such condition.
- 3.2 In the event the **Improvements** are not fully constructed and accepted by City as set forth herein, Developer shall be in breach of this Agreement and in addition to all other legal remedies available at law or equity, City may seek reimbursement from Developer for all reimbursements provided under this Agreement specific to those **Improvements** that have not been fully constructed and accepted, including interest at the legal rate. Additionally, City may withhold any and all certificate of occupancy, building permit, map approval, or any other City approval or permit relating to the Project.

### **SECTION 4. Inspection of Improvements**

- 4.1 City shall at all times have access to the construction site during construction and Developer shall furnish City with all reasonable information necessary for ascertaining full knowledge of the **Improvements** with respect to the progress, workmanship and character of materials and equipment used and employed in the work.
- 4.2 Neither observation of the work by City nor failure of City to inspect the **Improvements** or to discover defects in material or workmanship shall relieve Developer from its obligations to complete construction in accordance with the plans and specifications approved by City and to ensure that the **Improvements** are free of defects in materials and workmanship.

### **SECTION 5. Acceptance of the Improvements**

- 5.1 At such time as the Developer believes that each of the **Improvements** is complete, the Developer shall provide written notice of completion to the City ("**Notice of Completion**"), requesting an inspection. Within ten (10) business days or as mutually agreed following the date of receipt of the Developers' written notice of completion of any **Improvement**, the City shall conduct a final inspection of the applicable **Improvements**. If, during the final inspection, the City determines that **Improvements** have not been completed in accordance with all applicable codes, regulations, permits and approved plans, the City shall prepare a punch list of all items to be completed by the Developer and shall provide such punch list to the Developer within ten (10) business days or as mutually agreed following the final inspection.
- 5.2 If the City delivers such punch list to the Developer within said ten (10) business day period or period as mutually agreed upon, then the Developer shall undertake to repair such punch list items in a diligent manner within twenty (20) calendar days, unless the repairs for such punch list items cannot reasonably be accomplished within twenty (20) calendar days, in which case they shall be completed as soon as practicable using commercially reasonable efforts. Upon completion of the punch list work, the Developer shall request another final inspection from the City and within ten (10) business days following such written notice from the Developer, the City shall conduct another final inspection.

- 5.3 If the City determines that the punch list work is complete and no other deficiencies are identified, the Developer will be deemed to have successfully completed the final inspection. If the City determines that the punch list work is not complete, then City and Developer shall repeat the inspection/punch list procedures specified in this Section until the successful completion of the punch list work and a final inspection. At such time as Developer has successfully completed the final inspection, City shall schedule the initial acceptance of the completed **Improvements** within thirty (30) calendar days thereafter before the City Council.

#### **SECTION 6. Delivery of Plans and Specifications**

Prior to acceptance of the **Improvements** by the City the Developer shall deliver to the City copies of all plans, specifications, shop drawings, as-built plans, operating manuals, service manuals, warranties and other documents relating to the design, construction, installation and operation of the applicable **Improvements**. Plans shall be submitted in CAD format, GIS format and/or PDF format as acceptable to the City.

#### **SECTION 7. Supporting Documents for the Actual Costs**

Following the completion and acceptance of the **Improvements** provided in Sections 3 to 6, the Developer shall provide final invoices, records, change order documents, payment invoices, cancelled checks and other necessary documents, as requested by the City, in order to provide to the City a final accounting of actual costs for the **Improvements**. The City shall thereafter have thirty (30) days in which to review and approve such items, which approval shall not be unreasonably withheld, conditioned or delayed. The City may request an additional 30 days to review and approve such items, which such 30-day extension request will not be unreasonably withheld by Developer. If the City does not approve all such items in thirty (30) days (or sixty (60) days if extended), and, if the Developer disputes the disapproval of such items by the City, the thirty (30) days (or sixty (60) if previously extended) may be extended as mutually agreed upon to resolve any disputes. The amount of the actual costs for the **Improvements** shall not exceed the "Estimated Value of Built Improvements on Public Acreage" identified in Section 1.2 above without the express written approval of the City, which will require an amendment of this Agreement approved by the City Council.

#### **SECTION 8. Limited City Obligation**

The obligations arising from this Agreement are neither a debt of the City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except for the developer impact fees that would have otherwise been collected for the **Public Park Easement** and the **Improvements** and other capital facilities set forth in the project plans for the TASP Fee program. Neither the City of Milpitas general fund nor any other fund of the City, except the TASP Fee program, shall be liable for the reimbursement or payment of any obligations arising from this Agreement. The reimbursement or taxing power of the City is not pledged for the payment of any obligation arising from this Agreement. The Developer shall not compel the forfeiture of any of the City's property to satisfy any obligations arising from this Agreement.

#### **SECTION 9. Liens, Claims, and Encumbrances**

Prior to acceptance of the **Improvements** by the City the Developer shall provide a written guarantee and assurance to the City that there are no liens, claims, or monetary encumbrances on the **Improvements**, together with unconditional final releases from all contractors and

material suppliers, and with copies of invoices and corresponding checks issued by the Developer for all items for which fee reimbursements are requested under this Agreement for the **Improvements**. The City shall have no obligation to issue any reimbursements for **Improvements** until the Developer has cleared any and all liens, claims and monetary encumbrances from the **Improvements** and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.

#### **SECTION 10. No Third Party Beneficiary**

By entering into this Agreement, City and the Developer are not entering into any contract or agreement with any general contractor, subcontractor, or other party nor is any general contractor, subcontractor, or other party a third party beneficiary of this Agreement, and City shall have no obligation to pay any general contractor, subcontractor, or other party for any work that such general contractor, subcontractor, or other party may do pursuant to the plans and specifications for the **Improvements**.

#### **SECTION 11. Warranty and Repair**

The Developer hereby warrants the **Improvements** as to materials and workmanship and should any failure of any **Improvement** occur within a period of one year after initial acceptance of such **Improvement by the City Engineer**, the Developer shall promptly cause the needed repairs to be made without cost to the City. The provisions contained herein shall not be deemed to limit any rights Developer has or may have to seek damages or other relief from any acts or omissions of any contractor involved in the construction or design of the **Improvements**. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer or any materials used in the **Improvements** nor in any way limit any rights of City in equity or law under this Agreement.

#### **SECTION 12. Notice**

Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City: Steve Erickson, Interim Director of Engineering/City Engineer  
Milpitas City Hall  
455 East Calaveras Boulevard  
Milpitas, California 95035  
Phone: 408-586-3300; Fax: 408-586-3305

Developer: Anton Development Company, LLC  
Attention: Rachel Green, Senior Development Manager  
950 Tower Lane, Suite 1225  
Foster City CA 94404  
[Email: rgreen@antondev.com](mailto:rgreen@antondev.com)  
Phone: 650-549-1607

Any party hereto may, by notice given hereunder, designate a different address to which subsequent notices, payments, and instruments shall be delivered to it.

**SECTION 13.     Term**

The term of this Agreement shall start as of the date first written above and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied.

**SECTION 14.     Captions**

Captions to Sections of this Agreement are for convenience purposes only, and are not part of this Agreement.

**SECTION 15.     Severability**

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

**SECTION 16.     Successors and Assigns/Reimbursements to Developer**

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The TASP Fee Reimbursement granted herein shall run with the land with respect to their application against the TASP Fees otherwise payable upon development of the Project.

**SECTION 17.     Governing Law Venue**

This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Santa Clara, State of California.

**SECTION 18.     Indemnity**

To the fullest extent permitted by law, Developer shall protect, indemnify, defend and hold City, its officers, employees, and agents harmless (with counsel acceptable to City) from and against any and all claims, liability, loss, costs, judgement, or any other obligations arising out of or resulting directly or indirectly by any cause whatsoever in connection with or incidental to the (i) activities performed by Developer, its officers, employees, or agents under this Agreement, or (ii) negligence, omission or willful misconduct by Developer, its officers, employee, or agents.

**SECTION 19.     Waiver**

Developer agrees that waiver by City of any breach or violation of any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition or obligation.

**SECTION 20.     Compliance with Laws**

Developer shall comply with all applicable federal, state, and local laws, regulations, policies, or guidelines. Developer is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Designs or Improvements are part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Developer agrees to fully comply with such Prevailing Wage Laws. Developer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws and/or any other applicable law.

**SECTION 21.     Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by all parties.

**SECTION 22.     Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day of the year first above written.

**CITY OF MILPITAS:**

By:   
~~Dianne Thompson~~ Julie Edmonds-Mares  
~~Interim~~ City Manager

Date of Execution:  
4/27, 2018

**APPROVED AS TO FORM:**

By:   
Christopher J. Diaz  
City Attorney

Date of Execution:  
3/8, 2018

**DEVELOPER:**

**Anton Milpitas 750 LLC,**  
**a Delaware limited liability company**


By: **Anton Development Company, LLC**  
**a California limited liability company**  
**its Manager**

By:   
Name: Andrew Baker  
Title: President

Date of Execution:  
2-6, 2018

**Anton Milpitas 730 LLC,**  
**a California limited liability company**

By: **Anton Development Company, LLC**  
**a California limited liability company**  
**its Manager**

By:   
Name: Andrew Baker  
Title: President

Date of Execution:  
2-6, 2018