

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

This FIRST AMENDMENT TO CITY OF MILPITAS FEE REIMBURSEMENT AGREEMENT FOR TRANSIT AREA SPECIFIC PLAN PUBLIC FACILITIES AND PUBLIC IMPROVEMENTS (the “**First Amendment**”) is made this _____ day of _____, 2021 for reference purposes only, between the City of Milpitas (“**City**”), a California municipal corporation, and Anton Milpitas 750 LLC, a Delaware limited liability company, and Anton Milpitas 730 LLC, a California limited liability company (individually and collectively, the “**Developer**”).

RECITALS

A. Developer is the owner of certain real property and holder of a Site Development Permit (SD14-0017) and related approvals for a 583-unit residential development project (the “**Project**”) located at 730-750 East Capitol Avenue in Milpitas, California.

B. Pursuant to the conditions of approval for the Project set forth in City Council Resolution No. 8556 on June 21, 2016, Developer is required to 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.

C. In connection with the Project, the City and Developer previously entered into a Fee Reimbursement Agreement for Transit Area Specific Plan Public Facilities and Public Improvements, dated April 3, 2018, (the “**Fee Reimbursement Agreement**”) pursuant to which, upon the completion and dedication of the Improvements, the City would reimburse Developer for certain costs associated with the Improvements.

D. Following approval of the Fee Reimbursement Agreement and during construction of the Project, it was discovered that the crosswalk located on the north west corner of the intersection of East Capitol Avenue at South Milpitas Boulevard leading from the Project toward the future Bay Area Rapid Transit (BART) Station (the “**East Capitol Avenue crosswalk**”) was not included in the initial public Improvements required for the Project. However, Developer is required pursuant to Project Condition of Approval #48 as set forth in City Council Resolution No. 8556 and the Improvement Agreement between City and Developer, dated June 6, 2017, to construct the sidewalk located along the project frontage on East Capitol Avenue. The existing East Capitol Avenue crosswalk is a standard 12’ wide crosswalk. However, this existing East Capitol Avenue crosswalk does not match the already constructed TASP style crosswalk on the east side of East Capitol Avenue leading into the BART Station. These additional East Capitol Avenue crosswalk improvements are more particularly depicted in **Exhibit A**, attached hereto and

First Amendment to
Fee Reimbursement Agreement (Anton)

incorporated herein (the “**East Capitol Avenue Crosswalk Improvements**”), and shall hereafter be deemed “Improvements” for purposes of the Fee Reimbursement Agreement.

E. The City has determined that there will be greater efficiency achieved if Developer constructs the additional East Capitol Avenue Crosswalk Improvements concurrently with construction of the South Milpitas Boulevard crosswalk improvements. The East Capitol Avenue Crosswalk Improvements would otherwise be financed by the TASP Fee and will serve more than the Developer’s properties within the TASP Area.

F. City and Developer desire to enter into this First Amendment to provide for the construction of these East Capitol Avenue Crosswalk Improvements and to provide that Developer will receive Fee Reimbursements for its construction of said East Capitol Avenue Crosswalk Improvements.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and Developer agree to the following modifications to the Fee Reimbursement Agreement.

Agreements

1. **Incorporation of Recitals.** The parties hereby agree that the above recitals are true and correct and are therefore incorporated herein by reference.

2. **Section 1.4 East Capitol Avenue Crosswalk** is hereby added to read in full as follows:

Subject to the terms, conditions, and obligations of this Agreement, the City will provide TASP Fee Reimbursements for all of Developer’s soft and hard costs associated with the design, construction and installation of the East Capitol Avenue Crosswalk Improvements described in **Exhibit A**, up to a maximum amount of **\$145,000.00**, all of which shall be deemed “Improvements” for which Developer is entitled to reimbursement. In no event shall City owe a refund to Developer or provide any additional fee reimbursement above the Estimated Costs. The initial “Estimated Costs” associated with the construction of the East Capitol Avenue Crosswalk Improvements are as generally described on **Exhibit B** attached hereto.

3. **Agreement in Full Force and Effect.** Except as specifically set forth in this First Amendment, all other provisions of the Fee Reimbursement Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, this FIRST AMENDMENT TO FEE REIMBURSEMENT AGREEMENT is executed by the City and by Developer.

[Signatures on Following Pages]

First Amendment to
Fee Reimbursement Agreement (Anton)

SIGNATURE PAGE
TO
FIRST AMENDMENT TO FEE REIMBURSEMENT AGREEMENT
[Anton]

CITY OF MILPITAS

By: _____
Steven G. McHarris
City Manager

Approved as to form:

By: _____
Christopher J. Diaz
City Attorney

Approved:

By: _____
Lauren Lai, CPA, MPA
Finance Director/Risk Manager

Approved as to content:

By: _____
Steve Erickson
Engineering Director/City Engineer

DEVELOPER

Anton Milpitas 750 LLC,
a Delaware limited liability company

By: Blackhorse Company, LLC, a California
limited liability company, its Manager

By: Trisha Malone
Name: Trisha Malone
Title: CFO

Anton Milpitas 730 LLC,
a California limited liability company

By: Blackhorse Company, LLC, a California
limited liability company, its Manager

By: Trisha Malone
Name: Trisha Malone
Title: CFO

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SACRAMENTO

On JAN 26, 2021 before me, RANDI SEUNG YUN LO, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared TRISHA MALONE
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Signature]

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

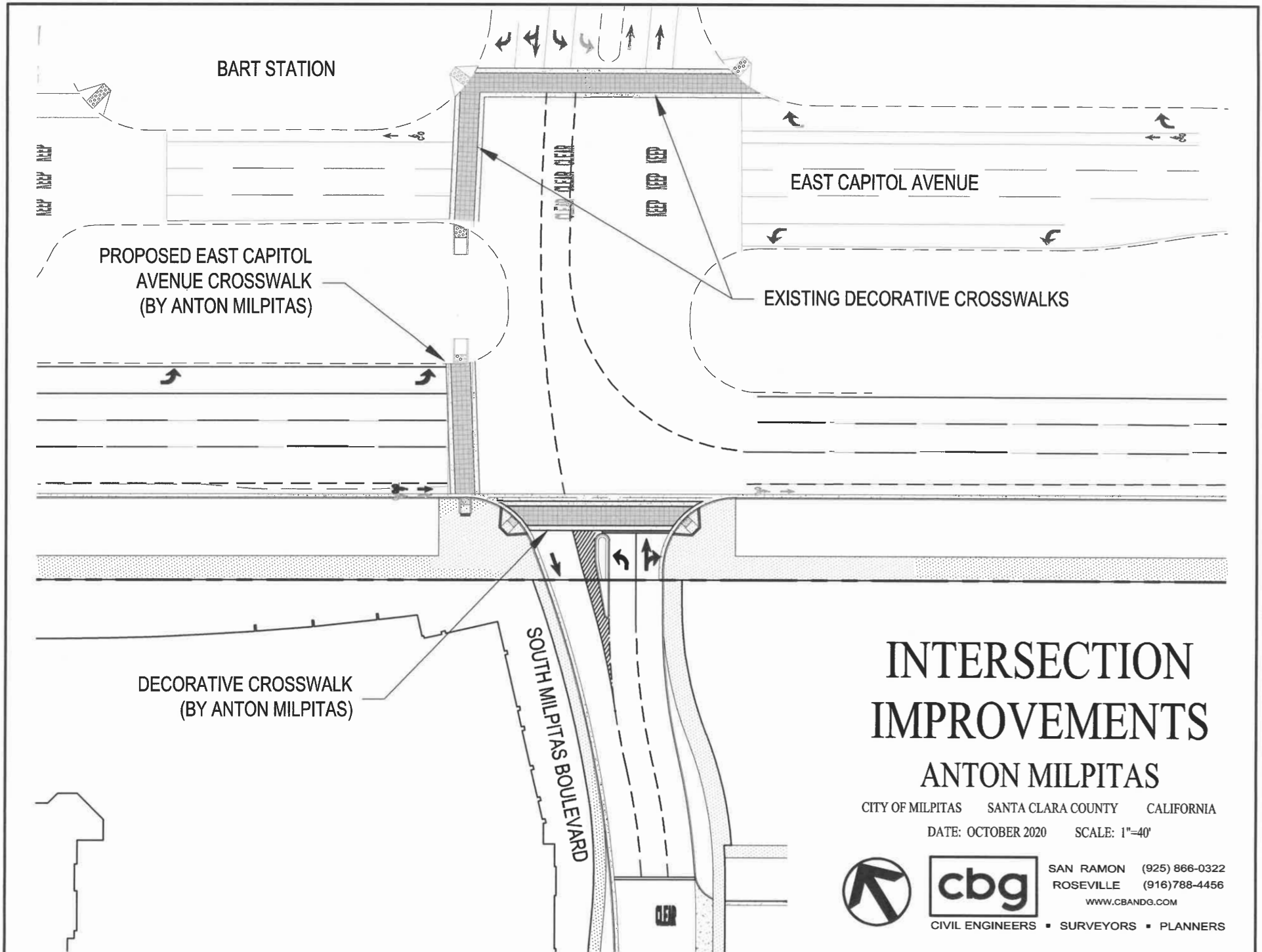
☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Exhibit A

“Site Plan”



INTERSECTION IMPROVEMENTS

ANTON MILPITAS

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

DATE: OCTOBER 2020 SCALE: 1"=40'



CIVIL ENGINEERS • SURVEYORS • PLANNERS

SAN RAMON (925) 866-0322
ROSEVILLE (916) 788-4456
WWW.CBANDG.COM

Exhibit B
“Cost Estimate”



CIVIL ENGINEERS ■ SURVEYORS ■ PLANNERS

ENGINEER'S PRELIMINARY COST ESTIMATE
E. CAPITOL AVENUE TASP CROSSWALK
730 AND 750 EAST CAPITOL AVENUE
MILPITAS, CALIFORNIA

December 22, 2020
Job No.: 2526-000

Item	Description	Quantity	Unit	Unit Price	Amount
<u>STREET WORK</u>					
1	Mobilization	3	EA	\$ 10,000	\$ 30,000
2	Erosion Control (Budget)	1	LS	\$ 2,500	\$ 2,500
3	Saw Cut	110	LF	\$ 3	\$ 330
4	Remove Existing AC / AB (31" Total Section, Includes Subgrade Recompaction and Off-Haul)	640	SF	\$ 25	\$ 16,000
5	Fine Grade	640	SF	\$ 2.50	\$ 1,600
6	8" Decorative Concrete (2' Wide Decorative Bands, Includes #4 Rebar @ 12" O.C.E.W., Color to be Scofield SG08-4 Wheat Fields)	215	SF	\$ 25	\$ 5,375
7	8" Decorative Concrete (8' Wide Crosswalk, Includes #4 Rebar @ 12" O.C.E.W., Color to be Scofield SG160-4 Red Brick)	425	SF	\$ 25	\$ 10,625
8	23.5" Aggregate Base	640	SF	\$ 5.75	\$ 3,680
9	Traffic Control (Budget)	1	LS	\$ 50,000	\$ 50,000
SUBTOTAL E. CAPITOL AVENUE TASP CROSSWALK CONSTRUCTION COSTS					\$ 120,110
20% CONTINGENCY					\$ 24,022
TOTAL E. CAPITOL AVENUE TASP CROSSWALK CONSTRUCTION COSTS					\$ 145,000
(to the nearest \$1,000)					

Notes:

1. This estimate was prepared assuming the same level of improvements to be installed for the proposed crosswalk shown on the plans prepared by Carlson, Barbee & Gibson, Inc. as was done for the existing crosswalk installed in E. Capitol Ave as part of the BART project.
2. This estimate is based on information available at this time and this office assumes no liability for changes in prices due to unforeseen conditions or changes required by governing agencies.
3. No Agency or Inspection fees have been included in this estimate.