

SIGNATURE COVER SHEET FOR CONTRACT

Approved by Council
10/18/16

Routing Date: Chris D. CD City Attorney (initial) Jan RM Finance Director (initial) Tom W. City Manager (initial) City Manager

From (Staff Name)/Ext/Dept: Roberto Alonzo - ext 3316 - LD NOV 4 2016

Contractor / Vendor Name DR Horton - Centre Pointe RECEIVED

Purpose of the Contract Subdivision Improvement

Project Name / Number Centre Pointe

Terms of the Contract

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

Contract Amount A

If this is an Amendment:
Aggregated Amount to Date

SOURCE OF FUNDING

☐ Operating Budget

specify budget item line

☐ CIP

specify CIP # / Name

☐ PJ Reimbursement

specify Developer Name / PJ #
(may still need Budget Appropriation)

☐ Grant

provide Grant name and Council mtg date (Grant requires pre-approval from Council)

☐ Other

specify other funding source

☐ CDBG

specify CDBG FY

☐ General Fund

☐ Water Fund

☐ Sewer Fund

☐ Equip. Fund

☐ Housing Fund

☐ TASP

Is Budget Appropriation needed?

☐ YES

☒ NO

Council meeting date

Subdivider(s): D.R. Horton CA3, Inc.
Subdivision Name: Centre Pointe – 1515 Centre Pointe Drive

Private Job Account No.: 1296
Improvement Plan No.: 2-1218
Tract Map No.: 10363
Council Approval Date:
10/18/16

CITY OF MILPITAS

SUBDIVISION IMPROVEMENT AGREEMENT

This AGREEMENT, executed this 18th day of October 2016, at Milpitas, California, is by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "CITY"); and D.R. Horton CA3, Inc., a Delaware Corporation (hereafter referred to as "SUBDIVIDER").

RECITALS

- A. SUBDIVIDER desires to subdivide certain land in the CITY in accordance with a final map filed with the Milpitas City Council, marked and designated as Tract No. 10363 (the "Subdivision").
- B. The Subdivision shows certain easements which are offered for dedication for public use.

NOW, THEREFORE, in consideration of the mutual covenants terms and conditions herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

- 1. SUBDIVIDER shall at its sole cost and expense, construct all those certain improvements listed in **Improvement Plan Nos. 2-1218 and 2-1218 SD** ("Improvement Plan") and specifications, which includes setting survey monuments and identified by Private Job Account No. 1296 (and any subsequent accounts created for this Subdivision, hereby referred to and made a part hereof the same as if set forth at length herein), and as set forth in the conditions of approval for the Subdivision. SUBDIVIDER agrees that any design changes to the Improvement Plan may necessitate CITY approval.
- 2. SUBDIVIDER shall also at its sole cost and expense, construct sidewalk, tree wells and street lights along the SUBDIVIDER's frontage of Centre Pointe Drive and associated amenities. All improvements shall be accepted by the CITY upon completion and as shown on City approved plans.
- 3. No improvement work shall be undertaken by SUBDIVIDER until all plans and specifications have received approval by the City Engineer, in writing, nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of the City Engineer or his/her designee.
- 4. SUBDIVIDER shall construct said improvements and said construction is subject to the inspection of and to the satisfaction of the CITY.

5. SUBDIVIDER shall construct said improvements in accordance with the requirements set forth in said Improvement Plan referred to above, all applicable local, state, and federal codes, ordinances, resolutions and orders of CITY enacted or adopted by said City Council as amended or revised as of the date hereof, and governing statutes of the State of California or of the United States of America.
6. SUBDIVIDER shall carry out and shall cause its contractors to carry out construction of the said improvements in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. To the extent applicable to **D.R. Horton** and its subcontractors and agents, shall comply with California Labor Code Section 1720 et seq. and regulations adopted pursuant thereto ("**Prevailing Wage Laws**") and shall be responsible for carrying out the requirements of such provisions.

SUBDIVIDER shall hereby indemnify, defend (with counsel approved by CITY), protect and hold harmless the indemnitees from and against any and all Claims whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages, the failure to comply with any state or federal labor laws, regulations or standards in connection with this AGREEMENT, including but not limited to the Prevailing Wage Laws, or any act or omission of CITY or Developer related to this AGREEMENT with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that CITY does not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless AGREEMENT because of the acceptance by CITY, or Developer's deposit with CITY of any of the insurance policies described in this AGREEMENT.

7. All said improvements shall be completed and ready for final inspection by the CITY **within 36 months** of the date of execution of this AGREEMENT or **prior to first Certificate of Occupancy** for the Subdivision, whichever comes first. If SUBDIVIDER shall fail to complete the work required by this AGREEMENT within same time, CITY may, at its option, and after giving ten (10) days written notice thereof to SUBDIVIDER, complete the same and recover the full cost and expense thereof from SUBDIVIDER. Additionally, CITY may contact the surety bond companies and seek enforcement of any bonds securing this AGREEMENT.
8. Upon the execution of this AGREEMENT, SUBDIVIDER shall file and submit security to CITY as obligee in the penal sum of **Nine Hundred Seventy Eight Thousand Dollars (\$978,000.00)** conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this AGREEMENT and conditioned upon the full and faithful performance of any and all public improvement work required hereunder.
9. In the event that SUBDIVIDER fails to perform any obligation on its part to be performed hereunder, SUBDIVIDER shall pay all costs and expenses incurred by CITY in securing performance of such obligation, and if suit be brought by CITY to enforce this AGREEMENT, SUBDIVIDER, shall pay costs of suit and reasonable attorney's fees to be fixed by the Court.
10. Upon the execution of this AGREEMENT, SUBDIVIDER shall file and submit security to CITY, as obligee, in the penal sum of **Nine Hundred Seventy Eight Thousand Dollars (\$978,000.00)** insuring to the benefit of any contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder.

11. SUBDIVIDER shall pay all costs for labor or materials in connection with the work of improvement hereunder.
12. Any faithful performance security required hereunder shall be reduced to ten percent (10%) of the security's original value for one (1) year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.
13. Prior to commencing any work, SUBDIVIDER, shall obtain an Encroachment Permit from the Engineering Department and at SUBDIVIDER's sole cost and expense, provide CITY with a duplicate public general liability and automobile liability insurance policy with endorsements showing the CITY as additional insured which insures CITY, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1,000,000 for each person and \$1,000,000 for each occurrence and \$1,000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of SUBDIVIDER. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to CITY of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said CITY, its officers and employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said CITY; its officers and employees shall not be precluded from claim against other insured parties thereunder; (g) be maintained in effect until final acceptance of SUBDIVIDER's improvements. If SUBDIVIDER does not comply with the provisions of this paragraph, CITY may (at its election and in addition to other legal remedies) take out the necessary insurance, and SUBDIVIDER shall forthwith repay CITY the premium therefor.
14. SUBDIVIDER shall ensure that any general contractor engaged by the SUBDIVIDER for any work of improvement under this AGREEMENT will have:
 - a. In full force and effect, a Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give CITY at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.
 - or
 - b. In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the SUBDIVIDER or its general contractor shall immediately notify the CITY in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.
15. SUBDIVIDER shall indemnify and save harmless CITY, City Council, City Engineer or any other officer or employee or agent of CITY from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons or property heretofore or hereafter arising out of or in any way connected with the act, omission or negligence of SUBDIVIDER, its officers, agents, employees, contractors or subcontractors or any officer, agent or employee thereof.

16. SUBDIVIDER shall comply with all conditions and notes of approval for this Subdivision, pay all fees, and costs and expenses incurred by CITY in connection with said Subdivision (including, but not limited to: office check of maps and improvement plans, field checking, staking and inspection of street monuments, construction water, wet taps, testing and inspection of improvement). SUBDIVIDER shall maintain a **Private Job Account No. 1296** (and any subsequent accounts created for this Subdivision) for this purpose with additional deposits as required by CITY.

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- a. Estimated Engineering Fees to be paid upon execution of this AGREEMENT are as follows:

	Type of Fees and Deposits	City Account No.	Calculated Fee
1	Plan Review, Map Review and Inspection Deposit	PJ1296-13-2500	\$97,800.00
2	Improvement Reimbursement Fee	310-3614-xx70	N/A
3	Other Fees/Deposits	XXXX-XX-XXX	N/A
		Total =	\$97,800.00

- b. Estimated Engineering Fees to be paid at the time of building permit issuance:

	Type of Fee	City Account No.	Calculated Fee
1	Water Connection Fee (residential): 241 units @ \$1,164 per unit	402-3715	\$280,524.00
2	Water Connection Fee Credit: a credit with \$5.97/gpd @ 110gpd/ksf for previous use of 158,834sf commercial buildings		-\$104,306.29
3	Sewer Connection Fee (residential): 241 units @ \$1,406 per unit	452-3715	\$338,846.00
4	Sewer Connection Fee Credit: a credit with \$8.52/gpd @ 110gpd/ksf for previous use of 158,834sf commercial buildings		-\$148,859.22
5	Storm Drain Connection Fee (residential): 10.532 acres @ \$16,771 per acre	340-3711	\$176,632.17
6	Transit Area Specific Plan Impact Fees (residential): 241 units @ \$32,781 per unit	350-3718	\$7,900,221.00
7	Contribution to the design and construction of Penitencia Creek Pedestrian Bridge: \$250,000/355 units x 241 units	CP 2005-15-3760	\$169,718.31
8	Sewer Treatment Plant Fee	452-3714	N/A
	Sub-total		\$8,612,775.97
9	Permit Automation Fee (2.5% of total fees above)	505-3601	\$215,319.40
		TOTAL =	\$8,828,095.37

- c. Credits and/or Reimbursements due to SUBDIVIDER: Subdivider will receive certain fee credit in accordance with a separate Fee Credit AGREEMENT.

The above fees set forth in Section 16a and 16b are estimates only. The amount of fee to be paid in Section 16a and 16b shall be the amount in effect as approved by the City Council. Full payment is due to the City at time of building permit issuance unless otherwise stated in this AGREEMENT.

17. Upon completion of the work and before City Initial Acceptance of the work thereof, SUBDIVIDER shall provide the City a complete Record Drawings showing all the changes from the original plan.
18. Any easement or right-of-way necessary for the completion of any of the improvements required of SUBDIVIDER shall be acquired by SUBDIVIDER at its sole cost and expense. In the event that eminent domain proceedings are necessary for the acquisition of any easement or right-of-way, SUBDIVIDER agrees that it will pay all engineering fees and costs, legal fees and costs, and other

incidental costs sustained by CITY in connection with said eminent domain proceedings and any condemnation award and damages (including all costs awarded in said eminent domain proceedings). SUBDIVIDER further agrees that prior to the institution of any eminent domain proceedings and upon ten (10) days written notice from CITY. SUBDIVIDER will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages.

19. SUBDIVIDER shall dedicate an easement for public purposes as shown on recorded Tract Map 10305.
20. CITY will accept on behalf of the public, the public easements offered for dedication upon completion and acceptance of public improvements, and will supply water for sale to and within said Subdivision, provided however, that as a condition precedent to said initial acceptance and to supplying water, SUBDIVIDER shall perform the covenants, terms and conditions of this AGREEMENT.
21. SUBDIVIDER shall have a City-approved Storm Water Control Plan (SWCP), including an Operation and Maintenance Plan (O&M Plan), prior to issuance of first building permit. SUBDIVIDER shall execute an Operation and Maintenance AGREEMENT (O&M AGREEMENT) and establish a Private Job Account in accordance with the O&M AGREEMENT prior to issuance of the last Certificate of Occupancy for the Subdivision.
22. This AGREEMENT shall be deemed to include any final conditions imposed by CITY upon the approval of the tentative and final maps related to public improvements of said Subdivision. All public improvements shall be constructed to the satisfaction of the City Engineer prior to issuance of the first Certificate of Occupancy for any residential unit in the Subdivision.
23. SUBDIVIDER shall, upon ten (10) days written notice from CITY, immediately remedy, restore, repair or replace, at its sole expense and to the satisfaction of City Engineer, all defects, damages or imperfections due to or arising from faulty materials or workmanship appearing within a period of one-year after the date of initial acceptance of all said improvements. If SUBDIVIDER shall fail to remedy, restore, repair, or replace said defects, damages or imperfections as herein required, CITY may at its option, do so and recover the full cost and expense thereof from SUBDIVIDER.
24. This AGREEMENT shall bind the heirs, administrators, executors, successors, assigns and transferees of SUBDIVIDER. It is agreed and understood that the covenants in this AGREEMENT shall run with the land and are for the benefit of the other lands in the CITY OF MILPITAS, and are made by SUBDIVIDER expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY, its successors and assigns.
25. Nothing contained in this AGREEMENT shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the CITY.
26. Time shall be of the essence of this AGREEMENT. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by SUBDIVIDER hereunder shall be subject to approval of the City Attorney as to form.

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

*Signed and Sealed this _____ day of _____, 2016.

CITY OF MILPITAS

By: _____

Thomas C. Williams, City Manager

SUBDIVIDER:

D.R. Horton CA3, Inc.
a Delaware Corporation

By: _____

**By: _____

Name: _____

Title: J.P.

APPROVED AS TO FORM THIS

16 day of Nov, 2016

By: _____

Christopher Diaz, City Attorney

APPROVED AS TO SUFFICIENCY THIS

31st day of October, 2016

By: _____

Greg Chung, P.E.
Director of Engineering/City Engineer

* Date should be same as date on Page 1 of 6.

** It is essential that the signatures be acknowledged before a California Notary Public and proper acknowledgment shall be attached.

Senate Bill 1050, amends Sections 1189 and 1195 of the Civil Code and Section 8202 of the Government Code, relating to notaries public. The below physical format of the new disclosure notice is an example, for purposes of illustration.

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 10/12/16 before me, Kristin M. Casey (here insert name and title of officer), personally appeared Dean K. Mills, 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.

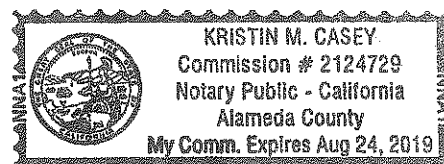
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Kristin M. Casey

(Seal)



**Preliminary Opinion of Probable Cost
Centre Pointe Offsite Improvement Plans
Milpitas, CA
DR Horton**

Revision Date	Revision Description
<p>In providing this Opinion of Probable Cost, the Client understands that the Design Professional has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the Design Professional is <u>not</u> a Professional Cost Estimator. The Design Professional makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. It is the Client's responsibility to review all unit prices and make changes as the Client sees fit to reflect the actual market prices the Client is experiencing and to reflect the Client's method of operation.</p> <p>This document shall be considered incomplete unless accompanied by all sheets, including notes.</p>	

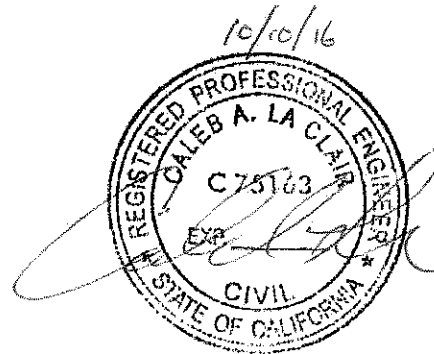
SUMMARY

A. GRADING	\$135,220
B. PAVING & CONCRETE	\$371,956
C. STORM DRAIN	\$23,700
D. SANITARY SEWER	\$22,200
E. WATER	\$113,600
F. MISCELLANEOUS	\$222,480

Sub-Total Improvements: \$889,166

CONTINGENCY 10% 88,917

Total Improvements: \$978,082



Preliminary Opinion of Probable Cost
Centre Pointe Offsite Improvement Plans
Milpitas, CA
DR Horton

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ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
A. GRADING AND DEMOLITION					
1.	Sawcut	2,540	LF	\$1.00	\$2,540
	Remove and Offhaul				
2.	Concrete Pavement (Dwy, Swk, Curb and Gutter)	4,000	SF	\$2.00	\$8,000
3.	AC Pavement 2" grind	19,000	SF	\$1.00	\$19,000
4.	AC and Baserock	21,000	SF	\$2.00	\$42,000
5.	Remove ex retaining wall	8	LF	\$50.00	\$400
6.	Remove and/or relocate ex sign	6	EA	\$100.00	\$600
7.	Remove ex irrigation box	2	EA	\$500.00	\$1,000
8.	Remove ex 39" RCP SD	8	LF	\$40.00	\$320
9.	Remove ex 24" RCP SD	3	LF	\$40.00	\$120
10.	Remove ex 21" RCP SD	3	LF	\$40.00	\$120
11.	Remove ex 18" RCP SD	8	LF	\$40.00	\$320
12.	Remove ex 12" RCP SD	65	LF	\$40.00	\$2,600
13.	Remove ex curb inlet/field inlet	5	EA	\$1,000.00	\$5,000
14.	Remove ex sewer lateral	4	EA	\$1,000.00	\$4,000
15.	Remove ex water service up to the valve/main and plug/cap	12	EA	\$1,000.00	\$12,000
16.	Remove ex fire hydrant	2	EA	\$2,000.00	\$4,000
17.	Remove ex water meter box	9	EA	\$500.00	\$4,500
18.	Remove ex backflow preventer	6	EA	\$500.00	\$3,000
19.	Remove ex PVI, FDC, and water service	4	EA	\$1,000.00	\$4,000
20.	Remove ex recycled water service	50	LF	\$40.00	\$2,000
21.	Remove ex recycled water meter box	5	EA	\$500.00	\$2,500
22.	Remove ex street light	5	EA	\$1,000.00	\$5,000
23.	Remove ex utility box	2	EA	\$500.00	\$1,000
24.	Remove ex 12" ACWP water main	80	LF	\$40.00	\$3,200
25.	Erosion Control (See Note 7)	1.6	AC	\$5,000.00	\$8,000
Sub-Total Grading:					\$135,220

**Preliminary Opinion of Probable Cost
Centre Pointe Offsite Improvement Plans
Milpitas, CA
DR Horton**

Revision Date	Revision Description

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ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
B. PAVING & CONCRETE					
1.	Street Fine Grading (R/W to R/W)	36,500	SF	\$0.50	\$18,250
2.	AC Pavement (3.5" AC over 13" AB)	15,200	SF	\$6.50	\$98,800
3.	AC Pavement (4" AC over 16" AB)	2,300	SF	\$7.50	\$17,250
4.	2" AC Overlay	19,000	SF	\$2.00	\$38,000
5.	Standard Curb and Gutter	1,800	LF	\$18.00	\$32,400
6.	Raised Median w/ Vertical Curb	275	LF	\$15.00	\$4,125
7.	Valley Gutter	370	SF	\$6.00	\$2,220
8.	4" PCC Sidewalk & Base	9,400	SF	\$5.00	\$47,000
9.	2' PCC Band	910	SF	\$6.00	\$5,460
10.	Stamped Concrete (at pedestrian crossings)	1,700	SF	\$12.00	\$20,400
11.	Handicap Ramp	9	EA	\$1,500.00	\$13,500
12.	Utility Concrete Cap	45	LF	\$10.00	\$450
13.	Micro Seal	74,100	SF	\$1.00	\$74,100
Sub-Total Paving & Concrete:					\$371,955

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
C. STORM DRAIN					
1.	6" Storm Drain (PVC)	110	LF	\$40.00	\$4,400
2.	12" Storm Drain (PVC)	40	LF	\$70.00	\$2,800
3.	Curb Inlet	3	EA	\$3,500.00	\$10,500
4.	Field Inlet	1	EA	\$3,000.00	\$3,000
5.	Connect to existing SD line	3	EA	\$1,000.00	\$3,000
Sub-Total Storm Drain:					\$23,700

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
D. SANITARY SEWER					
1.	8" PVC SS	120	LF	\$80.00	\$9,600
2.	Manhole (less than 10' deep)	2	EA	\$4,800.00	\$9,600
3.	Connect to existing manholes	1	EA	\$2,000.00	\$2,000
4.	Connecting to existing SS line	1	EA	\$1,000.00	\$1,000
Sub-Total Sanitary Sewer:					\$22,200

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
E. WATER					
1.	12" PVC incl. valves, thrust blocks, etc.	140	LF	\$90.00	\$12,600
2.	6" PVC (Reclaimed Water)	320	LF	\$75.00	\$24,000
3.	Fire Hydrant	8	EA	\$6,500.00	\$52,000
4.	2" Irrigation Water Meter/Backflow Device	2	EA	\$5,000.00	\$10,000
5.	Connect to existing water line	2	EA	\$5,000.00	\$10,000
6.	Connect to existing reclaimed water line	1	EA	\$5,000.00	\$5,000
Sub-Total Water:					\$113,600

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
F. MISCELLANEOUS					
1.	Electroliner	11	EA	\$5,000.00	\$55,000
2.	Monuments	1	EA	\$500.00	\$500
3.	Signing and Striping	1	LS	\$40,000.00	\$40,000
4.	Offsite Storm Drain Relocation (per OPC dtd: 09/07/2016)	1	LS	\$126,990.00	\$126,990
Sub-Total Miscellaneous:					\$222,490

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NOTES

1. THIS IS A PRELIMINARY OPINION OF PROBABLE COST BY THE CIVIL ENGINEER. THE CIVIL ENGINEER MAKES NO REPRESENTATION CONCERNING THE ABOVE ITEMS SHOWN IN CONNECTION WITH THE PLANS AND SPECIFICATIONS BEING PREPARED.
2. QUANTITIES SHOWN HEREIN ARE CALCULATED FROM OFFSITE IMPROVEMENT PLANS FOR CENTRE POINTE DATED SEPTEMBER 2016, WHICH ARE SUBJECT TO REVISION.
3. COST FIGURES SHOWN HEREIN ARE CONCEPTUAL ONLY. ACTUAL COSTS ARE DEPENDENT ON THE ITEMS SHOWN ON THE PLANS AT BIDDING TIME, THE GENERAL MARKET SITUATION, THE CONTRACTOR'S WORKLOAD, SEASONAL FACTORS, LABOR AND MATERIAL COST, ETC.
4. ITEMS SHOWN ABOVE AND THEIR ASSOCIATED COSTS ARE SUBJECT TO REVISION DUE TO CHANGES, ADDITIONS, AND DELETIONS RESULTING FROM ON-GOING AGENCY REVIEW.
5. COSTS ASSOCIATED WITH JOINT TRENCH CONSTRUCTION ARE NOT INCLUDED IN THIS OPINION OF PROBABLE COST. THE CLIENT SHOULD OBTAIN COST FIGURES FROM SEPARATE CALCULATIONS SUPPLIED BY A QUALIFIED UTILITY CONSULTANT. TOTAL COSTS, INCLUDING UTILITY COMPANY FEES, CONNECTION CHARGES, SUBSTRUCTURE, WIRING, ETC. ARE NOT INCLUDED.
6. COSTS FOR INDIVIDUAL SANITARY SEWER BACKFLOW PREVENTERS, WATER PRESSURE REDUCERS, AND WATER PRESSURE BOOSTERS ARE NOT INCLUDED IN THIS OPINION OF PROBABLE COST. THE BUILDER SHOULD BUDGET FOR THESE ITEMS WITH THE BUILDING COSTS.
7. EROSION CONTROL COSTS ARE FOR INITIAL INSTALLATION ONLY AND DO NOT INCLUDE ONGOING MAINTENANCE OR SUBSEQUENT YEARLY INSTALLATIONS/MODIFICATIONS.
8. THE CONTINGENCY SHOWN SHOULD BE VERIFIED BY THE CLIENT. THE CONTINGENCY SHOWN IN THIS OPINION OF PROBABLE COST IS INTENDED TO INDICATE GENERAL UNCERTAINTY AND SHOULD NOT BE USED AS A VARIANCE TO ACTUAL CONSTRUCTION COST.
9. PAVEMENT STRUCTURAL SECTION THICKNESS SHOWN IS BASED ON TABLE 12.0-1 FROM THE PROJECT GEOTECHNICAL REPORT BY ENGEO INC. DATED DECEMBER 30, 2015.
10. THIS DOCUMENT DOES NOT INCLUDE COSTS TO ACQUIRE RIGHT-OF-WAY NEEDED FOR THIS PROJECT.
11. GEOTECHNICAL MITIGATION INCLUDING SLIDE REPAIR, SUBDRAINS, KEYWAYS, AND OVEREXCAVATION IS NOT INCLUDED IN THIS OPINION OF PROBABLE COSTS.
12. EARTHWORK QUANTITIES SHOWN ON THIS OPINION OF PROBABLE COST ARE APPROXIMATE QUANTITIES AND ARE FURNISHED FOR INFORMATION ONLY. THE ACTUAL AMOUNT OF EARTH MOVED WILL VARY DEPENDING ON THE PROPERTIES OF THE SOILS ENCOUNTERED, THE CONTRACTOR'S METHOD OF OPERATION, ETC.
13. THIS CONCEPTUAL COST ANALYSIS EXCLUDES THE FOLLOWING:
 - a. CONSTRUCTION STAKING
 - b. GEOTECHNICAL ENGINEERING OR TESTING
 - c. OVERSIZING OF UTILITIES FOR ADDITIONAL CAPACITY
 - d. FENCING
 - e. BUILDING RELATED COSTS OR FEES
 - f. FINANCING CHARGES
 - g. REIMBURSABLE AGREEMENTS OR REFUNDABLE DEPOSITS
 - h. PLANNING AND OTHER CONSULTANT FEES
 - i. LANDSCAPING AND IRRIGATION, INCLUDING ONSITE EXTERIOR STAIRS AND WALKWAYS
 - j. CITY AND OTHER AGENCY FEES, INCLUDING MAP AND IMPROVEMENT PLAN FEES
 - k. ENVIRONMENTAL MITIGATION
 - l. BONDS AND BONDING FEES
 - m. IMPROVEMENTS NOT SHOWN ON THE PLANS
 - n. IMPROVEMENTS FOR CUSTOM LOTS
 - o. OFF-SITE IMPROVEMENTS
 - p. SCHOOL DISTRICT FEES
 - q. ASSESSMENT DISTRICT FEES
 - r. PROFESSIONAL DESIGN FEES (CIVIL, STRUCTURAL, ARCHITECTURAL, ETC.)
 - s. MONITORING DURING CONSTRUCTION

AGENDA REPORTS

XIV. PUBLIC HEARING

- 1. Conduct a Public Hearing, Adopt a Resolution Making Certain Determinations and Authorizing Submittal of the Levy of Special Taxes to the Qualified Electors of Certain Territory (Centre Pointe) Proposed to be Annexed to Community Facilities District No. 2008-1 for Public Services; Conduct a Special Election and Adopt a Resolution Declaring the Results of the Special Election and Adding Annexation No. 10; Approve Final Map Tract 10363 for a 241-Unit Residential Development at 1515, 1557 and 1585 Centre Pointe Drive, and Authorize the City Manager to Execute the Subdivision Improvement Agreement (Staff Contact: Judy Chu, 408-586-3325)**

Background: On January 6, 2009, the City Council adopted Resolution No. 7815 enabling the establishment of City of Milpitas Community Facilities District (CFD) No. 2008-1 for public services. On September 6, 2016, the City Council adopted Resolution 8585 declaring intention to annex real properties within Tract No. 10363 into CFD No. 2008-1 (Annexation No. 10, Attachment 1), levy and collect special tax for public services, set the public hearing date for 7:00 PM, October 18, 2016 at City Hall, and direct the City Clerk to provide notice of public hearing per Government Code Sections 53339.4, 53322 and 53322.4. A Notice of Public Hearing (Attachment 2) was duly published on *Milpitas Post* on October 7, 2016, as evidenced by the affidavit of the publication on file with the City Clerk.

Pursuant to Government Code Section 53339.8, City Council may determine to levy any special tax within Annexation No. 10, if two-thirds of the votes cast on the proposition are in favor of levying the special tax for public services. City has on file a Certificate of Registrar of Voters from the County of Santa Clara certifying that there are no registered voters residing within the boundaries of proposed Annexation No. 10 to the CFD 2008-1. Consequently, the qualified electors shall be the land owner within the Annexation No. 10. The land owner, D. R. Horton CA3, Inc., has consented and waived to shortening of time for noticing and conducting a special election to the proposed Annexation No. 10 (Attachment 3). Additionally, as required by the project condition no. 23, the land owner shall consent to annex its properties into CFD 2008-1 and pay the special taxes levied by CFD No. 2008-1 for public services.

Final Tract Map

On November 17, 2015, the City Council conditionally approved two Vesting Tentative Maps (VTMs) to allow for 241 new dwelling units on two lots located at 1515, 1557 and 1585 Centre Pointe Drive between Great Mall Parkway and Montague Expressway within the Transit Area Specific Plan area.

The City Engineer has examined the final map Tract 10363 (Attachment 1) and determined that the final map Tract 10363 is substantially the same as the VTMs pursuant to California Government Code (GC) Section 66442. The City Council shall not deny approval of a final map if it has previously approved a tentative map for the proposed subdivision and if it finds that the final map is in substantial compliance with the previously approved tentative map pursuant to GC Section 66474.1. Therefore, once the City Engineer certifies the final map, there are no additional discretionary grounds for the City Council to disapprove the final map.

Developers have offered dedications to the City for public use, such as public service and public utilities, emergency vehicle access, surface drainage release of storm water and future pedestrian bridge, as required by the project condition and as depicted on the final map. City Council shall accept, accept subject to improvements, or reject any offer of dedication at the time of final map approval pursuant to GC Section 66477.1 and Milpitas Municipal Code (MMC) Section XI-1-5.05-2.

On October 3, 2016, the City's Facilities and Streets Naming Subcommittee reviewed and recommended approval of the street names as shown on the final map. Those private street names are Market Street, Baja Rose Street, Wild Rose Way and Coffee Berry Lane without duplication. City Council shall approve all street names pursuant to MMC Section XI-1-7.01-8.

The City Engineer has also reviewed and approved public improvement plans (2-1218) pursuant to MMC XI-1-7.09-2. The Developer has executed a Subdivision Improvement Agreement (Attachment 2) as approved by the City Attorney as to form and by the City Engineer as to substance pursuant to MMC XI-1-17.01, paid all development fees and provided improvement securities for labor and materials to guarantee completion of required public improvements.

The final map Tract 10363 conforms to all of the requirements of the State of California Subdivision Map Act, and Milpitas Municipal Code Title XI, Chapter 1 *Subdivisions*.

California Environmental Quality Act: Annexation of real properties into the existing CFD No. 2008-1 is not a project pursuant to the CEQA section 15378(b)(4), therefore, not subject to further environmental review. For the final subdivision map, approval is a ministerial action exempt from CEQA pursuant to CEQA Guidelines Section 15268(b)(3).

Fiscal Impact: Annexation of real properties within Tract No. 10363 into the CFD No. 2008-1 will enable the City to levy special tax for the real properties within Tract No. 10363 to fund public services. There is no fiscal impact for final map approval.

Attachments:

- A. Council Resolution – Special Taxes Levy for Annexation No. 10
- B. Council Resolution – Election Results for Annexation No. 10
- C. Boundary Map for Annexation No. 10
- D. Notice of Public Hearing (as published)
- E. Consent and Waiver for annexation
- F. Final Map Tract No. 10363
- G. Subdivision Improvement Agreement (SIA) – Centre Pointe Drive

Recommendations:

1. Open the public hearing, and move to close it following any speakers.
2. Adopt a resolution making certain determinations and authorizing submittal of the levy of special taxes to the qualified electors of certain territory (Centre Pointe by D. R. Horton) proposed to be annexed to CFD No. 2008-1 for public services.
3. Direct City Clerk to open ballot(s) and report election results, and then adopt a resolution declaring the results of the special election and adding Annexation No. 10 to the CFD No. 2008-1 for public services.
4. Direct the City Clerk to record notice of the annexation pursuant to Section 3117.5 of the California Streets and Highways Code.
5. Approve Final Tract Map No. 10363 for 241 new dwelling units located at 1515, 1557 and 1585 Centre Pointe Drive, including approval of street names and acceptance of all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements.
6. Authorize the City Manager to execute the Subdivision Improvement Agreement.

CITY COUNCIL MEETING

10/18/2016

SUMMARY OF ACTIONS

Item

Staff

CLOSED SESSION

No announcement from Closed Session.

PUBLIC FORUM - None

ANNOUNCEMENT

Councilmember Giordano acknowledged Mayor Esteves and Councilmember Grilli for being named one of the best elected officials, in a recent edition of The Milpitas Post.

1. PUBLIC HEARING, ADOPT A RESOLUTION AUTHORIZING SUBMITTAL OF OF SPECIAL TAXES TO ELECTORS OF CERTAIN TERRITORY (CENTRE POINTE) TO BE ANNEXED TO COMMUNITY FACILITIES DISTRICT NO. 2008-1 FOR PUBLIC SERVICES; CONDUCT SPECIAL ELECTION AND ADOPT A RESOLUTION DECLARING RESULTS AND ADD ANNEXATION NO. 10; APPROVE FINAL MAP TRACT 10363 FOR A 241-UNIT RES. DEVELOPMENT AT 1515, 1557 AND 1585 CENTRE POINTE DR. AND AUTHORIZE CITY MANAGER TO EXECUTE THE SUBDIVISION IMPROVEMENT AGREEMENT

Judy Chu

1. Closed public hearing, after no speakers came forward.
 2. Adopted Resolution No. 8596 making certain determinations and authorizing submittal of the levy of special taxes to the qualified electors of certain territory (Centre Pointe by D. R. Horton) proposed to be annexed to CFD No. 2008-1 for public services.
 3. City Clerk opened ballot and reported one Yes vote. Adopted Resolution No. 8597 declaring the results of special election and adding Annexation No. 10 to the CFD No. 2008-1 for public services.
 4. Directed City Clerk to record notice of the annexation pursuant to Section 3117.5 of the California Streets and Highways Code.
 5. Approved Final Tract Map No. 10363 for 241 new dwelling units located at 1515, 1557 and 1585 Centre Pointe Drive, including approval of street names and acceptance of all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements.
 6. Authorized the City Manager to execute the Subdivision Improvement Agreement.
- VOTE: 5 - 0

- *2. VETERANS COMMISSION APPOINTMENT

Mary Lavelle

Re-appointed Liliana Ramos to the Milpitas Veterans Commission into the seat previously held, to a term that expires in February of 2019.

VOTE: 5 - 0

3. CONSTRUCTION STATUS UPDATE FOR MONTAGUE WIDENING PROJECT

Steve Chan

Received report from Santa Clara Valley Transportation Authority Project Manager Yvonne Liao (representing the project JPA, including County and Water District) on update of the construction status of the Montague Expressway Widening Project. Mayor Esteves asked for assurance that businesses in the area would be compensated, if appropriate due to loss of business during closure of Milpitas Blvd. at Montague for 5 weeks.

VOTE: 5 - 0

- *4. FEE WAIVER REQUEST FROM SUNNYHILLS NEIGHBORHOOD ASSOCIATION

Mary Lavelle

This item was removed from the agenda.