

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

This FIRST AMENDMENT TO CITY OF MILPITAS FEE CREDIT 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 Pulte Home Company, LLC, a Michigan limited liability company, successor by conversion of Pulte Home Corporation, a Michigan corporation (“**Developer**”).

**RECITALS**

A. Developer is the current owner of certain real property (APNs 086-32-039, -045, -046, -047, -048) located at 1425 South Milpitas Boulevard in Milpitas, California (the “**Property**”).

B. Pursuant to that certain Assignment of Subdivision Improvement Agreement dated July 8, 2015, between Milpitas Station (San Jose) Venture, L.L.P., a Delaware limited liability limited partnership, and Developer’s predecessor in interest, Developer is the current holder of a Master Tentative Map (MT09-0002) and related approvals for a 303-unit residential development project, commonly referred to as the Milpitas Station Project (the “**Project**”) on the Property, which is located within the Transit Area Specific Plan (TASP) Area within the City of Milpitas California.

C. Pursuant to the conditions of approval for the Project set forth in City Council Resolution No. 7786 approving the Master Tentative Map on October 21, 2008, and City Council Resolution No. 8034 approving Builder Tentative Map on October 5, 2010, Developer is required to pay certain TASP Fees, subject to fee credits against the TASP Fees for certain improvements constructed by the Developer.

D. In connection with the Project, the City and Milpitas Station (San Jose) Venture, L.L.P., a Delaware limited liability partnership (“**Milpitas Station**”), entered into that certain Fee Credit Agreement for Transit Area Specific Plan Public Facilities and Public Improvements dated June 17, 2014 (the “**Fee Credit Agreement**”), pursuant to which, upon the completion and dedication of specified public facilities and improvements in the TASP Area including, but not limited to, certain South Milpitas Boulevard Roadway Improvements, transmission pole relocation and electrical distribution undergrounding (the “**Improvements**”), Developer would be entitled to certain Improvement Fee Credits based on the Estimated Cost of the Improvements in the Financing Plan.

E. Pursuant to that certain Assignment of Intangibles dated July 8, 2015, between Milpitas Station and Developer's predecessor in interest, Milpitas Station assigned to Developer's predecessor in interest all of Milpitas Station's estate, right, title and interest in and to the certain intangibles including the Fee Credit Agreement.

F. Following approval of the Fee Credit Agreement and during construction of the Improvements, it was discovered that certain curbs, gutters and roadway pavement south of the Union Pacific Railroad crossing at South Milpitas Boulevard were not included in the initial public Improvements required for the Project. These additional improvements are more particularly depicted in **Exhibit A.3**, attached hereto and incorporated herein by this reference (the "**South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements**"), and shall hereafter be deemed "Improvements" for purposes of the Fee Credit Agreement.

G. The City has determined that there will be greater efficiency achieved if Developer constructs the additional South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements concurrently with construction of the original Improvements due to their proximity to the South Milpitas Boulevard Roadway Improvements that Developer is already constructing. The South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements are included in the Financing Plan and would otherwise be financed by the TASP Fee and will serve more than the Developer's properties within the TASP Area.

H. The City and Developer desire to enter into this Second Amendment to provide for the construction of these South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements and to provide that Developer will receive TASP Fee Credits in the additional amount of Two Hundred Forty-Two Thousand Dollars (\$242,000.00) for its construction of the South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements as more particularly depicted in **Exhibit B.3**, attached hereto and incorporated herein (the "**South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements Cost Estimate**"), and shall hereafter be deemed "Estimated Costs" for purposes of the Fee Credit Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the City and Developer agree to the following modifications to the Fee Credit 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 1.1 Fee Credits** of the Fee Credit Agreement is hereby amended and restated to read in full as follows:

##### **"1.1 Fee Credits**

Subject to the terms, conditions, and obligations of this Agreement, the City will provide TASP Fee Credits to Developer for the Improvement Costs (defined in Section

1.2 below) for acquisition and installation of the Improvements described in Exhibit A and Exhibit A.3 and for the parkland dedication depicted in Exhibit C.”

3. Section 1.2 Improvement Costs of the Fee Credit Agreement is hereby amended and restated to read in full as follows:

**“1.2 Improvement Costs**

The Improvements, with estimated quantities and prices shown in Exhibit B and Exhibit B.3 attached hereto based on the Financing Plan total One Million Seven Hundred Forty-Two Thousand Dollars (\$1,742,000.00) (the “**Estimated Costs**”). Provided Developer completes the Improvements in accordance with this Agreement and all other applicable agreements and approvals, Developer will be entitled to TASP Fee Credits up to the Estimated Costs of One Million Seven Hundred Forty-Two Thousand Dollars (\$1,742,000.00) as set forth together in Exhibit B and Exhibit B.3. The Estimated Costs include all costs and expenses anticipated to be incurred for the design, permitting and construction of the Improvements, including, without limitation, any and all design fees and costs, bond costs, land acquisition costs, hard and soft construction costs, consulting fees and costs, engineering fees and costs, inspection costs, and fees and expenses payable to the City or other governmental or public utility that, with respect to each of the above items, are incurred for the permitting, plan check, inspection and construction of the Improvements (“**Improvement Costs**”).

Developer acknowledges and agrees that in accordance with the City's Development Impact Fee Ordinance, if the actual cost of the development of the Improvements exceeds the Estimated Costs of One Million Seven Hundred Forty-Two Thousand Dollars (\$1,742,000.00), Developer shall not be entitled to any reimbursement of the cost differential or any additional fee credit, provided that if the actual cost of the development of the Improvements is below the Estimated Costs of One Million Seven Hundred Forty-Two Thousand Dollars (\$1,742,000.00), Developer is entitled to the full fee credit up to the Estimated Costs. Notwithstanding any other provision in this Agreement, in no event shall City owe a refund to Developer or provide any additional fee credit above the Estimated Costs.”

4. Section 1.1 “Credit Issuance Timing” of Section 2 “Issuance of Credits” of the Fee Credit Agreement is hereby amended and restated as follows:

**“1.1 Credit Issuance Timing**

Upon the execution of this Agreement by the City, the Park Land Fee Credit shall be deemed issued and available for use against TASP Fees due at the time of building permit issuance for each residential unit to be constructed on the Project. Provided Developer is in compliance with each term, condition, and obligation herein, Improvement Fee Credits will be issued and available for use against the applicable

TASP Fee due at the time of building permit issuance for each residential unit to be constructed on the Project, at the time that each part of the Improvements are completed (i.e., Improvements Fee Credit in connection with the South Milpitas Blvd. Roadway Improvements shall be issued and available upon the completion of the South Milpitas Blvd. Roadway Improvements; Improvements Fee Credits in connection with the PG&E Transmission Pole Relocation shall be issued and available upon the completion of the PG&E Transmission Pole Relocation; Improvements Fee Credits in connection with the PG&E Distribution Undergrounding-RR Crossing shall be issued and available upon the completion of the PG&E Distribution Undergrounding-RR Crossing; Improvements Fee Credits in connection with the South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements shall be issued and available upon the completion of the South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements). Once the fee credit of Five Million Nine Hundred Eighty-Six Thousand Four Hundred Eight-Six Dollars (\$5,986,486.00) has been exhausted, Developer shall be required to pay the City the full applicable TASP Fee for each residential unit at time of building permit issuance at the rate in effect at that time.”

5. **Section 3 “Construction of Improvements”** of the Fee Credit Agreement is hereby amended and restated as follows:

**“SECTION 3. Construction of Improvements**

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 in Tract No. 10218, unless City determines in its sole discretion to waive such condition; provided all PG&E undergrounding and transmission line and pole relocation improvements shall be completed prior to issuance of the certificate of occupancy for the 90<sup>th</sup> residential unit within the Project, and provided that all South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements shall be completed prior to initial acceptance of the Project and release of bonds under the Subdivision Improvement Agreement dated June 17, 2014. 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 credits provided under this Agreement 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.”

6. For purposes of Section 12 “Notice” of the Fee Credit Agreement, any notice addressed to Developer shall be addressed as follows:

Developer: Pulte Home Company, LLC

4511 Willow Road, Suite 8  
Pleasanton, CA 94588  
Attn. Aaron Head  
E-mail: aaron.head@pultegroup.com  
Phone: (925) 250-7608

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

**IN WITNESS WHEREOF**, this SECOND AMENDMENT TO FEE CREDIT AGREEMENT is executed by the City and by Developer.

**[Signatures on Following Pages]**

SIGNATURE PAGE  
TO  
SECOND AMENDMENT TO FEE CREDIT AGREEMENT  
[Milpitas Station]

**CITY OF MILPITAS**

By: \_\_\_\_\_  
Steven G. McHarris  
City Manager

*Attest:*

By: \_\_\_\_\_  
Wendy Wood, City Clerk

*Approved as to form:*


By: \_\_\_\_\_  
Christopher J. Diaz  
City Attorney

*Approved as to content:*

By: \_\_\_\_\_  
Steve Erickson  
City Engineer/Director of Engineering

**DEVELOPER**

Pulte Home Company, LLC,  
a Michigan limited liability company, successor  
by conversion of Pulte Home Corporation, a  
Michigan corporation

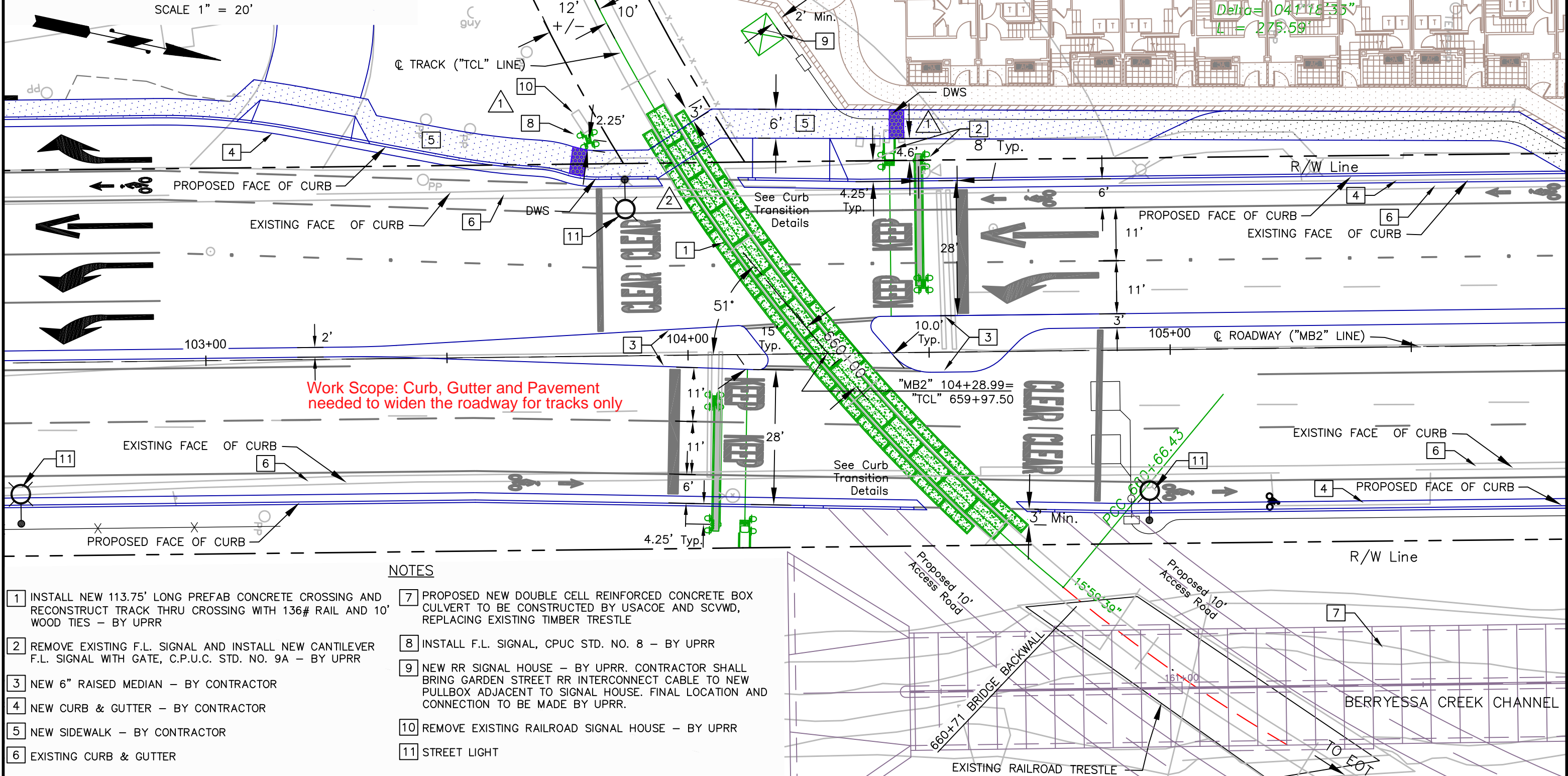
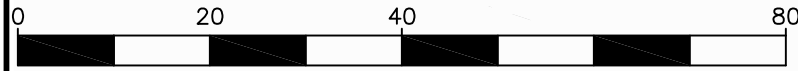
By:  \_\_\_\_\_  
Aaron Head, VP Land Planning & Dev

**Exhibit A.3**

**“South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements”**

Railroad Construction by UPRR  
Roadway Construction by Roadway Contractors  
Berryessa Creek Improvements by ACOE & SCVWD  
Planned New Transit Oriented Developments

Legend



PROPOSED RAILROAD-HIGHWAY SIGNAL LOCATION TABLE				
TRAFFIC DIR.	TYPE	"TCL" STATION	OFFSET	LENGTH
Northbound	Cant.	660+08.57	40.77' Rt.	26'
Northbound	Gate	660+12.28	36.38' Rt.	32'
Southbound	Cant.	659+76.79	39.60' Lt.	26'
Southbound	Gate	659+72.88	34.74' Lt.	32'
Sidewalk	F.L. Sig.	659+33.75	15.00' Rt.	N/A

Exhibit A.3  
South Milpitas Boulevard Railroad Crossing  
Reconstruction & Widening Improvements

$D_c = 015^{\circ}01'56''$   
 $R = 382.25'$   
 $\Delta = 104^{\circ}18'33''$   
 $L = 275.59'$

Work Scope: Curb, Gutter and Pavement  
needed to widen the roadway for tracks only

NOTES

- [1] INSTALL NEW 113.75' LONG PREFAB CONCRETE CROSSING AND RECONSTRUCT TRACK THRU CROSSING WITH 136# RAIL AND 10' WOOD TIES - BY UPRR

[2] REMOVE EXISTING F.L. SIGNAL AND INSTALL NEW CANTILEVER F.L. SIGNAL WITH GATE, C.P.U.C. STD. NO. 9A - BY UPRR

[3] NEW 6" RAISED MEDIAN - BY CONTRACTOR

[4] NEW CURB & GUTTER - BY CONTRACTOR

[5] NEW SIDEWALK - BY CONTRACTOR

[6] EXISTING CURB & GUTTER
- [7] PROPOSED NEW DOUBLE CELL REINFORCED CONCRETE BOX CULVERT TO BE CONSTRUCTED BY USACOE AND SCVWD, REPLACING EXISTING TIMBER TRESTLE

[8] INSTALL F.L. SIGNAL, CPUC STD. NO. 8 - BY UPRR

[9] NEW RR SIGNAL HOUSE - BY UPRR. CONTRACTOR SHALL BRING GARDEN STREET RR INTERCONNECT CABLE TO NEW PULLBOX ADJACENT TO SIGNAL HOUSE. FINAL LOCATION AND CONNECTION TO BE MADE BY UPRR.

[10] REMOVE EXISTING RAILROAD SIGNAL HOUSE - BY UPRR

[11] STREET LIGHT



**Chido & Associates**  
ENGINEERING AND PLANNING  
SERVICES  
FOR RAILROADS, ROADWAYS AND SITE  
DEVELOPMENTS  
  
chidoassoc.com

**RAILROAD CROSSING RECONSTRUCTION PLAN  
MONTAGUE VILLAGE OFFSITE IMPROVEMENTS  
MILPITAS BOULEVARD, DOT NO. 833 901Y  
UPRR MILPITAS INDUSTRIAL LEAD, M.P. 12.52**

DECEMBER 20, 2017

RECORD DRAWINGS TO BE COMPLETED PRIOR  
TO ACCEPTANCE OF WORK BY THE CITY

SIGNATURE & SEAL DATE  
P.E. NO. EXP.

REVISIONS

NUM.	DATE	BY	DESCRIPTION	DATE

**CITY OF MILPITAS  
ENGINEERING DIVISION**

APPROVED:	PROJECT NO.
	FILE NO.
	E.P. NO.
RECOMMENDED FOR APPROVAL:	SHEET
	OF
FIRE DEPT. DATE	

F:\CAD\BACKUP\MILPITAS\FROM CB&G\0822017\MILPITAS\_CPUC\_20SCALE\_R3.DWG



**Exhibit B.3**

**“South Milpitas Boulevard Railroad Crossing Reconstruction & Widening Improvements  
Cost Estimate”**



CIVIL ENGINEERS ■ SURVEYORS ■ PLANNERS

ENGINEER'S ESTIMATE TO COMPLETE WORK  
**RAILROAD CROSSING RECONSTRUCTION & WIDENING**  
**SOUTH MILPITAS BOULEVARD**  
MILPITAS, CALIFORNIA

July 21, 2020  
Job No.: 1543-030

Item	Description	Quantity	Unit	Unit Price	Amount
<b><u>CONTRACTOR SERVICES</u></b>					
1	Construction Services by Goodfellow Bros. Inc. dated 9/28/2018 (Excluding Median Curb and Signing & Striping)	1	LS	\$ 147,825.00	\$ 147,825
<b><u>CIVIL ENGINEERING &amp; SURVEYING SERVICES</u></b>					
2	Civil Engineering & Surveying Services by Carlson, Barbee & Gibson, Inc.	1	LS	\$ 32,000.00	\$ 32,000
<b><u>GEOTECHNICAL ENGINEERING SERVICES</u></b>					
3	Geotechnical Engineering & Inspection Services by RMA Group Inc.	1	LS	\$ 31,020.00	\$ 31,020
<b>SUBTOTAL RAILROAD CROSSING RECONSTRUCTION &amp; WIDENING COST TO COMPLETE</b>					<b>\$ 210,845</b>
<b>15% CONTINGENCY</b>					<b>\$ 31,627</b>
<b>TOTAL RAILROAD CROSSING RECONSTRUCTION &amp; WIDENING COST TO COMPLETE</b>					<b>\$ 242,000</b>
					<i>(to the nearest \$1,000)</i>

Notes:

- 1 Civil Engineering & Surveying Services include the following:
  - 1a Consultant and Agency Coordination
  - 1b Construction Consultation (RFI & Material Submittal Review)
  - 1c Meetings, Teleconferences and Processing
  - 1d Prepare Record Drawing Plans
  - 1f Construction Staking
  - 1g Reimbursables
- 2 Geotechnical Engineering Services include the following:
  - 2a Engineering Review and Consultation
  - 2b Field Investigation
  - 2c Roadway Testing

2633 CAMINO RAMON, SUITE 350 ■ SAN RAMON, CALIFORNIA 94583 ■ (925) 866-0322 ■ www.cbandg.com  
SAN RAMON ■ SACRAMENTO

## ACKNOWLEDGMENT

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

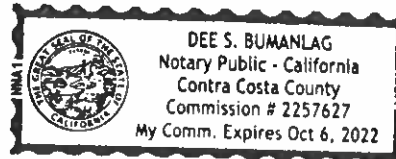
County of ALAMEDA)

On NOV. 18, 2020 before me, DEE S. BUMANLAG, NOTARY PUBLIC  
(insert name and title of the officer)

personally appeared AARON HEAD,  
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 Dee S. Bumanlag (Seal)